

1 witness stand, please?

2 Ms. Evans, you may proceed.

3 MS. EVANS: Thank you, Your Honor.

4 **MICHAEL KELLY,**

5 having been first duly sworn, testified as follows:

6 **DIRECT EXAMINATION**

7 BY MS. EVANS:

8 Q. Please introduce yourself.

9 A. My name is Michael Kelly.

10 Q. What do you do for a living?

11 A. I'm an investigator with the Harris County
12 District Attorney's Office.

13 Q. And how long have you been employed there?

14 A. A little over 15 years.

15 Q. What is your position there?

16 A. I'm a captain in the special, captain
17 investigator in the Special Crimes Bureau.

18 Q. And as a captain investigator in special
19 crimes, what are your duties?

20 A. I supervise the investigators assigned to
21 special crimes.

22 Q. Are you familiar in special crimes that
23 investigation numbers are issued with respect to those
24 files?

25 A. Yes.

1 Q. The existence of a special crime number, does
2 that automatically mean that an offense report has been
3 generated by the Harris County District Attorney's
4 Office?

5 A. Not automatically.

6 Q. It can be?

7 A. Yes.

8 Q. The fact that the special crimes number may
9 appear on grand jury subpoenas, does that automatically
10 indicate that an offense report was generated by the
11 Harris County District Attorney's Office?

12 A. Not automatically.

13 Q. Are you -- at my request, did you go back and
14 look at -- or for documents specifically related to the
15 Defendant, Patrick Brown, and specific Crimes
16 Investigation No. 12, dash, 13073?

17 A. Yes.

18 Q. Formally employed at the office was an
19 investigator, Dustin Deutsch. Were you involved in,
20 after he left, a review of documents and his computer
21 from his office?

22 A. Yes.

23 Q. And to the best of your capability, the
24 physical documents and physical items that were in
25 Dustin Deutsch's office, were those disseminated to the

1 appropriate files?

2 A. Yes.

3 Q. And to the best of your ability whatever
4 information that may have come from Dustin Deutsch, was
5 that disseminated to this file in Defendant's, Patrick
6 Brown's, case?

7 A. Yes.

8 Q. As part of your duties after Dustin Deutsch
9 left the office, did you review documents that were
10 contained on Dustin Deutsch's hard drive computer?

11 A. Yes.

12 Q. Did you specifically look for documents related
13 to this case, Defendant Patrick Brown?

14 A. Yes, I did.

15 Q. All right. Was an offense report generated
16 that you were able to determine?

17 A. I was not able to locate an offense report in
18 this case.

19 Q. Either in hard copy or on the computer?

20 A. Neither hard copy nor digital file.

21 Q. Okay. Anything that you reviewed that suggests
22 that there was even begun an offense report in this
23 case?

24 A. I found a partial sheet of some notes which you
25 have a copy of as well. I found the same notes, no

1 offense report.

2 Q. But the Harris County District Attorney's
3 Office, the investigators, there is a form or template
4 to do an offense report?

5 A. That's correct.

6 Q. And so there is a specific manner and means
7 that the investigators, when they're creating an offense
8 report, are supposed to do that?

9 A. They should, yes.

10 Q. And to the best of your knowledge, was that
11 done in this case?

12 A. No, it was not.

13 MS. EVANS: Pass the witness.

14 THE COURT: All right. Thank you, Ms.
15 Evans.

16 Mr. Greco.

17 MR. GRECO: Thank you, Judge.

18 **CROSS-EXAMINATION**

19 BY MS. GRECO:

20 Q. Okay. Captain Kelly, how are cases brought to
21 the attention of special crimes? How do they originate?

22 A. Many different methods, police officers can
23 bring us cases and ask for assistance, citizens may come
24 to us and ask for assistance and a case can be opened.

25 Q. Okay. And in this situation, where a law

1 enforcement agency would ask the assistance, would it be
2 fair to say that typically they would have already
3 generated an offense report to give that information as
4 the crux of their investigation over to you guys and let
5 you take the reins from there, correct?

6 A. If it came through a law enforcement agency,
7 many times there is that agency's report.

8 Q. Now, if it doesn't, like, if you mentioned it
9 comes through a civilian witness or something of that
10 nature, the investigators in special crimes would then
11 generate their own offense report, correct?

12 A. Yes.

13 Q. And, in fact, that would be the information
14 that would be taken in to the Grand Jury in order to get
15 an indictment typically, correct?

16 MS. EVANS: Judge, I'll object to lack of
17 personal knowledge with respect to what a Prosecutor may
18 take in to the Grand Jury.

19 THE COURT: You can answer if you know.

20 A. I don't know.

21 Q. (BY MR. GRECO) Sure. Tell me what's the
22 purpose of having the offense report generated by
23 special crimes, not the ones that are coming from an
24 outside agency, turned over to you guys, but ones that
25 like Dustin Deutsch would have done, or any other

1 special crimes investigator, what is the purpose of
2 generating an offense report?

3 A. To document the facts of the case and the
4 actions of the investigator.

5 Q. Witnesses that they've spoken to, findings that
6 they've been able to complete?

7 A. Yes.

8 Q. And in this particular case after your, I don't
9 want to call it an investigation, but after you were
10 able to go through, peruse the items that Mr. Deutsch
11 had on his computer and/or in his office, you didn't
12 find anything other than a partial sheet of some notes;
13 is that correct?

14 A. That's all I found.

15 Q. And what else did you find besides notes? I
16 mean, you went through a computer. You went through an
17 office. I mean, you found one sheet of notes that
18 pertain to this case?

19 A. He has a personal drive that is maintained by
20 our office, referred to as the I-drive. I went through
21 his I-drive; I found no records other than what I've
22 told you about regarding this case.

23 Q. Okay. Is it unusual then to get what is
24 labeled as an OR number on a case if there is no offense
25 report that's ever generated?

1 A. Well, typically at the beginning of the case,
2 the special crimes number would be generated.

3 MR. GRECO: Judge, can I approach the
4 witness?

5 THE COURT: Yes.

6 Q. (BY MR. GRECO) For the purpose of the record,
7 I'll label this as Defense Exhibit No. 1, if you could
8 take a look at that. Does that look familiar to you?

9 A. Yes.

10 Q. Do you see what might be labeled as an offense
11 report number or an OR number?

12 A. Yes.

13 Q. Is there an agency above that that indicates
14 who might be the author of that offense report?

15 A. Yes.

16 Q. And who is the agency on this particular one?

17 A. The District Attorney's Office.

18 Q. And is there an OR number or a number?

19 A. Yes.

20 Q. And looking at that number, is that consistent
21 with what an OR number may or may not look like?

22 A. Yes.

23 Q. And I think Ms. Evans referred to it a little
24 bit differently. I haven't seen it like that. But I
25 think she referred to it as 12, dash, 13073, something

1 to that effect?

2 A. Yes, the hyphen would be in that number.

3 Q. And tell me what the hyphen means?

4 A. It just separates the sequential number from
5 the year.

6 Q. So, that would indicate it was a 2012 case?

7 A. It would indicate that it was opened in 2012.

8 Q. I'm sorry. That's what I wanted to say. So,
9 just indicates the calendar year it was opened, and then
10 it has whatever arbitrary numbers are behind it?

11 A. Yes.

12 Q. Is it unusual then for it not to have the
13 hyphen in place?

14 A. No, that's not unusual.

15 Q. And, I guess, my question would be how then do
16 these numbers get generated? Are they randomly
17 generated or is there a system that generates it or just
18 the individual investigator generates it?

19 A. There is a database within special crimes when
20 you enter the information regarding the case and you
21 save the case, the database will create that number.

22 Q. Okay. In this database that you have to input
23 the information, is this similar to what Ms. Evans was
24 talking about with regard to the template?

25 A. No.

1 Q. So, what types of information would you have to
2 enter into this database in order to generate a number?

3 A. Well, information regarding the case, a
4 Complainant, the type of offense, witnesses, if you know
5 them at the time you're entering them, a Complainant,
6 those sorts of things.

7 MR. GRECO: Judge, may I approach, again?

8 THE COURT: You may.

9 Q. (BY MR. GRECO) All right. Captain Kelly, in
10 addition to Defense Exhibit 1, I'm going to show you
11 what we've marked as Defense 2, 3 and 4. If you'll take
12 a look at all these documents and tell me if you can
13 identify them?

14 A. Well, I know what types of documents they are.

15 Q. And, I guess, let me make it clear. I'm not
16 asking if you, yourself, generated these documents but
17 rather are you familiar with these types of documents in
18 the format in which you're seeing them?

19 A. Yes.

20 Q. And do each one of those documents have a cause
21 number on them?

22 A. Yes.

23 Q. Okay. With regard to Defense Exhibit No. 1,
24 what's the cause number that's on that one?

25 A. 1341298.

1 Q. And with regard to Defense 2?

2 A. 1382167.

3 Q. And Defense 3?

4 A. 1382168.

5 Q. And lastly Defense No. 4?

6 A. 1382169.

7 Q. Okay. And would these be a fair and accurate
8 depiction of what, I guess, the indictments would
9 typically look like in cases that are brought about by
10 this office?

11 A. To my knowledge, yes.

12 MR. GRECO: Judge, we would ask to enter
13 into evidence Defense 1, 2, 3 and 4.

14 (Defense Exhibit Nos. 1 through 4 offered.)

15 MS. EVANS: For the purposes of this
16 hearing, no objections, Your Honor.

17 THE COURT: All right. They will be
18 admitted for purposes of this hearing.

19 (Defense Exhibit Nos. 1 through 4
20 admitted.)

21 Q. (BY MR. GRECO) And so, Captain Kelly, you
22 noticed on there that there are different notations on
23 Defense Exhibit 1 and 2 have the same number, and
24 Defense Exhibits 3 and 4 have different numbers under
25 where it indicates OR; can you see that?

1 A. Yes.

2 Q. Okay. And Defense Exhibit 4, how does that
3 differ from Defense Exhibit No. 3 in terms of this
4 offense report number that's there?

5 A. This one --

6 Q. If you'll identify the exhibit?

7 A. No. 3 has an SC in front of it, and No. 4 has a
8 WC behind it.

9 Q. And can you tell us what's the difference
10 between SC and WC as it relates to an offense number?

11 A. SC is simply special crimes. WC is white
12 collar.

13 Q. Is there any reason why four different exhibits
14 have four different notations under the offense report
15 in your 15 years that you've been doing this?

16 A. Possibly the way it was inputted into the
17 system to generate those documents.

18 Q. Okay. And in order for them to generate
19 this -- these numbers, however they input it, they have
20 to input a certain amount of information for them to
21 assign a number to it; is that my understanding?

22 MS. EVANS: Judge, I'm going to object at
23 this point. I don't know that Captain Kelly is the one
24 responsible for putting together pleadings. So, how it
25 gets inputted, how the pleadings are generated, I think

1 is beyond the scope.

2 THE COURT: Just so that we're clear, SC
3 and WC are designations on the indictments --
4 complaints, the indictment, is that --

5 MS. EVANS: They're listed on the headings
6 of the indictments next to the agency, typically it's
7 the investigating agency and investigating offense
8 report number.

9 THE COURT: So, your objection is
10 sustained.

11 Q. (BY MR. GRECO) And maybe let me rephrase my
12 question. That wasn't what I was trying to ask you, and
13 I'm sorry if it came out that way. I'm referring to the
14 investigative side. What information must be input --
15 you mentioned that information must be input into a
16 database in order to generate these numbers. I guess
17 what I'm getting at is what types of information would
18 an investigator in special crimes need to input to
19 generate a number?

20 MS. EVANS: Again, Judge, I would object
21 because how this is inputted isn't necessarily done by
22 an investigator at all.

23 THE COURT: Your objection is sustained.

24 Q. (BY MR. GRECO) When you've then mentioned the
25 information that gets input by database, who does it if

1 it's not the investigator?

2 A. It could be any number of people.

3 THE COURT: You're referring to the
4 indictments, correct?

5 MR. GRECO: No, no, Judge. If I'm making
6 this confusing, it's my fault.

7 THE COURT: All right, I'm confused.

8 Q. (BY MR. GRECO) In order to get this number
9 that you said gets generated by a database, forget about
10 pleadings or indictments or anything, for it to be
11 assigned a number, you said an investigator has to input
12 information for this database to assign it a number as
13 an OR?

14 A. Some person.

15 Q. What information, what types of information
16 does that person have to input in order to get a number?

17 A. It could be very minimal information. You can
18 hit it, you can put a type of offense, hit the button
19 and generate a number.

20 Q. Did you retrieve anything like that from Dustin
21 Deutsch's computer, office files, or anything like that?

22 A. No, sir.

23 Q. Would you typically, in a situation like this,
24 since there isn't an offense report that was ever
25 located, like you mentioned, is it unusual then to not

1 have even minimal information that would be necessary to
2 generate the offense report from the database in order
3 to have those numbers assigned?

4 A. Ask that question to me again? I'm not sure I
5 understand.

6 Q. Yes, sir. Okay, and I apologize. You only
7 found that partial sheet of information. My question,
8 Captain Kelly, is, is it unusual, if we have four
9 different indictments like I showed you on these Defense
10 Exhibits and they all have different numbers, is it
11 unusual for the information that would be necessary to
12 derive these numbers for that to be missing, whatever
13 that information may have been?

14 A. Just because you get that number does not mean
15 that there's going to automatically be an offense
16 report.

17 Q. I understand. But there will be some
18 information, like you said, even however minimal it may
19 be in order to get those numbers, correct?

20 A. Yes.

21 Q. And what I'm asking is, is it normal; or is it
22 unusual that you wouldn't have been able to find any of
23 that as it relates to these four indictments?

24 A. I was asked to find an offense report, that's
25 what I looked for and any information related to that

1 case. I did not bring you the information that's
2 contained in the special crimes database.

3 Q. Okay. Is there, so, I guess, is it possible as
4 far as you may know, that there could be information in
5 this database pertaining to these cause numbers, these
6 indictments, not necessarily being an offense report but
7 potential information in these cases?

8 MS. EVANS: Judge, I'm going to object at
9 this point and as an officer of the Court and assigned
10 to special crimes, I'm going to go ahead and I would
11 like to put on the record that from the District
12 Attorney's Office, at the point where a special crimes
13 investigation has begun whether or not it ends in
14 charges or not there is some summary put in. That
15 summary may be put in by -- or created by an Assistant
16 District Attorney. It's inputted, generally speaking,
17 by a secretary. It may be based on a very scant amount
18 of information from the outset and rarely gets updated.
19 So, what is or isn't in there is not germane to these
20 proceedings. Captain Kelly has stated that there is no
21 offense report, after a search, he was able to find in
22 this case.

23 THE COURT: Just so that we're clear, it's
24 my understanding, correct me if I'm wrong, that we're
25 here today to, I'm assuming further discovery, further

1 your efforts at determining if there was additional
2 information that would be relevant to this case,
3 correct? Not necessarily -- I understand how the
4 process in which things are done could be relevant, but
5 I think Captain Kelly has given at least the Court
6 enough information to have a general understanding of
7 how things are generated in the District Attorney's
8 Office as related to reports. So, I have enough
9 information at this point for the purposes of this
10 hearing. I believe Captain Kelly has already testified
11 that he did a search that was what you requested, is
12 that correct, Mr. Greco?

13 MR. GRECO: No, Your Honor, I didn't
14 have -- I don't even know about Captain Kelly's
15 existence until this morning. I guess, to answer your
16 question, Judge, yes and no. I'm mostly trying to find
17 out and get to the bottom of the offense report issue
18 number.

19 THE COURT: I think we've gotten to the
20 bottom of that, and I think Captain Kelly has answered
21 your questions regarding the existence or lack of an
22 offense report. Is there anything further?

23 MR. GRECO: Yes, Judge. I just want to
24 know if there is information in the database, and I know
25 Captain Kelly says he hasn't looked for it there because

1 that wasn't, I guess, he didn't believe it was germane
2 to what we needed. And I didn't know there was anything
3 in the database. Is there a way we can see if there is
4 any information particular to this case at hand that
5 might be in the database?

6 A. Sure.

7 THE COURT: So, Captain Kelly, will you
8 look in the database to see if there is any additional
9 information or summary related to Mr. Brown's case?

10 THE WITNESS: Sure.

11 THE COURT: All right. Anything else?

12 MS. EVANS: Judge, if I could say, I have
13 tried my best to comply with the discovery order. There
14 is, in the file, a valuable property inventory from when
15 Defendant was booked in. I see the blue copy here that
16 was supposed to be given to the Defendant, it contained
17 his property when he was booked in. I'm going to give
18 that to the Defense. There is also a Harris County
19 Sheriff's Office Inmate Processing Warrant Pending
20 Worksheet. It is not an offense report, but I'm going
21 to give them a copy of this. I am trying my best to be
22 as broad as possible and disclosing things that I have
23 never disclosed before in any case. But I'm trying to
24 very liberally construe with the discovery order.

25 MR. GRECO: Judge, just so I hope it's

1 clear to Your Honor and everybody, we're not fishing for
2 things. This is just a very unusual case where there is
3 no offense report. We don't have what we normally have
4 in a regular case to go -- we're not trying to
5 unnecessarily delay this case or do anything. We just
6 want to make sure that we provide effective assistance
7 of Counsel. That's all we want to do.

8 THE COURT: And, again, I want to
9 accommodate your efforts to get all the information you
10 need so you can be fully prepared. I think Ms. Evans
11 has represented to the Court that she's doing everything
12 she can to get you as much information as she can in
13 light of the fact that there doesn't appear to be a
14 formal offense report. Is there anything else, Ms.
15 Evans?

16 MS. EVANS: No, Your Honor.

17 THE COURT: So those documents have been
18 provided to you, Mr. Greco. Captain Kelly has indicated
19 he will do a search of the database; and I assume if
20 there is a summary that was inputted into that database,
21 you are able to print that information out?

22 THE WITNESS: I will provide whatever
23 information is contained.

24 THE COURT: You'll print it out and copy it
25 from the database?

1 THE WITNESS: I'll give you a screen shot
2 is what I can do.

3 MS. EVANS: Judge, I am likely to have
4 objections at that time as to the relevance of it.

5 THE COURT: I expect that you will submit a
6 copy of the screen shot to this Court no later than 5:00
7 p.m. this afternoon so that I can review it and get it
8 to the Defense in a timely manner if I believe it should
9 be turned over to the Defense. And in terms of an
10 objection to relevance, Ms. Evans.

11 MS. EVANS: Well, that it was inputted at
12 some point by somebody with some limited knowledge.
13 That it accurately reflects what the whole investigation
14 looks like. You know, I don't know, you could
15 internally, literally to generate --

16 THE COURT: It is my intention to turn that
17 information over to the Defense regardless, and if there
18 is an objection to the lack of knowledge on the part of
19 the person who was doing data entry, so be it. But just
20 for our purposes today, once I get that information, I
21 will review it; and it's my intention to give it to the
22 Defense. You'll have an opportunity to review it as
23 well. Anything else?

24 MR. GRECO: Nothing from Defense.

25 THE COURT: All right. Thank you, Captain