UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

UNITED STATES OF AMERICA,

v. **Case No.: 8:19-cr-605-WFJ-CPT**

MICHAEL J. DACORTA
_____ /

MICHAEL DACORTA'S MOTION TO SUPPRESS STATEMENTS MADE AS A RESULT OF CUSTODIAL INTERROGATION ON APRIL 18, 2019

Comes now, Mr. Michael J. Dacorta, by and through undersigned counsel and moves this Court pursuant to the Fourth and Fifth Amendments to the United States Constitution, Title 18 U.S.C. § 3501, and Rule 12(b)(3)(C) of the Federal Rules of Criminal Procedure, to suppress non-*Mirandized* statements obtained during the custodial interrogation of Mr. Dacorta on April 18, 2019. As grounds to support, the Defense states the following:

I. Evidence To Be Suppressed

Defense requests that this Court suppress all statements obtained in response to the custodial interrogation of Mr. Dacorta by Agents Shawn Batsch and Ric Volp on April 18, 2019, which was conducted without Mr. Dacorta being advised of his Fifth Amendment right to remain silent nor his Sixth Amendment right to counsel as required by *Miranda v. Arizona*, 384 U.S. 436 (1966).

II. Procedural History

On December 17, 2019, Mr. Dacorta was indicted by a Grand Jury on the following charges: Count One, Conspiracy to Commit Wire Fraud and Mail Fraud, in violation of 18 U.S.C. § 1349 and Count Two, Illegal Monetary Transaction in violation of 18 U.S.C. § 1957. Doc. 1. His case was set for arraignment on January 7, 2020. Mr. Dacorta, through counsel, entered a plea of not guilty. Doc. 18. On February 17, 2021, a superseding indictment was filed and a count of False and Fraudulent Statement on Income Tax Return in violation of 26. U.S.C. 7206(1) and 18 U.S.C. 2 is alleged. Doc. 39. Mr. Dacorta's case is currently set for trial on the October 2021 trial term.

III. Factual Background

On April 18, 2019, during the early morning hours, multiple armed law enforcement officers demanded entry into Mr. Dacorta's house to execute a search warrant. With their guns drawn and a federal search warrant in hand, federal agents pounded on the front door while loudly yelling for Mr. Dacorta to let them inside his family home. Awoken from his sleep, Mr. Dacorta complied and came to the door to open it for law enforcement. See Defense Ex. A, Ring Video. When he opened the door, Mr. Dacorta was confronted by multiple federal agents with guns drawn yelling at him to put his hands up. Because Mr. Dacorta had been asleep in bed, he was dressed only in a white tank-top undershirt and boxer briefs. His wife, Carolyn, and daughter also had

been sleeping when armed agents unexpectedly came to the door. When Mr. Dacorta's wife went with her husband to the front door, she was dressed only in her night garments.

In response to the law enforcement show of armed force, Mr. Dacorta immediately cooperated and exited the house. He was ordered to sit on the front steps. At this point with their guns still drawn, law enforcement entered the home and shouted for Mr. Dacorta's daughter, Crystal, who was recently home from college, to come down the front steps. She was commanded to sit outside on the front steps next to her father.

While Crystal was sitting on the front steps, law enforcement officers told her that she did not have to stay at the house while the search warrant was being executed. In response to this statement, she asked about taking her car to leave the home. In response, agents told her that all of the cars were being seized, and she would not have access to her car. Mr. Dacorta was sitting next to his daughter when this exchange occurred. Notably, Mr. Dacorta, unlike his daughter, was never told he was free to leave the home while the search warrant was being executed.

After law enforcement conducted an armed protective sweep of the home, agents separated Mr. Dacorta from his wife and daughter. Carolyn and Crystal were told to sit on the couch in the living room while Mr. Dacorta was escorted to a separate room for questioning. Rarely were Mr. Dacorta's wife and

daughter permitted to move from the couch and never without permission. Mr. Dacorta, separated from his wife and daughter, was escorted by armed agents to a room off the kitchen. This room is notated as Room "L" in the photos taken by law enforcement. Photos of the room are attached. See Defense Composite Ex. B. The room is best described as an interior room with windows on one "wall" of the room and sliding glass doors that access the back patio. The room has lockable double doors. Mr. Dacorta was taken into the room and made to sit on a stool at the back of the room. The stool was set behind a large pool table, which was between Mr. Dacorta and the door to exit the room. The two, armed agents, Agents Batsch and Volp, were seated to Mr. Dacorta's right and left as they began to interrogate Mr. Dacorta for approximately four hours.

Prior to the interrogation Mr. Dacorta was not advised of his Fifth Amendment right to remain silent nor of his Sixth Amendment right to counsel pursuant to *Miranda v. Arizona,* 384 U.S. 436 (1966). During the prolonged interrogation Mr. Dacorta was not free to leave. He never was permitted to leave the room alone. He never left to use the restroom, and he did not leave to get himself anything to eat or drink. At times during his interrogation Mr. Dacorta's wife and daughter attempted to enter the interrogation room and were denied entry. In total, at least eleven armed law enforcement officers participated in the raid on Mr. Dacorta's home—nine FBI agents and the two IRS agents who questioned Mr. Dacorta. See Def. Ex. C. During Mr. Dacorta's

prolonged interrogation, he was questioned about where incriminating evidence was located in his home, including but not limited to the location of gold and silver. When Mr. Dacorta gave the location of the gold and silver in his home, he then was escorted by armed agents in order to show the agents where the gold and silver were located.

IV. Legal Argument

The Fifth Amendment to the United States Constitution affords an individual the right not to incriminate himself. U.S. Const. Amend. V. This right was extended over fifty years ago by the Warren Court in *Arizona v. Miranda.* 384 U.S. 436 (1966). Chief Justice Warren cited the Latin maxim, "Nemo tenetur seipsum accusare," which, roughly translated, means that no one is bound to incriminate himself. From that maxim, he constructed the opinion which would memorialize what we know today as the "*Miranda* warnings." These "warnings are required before any statement may be admitted into evidence at trial which was elicited from a person in custody through interrogation." *See Endress v. Dugger*, 880 F.2d 1244, 1248 (11th Cir. 1989). Today, it is well established that prior to custodial questioning a defendant must be advised of both their Fifth Amendment right to remain silent and their Sixth Amendment right to counsel. *See, e.g., United States v. Prior*, 381 F.Supp. 870 (M.D. Fla. 1974).

While law enforcement has an obligation to administer the *Miranda*

warnings, this obligation does not attach until "there has been such a restriction on a person's freedom to render him in custody." *Stransbury v. California*, 511 U.S. 318, 321 (1994). Custodial interrogation is defined as questioning initiated by law enforcement officers after a person has been taken into custody or otherwise "deprived of his freedom by the authorities in any significant way . . . ." *Miranda*, 384 U.S. at 478.

To determine whether an individual is in custody, the objective circumstances of the situation are assessed from the perspective of a reasonable person in the suspect's position. *Yarborough v. Alvarado*, 541 U.S. 652 (2004); *Berkemer v. McCarty*, 468 U.S. 420 (1984); *United States v. Long*, 866 F.2d 402, 405 (11th Cir. 1989) ("A suspect is considered in custody if a reasonable person would believe that he were not free to leave, for example if the officers brandished weapons, touched the suspect, or used language or a tone that indicated that compliance with the officers could be compelled.").

In making this determination, two discrete inquiries must be made – "[F]irst, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave." *Thompson v. Keohane*, 516 U.S. 99, 112 (1995). Relevant factors include the duration of the questioning; statements made during the interview; the presence or absence of physical restraint during questioning; and the release of the person at the end

of questioning. *Berkemer v. McCarty*, 488 U.S. 420, 437-38 (1984); *Oregon v. Mathiason*, 429 U.S. 492, 495 (1977); *Yarborough v. Alvarado*, 541 U.S. 652, 665 (2004); *Stansbury v. California*, 511 U.S. 318, 325 (1994); *New York v. Quarles*, 467 U.S. 649, 655 (1984); and *California v. Beheler*, 463 U.S. 1121, 1122-23 (1983).

The Defense bears the burden of establishing that the defendant was in custody. *United States v. de la Fuente*, 548 F.2d 528, 533 (5th Cir. 1977); *see also United States v. Peck*, 17 F.Supp.3d 1345 (N.D. Ga. 2014). However, when law enforcement officers conduct a custodial interrogation without providing *Miranda* warnings, there is a presumption that the suspect's statements are compelled. *See Waldrip v. Humphrey*, 532 Fed.App'x. 878 (11th Cir. 2013) (*citing Arizona v. Robinson*, 486 U.S. 675, 681 (1988)); *see also, United States v. Lall*, 607 F.3d 1277 (11th Cir. 2010).

A. Mr. Dacorta was the subject of a custodial interrogation when two, armed law enforcement officers escorted him to a closed room separated from his family members, questioned him for four hours, and severely restricted Mr. Dacorta's movement within the room and around his home. Because this interrogation proceeded without *Miranda* warnings, the statements Mr. Dacorta made should be suppressed.

The Eleventh Circuit has held that a person is not in custody for *Miranda* purposes merely because that person has been seized. *See, e.g., United States v. Luna-Encinas*, 603 F.3d 876 (11th Cir. 2010); *see also United States v. Street*, 472 F.3d 1298 (11th Cir. 2006). The threshold determination is whether, as

stated in *Stansbury*, "there was a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Stansbury*, 511 U.S. at 322 (*quoting California v. Beheler*, 463 U.S. 1121 (1983) (*quoting Oregon v. Mathiason*, 429 U.S. 492, 495 (1977)). While Eleventh Circuit case law has held, in some cases, that an individual is not in custody while questioned in their home, the facts of those cases are much different than the facts here.

There are two oft-cited Eleventh Circuit opinions when denying suppression of statements individual defendants have made when questioned by law enforcement in their homes. First, *United States v. Luna-Encinas*, *supra*, found that a suspect questioned, briefly, while outside of his house, was not in custody for *Miranda* purposes. That suspect, unlike Mr. Dacorta, was only briefly detained by law enforcement officers—not for the extensive length of four hours that Mr. Dacorta was kept in the closed room in his home. Second, in *United States v. Brown*, 441 F.3d 1330 (11th Cir. 2006), the Court found that the defendant was not in custody during the execution of a search warrant on his girlfriend's home, where he sometimes stayed. The facts of that case, also, are distinguishable in that defendant Brown was permitted to move freely about the home (though escorted by law enforcement) and the officers who questioned the defendant were not armed. In contrast, Mr. Dacorta was guarded by two armed officers who were interrogating him. He was never permitted to move freely about his home.

The fact that Mr. Dacorta was questioned in his home does not, *per se*, make the interrogation non-custodial. As the Ninth Circuit noted in *United States v. Craighead*:

> A reasonable person interrogated inside his own home may have a different understanding of whether he is truly free "to terminate the interrogation" if his home is crawling with law enforcement agents conducting a warrant-approved search. He may not feel that he can successfully terminate the interrogation if he knows that he cannot empty his home of his interrogators until they have completed their search.

United States v. Craighead, 539 F.3d 1073, 1083 (9th Cir. 2008)

Whether an individual is in "custody" while in their own home becomes an intensely fact-specific analysis. Various courts have found a defendant in custody when questioned in their home. For instance, in *United States v. Cavazos*, 668 F.3d 190 (5th Cir. 2012), the Fifth Circuit ruled that the defendant was in custody in his home, despite officers' advisements that the interrogation was "non-custodial." In *Cavazos,* the defendant awoke to multiple law enforcement agents banging on his door in an attempt to execute a search warrant for the residence. Agents then entered the home, found Mr. Cavazos, and handcuffed him. Mr. Cavazos was taken to a separate bedroom from his family and interrogated for at least one hour. The Fifth Circuit, in holding that Mr. Cavazos was in custody, reasoned, in part, that given the circumstances of the interrogation a reasonable person would not have believed he was allowed to terminate the interrogation and leave.

The facts in the instant case are more egregious than those in *Cavazos*. First, Mr. Cavazos himself opted to close the door to the room in which he was being questioned. In contrast, Mr. Dacorta's family tried to enter the interrogation room on at least one occasion and was not permitted to—it was not Mr. Dacorta's choice to be in a closed room separate from his family. Second, the interrogation in *Cavazos* lasted only one hour; Mr. Dacorta was interrogated for four hours. Third, Mr. Cavazos was told he was free to use the bathroom or get a snack; Mr. Dacorta was not given this freedom. The facts in the instant case speak more towards a custodial setting than a non-custodial setting. Certainly a reasonable person in Mr. Dacorta's situation (woken in the early morning hours by armed law enforcement agents, separated from family by armed law enforcement agents, escorted by armed law enforcement agents to a separate room with blocked exits, and interrogated for approximately four hours) would not have concluded that they were free to leave.

The Seventh Circuit, in *Sprosty v. Buchler*, likewise found that the defendant was in custody when interrogated in his home. 79 F.3d 635 (7th Cir. 1996). Mr. Sprosty was interrogated for three hours in his home while another agent stood guard. Mr. Dacorta was interrogated for an even longer period of time. Additionally, in *Sprosty*, the defendant was blocked off from leaving his home—law enforcement physically placed their cars so as to block the driveway. While this was not done in the instant case, Mr. Dacorta's cars were

seized by law enforcement—and he was told this prior to the questioning. Mr. Dacorta effectively had no way to leave his home. Finally, during the execution of the search warrant in *Sprosty*, the defendant was repeatedly asked to tell law enforcement where incriminating evidence was located. This is strikingly similar to the repeated questioning of Mr. Dacorta about where the gold and silver were located in the home—even going so far as to escort him from the closed room to have Mr. Dacorta physically point out the gold and silver.

Mr. Dacorta was separated from his family members—as both his wife and his daughter were told to sit on the couch, in a separate room, while Mr. Dacorta was forced to remain in a closed room away from his family. Additionally, unlike both his wife and daughter, Mr. Dacorta was never advised that he could leave. Curiously, while his daughter was advised she could leave, she was then told (within ear shot of Mr. Dacorta) that she would not be able to take any of the cars as they were all being seized. A reasonable person would not believe they were free to leave when law enforcement takes your only method of leaving. *See e.g., United States v. Gaines*, 2015 WL 9026840 (W.D. Okla. 2015) (where court found that defendant was in custody after placed in a police car, having his keys removed and his vehicle taken from him); *United States v. Adames*, 885 F.Supp. 610 (S.D.N.Y. 1995) (where court found that defendant was in custody, in part, due to law enforcement's seizure of his car keys); *contra United States v. Mora-Pizarro*, 2016 WL 6871271 (W.D.

Ky. 2016) (where the court notes that the defendant's car keys were *not* taken away as a factor that cuts against the defendant being in custody).

In addition to being deprived any means to leave his residence, law enforcement engaged in a show of force to prohibit Mr. Dacorta from freely moving about his home. He was either 1) directly escorted by armed agents or 2) completely forbidden from moving. When he went to his bedroom to put clothes on, he was escorted there and watched. He had no opportunity to shower, brush his teeth, or use the restroom. When he was in the interrogation room, he asked for a coffee. He was prohibited from getting up to get the coffee himself even though the kitchen was directly outside the room and still within eyesight of the agents. What's more, his wife was told she could not bring coffee to him. When he heard his dogs being rambunctious and barking outside the room, Mr. Dacorta was not allowed to get them.

The only time Mr. Dacorta left that interrogation room, for the entire four hours, was upon command of the agents that he show them where the gold and silver currency was being stored. And, even at that time, he was escorted by two armed agents. Further, at multiple points during the questioning, Agent Batsch was called out of the room by other law enforcement officers. Every time this occurred, Mr. Dacorta was not left alone—instead he was under the watchful eye of Agent Volp. Given the significant curtail of his movement, any reasonable person to believe they were in the custody of law

enforcement.

V. Conclusion

Because Mr. Dacorta was in custody at the time of his interrogation and was not provided any *Miranda* warnings prior to questioning, his statements were not freely and voluntarily given. As such, this Court must suppress the statements made in response to the questioning conducted by Agents Volp and Batsch on April 18, 2019.

DATED this 27th day of April 2021.

Respectfully submitted,

JAMES T. SKUTHAN
ACTING FEDERAL DEFENDER

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 27th day of April 2021, a true and correct copy of the foregoing was furnished by using the CM/ECF system with the Clerk of the Court, which will send notice of the electronic filing to the following:

Rachelle Bedke, AUSA

David WA Chee, AUSA

Francis D Murray, AUSA

Suzanne C Nebesky, AUSA

/s/ Jessica Casciola
Jessica Casciola
Assistant Federal Defender

Exhibit A

Ring Video, Filed via CD with the Court

Exhibit B

Photo Composite


CASIO
OMICRON GRANITE & TILE
$13.99

Exhibit C

Sign In Log

Case ID 318B-TP-2992878
Date 4/18/19
Location 13318 Lost Key Pl
Lakewood Ranch, FL

FEDERAL BUREAU OF INVESTIGATION
Sign-In Log

Page 1 of ___

Maintained by:_____

Print Full Name	Agency/Division/Office	Phone	Signature	Initials	Time In	Time Out
Natalie A. Williams	FBI	813-253-1079	Natalie A. Williams	NAW	7:15am	
Cynthia Shepherd	FBI	8133166464	C.S.	CS	7:15	
Dan Nowak	FBI, PRA	727-348-8045	D Nowak	DN	7:05 AM	
Ludmila Reigel	FBI	2015630640	L Reigel	LR	7:05	
Michael Diaz	FBI	941650 6121		MD	7:05	
Greg Price	FBI	941-920-1199	Greg Price	GP	7:05	
Bill Tidwell	FBI CART	321-246-5802		WMT	7:05 A	
Kelley J. Molanare	FBI	813 253 1196	Kelley J Molanare	KJM	7:15 Am	
Timothy M. Gorman	FBI	7272247330		TMG	5:45	8:50
Rick Volp	FBI	646-341-0545		RV	7:05	
Shawn Batsch	IRS	520-631-3421		S.B.	7:05	

FD-674 (Rev. 5-10-2013)

DATE 4 / 18 / 19

CASE ID 318B-TP-2992878

FBI

PHOTOGRAPHER _____

LOCATION 13318 Lost Key Pl

Lakewood Ranch, FL

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PHOTOGRAPHIC LOG

GENERAL INFORMATION

DATE 4/18/19

CASE ID 318B-TP-2992878

LOCATION 13318 Lost Key Pl, Lakewood Ranch, FL

PREPARER/PHOTOGRAPHER

REMARKS

PHOTO #	DESCRIPTION OF PHOTOGRAPHIC SUBJECT / MISCELLANEOUS COMMENTS

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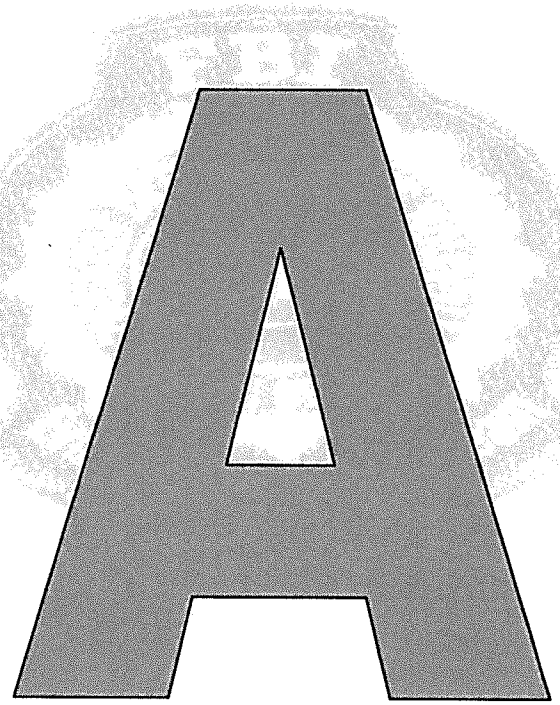

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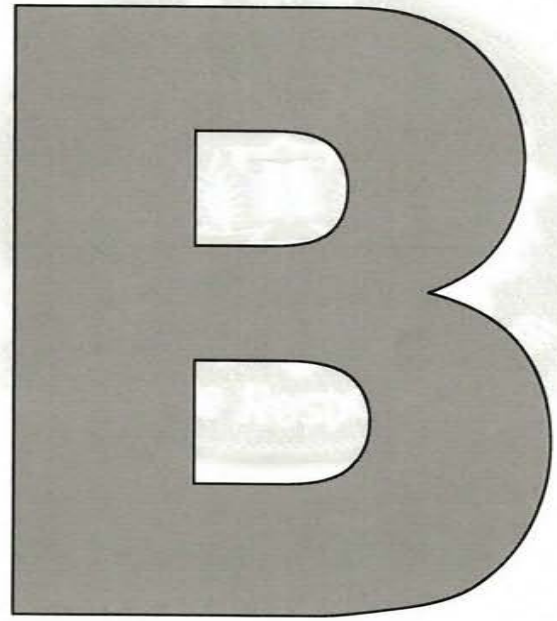

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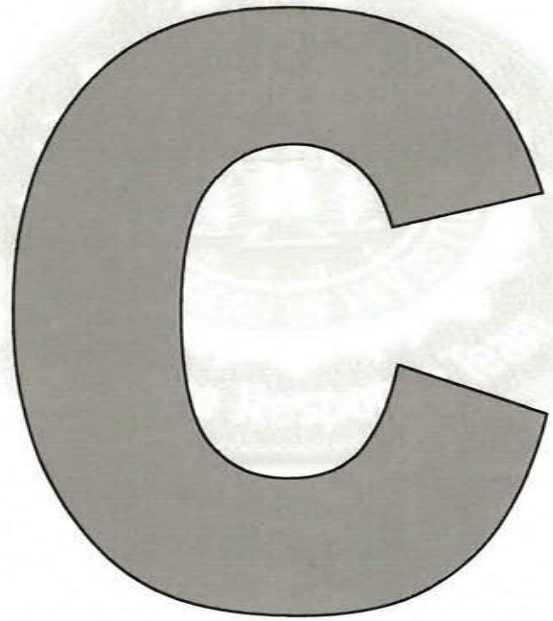

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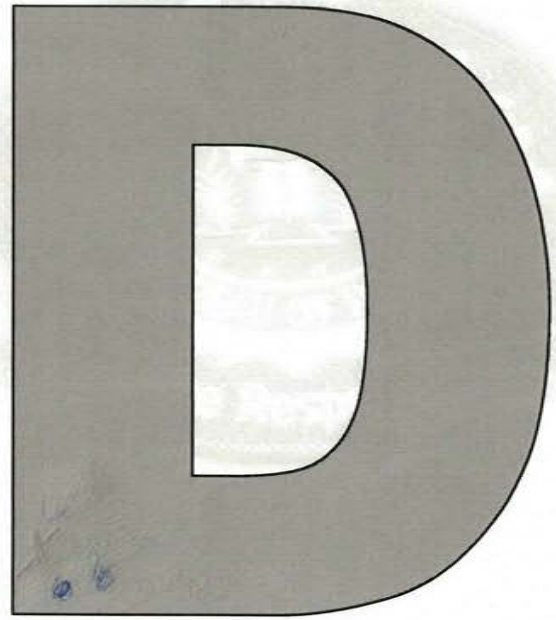

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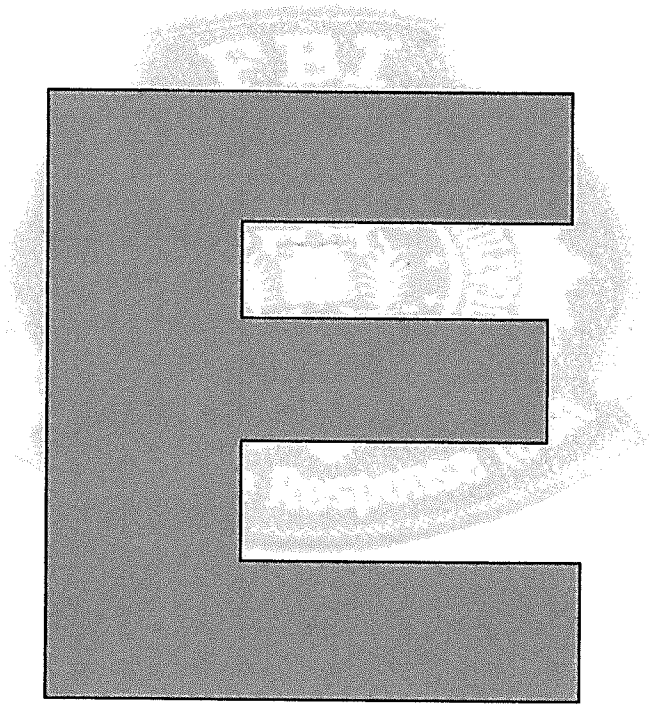

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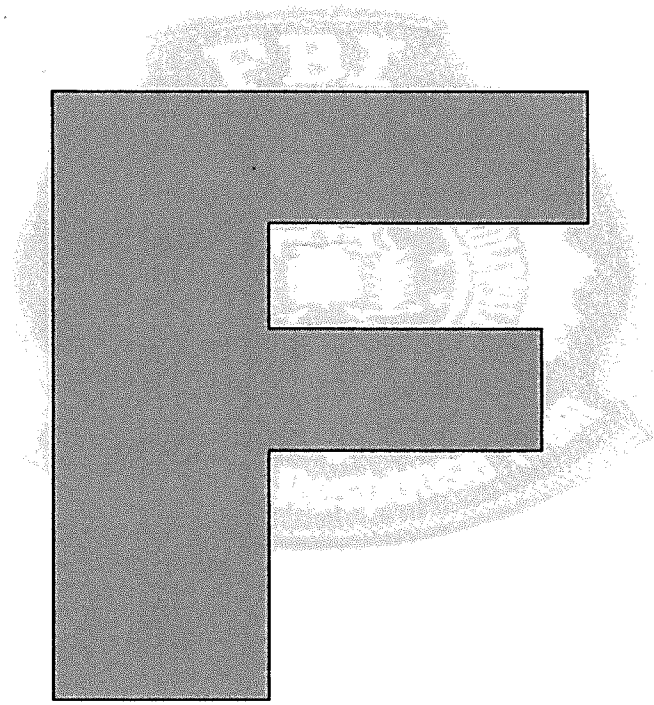

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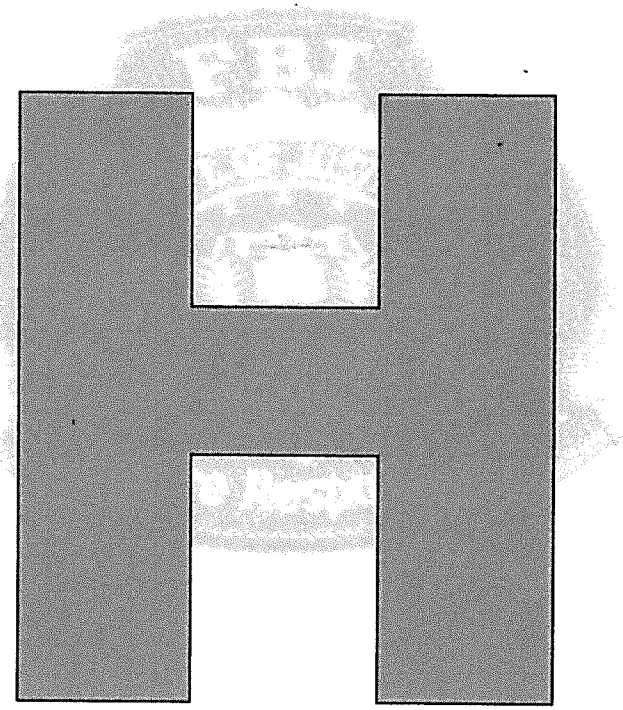

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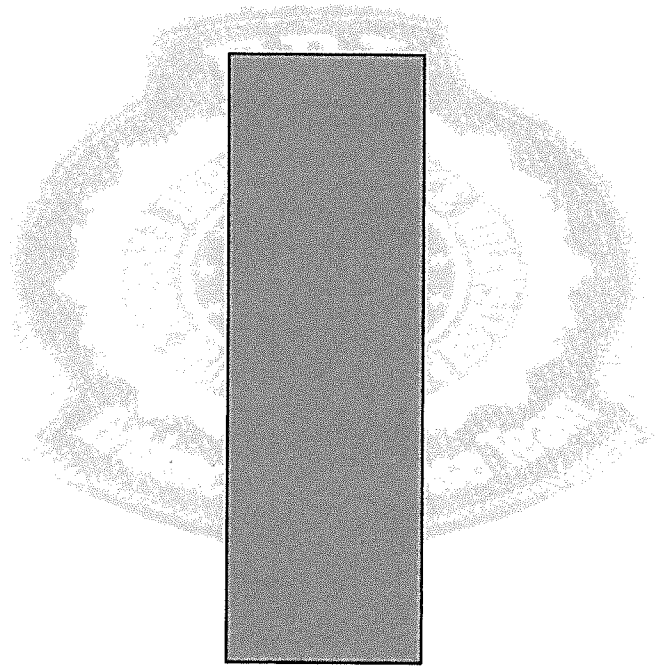

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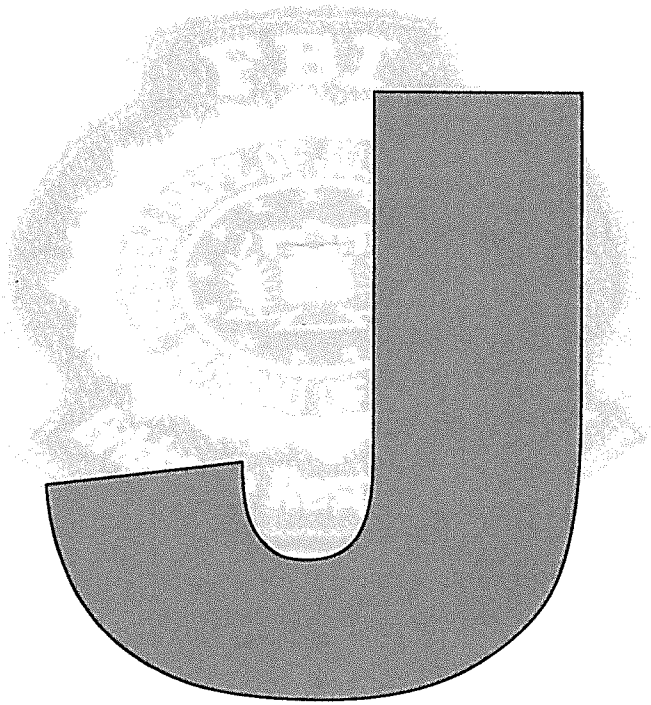

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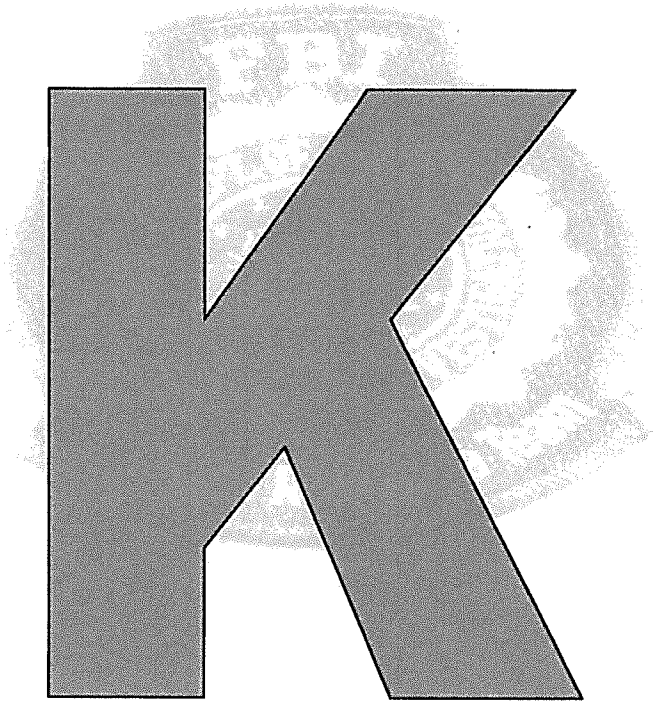

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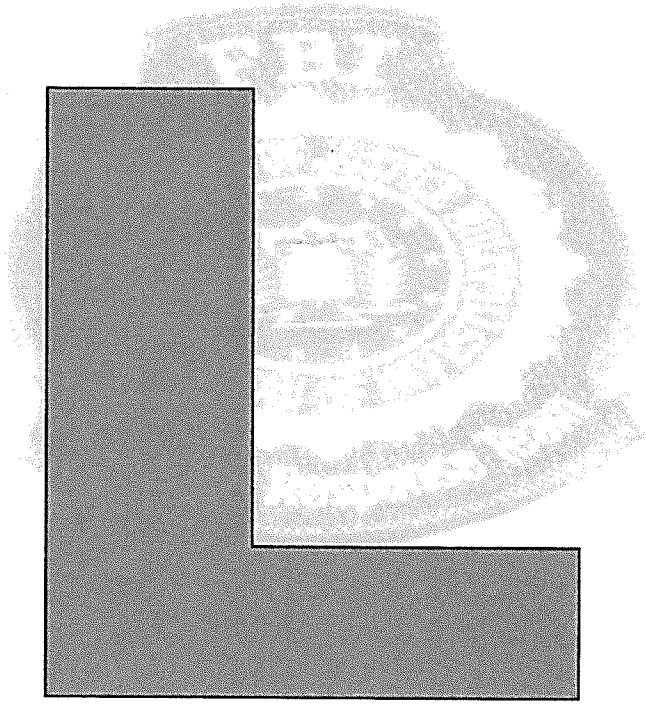

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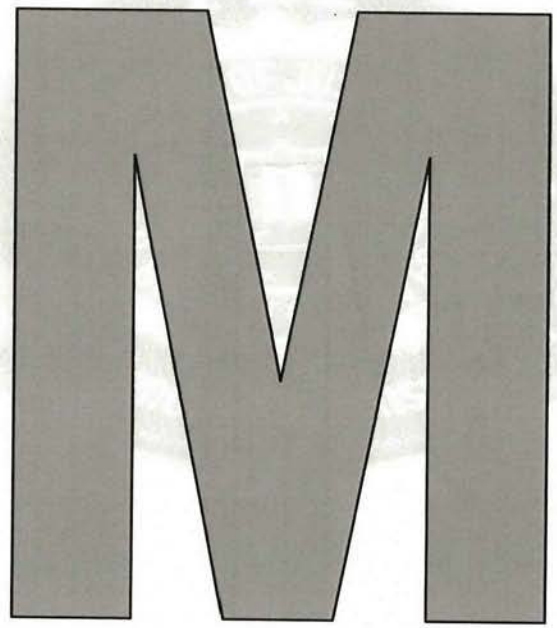

Search Personnel Name	Agency	Contact Number	Initials
Mike Diaz	FBI	941 650 6121	
Greg Price	FBI	Cell. 920. 1199	

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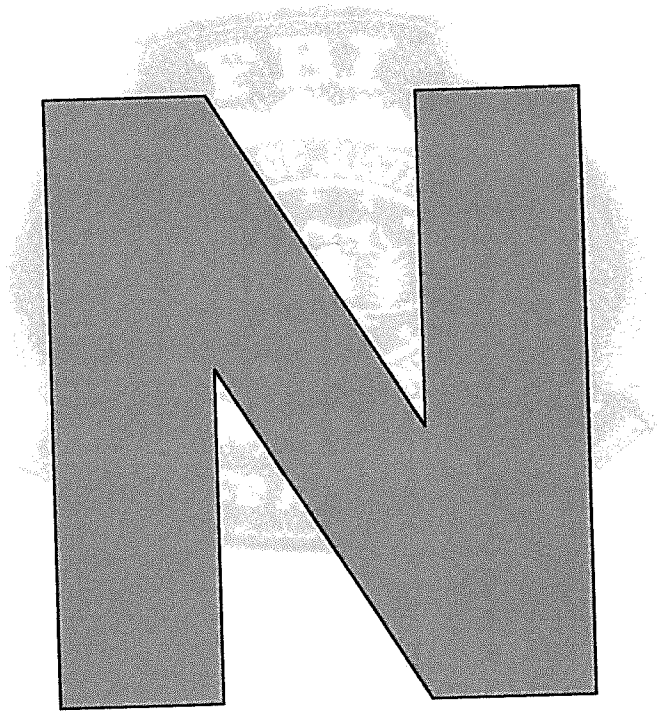

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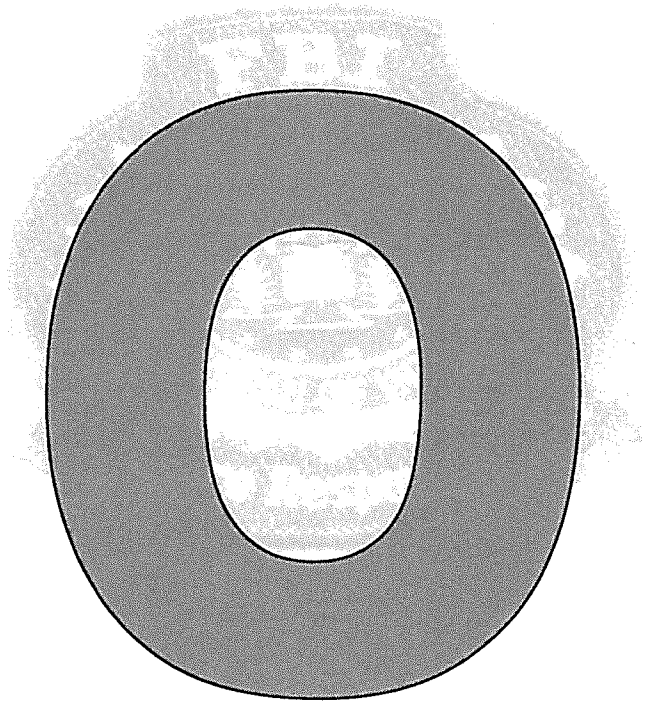

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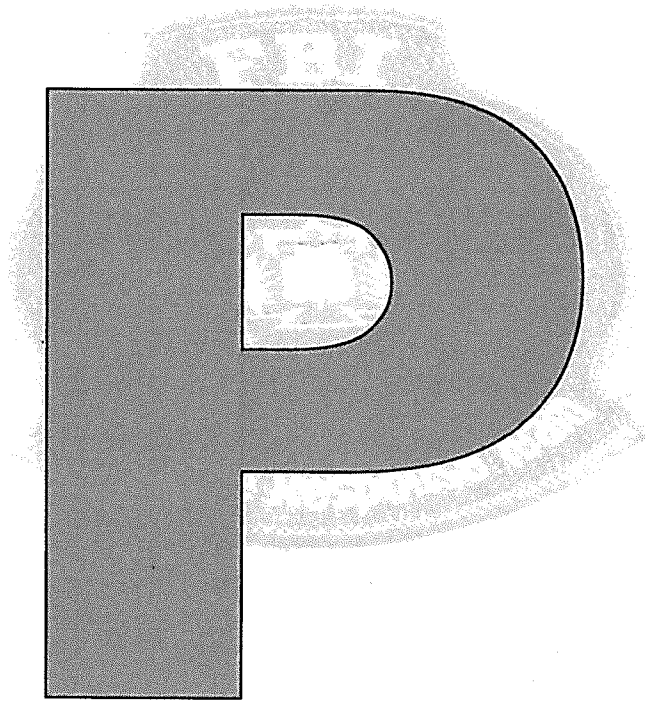
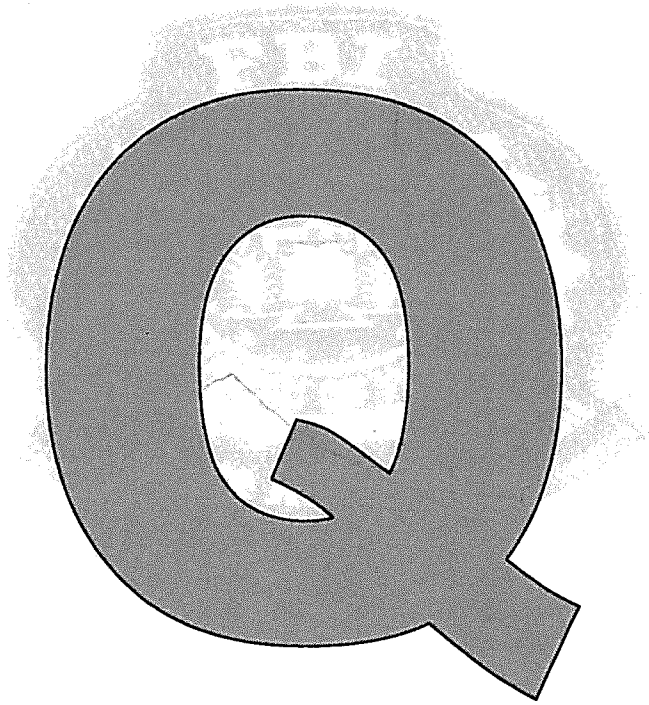
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
Greg Price	FBI	941-920-1199	

Search Completed (Place X in Box)
X

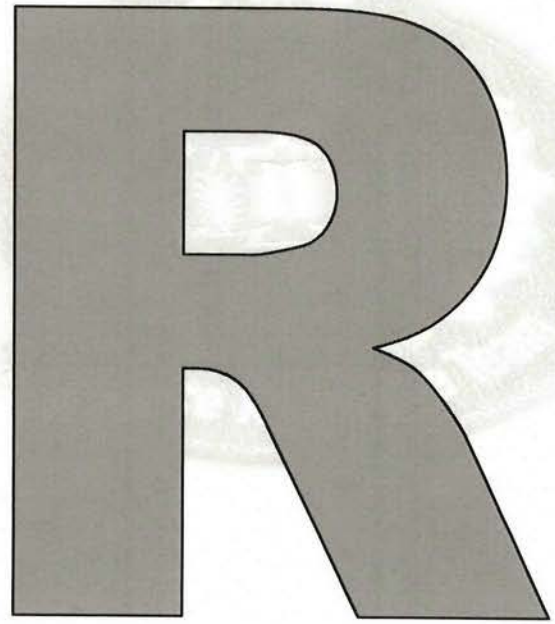
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials

Search Completed (Place X in Box)

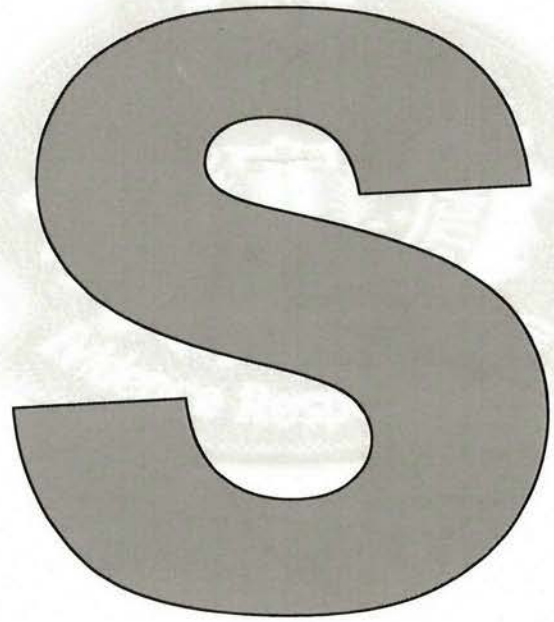
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
Mike Diaz	FBI	941 650 6121	MD

Search Completed (Place X in Box)
X

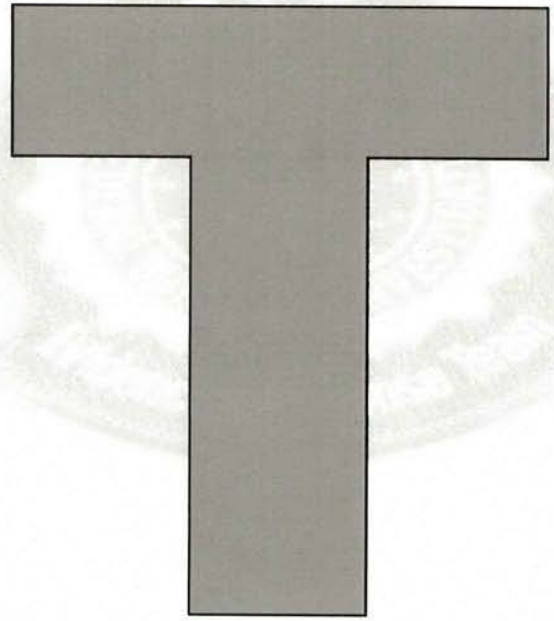
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
Mike D. Mz	FBI	941 650 6121	

Search Completed (Place X in Box)
X

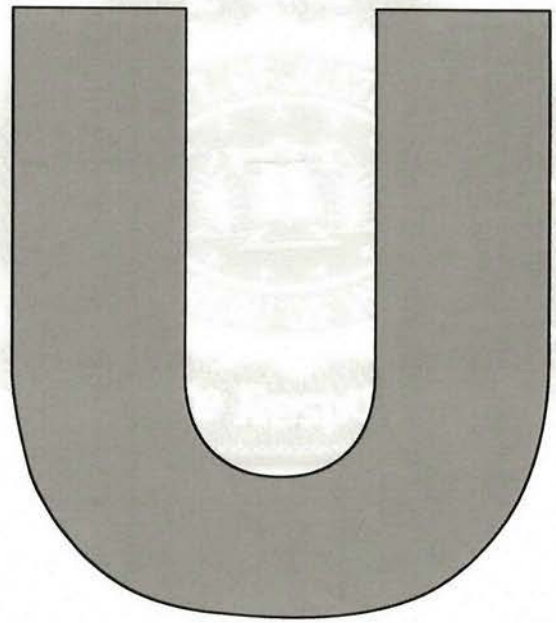
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
[illegible] Diaz	FBI	941 650 6121	

Search Completed (Place X in Box)
X

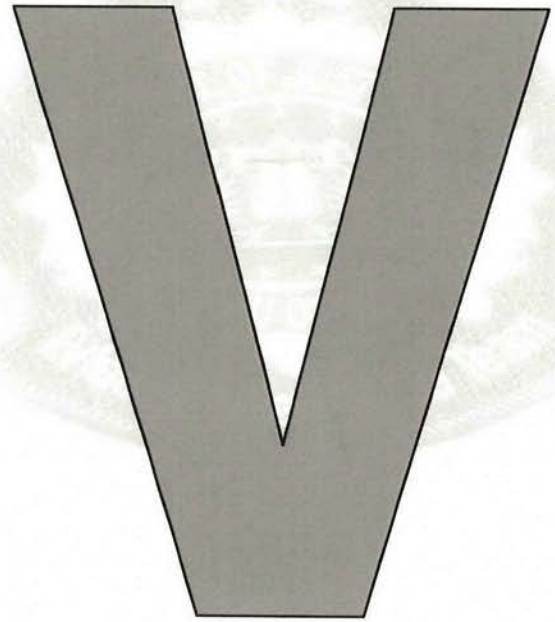
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
[illegible] DIAZ	FBI	941 650 6121	

Search Completed (Place X in Box)
X

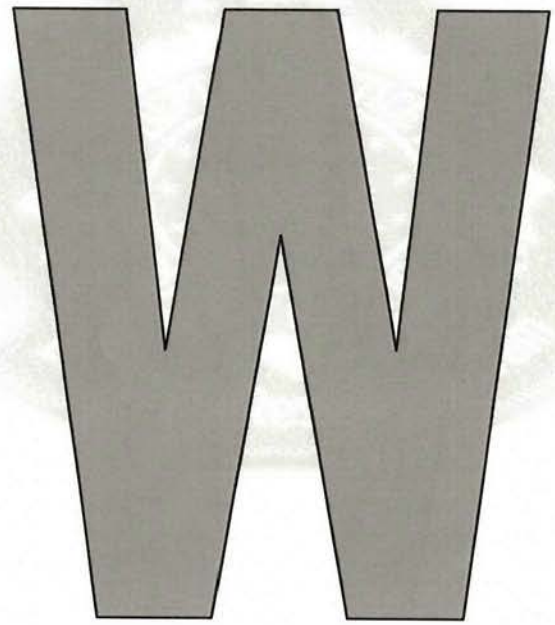
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
Mike Dietz	FBI	941 65- 6121	MD
Natalie A. Williams	FBI	813-253-1079	NAW

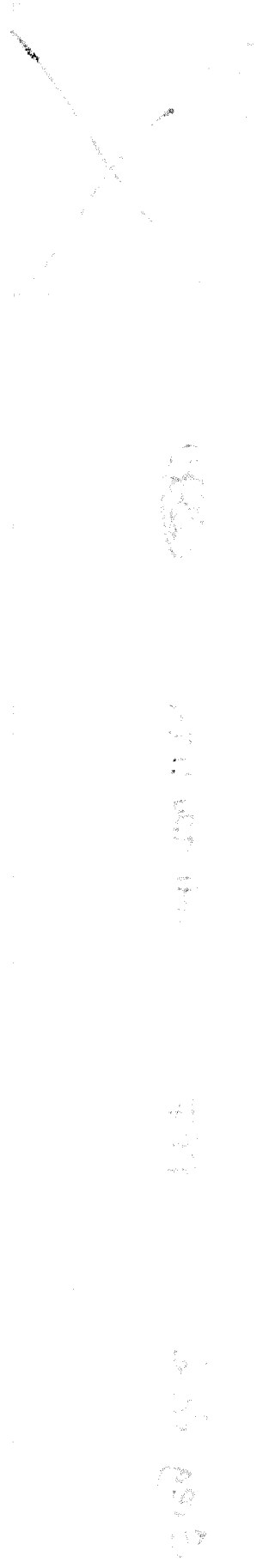
Search Completed (Place X in Box)
X

Building No.	Description of Room

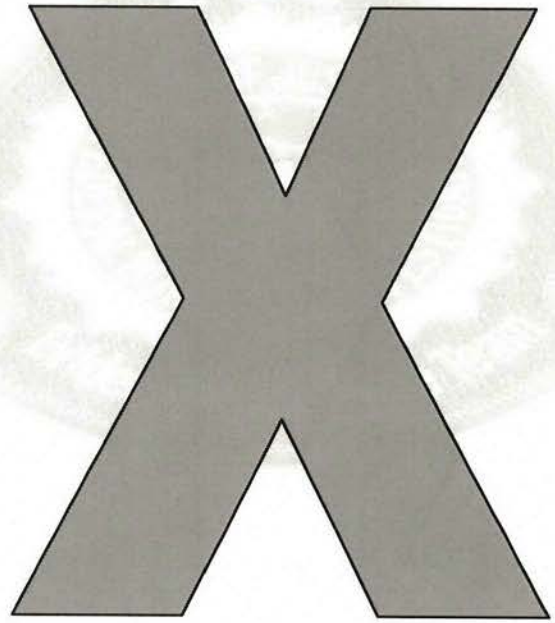


Search Personnel Name	Agency	Contact Number	Initials
Greg Price	FBI	941-920-1199	GP
Natalie A. Williams	FBI	813-253-1079	NAW

Search Completed (Place X in Box)
X



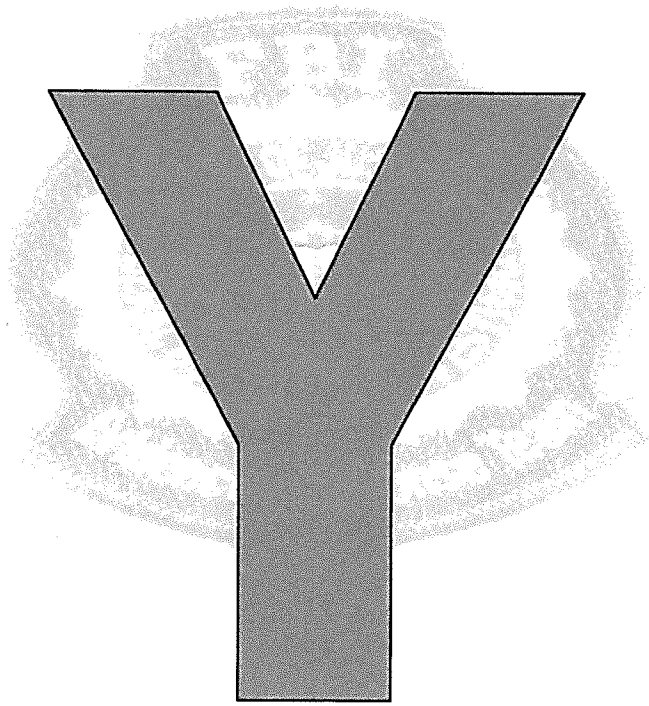
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
[illegible] Diaz	FBI	941 650 6121	

Search Completed (Place X in Box)
X

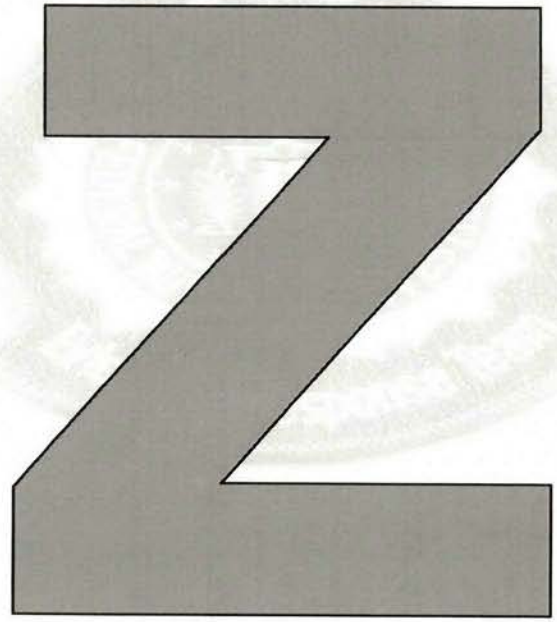
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
Greg Price	FBI	941-920-1199	

Search Completed (Place X in Box)
X

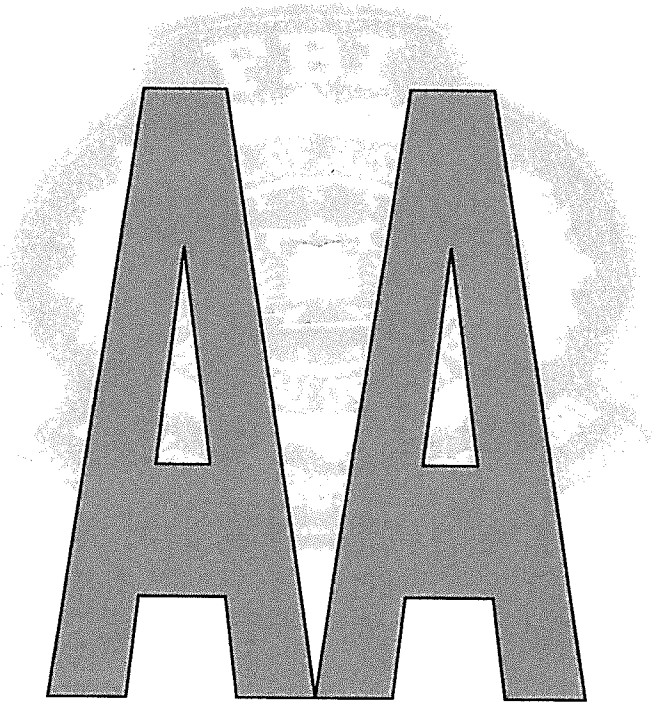
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
DAN NOWAK	FBI, TP, PRA	727-348-8045	DN

Search Completed (Place X in Box)
X

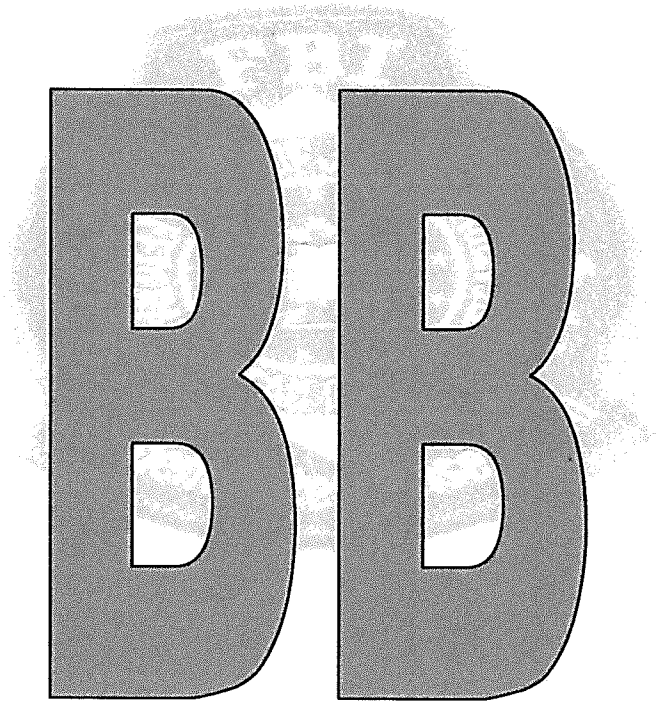
Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
Greg Pelle	FRF	941-920-1199	

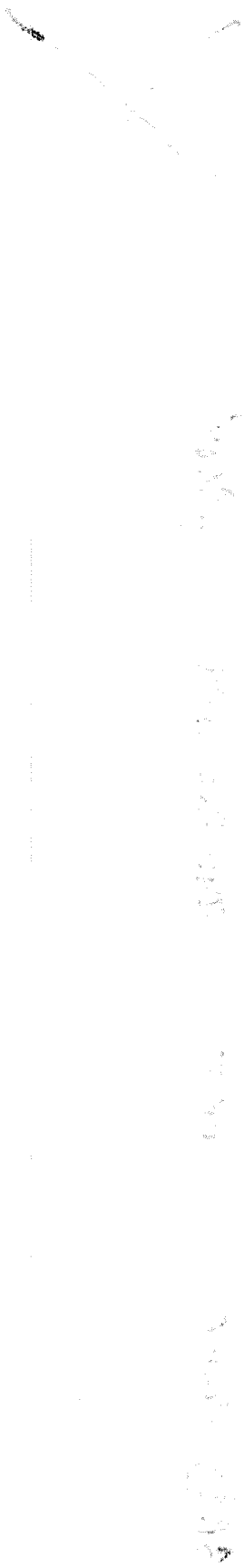
Search Completed (Place X in Box)
X

Building No.	Description of Room



Search Personnel Name	Agency	Contact Number	Initials
Greg Price	FBI	941-920-1199	

Search Completed (Place X in Box)
X



Building No.	Description of Room

CC

Search Personnel Name	Agency	Contact Number	Initials
Greg Price	FBI	941-920-1199	

Search Completed (Place X in Box)
X