

**BIRMINGHAM PD**

151 MARTIN
BIRMINGHAM MI 48009
248-530-1889

**Case Report****Administrative Details**

CR No	Subject
130011615	C3324 - Suspicious Circumstances
Report Date/Time	Occurrence Date/Time
08/16/2013 21:05	08/16/2013 21:05
Location	Call Source
PLEASANT AVE	TELEPHONE
Dispatched Offense	Verified Offense
C3324 SUSPICIOUS CIR	C3324 Suspicious Circumstances
County	City/Twp/Village
63 - Oakland	80 - Birmingham
Division	
Patrol	

Action Requested

<input type="checkbox"/> Arrest warrant	<input checked="" type="checkbox"/> Review only
<input type="checkbox"/> Search warrant	<input type="checkbox"/> Forfeiture
<input type="checkbox"/> Juvenile petition	<input type="checkbox"/> Other
Agency Contact: Det Chris Koch	Contact Number: 248-530-1769



Offenses

C3324 - Suspicious Circumstances [BISPRINGERR (00051)]

IBR Code / IBR Group /	Offense File Class	
Crime Against	Location Type 20 - Residence/Home	Offense Completed Completed
Domestic Violence No	Hate/Bias 00 - None (No Bias)	
Using		
A-Alcohol: No C-Computer Equipment: No D-Drugs/Narcotics: No		

People

SUH, NDAMUKONG (S-SUSPECT) [BISPRINGERR (00051)]

Last Name SUH	First Name NDAMUKONG	Middle Name [REDACTED]	Suffix	Mr/Mrs/Ms
DOB (Age) 26	Sex M	Race BLACK	Ethnicity	Birth City & State OAKLAND USA
Street Address	Apt #	County	Country	Home Phone
City Birmingham	State MI	Zip 48009	Cell Phone	Work Phone
Country of Citizenship				

FERRELL, SPENCER OCTAVIOUS (V-VICTIM) [BISPRINGERR (00051)]

Victim Type I - Individual	Victim of C3324 - Suspicious Circumstances			
PE:	W.Type:	Last Name FERRELL	First Name SPENCER	Middle Name OCTAVIOUS
DOB (Age) 22	Sex M	Race BLACK	Ethnicity	Birth City & State MACOMB USA
Street Address	Apt #	County	Country	Home Phone
City Eastpointe	State MI	Zip 48021	Cell Phone	Work Phone
Country of Citizenship				
Phone/Email				
Type		Description		
BU-Business Phone #1		[REDACTED]		
Employer COMCAST	Employer Address	Employer Phone	Occupation CABLE REPAIR	Employer CSZ
Victim Injury				

KOCH, CHRISTOPHER (O-OTHER) (L-POLICE OFFICER) [BIKOCHC (00006)]

PE:	W.Type:	Last Name Koch	First Name Christopher	Middle Name	Suffix	Mr/Mrs/Ms Det.
DOB (Age)	Sex	Race UNKNOWN	Ethnicity	Birth City & State OAKLAND USA	Country of Citizenship	
Street Address	Apt #	County	Country	Home Phone	Work Phone	
City Birmingham	State MI	Zip 48009	Cell Phone	Email		
Phone/Email						
Type		Description				
BU-Business Phone #1		248-530-1889				

**WEBB, PHILLIP (O-OTHER) (L-POLICE OFFICER) [BISPRINGERR (00051)]**

PE:	W.Type:	Last Name	First Name	Middle Name	Suffix	Mr/Mrs/Ms
	OF	Webb	Phillip			OFFICER
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country	Country of Citizenship
		UNKNOWN				
Street Address	Apt #	County	Country	Home Phone	Work Phone	
		OAKLAND	USA			
City	State	Zip	Cell Phone	Email		
Birmingham	MI	48009				
Phone/Email						
Type				Description		
BU-Business Phone #1				248-530-1889		

STUEF, TYLER (O-OTHER) (L-POLICE OFFICER) [BISPRINGERR (00051)]

PE:	W.Type:	Last Name	First Name	Middle Name	Suffix	Mr/Mrs/Ms
	OF	Stuef	Tyler			OFFICER
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country	Country of Citizenship
		UNKNOWN				
Street Address	Apt #	County	Country	Home Phone	Work Phone	
		OAKLAND	USA			
City	State	Zip	Cell Phone	Email		
Birmingham	MI	48009				
Phone/Email						
Type				Description		
BU-Business Phone #1				248-530-1889		

RUBY, PETER (O-OTHER) (L-POLICE OFFICER) [BISPRINGERR (00051)]

PE:	W.Type:	Last Name	First Name	Middle Name	Suffix	Mr/Mrs/Ms
	OF	Ruby	Peter			SGT.
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country	Country of Citizenship
		UNKNOWN				
Street Address	Apt #	County	Country	Home Phone	Work Phone	
		OAKLAND	USA			
City	State	Zip	Cell Phone	Email		
Birmingham	MI	48009				
Phone/Email						
Type				Description		
BU-Business Phone #1				248-530-1889		

SPRINGER, REBEKAH (O-OTHER) (L-POLICE OFFICER) [BISPRINGERR (00051)]

PE:	W.Type:	Last Name	First Name	Middle Name	Suffix	Mr/Mrs/Ms
	OF	Springer	Rebekah			OFFICER
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country	Country of Citizenship
		UNKNOWN				
Street Address	Apt #	County	Country	Home Phone	Work Phone	
		OAKLAND	USA			
City	State	Zip	Cell Phone	Email		
Birmingham	MI	48009				
Phone/Email						
Type				Description		
BU-Business Phone #1				248-530-1889		

**SUH, NGUM LENNON (O-OTHER) (X-MISCELLANEOUS) [BISPRINGERR (00051)]**

PE:	W.Type:	Last Name	First Name	Middle Name	Suffix	Mr/Mrs/Ms
	MS	SUH	NGUM			
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country	Country of Citizenship
	F	BLACK				
Street Address	Apt #	County	Country	Home Phone	Work Phone	
		OAKLAND	USA			
City	State	Zip	Cell Phone	Email		
Birmingham	MI	48009				
Notes						
SUSPECT'S SISTER						

MOORE, ELTON (O-OTHER) (X-MISCELLANEOUS) [BISPRINGERR (00051)]

PE:	W.Type:	Last Name	First Name	Middle Name	Suffix	Mr/Mrs/Ms
	MS	MOORE	ELTON			
DOB (Age)	Sex	Race	Ethnicity	Birth City & State	Birth Country	Country of Citizenship
	M	BLACK				
City	State	Zip	Cell Phone	Email		
Notes						
LIONS LIAISON FOR POLICE INCIDENTS						

Property**3704 TBB Pellet Or Gas Powered Gun 5480 [BISPRINGERR (00051)]**

Property Class	IBR Type	UCR Type
80	80 - Weapons Other	G - Firearms
Status	Count	Value
K - Held For Safe Keeping (Includes Impounds)	1	1
Manufacturer	Model	Serial No.
GAMO	VARMINT HUNTER HP	04-1C-715571-12
Description	Disposition	Evidence Tag
GAMO, VARMINT HUNTER HP, PELLET GUN		130011615.001
Recovered Date/Time	Location	Owner
		[S19107668] SUH, NDAMUKONG
Notes		
COLOR OF PELLET GUN IS DRAB GREEN		

Narrative

CR No: 130011615-001 Written By: BISPRINGERR (00051) Date: 08/17/2013 02:24 AM

On the above date and time, Officer Webb and I were dispatched to Pleasant on a suspicious circumstance complaint. BIPD dispatch advised that a Comcast employee called and stated while working in the backyard of the residence he was confronted by the homeowner who had a gun.

Upon arrival to the residence I observed the Comcast employee, R/P, standing next to his work truck in the road. I spoke with the individual, later identified as Spencer Ferrell. Ferrell stated while he was working at the utility pole (ID # D.E.) in the backyard the homeowner approached him with a gun telling him to get off the property. He explained that the residence behind Pleasant was having cable service issues and he was trying to fix the issue. The utility pole that holds the cable service box (amplifier according to Ferrell's statement) is located in the service residence's backyard right next to the back fence shared with Pleasant. However the service box faces Pleasant and can only be accessed



from its backyard. Ferrell stated instead of jumping over the fence, he drove his work truck around the block and parked in front of the house he believed the utility pole was in ([REDACTED] Pleasant). Ferrell then walked into the backyard to confirm he had the right house. There are multiple trees and bushes on the back fence line of [REDACTED] Pleasant that cover and hide the utility pole. Ferrell had to walk all the way to the fence line and through the brush to confirm the utility pole was there. Once he confirmed he was at the right house he began walking back through the backyard to get tools out of his work truck. He stated at that time he saw the homeowner, Ndamukong Suh [REDACTED], in his garage by a vehicle. Ferrell stated he identified himself as a Comcast employee and showed the Xfinity symbol on his t-shirt to Suh. When Suh walked out of his garage and away from his vehicle, Ferrell saw Suh had a gun in his hand. At this time Ferrell became frightened and fearful for his life. He stated the gun was green near the barrel and looked like an Ak-47. Ferrell stated Suh was angry that he was on the property and kept yelling at him to get off the property. Ferrell continuously tried to explain why he was there and that he was trying to do his job. According to Ferrell, Suh never pointed the gun directly at him, but was waving the gun around in an intimidating manner. He stated Suh was waving the gun in the air from side to side and at the ground moving the gun from side to side. Ferrell offered to show Suh his Comcast id in his work truck. Suh stated he already saw his work truck and to get off the property. Ferrell feeling he could not do anything else walked past Suh, off the property and back to his work truck where he called his supervisor and then 911. Ferrell informed Birmingham officers, Officer Webb and Officer Stuef were also on scene, that Suh had left the property before our arrival, but that a female had arrived home shortly after Suh left. Officer Stuef and I made contact with the female, Suh's sister Ngum Suh [REDACTED], at the front door. We informed Ngum we needed to speak with Suh and asked her to contact him and to get him to come back to the residence. Ngum stated she would try to call him and then closed the front door and went back into the residence. A couple minutes later she returned and was on the phone with Elton Moore, the liaison for the Detroit Lions'. Ngum was asking Moore's advice on how to handle the situation and wanted officers to speak with Moore. I explained that officers needed to speak with Suh and would not talk about the incident with Moore. I asked Ngum again if she would attempt to contact Suh and let him know officers needed to speak with him. Sgt. Ruby was on scene at this time and tried explaining to Ngum how important it was for officers to speak with Suh and get his side of the story. She stated she was trying and again closed the front door and remained in the residence. At that time she locked the front door and turned off the porch lights where officers were standing.

Officer Webb and Officer Stuef remained at the front door waiting for Ngum to return with information. At this time I photographed Ferrell's work truck with the Xfinity logo on the side and Ferrell showing his yellow vest and t-shirt with the word Xfinity on them. I then photographed the utility pole and the service box that is located in the backyard. All the photographs were logged and placed into the report.

During this time Sgt. Ruby was able to acquire the phone number for Moore from BIPD Chief Donald Studdt. All officers cleared the residence and Sgt. Ruby and I returned to BIPD for follow-up.

At BIPD, Sgt. Ruby was able to make contact with Moore and arranged to meet with Suh at The Henry



Hotel in Dearborn to speak with him. Sgt. Ruby and I went to the hotel and spoke with Suh; see Sgt. Ruby's narrative for Suh's full statement. Suh stated he did have a confrontation with the Comcast employee, but that the gun was a pellet gun. Suh stated he never threatened the Comcast employee but asked him to leave his property and that he should have never been on the property without permission. Suh agreed to turn the pellet gun over to officer for safe keeping.

After leaving the hotel, Sgt. Ruby and I returned to [REDACTED] Pleasant and picked up the pellet gun from Ngum. Ngum also informed officers the security/surveillance employee for the residence was there and was making officers a copy of the security footage from the backyard. She stated it would take time to copy and she could drop it off at BIPD tomorrow.

Ferrell completed a witness statement; it was logged and scanned into the report. The pellet gun was logged and will be kept in the BIPD Evidence Room until the investigation is completed.

The incident was turned over to the Detective Bureau for follow up.

CR No: 130011615-002 Written By: BIRUBYP (00154) Date: 08/17/2013 01:10 AM

On 08/16/2013, approximately 2105 hrs, writer (Sgt. Pete Ruby) along with other units from BIPD, responded to [REDACTED] Pleasant, on reports that a uniformed employee of Xfinity cable had been confronted by the homeowner with a firearm. The employee, later ID as Spencer Ferrell, stated that he believed the homeowner who had confronted him to be Detroit Lions player, Ndamukong Suh.

Upon arrival officers made contact with Mr. Ferrell. Officers interviewed him (See Ofc. Springers report) and he wrote out a voluntary statement. Officers also took pictures of Mr. Ferrells truck, uniform and the cable pole in the backyard.

Officers attempted to make contact at [REDACTED] Pleasant. Although Mr. Ferrell stated that Mr. Suh had left the home in a vehicle, officers knew that Mr. Suhs sister, Gum, lives at the address.

Officers were able to make contact with Ms. Suh and attempted to have her call Mr. Suh, in an effort to get him to come back and speak with officers regarding the incident. Ms. Suh was less than cooperative with the officers initially, becoming argumentative and, at one point, closing the door and shutting off the porch lights.

Writer was able to make contact with Elton Moore, Detroit Lions director of security. Mr. Moore stated that he had spoken to Mr. Suh at the Lions team training camp hotel. Mr. Moore stated that Mr. Suh was willing to speak with officers, and it was decided that writer and Ofc. Springer would go to the hotel ("The Henry" in Dearborn) and interview Mr. Suh.

Upon arrival at the hotel, officers met with Mr. Moore who then led officers to a small private area and brought Mr. Suh in. Mr. Moore also stayed in the room.

Writer explained to Mr. Suh that he was not under arrest and officers only wanted to get his side of the story. Mr. Suh stated that he understood and was willing to provide it.

Mr. Suh stated that he had arrived home and pulled to his driveway on the northwest side of his home. Mr. Suh stated that he thought he saw something in the back trees as he pulled in (they are approximately 75-



100 yards in back of the home). Mr. Suh stated that he saw branches moving and, once out of the car, could hear branches breaking. Mr. Suh stated that he picked up a pellet gun that was in his garage (equipped with a scope) and looked through the scope towards the trees.

At this time, Mr. Suh stated that he saw a male figure, who then started to walk toward him. He stated that the male (ID as Mr. Ferrell) was telling him he was with "Comcast" and was working in the tree line.

Mr. Suh stated that he could not see any obvious signs of a cable employee and only saw he had a vest on.

Mr. Suh stated that he "shouldered" the pellet gun and never moved more than a few feet from his garage.

Mr. Suh stated that he told the worker to leave his property. He further stated that the male started to further explain why he was there and Mr. Suh told him he did not want to hear anything more, he wanted him off his property.

Mr. Suh stated that he kept telling the male to exit his property and he finally did so. Mr. Suh stated that he then went in the home, showered, and packed and went to the team hotel. He stated that he had no further contact with the male subject and did not threaten him.

Writer asked Mr. Suh if he saw the "Xfinity" truck near his driveway upon his arrival. Mr. Suh stated that he did, however he did not think it was so close to his drive that it was at his home, and he had not requested any service.

Writer asked Mr. Suh if he had used profanity at Mr. Ferrell at any time, and he stated that he did not. Mr. Suh did not dispute that that he used profanity when writer offered that Mr. Ferrell stated he had used it toward him.

Writer asked Mr. Suh if he realized that approaching someone with anything resembling a firearm and ordering them off the property might scare them, as a reason that Mr. Ferrell did not leave. Mr. Suh agreed that could be possible. Writer further explained that Mr. Ferrell felt he was only doing what he was paid to do and did not leave immediately when confronted because (Ferrell) stated that he was "scared of what (Mr. Suh) would do with the firearm". Mr. Suh did not dispute that Mr. Ferrell might have been in fear.

Writer offered that Mr. Suh could have called 9-1-1 at the time he saw Mr. Ferrell in the scope. Mr. Suh began to question why he couldn't confront someone on his property. Writer stated that he could, but that if the person confronted was also armed the situation could get quickly out of control. Mr. Suh stated that he understood that scenario.

Mr. Suh explained to officers that he was "in fear" for his and family members safety daily and would always protect his family (he stated, "If you think I show aggression on the football field, I would show more to protect my family"). Writer and Ofc. Springer explained that the role of the police department is to provide safety for everyone in the city and sometimes certain situations would need more attention. Mr. Suh was advised to contact the PD for assistance with neighborhood trouble or annoying persons around his home.

Writer asked Mr. Suh if he wanted to write his own statement regarding the incident and he declined, looking at Mr. Moore and saying, "I've got him". Writer asked Mr. Suh if he could call his sister and have the pellet gun turned over to the PD for the duration of the investigation and he did so.



the pellet gun turned over to the PD for the duration of the investigation and he did so. Writer explained to Mr. Suh the progression of the report and thanked him for his time. Mr. Suh had no further questions of officers and the interview was ended.

CR No: 130011615-003 Written By: BIKOCHC (00006) Date: 08/19/2013 08:55 AM

08/19/13 Monday

I read and reviewed Officer Springer's suspicious circumstance report. I went over to the Suh residents with Lt. Albrecht to pick up a copy of the surveillance video, but no one answered the door. I was able to make contact with Ngum Suh by phone. She said she would assist in letting me review the video of the residence on the date and time of the incident.

Ngum Suh came by the station to let Deputy Chief Clemence and I review the video. The thumb drive with the video on it did not contain the complete incident. Suh contacted the person who works on their video system and he said he was able to come by the residence tonight and download the entire incident. Suh agreed to bring the video to the prosecutors office on Tuesday, August 20th so we could review the video.

08/20/13 Tuesday

Deputy Chief Clemence and I met Ngum Suh at the Oakland County Prosecutors Office to review the surveillance video of the residence. In the video you see Mr. Ferrell pull up and park his work vehicle on the street south of the driveway of [REDACTED] Pleasant at approx., 2003hrs on 08/16/13. Mr. Ferrell walks along the south side of the residence toward the back yard of [REDACTED] Pleasant. The back yard camera shows Mr. Ferrell walk and disappear in the tree line on the east end of the property. Several minuets later Mr. Suh arrives home and backs his vehicle into the garage located on the east end of the [REDACTED]. Suh exits his vehicle you can see him looking into the back yard. Moments [REDACTED] appears from the tree line wearing his reflective vest. Mr. Ferrell wakes toward [REDACTED] e gets to the driveway he turns around to show him the "Xfinity" name on [REDACTED] t. There is some communication between the two of them but there in no a [REDACTED] video so we were unable to determine what was said. At no time in th [REDACTED] point the pellet gun at Mr. Ferrell in a threatening manor. The video shows the pellet gun in Suh's right hand pointing at the ground. After several minutes Mr. Suh has it over his right shoulder pointing away from Mr. Ferrell. The report as submitted to the OCPO to review.

"Mr. Suh explained to officers that he was "in fear" for his and family members safety daily and would

08/23/13 Friday



I received a letter back from the Prosecutor's office that concluded that the evidence was insufficient to establish probable cause that any crime occurred during the incident at Mr. Suh's house on August 16, 2013.

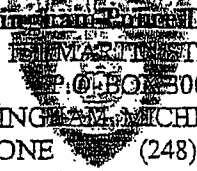
Reviewed by Prosecutor no evidence of a crime, case closed.

CFS Narrative By: BISPRINGERR (00051)

00033 - 21:08:55 R/P REPORTS HE WAS IN THE BACKYARD OF UNK ADDRESS OF A HOME WORKING ON THE CABLE LINE AND THE HOME OWNER DREW A GUN ON HIM.

INVESTIGATED SUSPICIOUS CIRCUMSTANCES AT [REDACTED] PLEASANT. COMCAST CABLE WORKER WAS CONFRONTED BY THE HOMEOWNER WHILE IN THE BACKYARD...SPRINGER/51

Attachments					
File Name	File Type	Comments	Date	By	Role
Attachments Included in This Report					
GEDC0284.JPG	pjpeg	Photograph	08/19/2013 10:25 AM	KOCH, CHRISTOPHER	INVESTIGATOR
GEDC0285.JPG	pjpeg	Photograph	08/19/2013 10:26 AM	KOCH, CHRISTOPHER	INVESTIGATOR
comcast1.pdf	pdf	photographs	08/17/2013 01:23 AM	SPRINGER, REBEKAH	POLICE OFFICER
comcast2.pdf	pdf	photographs	08/17/2013 01:23 AM	SPRINGER, REBEKAH	POLICE OFFICER
comcast3.pdf	pdf	photographs	08/17/2013 01:24 AM	SPRINGER, REBEKAH	POLICE OFFICER
comcast4.pdf	pdf	photographs	08/17/2013 01:24 AM	SPRINGER, REBEKAH	POLICE OFFICER
ferrell.pdf	pdf	witness statement	08/17/2013 02:20 AM	SPRINGER, REBEKAH	POLICE OFFICER
MX-C311_20130826_084333.pdf	pdf	Prosecutor Letter	08/26/2013 08:45 AM	KOCH, CHRISTOPHER	INVESTIGATOR


Birmingham Police Department
100 MARKET STREET
P.O. BOX 3001
BIRMINGHAM, MICHIGAN 48012
PHONE (248) 644-3405
FAX (248) 644-2567

WITNESS STATEMENT

Date 8-16-13

Incident # 13-11615

Name Spencer Fennell

Page 1 of 2

Address [REDACTED]

Eastpointe, MI 48021

Home Phone [REDACTED]

Work Phone [REDACTED]

Cell Phone [REDACTED]

Walked into backyard to verify that a Comcast Amplifier was in the backyard. After verifying, I was walking back to my truck through the yard and seen Mr. Suh. Upon seeing him I immediately identified myself as a Comcast Employee and then he walked from behind his car with Gun and said Why the Fuck are you in my backyard. I said I'm from Comcast trying to ~~access~~ see how I can get to this Amplifier. He said get the Fuck off my Property while holding Gun up pointing up. I said ~~Idamaking~~ Suh he said get the Fuck out of here. I said Sir I'm trying to explain we have a piece of equipment in your backyard that I need

Signature 

Date 8-16-13


Birmingham Police Department
151 MARTIN STREET
P.O. BOX 3001
BIRMINGHAM, MICHIGAN 48012
PHONE (248) 644-3405
FAX (248) 644-2567

WITNESS STATEMENT

Date 8-16-13

Incident # 13-11615

Name Spencer Fennell

Page 2 of 2

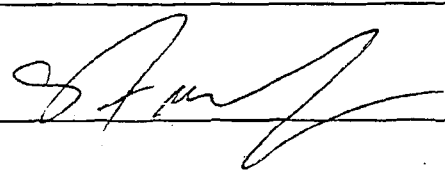
Address [REDACTED]
Eastpointe, MI 48021

Home Phone [REDACTED]

Work Phone [REDACTED]

Cell Phone [REDACTED]

to get to I pointed up at the DTE
transformer he looked and Yea I see
it I said we have a piece of equipment
shaped like a box a few feet below
that, He said yall should be paying
me yall shit on my property. I said
I apologize sir but we need access
to it. He said aint yall supposed to
let people know when yall in they yard
I said sir nobody was here. He said
thats because nobody comes to my house
I said do you want to see my job
my truck is out front. He said I
seen your truck. Get the Fuck out
of Here. I ~~sa~~ walked on

Signature 

Date 8-16-13

*Office of the Prosecuting Attorney
County of Oakland*



JESSICA R. COOPER
Prosecutor

Paul T. Walton
Chief Assistant Prosecutor

August 22, 2013

Detective Chris Koch
Birmingham Police Department
151 Martin
Birmingham, MI 48009

Re: Incident Involving Ndamukong [REDACTED] Suh, DOB [REDACTED]
City of Birmingham, August 16, 2013

Detective Koch:

You submitted to the Oakland County Prosecutor's Office the police reports, a witness statement, and photographs concerning an incident involving Ndamukong Suh that occurred the evening of August 16, 2013 at [REDACTED] Pleasant in the City of Birmingham. Also presented through an agent of Mr. Suh were surveillance videos of the incident (said videos are the property of Mr. Suh and he retained possession of them). You requested a review of this matter and an opinion as whether or not evidence was sufficient to establish probable cause of a crime. After reviewing the materials that you and Mr. Suh provided, it is my opinion that there is no evidence of a crime.

Facts

Mr. Spencer Ferrell, age 22, was an employee of Xfinity/Comcast, a communications provider. The evidence shows that he answered a call for service at a home near the residence of Mr. Suh that caused him to enter onto Mr. Suh's property. The videos from Mr. Suh's surveillance equipment captured most of the incident. It shows that Mr. Ferrell parked on the street near Mr. Suh's home. He then walked between two homes and into the back yard of Mr. Suh. The time was just after 8:00 P.M. The back yard is large and surrounded by thick trees and bushes. Mr. Ferrell was attempting to locate the utility pole and the attached utility box that needed service. Access to the pole and box could only be accomplished from the far perimeter of Mr. Suh's property, within the thick trees and bushes and out of sight from the house. In approaching this utility box, Mr. Ferrell went completely out of view and was hidden by the dense foliage.

While Mr. Ferrell was in the trees and shrubs, Mr. Suh arrived home and parked his vehicle in the garage. Mr. Suh saw movement at the edge of his yard and heard noises (branches breaking) coming from the area of the dense foliage. It was still light out, but the time of day is best described as dusk. Mr. Suh grabbed a BB/pellet gun that he kept in the garage. He remained at the garage door area of his home. Mr. Ferrell soon

emerged from the trees and approached Mr. Suh. From his statement police, and his actions captured on the video, it appeared that Mr. Ferrell was trying to identify himself and explain his presence on the property. As the two faced each other, there were no visible markings on the front Mr. Ferrell that showed he was a utility repairman—he wore a vest that read “Xfinity” on the back and the company name on the front of his shirt was concealed by the vest. The only possible marking on the front of the vest that suggested he was a utility worker was the reflective tape. The surveillance video revealed that Mr. Ferrell tried to turn around and show Mr. Suh the Xfinity logo on the back of his vest.

The only appreciable movement by either party was that of Mr. Ferrell toward Mr. Suh. Mr. Suh remained at or near his garage doorway during the entire incident. He held the BB/pellet gun in his hand in two positions during his conversation with Mr. Ferrell: pointed downward at the ground and pointed upward as it rested on his shoulder. He neither leveled the gun, nor pointed it in the direction of, Mr. Ferrell at any time (in his statement, Mr. Ferrell also said that the gun was never pointed at him). Mr. Suh never approached Mr. Ferrell. From the videos, it appeared that the closest Mr. Ferrell got to Mr. Suh was twenty feet or more. The incident ended when Mr. Suh entered his garage and closed the door, leaving Mr. Ferrell walked off the property.

Both parties cooperated with police and gave statements as to what occurred. The weapon was turned over to the police and was verified to be a BB/pellet gun, not a firearm.

Opinion

The weapon was a BB/pellet gun not exceeding .177 caliber. It is not a firearm and therefore the firearm laws are not applicable.

The only relevant offense for consideration is simple assault (statutes involving BB guns are not applicable to these facts). The best evidence of what occurred is the surveillance video which captured the entire confrontation between the two men. The evidence shows that Mr. Suh never approached Mr. Ferrell. At no time did Mr. Suh level the weapon in the direction of Mr. Ferrell. The BB gun was either held down at his side or over his shoulder—it was never pointed at Mr. Ferrell.

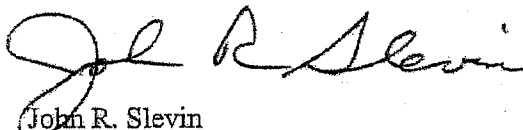
An assault is either an attempt to commit a battery or an unlawful act which places another person in reasonable fear of an immediate battery. The evidence in this matter satisfies neither of those definitions. The BB gun was never pointed at Mr. Ferrell. Mr. Suh never raised a hand or made a motion toward Mr. Ferrell. The only movement was by Mr. Ferrell, and that was toward Mr. Suh, tending to establish a lack of fear (Mr. Ferrell moved toward Mr. Suh as he appeared to be identifying himself and explaining his presence on the property). Mr. Ferrell never backed away in fear. The evidence is lacking to establish that Mr. Ferrell felt he was in fear of an immediate battery.

Conclusion

The evidence is insufficient to establish probable cause that any crime occurred during the incident at Mr. Suh's home on the evening of August 16, 2013.

Please let me know if you have any questions about this opinion. I am returning to you the materials you submitted for this review.

Respectfully,

A handwritten signature in black ink, appearing to read "John R. Slevin". The signature is fluid and cursive, with the first name "John" and last name "Slevin" clearly distinguishable.

John R. Slevin
Chief, Warrants Division
Oakland County Prosecutor's Office

Enclosure

EVIDENCE LIST

Incident No.: 130011615

Agency: Birmingham PD

ITEM	NEEDED	IN-FILE	COMMENTS
Audio/Video Tape and Transcripts	()	()	
Autopsy Report	()	()	
BAC/Blood/Semen	()	()	
Ballistics/Bullets	()	()	
Chain of Evidence List	()	()	
Clothing/Shoes	()	()	
Confession (written, audio, video)	()	()	
Controlled Substance (Tox Report)	()	()	
Criminal History	()	()	
CSC Kit	()	()	
Diagram Map	()	()	
Finger/Foot Prints	()	()	
Hair/Fiber	()	()	
Hospital/Medical Records	()	()	
Photographs/Slides	()	()	
Weapons	()	()	
Witness Statements	()	()	
CERTIFIED RECORDS	()	()	
SOS	()	()	
Convictions	()	()	
	()	()	
	()	()	
	()	()	
OTHER PHYSICAL EVIDENCE	()	()	
3704 - BB, Pellet Or Gas-Powered Gun 5480			
VICTIM PROPERTY			
	()	()	
	()	()	
	()	()	

Officer in Charge

Date

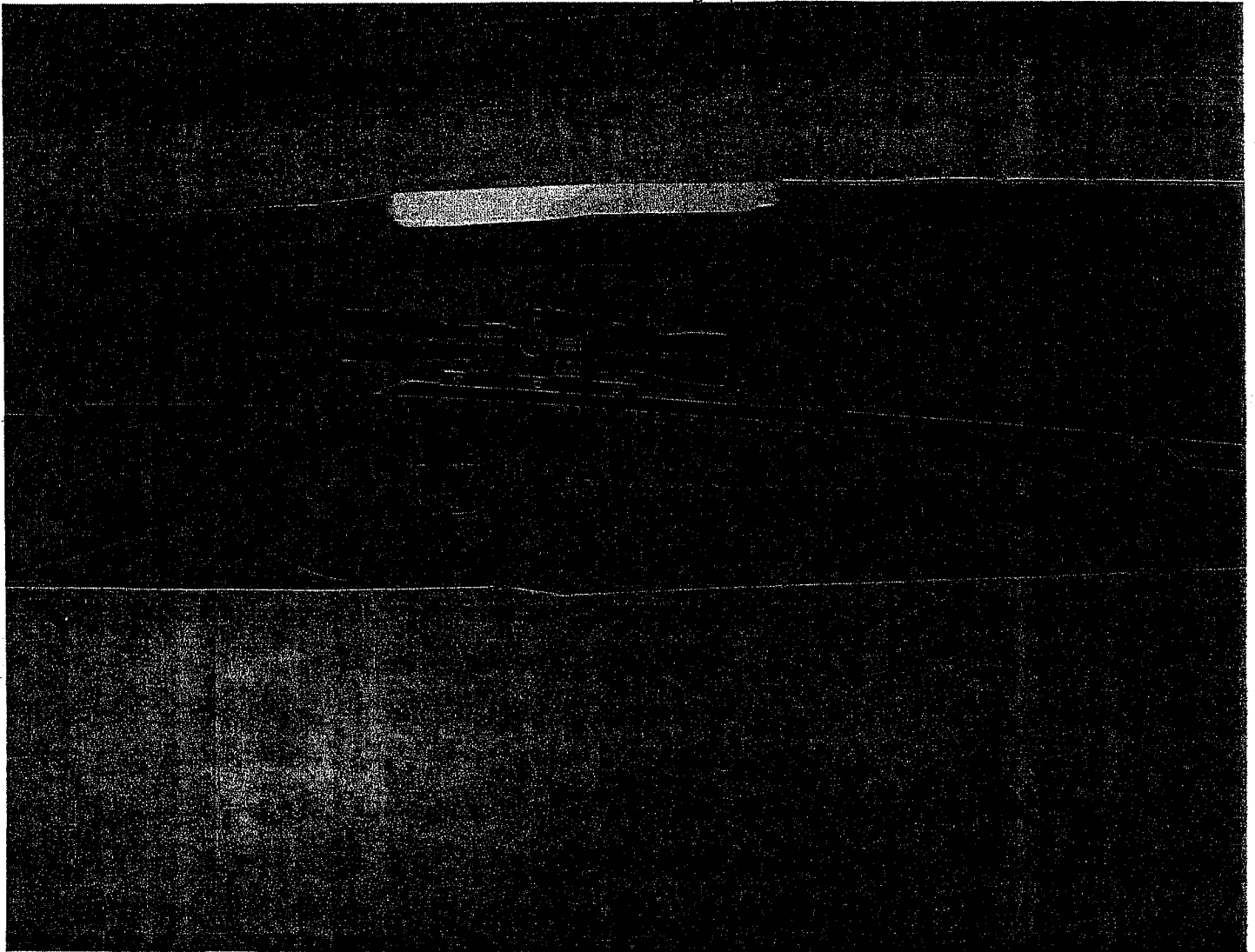
Phone No.

The Prosecuting Attorney's Office certifies that (*) property belonging to the crime victim must be retained by the Law Enforcement Agency for trial purposes in lieu of photograph or other means of memorialization pursuant to 1985 PA 87

Assistant Prosecutor

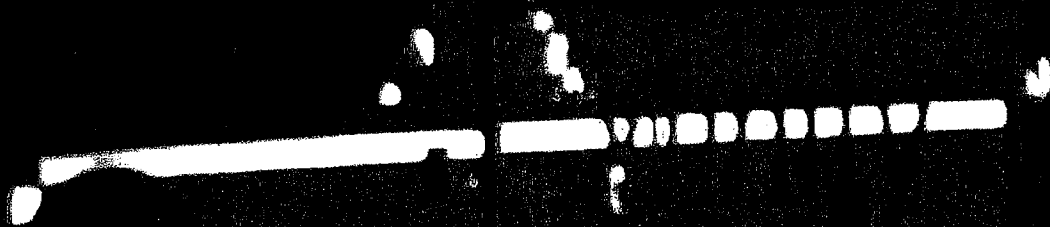
Date

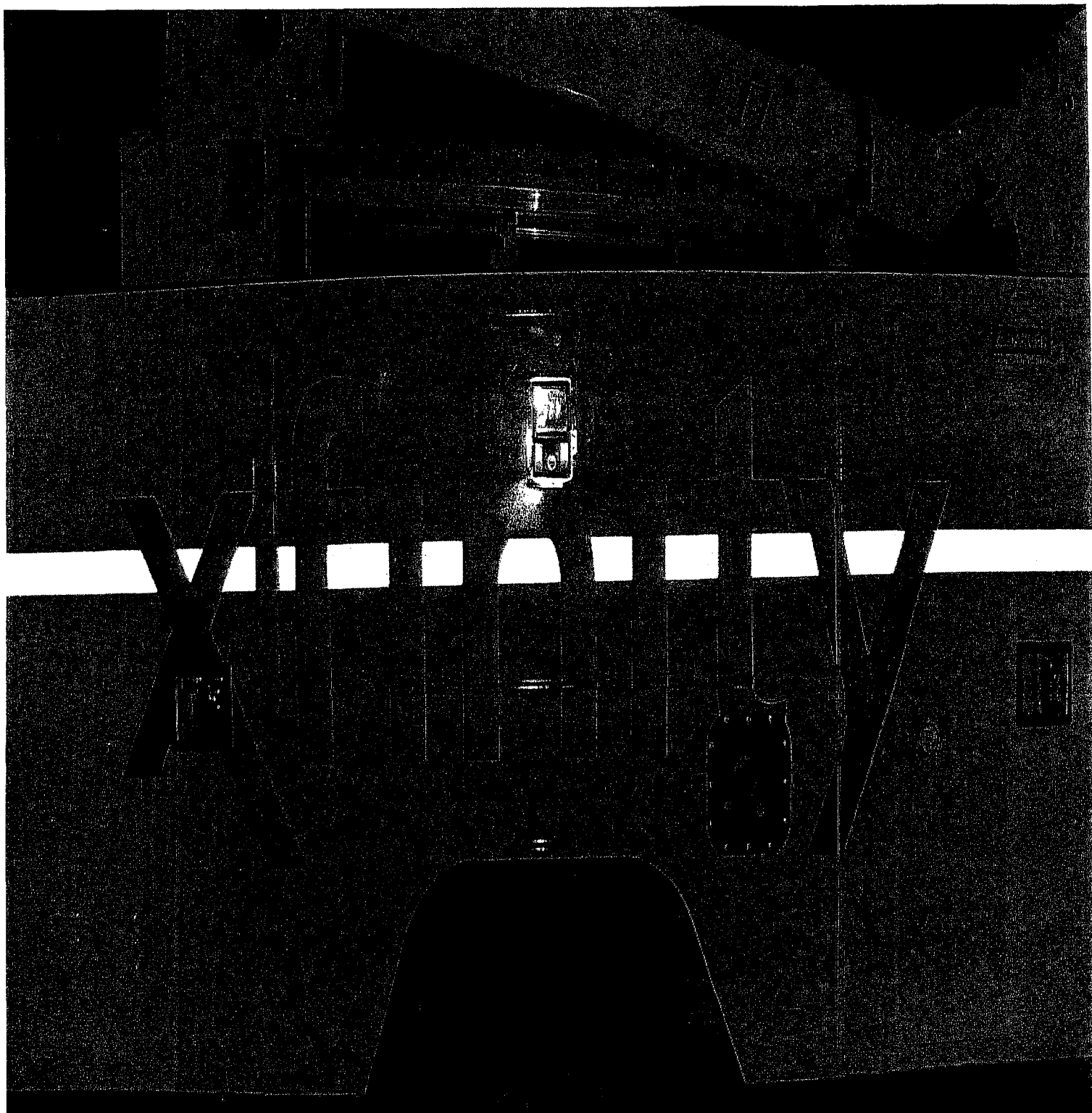
Attachment File : Photograph



Attachment File : Photograph





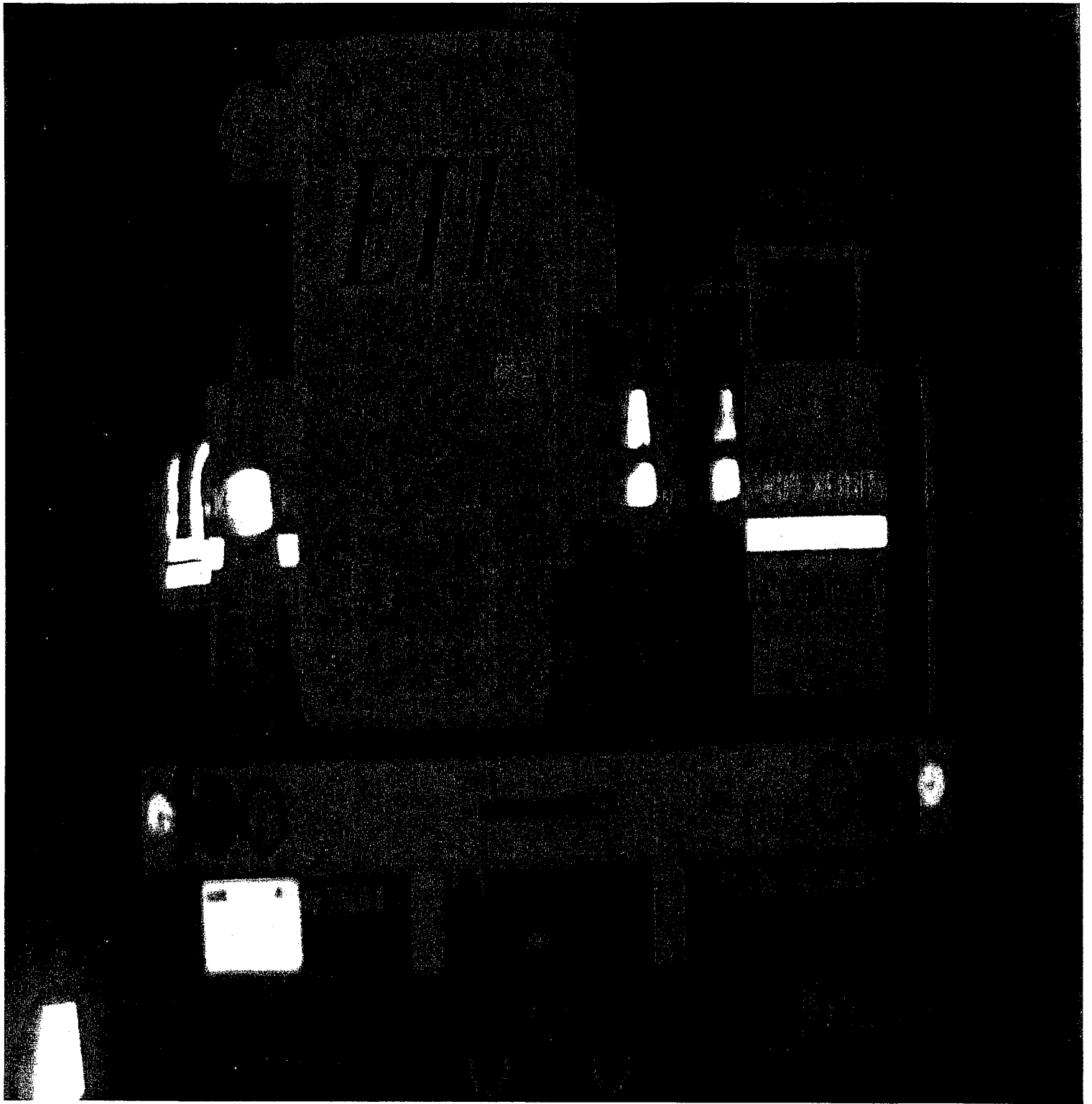


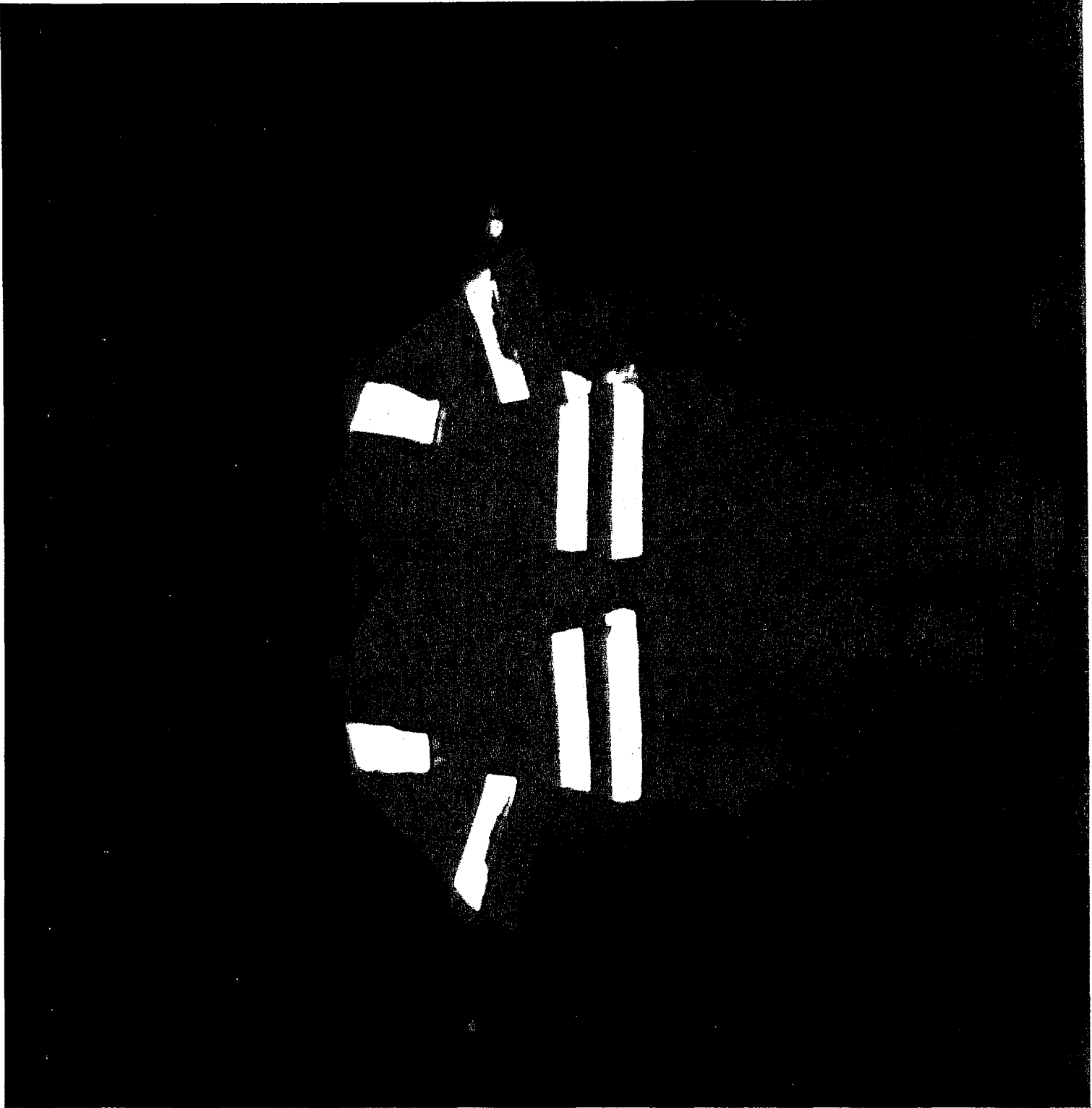
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