

1 having been first duly sworn, testified as follows:

2 **DIRECT EXAMINATION**

3 **BY MS. BARD:**

4 Q. Could you please introduce yourself to the
5 jury?

6 A. Yes, ma'am. I'm James Tippy. The spelling of
7 my last name is T-i-p-p-y.

8 Q. And we see you're here in uniform with the
9 Houston Police Department.

10 A. Yes, ma'am.

11 Q. How long have you been with the Houston Police
12 Department?

13 A. November will be 29 years.

14 Q. Do you like being a police officer?

15 A. Yeah, apparently. I've been there that long,
16 so, yeah.

17 Q. Where are you currently assigned?

18 A. Currently assigned to the Vehicular Crimes
19 Division.

20 Q. Something we commonly refer to as VCD, correct?

21 A. Correct.

22 Q. How long have you been with VCD?

23 A. January of '92 I transferred there.

24 Q. What's your kind of primary responsibilities
25 and job duties in the Vehicular Crimes Department?

1 A. Our particular division is responsible for
2 investigating police car accidents, fire department
3 accidents, catastrophic injury accidents, FSRAs, which
4 is failure to stop and render aid, as well as fatality
5 accidents. That's our primary mission in our division.

6 My responsibility in the division, I'm
7 assigned to the crash reconstruction unit on evening
8 shift. And then I also have a lieutenant that has
9 decided to make me a special projects officer as well.
10 So, I do that as well.

11 Q. Do you have any sort of specialized training or
12 education in the -- in this area of crash investigation,
13 crash reconstruction?

14 A. Yes, ma'am. Everyone that wants to come over
15 to the VCD Division has to take basic courses,
16 intermediate courses, and advanced courses in accident
17 investigation. If it's something that you like doing
18 and you want to take it to another level, which,
19 obviously, is reconstruction to determine causation of
20 accidents and how the dynamics of the wreck happened,
21 then you take advanced courses in reconstruction
22 involving commercial motor vehicles, pedestrian wrecks,
23 motorcycle wrecks, all of the wrecks that we would
24 typically experience in Houston.

25 Q. If you had to guesstimate, how many hours of

1 training and education do you have in crash
2 investigation and crash reconstruction?

3 A. I know the total amount of inservice school I
4 have is about 2400 hours. If you take 720 hours out,
5 which is the basic police officer, I guess, curriculum,
6 the majority of all of my advanced and intermediate
7 training has been in accidents. I didn't really pick
8 that as a career path, but it just seemed like I kept
9 going to those classes.

10 Q. So, well over 1500 hours of training?

11 A. I would say, yes.

12 Q. And, in fact, you've taught some trainings in
13 crash investigation and reconstruction, have you not?

14 A. That is correct.

15 Q. In fact, you taught me?

16 A. That is correct.

17 Q. Okay. Were you called out on July 26th of 2010
18 to a fatality crash at I-45 southbound?

19 A. Yes, ma'am, I was.

20 Q. And about what time or so did you show up on
21 this scene?

22 A. I think the wreck happened about 12:25 and I
23 come on duty -- I work 12:00 to 10:00. And I heard the
24 accident go out. And it was probably about 2:00 o'clock
25 by the time I arrived on the scene because traffic was

1 bad and I was coming from downtown.

2 Q. In fact, you had to get stuck in the traffic
3 that was kind of rubbernecking the crash you were going
4 to try to investigate?

5 A. Correct.

6 Q. Are you familiar with southbound I-45 at about
7 El Dorado and Bay Area Boulevard?

8 A. Unfortunately, we've had several fatality
9 accidents out there. So, yes, I'm familiar with that
10 area.

11 MS. BARD: Your Honor, may I approach the
12 witness?

13 THE COURT: Yes.

14 Q. (By Ms. Bard) Officer Tippy, I'm going to show
15 you what has previously been marked as State's Exhibits
16 4, 5, 6, and 7. Can you look at those for me
17 (indicating)?

18 A. All right.

19 Q. Looking at 4, 5, 6, and 7, are these simply
20 maps and -- satellite maps of the intersection of, I
21 guess, I-45 between El Dorado and Bay Area Boulevard?

22 A. Yes, they are.

23 Q. And do they fairly and accurately show Bay Area
24 Boulevard and south I-45?

25 A. It shows how the road would be depicted, yes.

1 MS. BARD: Your Honor, at this time, the
2 State would offer into evidence State's 4, 5, 6, and 7,
3 and tenders to opposing counsel for any objection.

4 **(State's Exhibit No. 4 through 7 Offered)**

5 MS. BECK: I have no objections to State's
6 4 through 7, Your Honor.

7 THE COURT: All right. State's 4 through 7
8 are admitted.

9 **(State's Exhibit No. 4 through 7 Admitted)**

10 MS. BARD: May I publish, Your Honor?

11 THE COURT: Yes.

12 Q. (By Ms. Bard) I'm going to start with State's
13 Exhibit 4. What are we looking at here (indicating)?

14 A. A blurry picture.

15 Q. What are we looking at here in State's Exhibit
16 4 (indicating)?

17 A. This is the Gulf Freeway as it runs south
18 towards Galveston. And it has an "A." I would say that
19 probably is indicative of where the crash happened.

20 Q. Is this basically just kind of a picture where
21 in Houston the crash happened?

22 A. Right. It's going to be in far deep southeast
23 Houston.

24 Q. Looking at State's Exhibit No. 5, is this
25 simply a closer-up map where we can see El Dorado and

1 Bay Area Boulevard (indicating)?

2 A. That is correct.

3 Q. And that "A," similar to what we saw in State's
4 4, is that about approximately where the crash happened?

5 A. Yes, ma'am.

6 Q. Looking at State's Exhibit 6, what are we
7 looking at here (indicating)?

8 A. Basically, what this is is this has just
9 changed it to a satellite view instead of a map view
10 with the overlays. It basically shows what it would
11 look like from the air.

12 Q. So, State's Exhibit 6 is basically a satellite
13 view of what we saw on State's Exhibit 5?

14 A. That is correct.

15 Q. We can see El Dorado Boulevard and we can see
16 Bay Area Boulevard?

17 A. Yes, ma'am.

18 Q. Okay. If you had to describe this section of
19 I-45 going southbound, or even northbound for that
20 matter, how would you describe it; as mostly
21 residential, mostly commercial?

22 A. This particular section of the Gulf Freeway
23 is -- mostly it's going to be commercial. There's
24 businesses out there. There's a mall out there. A lot
25 of restaurants out there. I mean, this is -- I mean,

1 right up on the freeway and on the service road is all
2 commercial.

3 Q. Would you say that this is a heavily-trafficked
4 area in Houston, Harris County?

5 A. Yes, that would be accurate.

6 Q. And, in fact, where the "A" is where the crash
7 happened, that happened in Harris County, Texas, did it
8 not?

9 A. That is correct.

10 Q. Okay. Now, looking closer here at State's
11 Exhibit 6, we see the West El Dorado Boulevard. Do you
12 see that (indicating)?

13 A. Yes, ma'am.

14 Q. And there's kind of a bunch of businesses sort
15 of in a rectangular shape around there.

16 A. Yes.

17 Q. Okay. Looking at State's Exhibit No. 7, is
18 that that same sort of rectangular area that we were
19 talking about, El Dorado Boulevard (indicating)?

20 A. Yes, it appears to be that.

21 Q. And there's a Whataburger up here in the north,
22 kind of northeast section -- or northwest section -- I'm
23 sorry -- is that correct?

24 A. Yes.

25 Q. Now, if someone was leaving the Whataburger

1 parking lot and they wanted to end up on I-45 going
2 southbound, how would they travel?

3 A. They would travel, basically, out of the
4 Whataburger parking lot and down this kind of U -- like
5 U-ramp, which leads up to the service road.

6 Q. And you can go ahead and mark on the diagram --
7 or on the screen for me, if you would, to show that
8 direction of travel from the Whataburger onto southbound
9 of I-45.

10 A. Onto the main lanes?

11 Q. Yes.

12 A. (Witness complies).

13 Q. Now, we can't see, but what would be farther
14 south of this picture of State's 7 would be the
15 intersection at Bay Area Boulevard, would it not?

16 A. Yes, ma'am.

17 Q. Okay. Now, when you finally were able to make
18 it to the scene, what's the first thing that you did?

19 A. Typically, when I get to any scene that we're
20 going to investigate, obviously, you're trying to
21 identify road evidence, what's out on the road, so you
22 don't park on top of it to destroy it or whatever.
23 Typically, what I'll do, as I'm coming up, I'm looking
24 to see what may be laying in the roadway, not laying in
25 the roadway, then park, obviously, away from that. I

1 parked a ways back, so when I get out -- I don't talk to
2 anybody when I first get to the scene. When I get out,
3 get out of the car, you know, make sure that it's parked
4 in a safe spot. And then I just kind of overview
5 walking down the road, looking for road evidence,
6 looking how the vehicles are positioned, if there's any
7 victims at the scene where they're located and such as
8 that, just to kind of get a layout of how the crash, you
9 know, appears when I get there.

10 Q. And did you do that here in this case for this
11 crash?

12 A. Yes, ma'am. That's what I do on every -- every
13 scene that I go to, the first thing I do is -- like I
14 said, I park back so I can get out and do an overview of
15 the scene and then walk it just to see what evidence we
16 have available.

17 Q. Were you able to get a good look at all of the
18 southbound lanes at I-45?

19 A. Yes, ma'am.

20 Q. Did you see any sort of construction or
21 potholes or any defects in the road prior to where the
22 marks and the evidence started to show?

23 A. No, I did not.

24 MS. BARD: Your Honor, may I approach,
25 please?

1 THE COURT: Yes.

2 Q. (By Ms. Bard) Now, while you were out making
3 this walk along and looking and examining the evidence,
4 there was another officer taking photos, was there not?

5 A. There were actually several people -- several
6 officers taking photos.

7 Q. That's standard procedure?

8 A. Yes.

9 Q. Okay. I'm showing you the first group, State's
10 8, 10, 11, 12, 13, 14, 15, 16, 17, and 18. Could you
11 look at those for me (indicating)?

12 A. All right.

13 Q. Looking at State's 8 through 18 {sic}, do these
14 fairly and accurately show the crime scene, the crash
15 scene, as you saw it and as you walked it?

16 A. Yes.

17 Q. Looking at State's 19, 20, 21 and 22, take a
18 look at those for me (indicating).

19 A. All right.

20 Q. Do State's 19 through 22 show the crash scene
21 as if you were starting from where the vehicles ended
22 going backwards?

23 A. That would show where the striking vehicle's
24 final rest was.

25 Q. Do they fairly and accurately show the tire

1 marks, the cars, and the evidence on the road?

2 A. Correct.

3 Q. Looking at State's 23 through 39, can you look
4 at those for me (indicating)?

5 A. All right.

6 Q. Looking at State's 23 through 39, are these
7 pictures of some of the roadway evidence and debris that
8 was left as a result of the crash?

9 A. Yes.

10 Q. Do they fairly and accurately depict what you
11 saw out there that day?

12 A. Yes.

13 Q. Looking at State's Exhibits 40 through 57,
14 could you look at those for me (indicating)?

15 A. All right.

16 Q. Looking at State's 40 through State's 57, are
17 these photos fairly and accurately depicting the
18 complainant's gold truck and its path and travel?

19 A. Correct.

20 Q. Looking at State's 58 through 69, can you look
21 at those for me (indicating)?

22 A. All right.

23 Q. Looking at State's 58 through 69, are these
24 photos fairly and accurately showing the defendant's
25 black truck, the inside and outside of it?

1 A. Correct.

2 MS. BARD: Your Honor, at this time the
3 State would offer into evidence -- State's -- let me be
4 sure I get this right -- State's 8 through 18, excluding
5 picture 9, which has already been admitted -- and then
6 19 through 69, and ask that they be admitted into
7 evidence after tendering to opposing counsel.

8 **(State's Exhibit No. 8, 10 through 69**
9 **Offered)**

10 MS. BECK: Your Honor, may I just have one
11 second? I've looked at them, but just to make sure.

12 (Pause)

13 MS. BECK: No objections, Your Honor.

14 THE COURT: State's 8 and 10 through 69 are
15 admitted.

16 Upon that, ladies and gentlemen, we're
17 going to make our break for lunch. We'll continue with
18 this testimony after lunch. Please retire to the jury
19 room.

20 **(State's Exhibit No. 8, 10 through 69**
21 **Admitted)**

22 (Open court, defendant present, no jury)

23 THE COURT: Be seated. We'll continue at
24 1:30.

25 (Lunch recess)

1 (Open court, defendant and jury present)

2 THE COURT: All right. Please be seated.

3 All right. You may continue.

4 MS. BARD: Thank you.

5 May I approach?

6 THE COURT: Okay.

7 Q. (By Ms. Bard) Officer Tippy, I want to show you
8 what's previously been marked as State's Exhibit 2. Do
9 you recognize that (indicating)?

10 A. Yes, ma'am.

11 Q. What are we looking at in State's 2?

12 A. This would be what we would commonly refer to
13 as an after-accident situation map or scale diagram.

14 Q. And looking at State's Exhibit 3, is this
15 simply a bigger version of State's Exhibit 2
16 (indicating)?

17 A. Yes, ma'am.

18 Q. And do both of these fairly and accurately
19 depict the scene as it was after the crash occurred?

20 A. That is correct.

21 Q. And would these aid the jury in your testimony
22 today?

23 A. Yes, it would.

24 MS. BARD: Your Honor, at this time the
25 State would offer into evidence State's Exhibit 2 and

1 State's Exhibit 3 and tender to opposing counsel for any
2 objection.

3 **(State's Exhibit No. 2 and 3 Offered)**

4 MS. BECK: No objections to 2 and 3, Your
5 Honor.

6 THE COURT: State's 2 and 3 are admitted.

7 **(State's Exhibit No. 2 and 3 Admitted)**

8 Q. (By Ms. Bard) We'll be referring to this
9 throughout, Officer Tippy.

10 THE COURT: Can everyone on the jury see
11 the diagram?

12 Thank you.

13 Q. (By Ms. Bard) Can you briefly describe for the
14 jury what it is that we're looking at here on 2 and
15 State's Exhibit 3 (indicating)?

16 A. Basically, what this is, this is a scene -- a
17 scale diagram, is how we refer to it. What we do is we
18 take a Total Station measuring device. You see them a
19 lot on the side of the road with construction workers.
20 They've got a guy with a scope and another guy with a
21 prism pole. What they're doing, they're shooting
22 distances. They've got a laser that goes out, it shoots
23 a distance, shoots -- brings it back to the instrument.
24 We capture that in a data collector. And then what we
25 do, we bring that back down, load it into a program, and

1 we're able to render a drawing such as this here.

2 Q. Zoom in and it will tell us up here at the top
3 left box that it's a Houston case, the date and time,
4 and where the crash actually happened at, correct?

5 A. Yes, ma'am.

6 Q. It will give us an orientation as to which way
7 is north?

8 A. Correct.

9 Q. And then as we start seeing, we see some -- we
10 start seeing letters like A, B, A, B, C. If you kind of
11 scroll down, you see some Ds, you'll see vehicles. And
12 there's a legend kind of to the bottom right and a scale
13 that will kind of tell you what each of the letters
14 mean, correct?

15 A. Yes, ma'am.

16 Q. Keeping this kind of exhibit in mind, showing
17 you State's Exhibit No. 8, what are we looking at here
18 in State's Exhibit No. 8 (indicating)?

19 A. This would be the beginning of the tire mark
20 evidence that was left on the scene.

21 Q. And to give the jury an idea, when we look at
22 State's Exhibit 8, we see that there's some markings
23 like a "P" -- there's a "P" and an "A" and there seems
24 to be some other "P's" throughout the picture. Do those
25 correspond with this case the tire marks that we see

1 here at the top of the diagram as the letter "A"?

2 A. Yes, ma'am, it does.

3 Q. All right. Now, Officer Tippy, in your
4 experience during crashes, do you see a lot of tire
5 marks, a little -- few tire marks?

6 A. I mean, typically -- typically, you're going to
7 have road evidence. I mean, obviously, sometimes, you
8 know, according to where the wreck is and what the speed
9 of the vehicles are, what type of vehicles are involved,
10 you will have either more or less tire marks at the
11 scene, but, typically -- I mean, it would not be unusual
12 that we would have a crash like this that there be
13 roadway evidence involving tire marks on a scene, no.

14 Q. And are tire marks helpful in determining what
15 happened in reconstructing a crash?

16 A. Yes, ma'am, they are.

17 Q. And certain tire marks can mean different
18 things, can they not?

19 A. Correct.

20 Q. So, for example, a skid mark is different than
21 what would be left by like a flat tire mark?

22 A. Correct.

23 Q. And is it possible to distinguish between like
24 a skid tire mark and a flat tire mark?

25 A. Yes, ma'am.

1 Q. When you walked the scene, and looking at
2 State's Exhibit 8, did you ever see any sort of
3 indication of a flat tire or a blow-out tire mark
4 anywhere on this scene?

5 A. Not -- not at the point of impact, which is
6 down here on the -- this foreground that we're looking
7 at in the photo.

8 Q. So, looking at what we see here in State's
9 Exhibit 8, down at the south, the bottom part of the
10 picture, this is what's commonly referred to as the area
11 of impact, is it not (indicating)?

12 A. That would be correct.

13 Q. Where is the area of impact on I-45 in regards
14 to the lanes?

15 A. On this -- on this wreck here, it occurred in
16 the -- what we would -- when they built roadways, they
17 number them. The fast lane is number one and then they
18 go out two, three, four, like that. That's how the
19 engineers build them. In this particular case, it's
20 going to be in lane number three and partially on the
21 right shoulder.

22 Q. So, that would be what we kind of call the slow
23 lane in this case?

24 A. Not necessarily in Harris County, but, yes, if
25 that's what you'd like to say.

1 Q. Fair enough.

2 All right. So, when you're determining the
3 area of impact, like what we see here in State's Exhibit
4 8, why is that important?

5 A. Well, obviously, when you get out to a scene,
6 on any scene like this, you want to try to determine
7 where the first harmful event started. So that way, you
8 know, you can either back up from there to see if
9 there's other evidence that you may need to look at, or
10 like I said, if you determine this is, indeed, the area
11 of impact, then go past that to see what other evidence
12 is out there at the scene for the crash.

13 Q. Now, looking at State's Exhibit 9, is this
14 simply a closer-up version of some of those tire marks
15 as we're moving away from the area of impact towards the
16 final rest (indicating)?

17 A. Yes, ma'am. This is basically -- this is
18 traveling the direction of travel that both vehicles
19 were to travel, which is southbound.

20 Q. And you've had a chance to look over all of the
21 State's exhibits and the tire marks. How many tire
22 marks from different vehicles were left as to what we
23 can see in State's 9?

24 A. In State's 9, there is going to be at least two
25 vehicles that are involved in leaving these marks out

1 there.

2 Q. Okay. Now, I notice in State's 9 that there's
3 no paint, but like if you look at State's 8, there is
4 this orange paint. Can you explain to the jury what
5 that's about?

6 A. Most of the time when we get to scenes, the
7 weather cooperates. I know that's hard to believe, but
8 sometimes it does. We try to take all of our pictures,
9 all of our measurements, everything, without painting
10 the scene. Because what happens is when you paint the
11 scene, just like when we look at these photos, you're
12 going to be looking at the paint marks and not
13 necessarily looking at the marks, because that's what it
14 draws your eye to. So, we do all the evidence,
15 photographs, all the measurements, before we paint the
16 scene.

17 In this instance, the rain was coming, we
18 knew the rain was coming. We knew we probably weren't
19 going to be able to get the scene done before the
20 torrential rain came. So, we painted it so that the
21 next day if it wasn't raining, we could actually go back
22 out there, shut the freeway down, and actually map the
23 scene, which is, in fact, in this case we -- we had to
24 do that.

25 Q. And, in fact, rain, bad rain like what we ended

1 up having on July 26th, can wipe away a lot of the tire
2 marks, can they not?

3 A. That is correct.

4 Q. Now, you said that there were two vehicles that
5 left tire marks like what we see in State's 9?

6 A. Yes, ma'am.

7 Q. Looking at State's 10, can you describe for the
8 jury how you know that there were two separate vehicles
9 leaving tire marks?

10 A. You've got this one here that, as you can see,
11 it's side-slipping, which is what we would refer to as a
12 yaw. And, basically, when a vehicle goes into a yaw,
13 it's kind of like if you're driving down the road and
14 you've decided, as you're driving down the road, this is
15 the driveway you need to go into, but you're still doing
16 30 miles-an-hour. So, you think you can turn into the
17 driveway. So, you're going to cut the wheel so you can
18 try to make it. Your car is going to do this, because
19 your tires are still rolling, but what they're doing is
20 they're side-slipping. When they side-slip, they leave
21 these marks like this in the roadway. Because,
22 basically, what it is is you've got the momentum of your
23 car pushing that tire and that tire starts rolling
24 (indicating).

25 This other one is a distinctive mark that

1 goes back. This one here actually goes back towards Mr.
2 Petty's truck that's at final rest (indicating).

3 Q. All right. So, the first mark, the yaw mark
4 that you were describing, that would have been left by
5 the complainant's vehicle at this point?

6 A. That is correct.

7 Q. Okay. Looking at State's Exhibit No. 11, are
8 we seeing two of the separate cars leaving two separate
9 tire marks (indicating)?

10 A. You can see where basically now what they've
11 done is they've split off. And like I said, the
12 complainant's vehicle is going to continue traveling
13 this way (indicating) down the freeway and onto the
14 shoulder and subsequently into the grassy median. And
15 like I said, Mr. Petty's vehicle is going to travel back
16 and is going to end up back over here (indicating).

17 Q. Okay. Now, looking at State's Exhibit 11, you
18 kind of -- it looks sort of like a "Y," if you will, the
19 two different tire marks. And we call that specifically
20 a crook, do we not?

21 A. Yes, ma'am.

22 Q. Could you describe for the jury what a crook
23 means as far as accident reconstruction?

24 A. Typically, what happens when you get a crook,
25 it's going to be where you -- you have a change in

1 velocity. And, typically, what that means is -- if you
2 have a car coming this way and a car coming this way
3 (indicating), when they hit, this car may leave a crook
4 mark. And, basically, what it is is the tire marks,
5 just shoving the car like this (indicating). And the
6 tires are basically going to make an angular departure
7 from that impact (indicating).

8 Q. So, looking at State's 11, knowing that there
9 are two tire marks that for a little bit are sort of on
10 top of each other and separating at this crook, what
11 does that tell you?

12 A. This is going to be basically where the
13 complainant's vehicle at that point separated from
14 Mr. Petty's vehicle and started -- started -- basically,
15 it was in a yaw at that point. And then because of the
16 momentum, it basically started flipping and going down
17 the roadway.

18 Q. Okay. Looking at State's Exhibit 12, what are
19 we looking at here (indicating)?

20 A. Basically, this is just another angle of it as
21 it comes down. And you can see there's that mark and
22 this mark. And like I said, the complainant's vehicle
23 is going to continue down this way as you can see its
24 final rest over here (indicating).

25 Mr. Petty's car -- or truck you can see the

1 marks and it's going to end up back over here as it
2 separates off. Because what happens is when they hit at
3 impact, they kind of get aligned, but what happens is
4 the complainant's vehicle, because of the angle it got
5 hit, it starts to turn like this. When it's turning,
6 the wheels are still moving and rolling. The tires
7 aren't locked up, so they're yawing. That's that
8 critical curve speed we talked about when we did yaws.
9 And when it starts yawing, like I said, once it gets to
10 a certain point, it's going to start rolling because of
11 the momentum. Because this truck, if it's going
12 60 miles-an-hour, 70-miles-an-hour sideways, it's going
13 to roll over.

14 Like I said, when his truck separated off
15 and continued down the service road or down the
16 shoulder, Mr. Petty's vehicle continued back over to the
17 left.

18 Q. So, what we see by these tire marks, an example
19 in State's 12, what it tells you is that the vehicles
20 were traveling in the same direction. And if I
21 understand you correctly, the complainant's vehicle
22 starts to spin sort of sideways and it's starting to
23 move and it was kind of a sideways sort of curve. Is
24 that fair?

25 A. Because of the angle that Mr. Petty's vehicle

1 struck the complainant's vehicle, front right to left
2 back quarter, when he hits him like this, the truck
3 is -- the truck, from the momentum, is going to start
4 going this way (indicating). So, you've got the front
5 of the truck and what it's going to do is it's slowly
6 going to turn. As it's turning, it's sliding, but the
7 tires are still moving (indicating).

8 Q. Okay. And what we see by kind of the crook, if
9 you will, where they start to split off, it's your
10 opinion that this is where the vehicle then starts --
11 the complainant's vehicle starts to start rolling over
12 (indicating)?

13 A. Yes, ma'am. At that point, that's when it
14 starts tumbling down the freeway.

15 Q. And looking at State's Exhibit 13, what are we
16 looking at here (indicating)?

17 A. Basically, what here is, is that once this --
18 once the complainant's vehicle is sideways and it starts
19 to flip and is going down the freeway, you've got a
20 4,000-pound vehicle bouncing down the road like this,
21 tumbling (indicating). As it's tumbling, there's pieces
22 on this truck that are going to make marks in the
23 pavement. They're going to make gouge marks where they
24 gouge the pavement out because this is blacktop. So,
25 blacktop in July is going to be soft. You're going to

1 have gouge marks in it. If it was concrete, you'd
2 probably have scrapes, but because this asphalt is soft,
3 you're going to chunk it out from pieces, either like
4 from the rim, from the fenders, whatever the case may
5 be. And as this truck continues to flip down the road,
6 as it's traveling -- because it's not -- it's not
7 flipping and sliding at this point. It's flipping,
8 coming up in the air, flipping, coming up in the air,
9 flipping. Because you can see where it hits further
10 down the road by evidence in the roadway (indicating).

11 Q. Okay. Looking at State's Exhibit 14, do we see
12 kind of to the left of that tire mark coming towards
13 where the defendant's final rest is another one of those
14 flip marks (indicating)?

15 A. What we would refer to as a gouge mark.

16 Q. Okay. Looking at State's Exhibit 15, what are
17 we looking at here (indicating)?

18 A. This is basically the tire marks at this point
19 when Mr. Petty's vehicle separates from the
20 complainant's vehicle and he travels back out. And as
21 you can see, he travels back out. And his truck is up
22 here at the top of the photo at final rest (indicating).

23 Q. Looking at State's Exhibit 16, I notice that
24 the marks from this perspective looks a little thinner
25 as far as travel towards -- and you can kind of see it

1 lining right on up with the final rest of the
2 defendant's vehicle (indicating).

3 A. Correct.

4 Q. What does that indicate to you?

5 A. Well, the thing about this, knowing from the
6 damage sustained to the right front of that truck, this
7 tire on the right front at this point is -- basically,
8 the tie rod is broken and the tire is flat. So,
9 basically, what it's doing is it's just -- it's
10 free-wheeling. The only control he has steering-wise in
11 this truck is the left tie rod because it's still
12 intact.

13 Q. And looking at State's Exhibit 17, is that kind
14 of that same mark that we're seeing right there in
15 State's Exhibit 17 (indicating)?

16 A. Yes, ma'am. Because that will lead up to right
17 there where the front right tire is at.

18 Q. And that mark, if I understand you correctly,
19 is because the tire is now flat, it's not making contact
20 with the pavement like a rolling tire --

21 A. No. It's almost -- it's almost what we would
22 call a run flat mark or like a scuff mark because
23 there's no air in the tire. So, it's just kind of
24 rubbing along on the pavement.

25 Q. And you don't see this mark in any of the

1 photos pre-impact, for example, here at State's Exhibit
2 8, do you (indicating)?

3 A. No, ma'am, this -- this here -- this here, to
4 me, appears to be an over-deflection mark, or the weight
5 of the truck has come down and over-deflected the tire
6 and left those two little marks, but not a run flat
7 mark.

8 Q. If we quickly look at State's 19 through 22,
9 this is just looking sort of -- looking at State's
10 Exhibit 19, we're looking now from where the defendant's
11 vehicle has finally rested backwards to the area of
12 impact, correct (indicating)?

13 A. Yes, ma'am.

14 Q. And looking at 20, we're kind of going in that
15 same direction (indicating)?

16 A. Yeah. I think this is just a little bit
17 further north of where the vehicle is.

18 Q. And we can see that sort of flat tire mark that
19 you were discussing in State's 20 (indicating)?

20 A. Yes, ma'am.

21 Q. And State's 21, same thing (indicating)?

22 A. Yes.

23 Q. And then State's 22 is looking back at all of
24 the different tire marks that kind of get left,
25 including some of the gouges, the crooks, and all the

1 way down the road (indicating)?

2 A. Yes, ma'am.

3 Q. As the vehicle was tumbling, as it's going down
4 the road, because of the blacktop, the ground gets soft,
5 it leaves marks, is that something similar to what we're
6 seeing here in State's Exhibit 23 (indicating)?

7 A. These -- these marks that I'm looking at are
8 more of a scraping nature versus a gouging.

9 Q. Okay. Can you describe the difference?

10 A. Well, the gouges is going to be where it
11 actually cuts pieces out of the pavement as it's
12 tumbling or rotating. Scrapes end up when -- as it's
13 coming down and it may hit on the roof, it may hit on
14 the hood for a short time and slide. And this here,
15 obviously, would be metal from the vehicle sliding along
16 the pavement.

17 Q. Looking at State's Exhibit 23, we see this
18 rather large orange circle kind of mapping where the
19 scrapes were seen in this photo. Is that referencing
20 what we see as "C" for scrapes back up here, that sort
21 of circle on State's 2 (indicating)?

22 A. Can you take -- can you pull the -- yeah. And
23 back up. No, no. Just back up so I can see the photo
24 again.

25 Q. Oh, sorry.

1 A. Yes.

2 Q. And looking at State's 24, we're starting to
3 move a little bit closer-up to where the final rest is;
4 from a previous picture, State's 23, moving closer
5 (indicating)?

6 A. We're moving southbound as the direction the
7 vehicles would have been traveling, yes.

8 Q. Okay. Looking at State's Exhibit 27, going a
9 little bit farther or (indicating) --

10 A. Yes.

11 Q. State's 28. We keep moving in that sort of
12 general direction (indicating)?

13 A. Yeah. Basically, what we're doing is we're
14 moving in a south -- you know, south direction as the
15 vehicles traveled post impact.

16 Q. Looking at State's 30, we've kind of moved from
17 here -- and you see in State's Exhibit 28 there's kind
18 of an orange circle where the people are standing. Is
19 that -- we're seeing a little bit more clearly now -- in
20 State's 30 (indicating)?

21 A. Can I see the other photo again?

22 Yes.

23 Q. And then 31, we're starting to see it a little
24 more clearer, that second sort of scrape (indicating)?

25 A. Yes.

1 Q. Looking at State's Exhibit 33, now we're kind
2 of sort of standing on top of those scrapes, if you
3 will, inside of that scraped circle. Is that fair to
4 say (indicating)?

5 A. Yes.

6 Q. Looking at State's Exhibit 35, we're still kind
7 of moving sort of southbound, if you will, through the
8 crash scene. We're still on the side of that scrape
9 pile, are we not (indicating)?

10 A. Correct.

11 Q. Now, I notice up here in State's 35 there's
12 another kind of circle, orange circle, with kind of like
13 a half moon in it. What are we looking at there
14 (indicating)?

15 A. That is going to be where the -- basically, the
16 edge of the rim -- like if you took the rim face-down
17 and hit the pavement, that's going to be a rim scrape
18 mark.

19 Q. You can kind of see that a little clearer in
20 State's 36 (indicating)?

21 A. Yes.

22 Q. And a little clearer in State's 37
23 (indicating)?

24 A. Yes.

25 Q. And so, that is evidence to you that the truck

1 is, in fact, tumbling down the roadway?

2 A. Yes, ma'am.

3 Q. Now, if you come back out for a second, State's
4 Exhibit 35, kind of at the top of the picture you see
5 kind of a grill of a vehicle. Is that what we're seeing
6 now closer-up in State's Exhibit 38 (indicating)?

7 A. Yes, ma'am.

8 Q. And if you look back again at State's Exhibit
9 33, more of that grill, you kind of see some black marks
10 up at the top (indicating)?

11 A. I'm sorry. What?

12 Q. If you're looking north -- on State's Exhibit
13 33, north of the grill, you see some sort of black mark.
14 Is that what we're seeing closer-up here on State's
15 Exhibit 39 (indicating)?

16 A. Are we talking about this here (indicating)?

17 Q. Yes, sir.

18 A. Yeah. That will probably -- that looks to me
19 like to be the rear window gasket.

20 Q. Now, it looks -- in that same picture, State's
21 39, it looks like we have -- does that look like two
22 cell phones to you (indicating)?

23 A. It appears to be two cell phones, yes.

24 Q. Going through State's Exhibit 40, what are we
25 looking at here (indicating)?

1 A. This is going to be, basically, the scrape area
2 we talked about. You have your grill up here and you
3 can see where as the truck has come off the road that
4 there's -- there's some disturbances in the ground here.
5 And then as you come further out, you see the final
6 rest. The complainant's vehicle is sitting out here
7 between the main lanes and the service road on the
8 grassy median (indicating).

9 Q. And looking at State's 41, are we simply moving
10 closer towards the complainant's vehicle at final rest?

11 A. Yeah. In fact, we've got, basically, right
12 here -- this right here is going to be part of the
13 window glass, either the windshield or such as that that
14 came out of the truck. And, yeah, it's -- we're just
15 coming off of the travel path of the complainant's
16 vehicle.

17 Q. And looking at State's Exhibit 42, we're simply
18 getting closer to the car (indicating)?

19 A. Closer to the truck.

20 Q. To the truck.

21 A. Yes.

22 Q. Now, I notice there's kind of a big depression
23 here in State's Exhibit 42, but we see a little clearer
24 in State's Exhibit 43. What is that (indicating)?

25 A. That's going to be -- that's going to be one of

1 the areas on the ground where the truck hit prior to
2 coming to final rest because it's tumbling to a stop.

3 Q. Now, I notice it's kind of tinged red. Do you
4 see that? Is it easy for you to see on that picture
5 (indicating)?

6 A. It looks kind of purple to me, but...

7 Q. Okay. All right. Looking at State's Exhibit
8 44, are we simply still moving closer towards the
9 complainant's vehicle at final rest (indicating)?

10 A. That is correct.

11 Q. And I notice there, kind of in the south part
12 of the picture, there's some sort of marks out of the
13 grass, like chunks, divots. What is that (indicating)?

14 A. That's going to be either the truck itself or
15 components of the truck that has hit the ground and
16 furrowed the ground up.

17 Q. Looking at State's Exhibit 45, what are we
18 looking at here (indicating)?

19 A. This would be the complainant's vehicle at
20 final rest.

21 Q. Now, the complainant's vehicle was actually a
22 Toyota truck, was it not?

23 A. Yes, ma'am.

24 Q. It should not look flat like that, should it?

25 A. No.

1 Q. Looking at State's Exhibit 46, what are we
2 looking at there (indicating)?

3 A. That is the passenger side of the front of the
4 complainant's vehicle.

5 Q. Now, I notice kind of the front passenger side
6 tire is kind of laying at an angle. Does that indicate
7 anything to you?

8 A. That just indicates as the vehicle is tumbling
9 down the road and it's hitting on those steering axles
10 and the rear-drive axles that the force -- basically,
11 what it's done is it's broke the axle of the steering
12 components and it's just laid over flat.

13 Q. Looking at State's Exhibit 47, what are we
14 looking at here (indicating)?

15 A. This would be the left rear of the
16 complainant's vehicle at final rest.

17 Q. Looking at State's Exhibit 48, what are we
18 looking at here (indicating)?

19 A. This is up by the front with the -- one of the
20 complainants trapped between the door frame and the roof
21 of the vehicle.

22 Q. Looking at State's Exhibit 49, what are we
23 looking at?

24 A. We've basically moved back to about the
25 passenger door. And, again, it shows the complainant

1 between the door frame and the roof trapped in the
2 vehicle.

3 Q. Looking at State's Exhibit No. 50, what are we
4 looking at (indicating)?

5 A. This is a close-up view of the complainant
6 between the door frame and the roof of the truck.

7 Q. Looking at State's Exhibit 51, what are we
8 looking at (indicating)?

9 A. This is going to be, I believe, his arm hanging
10 out of the vehicle. And it's just a closer thing to
11 show the -- you know, the injuries that he sustained.

12 Q. And if you notice, I don't know if you can see
13 in State's Exhibit 51, sort of grass stains. Is there
14 grass marks picked up along the car? Can you see that
15 (indicating)?

16 A. Yes, ma'am.

17 Q. Okay. What does that indicate to you, if
18 anything, as far as the tumbling goes?

19 A. Well, I mean, obviously, this vehicle --
20 because as it's tumbling down the shoulder and then
21 leaves the roadway, and as it's -- you know, it's
22 digging into the ground as it's turning and these
23 individuals are in the vehicle, there's going to be
24 grass that's going to be attached inside the vehicle on
25 the victims' bodies and stuff like that because it's

1 digging the ground out as it's going. Because, as I
2 said, you've got a vehicle that weighs, you know, 3800,
3 4,000 pounds, it's 2 tons of a truck, and it's going to
4 dig the dirt up.

5 Q. Looking at State's Exhibit 52, what are we
6 looking at here (indicating)?

7 A. This would be a further-back picture on the
8 driver's side that shows the left back, left back tire
9 and the back of the bed where the impact took place.

10 Q. And the impact that you're talking about is not
11 from the road, but the initial impact that causes this
12 crash from the beginning?

13 A. This would be -- this would be the initial
14 impact between Mr. Petty and the complainant.

15 Q. Looking at State's Exhibit 53, what are we
16 looking at here (indicating)?

17 A. This is an inside view of the passenger
18 compartment of the truck.

19 Q. Looking at State's Exhibit 53, does it look
20 like the inside compartment and interior has been
21 scrunched down, squished in, if you will?

22 A. Yes. I mean, from the previous photo, the roof
23 has collapsed on this truck.

24 Q. Looking at State's Exhibit 54 (indicating).

25 A. This is a photo that shows from the passenger

1 side where the victim is sitting in the driver's seat,
2 seat-belted in.

3 Q. Looking at State's Exhibit 55, what are we
4 looking at there (indicating)?

5 A. This shows the complainant's vehicle at final
6 rest. And then it shows one of the tires off the truck
7 sitting down here that has traveled after impact down
8 here to final rest (indicating).

9 Q. And if we look at State's Exhibit 2 for a
10 moment, vehicle two is indicated as the gold truck, the
11 complainant's truck, and "E" is that tire and how far
12 it's come; is that correct (indicating)?

13 A. Yes, ma'am.

14 Q. Looking at State's 56, what are we looking at
15 here (indicating)?

16 A. Another picture of the tire that has come off
17 the truck after impact.

18 Q. Looking at State's Exhibit 57, what are we
19 looking at (indicating)?

20 A. This is the back side of the tire where
21 typically the axle would go in to connect it to the
22 truck.

23 Q. Can you just explain for some of the jurors
24 that may not know where the axle would connect, where it
25 should be?

1 A. Typically, you've got an axle here that runs
2 either into the rear-end or you've got that goes into a
3 spindle on a steering knuckle on the front of the thing.
4 And that, basically, attaches the tire and wheel
5 assembly to the truck (indicating).

6 When you have an impact that's, you know, a
7 pretty good impact, you're going to shear these metal
8 components. In this case, it sheared it so the tire,
9 obviously, is no longer attached to the truck.

10 Q. Officer Tippy, in order for these metal parts
11 to shear off of a tire, what kind of impact or what kind
12 of force are we talking about?

13 A. You know, the problem is that if you try to
14 quantify an answer like that, you know, the thing about
15 it is, is that you have axles according to what size
16 vehicle they are, whether it's a three-quarter ton or
17 one-ton who has bigger axles, you may have a smaller car
18 with smaller axles. I mean, obviously, we know the
19 force was strong enough to generate this breaking, but,
20 you know, this is something that, you know,
21 metallurgists, stuff like that that examine metal, they
22 can tell you what breaking points are on components.

23 Q. Now I want to show you State's Exhibit 58.
24 What are we looking at here (indicating)?

25 A. This would be Mr. Petty's vehicle at final

1 rest.

2 Q. Looking at State's Exhibit 59, what are we
3 looking at there (indicating)?

4 A. That is looking at the right front portion of
5 Mr. Petty's vehicle at final rest.

6 Q. And looking at State's Exhibit No. 60, what are
7 we looking at there?

8 A. Just a little bit closer up to show where
9 the -- basically, the direction of force was on the
10 impact on Mr. Petty's truck.

11 Q. And what does the damage on 60 show you as far
12 as the principal direction of force?

13 A. Looking at this on principal direction of
14 force, it looks to me like it's going to be right there
15 at the right front corner, corner of the truck.

16 Q. And that's based on how the damage is and how
17 it's sort of away from and coming away from the vehicle?

18 A. Correct.

19 Q. Okay. Looking at State's Exhibit 61, what are
20 we looking at here (indicating)?

21 A. This is -- basically, what we've done now is
22 we've gone from the right corner and we're over on the
23 left corner of the truck now, which --

24 Q. Looking at -- go ahead.

25 A. -- which is, if you look on this side, is

1 undamaged from the crash (indicating).

2 Q. And looking at State's Exhibit 62 (indicating).

3 A. That is a driver's side view of Mr. Petty's
4 truck. And as you can see, it's undamaged as well.

5 Q. All right. We've looked at the complainant's
6 truck and it is flattened, it is damaged on all four
7 sides. When we look at the defendant's truck, there
8 seems to be a marked difference in the damage. Would
9 you agree with that?

10 A. Yes.

11 Q. Okay. And, in fact, the only real damage that
12 the defendant's truck has, if you see in State's Exhibit
13 59, seems to be kind of the front area mostly on the
14 passenger side (indicating). Is that a fair statement?

15 A. Yes.

16 Q. Now, looking at State's Exhibit 63, what are we
17 looking at here (indicating)?

18 A. This would be the interior of Mr. Petty's truck
19 where you can see that the airbag had started to deploy.

20 Q. And looking at State's Exhibit 64, what are we
21 looking at here (indicating)?

22 A. This is looking out the front windshield of
23 Mr. Petty's truck at final rest.

24 Q. Now, I notice that there are kind of some
25 cracks running throughout the windshield, kind of lower

1 down. Is there any way for you to be able to tell
2 whether or not those cracks would have been there before
3 or after the crash (indicating)?

4 A. Only -- I mean, if we look at the sheet metal
5 and see where it struck the windshield, we could. I
6 don't remember on this if we did that or not.

7 Q. Looking at State's Exhibit 65, what are we
8 looking at here (indicating)?

9 A. This is with the driver's side door opened
10 looking into Mr. Petty's truck at final rest.

11 Q. Now, I notice that there's a Whataburger cup
12 here in State's Exhibit 65 (indicating).

13 A. Yes.

14 Q. Were you asked to do anything with that cup?

15 A. Yes, I was.

16 Q. And what were you asked to do?

17 A. There was a -- there was a blue liquid inside,
18 inside that cup, that they wanted to test for controlled
19 substances just to make sure it wasn't, you know,
20 codeine or something like that. So, I basically --
21 Officer Ho handed me that drink and I tagged that, went
22 to Narcotics, had them weigh it, and subsequently tagged
23 it in the crime lab.

24 Q. Did you learn after chemical analysis what that
25 subject actually was?

1 A. Yes.

2 Q. And what was it?

3 A. It was Powerade.

4 Q. Okay. It's not illegal to have Powerade, is
5 it?

6 A. No.

7 Q. Okay. Also in a subsequent investigation, you
8 do kind of a follow-up investigation in this case, don't
9 you, with Officer Trey Cox?

10 A. That is correct.

11 Q. Okay. And one of the things you looked at was
12 whether or not any of the vehicles involved in this case
13 had any sort of recalls. Is that --

14 A. Correct.

15 Q. Did the black truck that the defendant was
16 driving, did it have any sort of recalls? I mean, it is
17 a Toyota?

18 A. Yes.

19 Q. And what kind of recalls, if any, did it have?

20 A. The recall it had was there was potentially a
21 problem with the floor mat interfering with the throttle
22 pedal.

23 Q. Looking at State's Exhibit 65, can you see the
24 floor mat (indicating)?

25 A. Yes, I can.

1 Q. Does it appear to you in any way to be
2 interfering with the gas pedal, the throttle?

3 A. No, it does not.

4 Q. Looking closer up at State's Exhibit 66, what
5 are we looking at here (indicating)?

6 A. This would be a closer view of the inside of
7 the -- where Mr. Petty would be sitting when he's
8 driving the truck with the floor mat basically secured
9 in the truck.

10 Q. And looking at State's Exhibit 67, what are we
11 looking at here (indicating)?

12 A. This is just a -- a broader view back where you
13 can see the floor mat inside on the driver's side.

14 Q. And looking at State's Exhibit 68, what are we
15 looking at (indicating)?

16 A. What we're looking at here is that on most new
17 cars they have little clips that you put your floor mat,
18 when they click in so they won't ride up under the --
19 you know, under the gas pedal or the brake pedal. And
20 what this does here is this secures that mat from it
21 being able to move. Basically, locks it into place
22 (indicating).

23 Q. And from what I'm seeing here in 68, the floor
24 mat is actually locked into place; it's doing its job?

25 A. That is correct.

1 Q. All right. And just looking at State's Exhibit
2 69 (indicating).

3 A. This is a broader view back that shows the
4 airbag that is deployed partially, the Whataburger cup,
5 and, of course, we've got our floor mat down here on the
6 bottom. This would be the interior of Mr. Petty's truck
7 at final rest (indicating).

8 Q. In any of your examinations of that car or in
9 any of these photos, does it appear that the floor mat
10 is affecting the gas pedal or the braking in any way?

11 A. No.

12 Q. Knowing that there was a recall and something
13 to look at, have you made a determination as to whether
14 or not the recall played a part into this crash?

15 A. On this particular vehicle, no.

16 Q. And that's because we can see in the last two
17 pictures the floor mat has been locked into place?

18 A. Correct.

19 Q. Okay. Did you do or look at any recalls for
20 the complainant's truck?

21 A. Yes, I did.

22 Q. And were there any recalls for that?

23 A. Yes, there were.

24 Q. And what was that recall?

25 A. The recall for his truck was -- there was

1 something with a faulty trailer -- trailer wire harness
2 or something to that effect.

3 Q. Did you see any sort of trailer or any sort of
4 harness for a trailer on the complainant's truck?

5 A. I did not examine it for a trailer harness.
6 There was no trailer attached to the vehicle at the
7 scene. And that -- the trailer harness wire would have
8 no -- no bearing on this crash.

9 Q. Okay. So, even though there was a recall that
10 existed, you don't believe it had any part to do with
11 the crash or the causation of the crash?

12 A. On either vehicle, no.

13 Q. Okay. The crash where this happened, this is a
14 public place in Harris County, right?

15 A. Yes, ma'am.

16 Q. Now, you were asked to tag not only the cup,
17 were you asked to tag anything else found in the
18 vehicle, in the defendant's truck?

19 A. Yes, I was.

20 MS. BARD: Your Honor, may I approach the
21 witness?

22 THE COURT: Yes.

23 Q. (By Ms. Bard) Looking at State's No. 70, can
24 you take a look at that for me (indicating)?

25 A. Yes, ma'am.

1 Q. What are we looking at in State's Exhibit 70?

2 A. This would be, basically, medical papers that
3 Mr. Petty got when he went to the -- I think the ER on
4 having a headache, is what it was described as, headache
5 or a migraine headache.

6 Q. Okay. And these were papers that were found
7 inside the defendant's truck, correct?

8 A. Yes.

9 Q. And have these papers changed in any way since
10 you last saw them?

11 A. No, ma'am.

12 MS. BARD: Your Honor, at this time we
13 would offer into evidence State's Exhibit 70, which is
14 14 pages stapled together.

15 **(State's Exhibit No. 70 Offered)**

16 MS. BECK: Could I have just a moment, Your
17 Honor?

18 THE COURT: Yes.

19 (Pause)

20 MS. BECK: No objection, Your Honor.

21 THE COURT: State's 70 is admitted.

22 **(State's Exhibit No. 70 Admitted)**

23 MS. BARD: May I publish, Your Honor?

24 THE COURT: Yes.

25 Q. (By Ms. Bard) Looking at State's Exhibit No.

1 70, we're looking at some -- what you've already
2 described as hospital records from the Christus Health
3 Hospital Center (indicating)?

4 A. Yes, ma'am.

5 Q. All right. If you look a little closer, we can
6 see that the date is 7-25-2010 (indicating)?

7 A. Yes, ma'am.

8 Q. And it's for an account, a medical record
9 number, and it's for a patient by the name of Michael
10 Petty, correct?

11 A. Correct.

12 Q. That is, it's your understanding, the name of
13 the driver of the black Toyota pickup truck?

14 A. Yes, ma'am.

15 Q. Okay. These records, basically, within State's
16 Exhibit 70, basically, say: You were seen here for --
17 scroll a little bit here -- you were seen here today for
18 a headache, it gives who talked to you, who your doctor
19 and your nurse was, what they reviewed, and then it
20 gives you medication dose and instructions, correct?

21 A. Yes.

22 Q. And he was given three different medications,
23 it appears, on -- by the hospital on July 25th of 2010.
24 I'll probably say these wrong, Docusate, Topiramate, and
25 Colace?

1 A. It does appear that's the medications he was
2 given.

3 Q. Okay. Now, 7-25 of 2010, that's the day before
4 this crash, is it not?

5 A. Yes.

6 Q. Now, within State's Exhibit 70, it's got Pages
7 1 of 13, Page 2, and it goes all the way through 13, and
8 then there's one page of a work and school release,
9 correct?

10 A. Yes, ma'am.

11 Q. Okay. Looking at Page 1, the first thing it
12 says is medication information for -- a word I can't
13 pronounce -- Colace, correct?

14 A. Yes, ma'am.

15 Q. And it tells you how to use this information.
16 And on the next page it tells you uses, how to use it,
17 and side-effects, precautions, drug interactions,
18 correct?

19 A. Yes, ma'am.

20 Q. If you flip to Page 3, it does the same sort of
21 thing for Topamax, does it not?

22 A. Yes.

23 Q. It tells you how to use the information, its
24 uses, correct?

25 A. Correct.

1 Q. It tells you how to use it, tells you some of
2 the side-effects. Can you see those side-effects
3 (indicating)?

4 A. Yes.

5 Q. Can you read that first sentence of
6 side-effects for Topamax?

7 A. Weakness, tiredness, drowsiness, dizziness,
8 confusion, difficulty concentrating, tingling of the
9 hands and feet, loss of appetite, diarrhea, impotence,
10 weight loss. Wow.

11 Q. Down farther, it gives you precautions. Do you
12 see that, from the side-effects down to --

13 A. Yes.

14 Q. Okay. The very last sentence on Page 4 says:
15 This drug may make you dizzy or drowsy. And onto Page
16 5: Or cause blurred vision. Do you see that?

17 A. Yes, ma'am, I do.

18 Q. Can you read the next sentence for us?

19 A. Do not drive, use machinery, or do any other
20 activity that requires alertness or -- sorry -- or clear
21 vision until you are sure you can perform such
22 activities safely.

23 Q. And that was in the precautions page section of
24 the Topamax before taking Topiramate?

25 A. Correct.

1 Q. Now, when you got to the scene on July 26th,
2 the day after he's given these medications, these
3 precautions, was it raining or was it sunny?

4 A. When I arrived at the scene?

5 Q. Correct.

6 A. It was neither -- I mean, it wasn't raining.
7 It was overcast.

8 Q. And did the road look wet, did the road look in
9 any way like it could have been -- or a part of this
10 crash could have been caused due to weather?

11 A. No.

12 Q. In fact, the rain comes a few hours after the
13 crash, does it not?

14 A. Correct.

15 Q. Based on your training and experience, Officer
16 Tippy, handling all of these investigations, all of your
17 hours of training, are you familiar with the definition
18 of deadly weapon in the state of Texas?

19 A. Yes, ma'am.

20 Q. Do you believe that a motor vehicle is a -- is
21 a deadly weapon? And what I mean by that is, is a
22 deadly weapon something that is capable of causing
23 serious bodily injury or death?

24 A. Yes.

25 Q. And based on what you observed out on the scene

1 that day, on July 26th, was the black Toyota truck
2 driven by Michael Petty used as a deadly weapon?

3 A. Yes, it was.

4 MS. BARD: Pass the witness, Your Honor.

5 THE COURT: Ms. Beck.

6 MS. BECK: Yes, Your Honor.

7 **CROSS-EXAMINATION**

8 **BY MS. BECK:**

9 Q. Is it Officer Tippy or Sergeant Tippy?

10 A. Just Officer Tippy, ma'am.

11 Q. Just Officer Tippy.

12 Okay. I want to ask you a few questions.

13 You stated that from the time that the call
14 went out until the time that you actually get there,
15 it's about, what, 2:00 o'clock when you get there?

16 A. Yes, ma'am.

17 Q. So, about an hour-and-a-half before you're
18 actually able to get out there?

19 A. Yes.

20 Q. And there's a considerable amount of police
21 officers, emergency personnel that are out there before
22 you are, correct?

23 A. Correct.

24 Q. Were you aware that even another agency closer
25 out there, Webster Police Department, was there before

1 you were --

2 A. Yes.

3 Q. -- I mean, before HPD got out there?

4 A. Yes.

5 Q. Okay. And that's going to be a little bit
6 closer to their jurisdiction, right?

7 A. It's right -- right on top of Webster, yes.

8 Q. All right. And so, it's fair to say that you
9 have no idea how many people had actually been in the
10 area that you've described that you basically were out
11 there to look at, do an overview, and collect evidence,
12 correct?

13 A. I don't think I understand your question.

14 Q. Let me rephrase the question.

15 There were dozens of people out there,
16 police officers, fire department, EMT, witnesses, out
17 there in your scene, in the scene, in the crime scene
18 area, if you want to call it that?

19 A. Which is what it would be.

20 Q. Okay. So, dozens of people before you even get
21 there, correct?

22 A. I would say there was a large number of people
23 out there, yes.

24 Q. And with regard to the vehicles, when you have
25 people out there, that number of people, it's hard to

1 sometimes protect the scene or protect the integrity of
2 the scene, correct?

3 A. I would say that in some cases, yes.

4 Q. I want to --

5 MS. BECK: May I approach the witness?

6 THE COURT: Yes.

7 Q. (By Ms. Beck) I want to talk to you about
8 what's been entered into evidence -- I think this was
9 number -- was No. 3, correct (indicating)?

10 A. Correct.

11 Q. And in talking to the prosecutor, you basically
12 described how this is basically northbound, but the
13 accident and the traffic is traveling southbound,
14 correct?

15 A. Correct.

16 Q. And you stated that the way they label the
17 lanes of traffic, this here would have been lane number
18 one, correct (indicating)?

19 A. Correct.

20 Q. This would have been lane number two
21 (indicating)?

22 A. Correct.

23 Q. And this would have been lane number three,
24 right in here (indicating)?

25 A. Yes.

1 Q. This would have been a shoulder (indicating)?

2 A. Yes, ma'am.

3 Q. And, in other words, commonly referred to as
4 fast lane and this would be the slow lane, correct
5 (indicating)?

6 A. Yes.

7 Q. Okay. So, based upon your testimony, you've
8 testified that the initial point of impact back here
9 where we have the "A" would have actually been in the
10 third lane, correct, or the slower lane?

11 A. Correct.

12 Q. Okay. Would both of the vehicles have been in
13 that lane or just one of them being the complainant's
14 vehicle?

15 A. The complainant's vehicle would have been in
16 that lane. Mr. Petty just came across at an angle.

17 Q. Okay. Do you have any information as to
18 what -- well, let me ask you this: Based upon your
19 investigation, do you have any idea or is there any
20 physical evidence to corroborate where Mr. Petty's
21 vehicle had been initially before the point of impact?

22 A. There are numerous witnesses that told us where
23 the vehicle was prior to impact.

24 Q. So, when you're doing your investigation, some
25 of what you're basing your findings on and conclusions

1 upon are witness accounts, correct?

2 A. Yes. When you do an investigation, that's
3 correct.

4 Q. All right. And sometimes, based upon those
5 accounts, you're able to determine that what the
6 witnesses are telling you is basically kind of
7 impossible because the physical evidence doesn't support
8 it, correct?

9 A. In some cases, yes.

10 Q. All right. So, hypothetically, if a witness
11 had told you that Mr. Petty's vehicle was in the first
12 lane and that the complainant's vehicle was in the
13 middle lane and that the point of impact occurred
14 between the first and second lanes, you know based on
15 the physical information -- physical evidence that
16 you've collected that that's impossible, correct?

17 A. Are we talking about actually or
18 hypothetically?

19 Q. Well, I'm talking about actually in this case.

20 A. In this case, if a witness said that the crash
21 occurred in lane number one?

22 Q. Correct.

23 A. With the road evidence, I would say that would
24 be wrong.

25 Q. Okay. All right. And so, basically, you would

1 know that the witnesses in that instance were incorrect
2 in their assessment of what they gave you?

3 A. Yes.

4 Q. With regard to any of the measurements that you
5 took out there, did you take -- with regard to yaw marks
6 or skid marks, were any of those measurements taken with
7 the purpose of trying to determine what speeds the
8 vehicles were going?

9 A. Okay. I didn't take the measurements of the --
10 for the scaled diagram.

11 Q. Okay.

12 A. Obviously, Officer Tallent drew it. There were
13 a couple other officers that actually ran the Total
14 Station the following morning.

15 Q. Okay.

16 A. But, yeah, when they take measurements of skid
17 marks or yaw marks and such as that, yeah, that is
18 ultimately used to reconstruct the wreck and come up
19 with the speed or the dynamics of the crash.

20 Q. Okay. And you actually observed -- I think you
21 went out there a second time or a couple days later to
22 take some measurements; is that correct?

23 A. Correct. We went out there to get a drag
24 factor and to measure a yaw mark.

25 Q. Okay. And while you may not have done a

1 calculation -- and I think you prepared a supplement
2 with regard to what you did in the case, correct?

3 A. Correct.

4 Q. Do you recall trying to determine what the
5 speed of the complainant's vehicle, Mr. Portillo's
6 vehicle was prior -- just prior to or at the point
7 impact?

8 A. At the point of impact when it started to yaw
9 and we measured the first third of that yaw mark, it was
10 at 71 miles-an-hour.

11 Q. Okay. And do you recall actually determining
12 that that was somewhat conservative because the yaw mark
13 had been a little bit more faint and possibly had
14 started prior to where you actually started the
15 measurement?

16 A. The thing about -- the thing about that is when
17 you observe yaw marks or roadway evidence, it's in a
18 temporary nature because of all the cars run up and down
19 the Gulf Freeway or any other road, that that evidence
20 is going to go away sooner than later. We typically
21 measure everything out there and then put it back
22 together. In this particular case, because it's the
23 complainant's vehicle, as he starts to yaw, the reason
24 he starts to yaw is not from a steering input that he
25 causes the vehicle to yaw, it's from the impact of

1 Mr. Petty's truck. Because there's an outside force
2 reacting with this complainant's vehicle, the yaw mark
3 in this, we couldn't use for reconstruction, but it gave
4 us a good point, once our reconstruction was done, to
5 see how fast the complainant's truck was accelerated up
6 to when it started to yaw and then subsequently tumbled
7 down the road.

8 Q. Okay. And, again, the posted speed limit out
9 there is at 65 miles-per-hour, correct?

10 A. I'll take your word for it.

11 Q. Okay. Let me ask you this. You raised a good
12 point. Is it possible, with the number of wrecks, the
13 number of accidents that we have, and just regular
14 traffic incidents, that there are several marks on a
15 particular roadway that may intersect from different
16 incidents? In other words, is it possible that there
17 are other marks out there that possibly could have been
18 remaining marks from another independent incident?

19 A. In this particular case?

20 Q. Well, in general, first of all.

21 A. In general, that has occurred in the past.

22 Q. Okay.

23 A. In this case, I do not believe that to be true.

24 Q. And why is that?

25 A. This case, like I said, once the wreck

1 happened, this evidence -- this roadway evidence was
2 pretty clear out there for matching it up to the
3 vehicles that were still at the scene. Like you said,
4 Webster, I think, was probably there within probably
5 seconds, knowing Webster, to shut this road down.

6 Q. Okay.

7 A. Now, yeah, is there -- are there other marks
8 out there that probably have nothing to do with this?
9 Probably so, but the area of impact or final rest, not
10 indicated by the photos that I saw.

11 Q. Okay. And so, you basically -- your answer is
12 that you do not believe it's the case, but it's possible
13 that there could have been?

14 A. In this case, I don't believe that to be
15 possible. In general, I do.

16 Q. Okay. I want to talk to you about a particular
17 set of photos with regard to Mr. Petty's vehicle. And
18 did you actually have an opportunity to get up close --
19 I don't know if you actually took these photos. I know
20 that you did review them based upon your investigation.
21 Did you actually take the photos?

22 A. No, ma'am, I did not.

23 Q. Okay. Did you get up close and actually view
24 these areas such as are portrayed in State's Exhibit
25 No. 60 (indicating)?

1 A. Yes, ma'am.

2 Q. Okay. And there is considerable damage to the
3 tire area, the front end area of Mr. Petty's vehicle,
4 correct?

5 A. Yes.

6 Q. And as is -- I was going to show you -- I
7 guess, that's a pull-back version right here, State's
8 Exhibit No. 59 (indicating).

9 A. Okay.

10 Q. You observed that to be the condition of the
11 vehicle on July 26th?

12 A. Yes.

13 Q. Do you recall actually having an opportunity to
14 view the tire rod area of Mr. Petty's vehicle on that
15 particular wheel, the front passenger area?

16 A. I -- I don't know what you mean by "tire rod."

17 Q. Well, with regard to the front wheel and it has
18 the tire and it's connected to the axle of the vehicle,
19 did you get up close on that or was that something that
20 you left to the mechanics to look at?

21 A. Are you talking about the tie rod assembly, the
22 way it connects into the steering --

23 Q. Right. Yes, sir.

24 A. Yes.

25 Q. Did you have an opportunity to observe that on

1 July 26th?

2 A. Yes, ma'am, I did.

3 Q. What were your observations about that?

4 A. The observation is that the right tie rod had
5 been pulled out of the bottom of the tire -- the tie rod
6 that goes up to the steering wheel.

7 Q. So, it was totally disconnected, correct?

8 A. It was disconnected, yes.

9 Q. Okay. And based upon your training and
10 experience, do you have an opinion as to what happens if
11 that becomes disconnected while you're operating a motor
12 vehicle?

13 A. Since this particular tie rod separated at
14 impact, certainly after impact he would have lost the
15 use of steering that right front wheel. The tie rod
16 assembly on the left tire still would allow him to
17 control the vehicle to be able to steer to the left.

18 Q. Okay. And so, you're saying that in this
19 particular case the tie rod came apart after the point
20 of impact?

21 A. It would be post-impact damage, yes.

22 Q. And how are you conclusive about that?

23 A. You can see where the tie rod has stretched out
24 from the impact when it pushes that tire assembly
25 backwards with the impact and you can actually --

1 there's a photo where it's almost wallered out from
2 being pulled down with force and pushed back.

3 Q. You have no -- based upon speaking with the --
4 did you actually speak with any of the witnesses?

5 A. No, ma'am, I did not.

6 Q. You reviewed their statements?

7 A. That is correct.

8 Q. Okay. And there is -- you talked about the
9 fact that you observed -- there was no -- I want to get
10 your phrasing right on this, so bear with me.

11 At the point of impact, you stated that
12 there were no flat tire marks prior to the point of
13 impact. Correct?

14 A. Correct.

15 Q. All right. If the tire had blown out prior to
16 the point of impact, what exactly would you expect to
17 see?

18 A. If it blew out, you would typically see edges
19 of the tire leaving a dark mark on the roadway.

20 Q. Is it fair to say that it's possible that there
21 would not have been those marks?

22 A. If it blows completely out and there's nothing
23 left of the tire on the wheel, yeah, you would not see
24 anything.

25 Q. And with regard to the depiction in the State's

1 photos of the defendant's tire, we do see that it
2 actually is flat once it came to the final resting
3 place, correct?

4 A. Correct.

5 Q. I want to talk to you just briefly about a few
6 other things that you did. You -- you stated that you
7 were asked to submit the Powerade in the Whataburger cup
8 for analysis, correct?

9 A. Yes, ma'am.

10 Q. And you do know that it came back as Powerade,
11 no alcohol whatsoever, correct?

12 A. That is correct.

13 Q. With regard to the papers that were found, were
14 you -- did you actually recover those papers or did
15 another officer find them and give them to you?

16 A. The Whataburger cup with the Powerade as well
17 as the hospital papers that were in Mr. Petty's truck,
18 Officer Ho on day shift had those in his custody and
19 handed them to me. And, subsequently, I brought those
20 downtown.

21 Q. I just want to ask you about those -- that
22 paperwork. You are not -- you are what you are, you're
23 a reconstructionist, correct?

24 A. Yes, ma'am.

25 Q. You don't have a degree in chemistry; you're

1 not a pharmacist or a physician of any nature, correct?

2 A. Not to my knowledge, ma'am.

3 Q. With regard to the State's line of questioning
4 with -- and the drug of Topamax, she asked you to read
5 about some of the precautions and some of the things
6 that you should be kind of weary about doing. I think
7 it was on Page 3. Give me one second. I'm sorry.

8 All right. Actually, it's Page 5 of 13.
9 Can you see that same sentence that she had you to read
10 with regard to do not drive, use machinery, or do any
11 activity that requires alertness, clear vision, until
12 you are sure you can perform those activities safely?
13 Correct?

14 A. Correct.

15 Q. Do you remember reading that sentence?

16 A. Yes, ma'am.

17 Q. At any time did you have contact with Mr. Petty
18 out there at the scene?

19 A. No, ma'am.

20 Q. And so, you had no opportunity to question him
21 about the history or how long that he had been taking
22 these particular -- this particular drug, correct?

23 A. No, ma'am.

24 Q. And you had no idea as to -- you can't tell
25 this jury anything about his ability to perform these --

1 drive a motor vehicle after having taken such a
2 medication, correct? You did not have any kind of
3 discussion with him about that, correct?

4 A. That's correct.

5 Q. With regard to the -- let me show you State's
6 Exhibit No. 59. It appears here -- can you see that
7 clearly? It appears here that the tire is somewhat off
8 the rim. Is that fair to say (indicating)?

9 A. Yes.

10 Q. And if it has actually come off of the rim,
11 isn't the pressure in the tire going to be deflated
12 somewhat?

13 A. Correct.

14 Q. Okay. If it is deflated, isn't it fair to say
15 that -- and it's not on the rim, it's not going to leave
16 the same type of mark that it would had it been on the
17 rim and the same amount of pressure, the original amount
18 of pressure?

19 A. Say that again.

20 Q. Okay. Had the wheel been on the rim and been
21 in its original or normal amount of pressure, tire
22 pressure, wouldn't it have left more of a significant
23 mark as opposed to the way we see it after having come
24 completely off the rim?

25 A. There could be a difference in the marks, yes.

1 MS. BECK: I pass the witness, Your Honor.

2 THE COURT: Ms. Bard.

3 MS. BARD: Briefly, Your Honor.

4 **REDIRECT EXAMINATION**

5 **BY MS. BARD:**

6 Q. Officer Tippy, she was asking you a few
7 questions about the -- tie rod, t-i-e rod, correct?

8 A. My understanding it is, yes.

9 Q. We don't confuse it to the tire rod because
10 it's attached to the tire, right?

11 A. Correct.

12 Q. Okay. Looking at State's Exhibit 60 -- zoom in
13 here -- we see the tire, the rim, and then there's this
14 kind of sort of metal shaft hanging out right here
15 (indicating)?

16 A. Yes, ma'am.

17 Q. Is that the tie rod?

18 A. That would be the tie rod.

19 Q. Okay. If the tie rod had snapped or had come
20 apart prior to impact, would you expect to see some sort
21 of marking on the roadway?

22 A. Yes.

23 Q. What kind of marks would you expect to see on
24 the roadway?

25 A. From my experience in other accidents, what it

1 would do is if that tie rod snaps or breaks, it comes
2 down on the pavement and what it will do is it will
3 leave a groove as the truck or vehicle is coming to a
4 final rest.

5 Q. Looking at State's Exhibit No. 8, do we see any
6 sort of groove or scrapes indicating that that tie rod
7 was dragging across the road prior to impact?

8 A. No, ma'am.

9 Q. In fact, when you were looking through the
10 pictures of the tire as it's moving closer and closer to
11 the defendant's truck, do you see any sort of groove
12 following the tire through the -- that would indicate
13 the tie rod was dragging along the ground?

14 A. No, ma'am.

15 Q. In a crash like this where the defendant's
16 front tire is coming into contact with the rear part of
17 the -- in this case, the complainant's truck,
18 particularly where this crash happens at, at this point
19 of where the tire is connected, would you expect to see
20 some sort of damage there after the crash?

21 A. Post-impact?

22 Q. Yes.

23 A. Yes.

24 Q. And did you have a chance to actually examine
25 the tie rod at any point?

1 A. We have examined the vehicle several times at
2 the Dart lot.

3 Q. Did you see any sort of marks on that tie rod
4 that indicated to you that, in fact, it had been dragged
5 or scraped across the black asphalt?

6 A. I did not observe that.

7 Q. Do you believe the tie rod had anything to do
8 with the causation of this crash?

9 A. No.

10 MS. BARD: Pass the witness.

11 THE COURT: Ms. Beck.

12 MS. BECK: I have no further questions,
13 Your Honor.

14 THE COURT: You may step down, sir.

15 THE WITNESS: Thank you.

16 THE COURT: State, call your next witness.

17 MS. COOPER: State calls Kamud Patel, Your
18 Honor. And we're calling this next witness out of order
19 for scheduling purposes.

20 THE COURT: Okay.

21 THE BAILIFF: This witness has been sworn
22 in, she said.

23 THE COURT: She needs to be sworn?

24 MS. COOPER: She has not been sworn, Your
25 Honor.

1 THE COURT: Okay. Swear her in.

2 (Witness sworn)

3 THE WITNESS: I speak truth.

4 THE BAILIFF: Have a seat in this chair
5 right here.

6 THE COURT: What did she say?

7 THE BAILIFF: Ma'am, what did you say?

8 THE WITNESS: I speak truth.

9 THE COURT: Okay. Okay. Sorry.

10 Ms. Cooper.

11 MS. COOPER: Thank you, Your Honor.

12 **KAMUD PATEL,**

13 having been first duly sworn, testified as follows:

14 **DIRECT EXAMINATION**

15 **BY MS. COOPER:**

16 Q. Ma'am, can you please introduce yourself to the
17 members of the jury?

18 A. I'm Kamud Patel.

19 Q. Okay. If you can pull that microphone down so
20 that you can speak into it.

21 A. I'm Kamud Patel. I'm from Clear Lake Regional
22 Medical Center. I'm a lab assistant.

23 Q. Okay.

24 A. I'm drawing blood.

25 Q. Okay. If you will just remember what we talked