

**IN THE COUNTY COURT OF THE NINETEENTH JUDICIAL CIRCUIT
IN AND FOR OKEECHOBEE COUNTY, FLORIDA**

STATE OF FLORIDA,

vs.

Case No.: 472023CT000474A

[REDACTED]

Defendant.

_____ /

MOTION TO SUPPRESS

NOW COMES the Defendant, [REDACTED] by and through his counsel, and moves to suppress the following illegally obtained evidence pursuant to Florida Rules of Criminal Procedure 3.190(g) and 3.190(h)¹:

- A. Any and all evidence unlawfully obtained, including but not limited to the field sobriety tests and/or exercises conducted and their results, a “cold and almost completely full” 12oz. beer, and *intoxilyzer* breath samples obtained.
- B. Any and all statements made by [REDACTED] including but not limited to any arguable confession or admission obtained unlawfully from [REDACTED].
- C. Any and all derivative evidence, including but not limited to his identity.

¹ See Fla.R.Crim.P. 3.190(g) (Motion to Suppress Evidence in Unlawful Search) (“(1) Grounds. A defendant aggrieved by an unlawful search and seizure may move to suppress anything so obtained for use as evidence because: (A) the property was illegally seized without a warrant... (2) Contents of Motion. Every motion to suppress evidence shall state clearly the particular evidence sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based”); Fla.R.Crim.P. 3.190(h) (Motion to Suppress Confession or Admission Illegally Obtained) (“(1) Grounds. On motion of the defendant or on its own motion, the court shall suppress any confession or admission obtained illegally from the defendant. (2) Contents of Motion. Every motion made by a defendant to suppress a confession or admission shall identify with particularity any statement sought to be suppressed, the reasons for suppression, and a general statement of the facts on which the motion is based.”).

PRELIMINARY STATEMENT AND RELEVANT FACTS

All of the evidence illegally obtained by Deputy ██████████ of the Okeechobee County Sheriff's Office should be suppressed because the officer here *fabricated a traffic stop* for the purported operation of a motor vehicle without two functioning headlights at night in violation of Fla. Stat. § 316.217(1). See Exhibit A ("Arrest Affidavit") (officer stopped Ford Ranger, FL tag ██████████ purporting he "observed a small pickup truck traveling ... with only one functioning headlight"). Still shots from the videotape evidence obtained at the time of the bogus traffic stop on April 21, 2023 and an affidavit reporting the results of a timely inspection of the headlights show ██████████ *was traveling with both of his headlights functioning.*

Deputy ██████████ documented his "driver observations." See Exhibit A at p.6. The officer claims he smelled a "strong odor of an alcoholic beverage emitting from ██████████ breath, which became stronger as he spoke. His words were thick and slurred." *Id.* (brackets added). The officer asked ██████████ "if he had consumed any alcoholic beverages" and he admitted to "three drinks." *Id.* The officer sought ██████████ consent to conduct "field sobriety exercises," but ██████████ refused. The officer asked ██████████ why he had refused, and he reportedly answered that "if he was too messed up, he did not want to get arrested for it." *Id.* The officer then cajoled "consent" out of ██████████ to "field sobriety exercises" by explaining what the exercises entailed. *Id.*

Before withdrawing his consent to any further exercises, ██████████ performed the Horizontal Gaze Nystagmus (HGN) test, the Romberg Balance exercise, and part of the “Walk and Turn” exercise. When he decided he was done with the exercises, ██████████ reportedly advised the officer to take him to jail. *See* Exhibit A at p.7. The officer handcuffed ██████████, arrested him for driving under the influence, *see* Fla. Stat. § 316.193(1), and issued a DUI uniform traffic citation # ██████████. *Id.* ██████████ was then transported to the Okeechobee County jail where he agreed to provide a breath sample for an “intoxilyzer” test conducted by the arresting officer, which resulted in readings of 0.212 and 0.211. ██████████ was “*Mirandized*” after he was in the county jail and after he provided his breath sample for an intoxilyzer test. ██████████ understood his rights and chose not to speak to the officer. *Id.* at pp.7-8.

An “inventory search” was conducted by another officer who found a 9mm Glock gun, serial # ██████████, on the passenger side of the center console. A “cold and almost completely full” 12oz. beer was found between the driver’s seat and the center console during the reported “inventory search.” *Id.* at p.7.

On May 25, 2023, an Amended Information was filed against ██████████ for driving under the influence when affected to the extent that his normal faculties were impaired or for driving with a blood alcohol level of 0.15 or more grams of alcohol, having been previously convicted of driving or boating under the influence, all in alleged violation of Fla. Stat. §§ 316.193(1), 316.193(2), 316.193(4).

ARGUMENT

1. The detention and arrest of [REDACTED] were unlawful and resulted in violation of his rights under Article 1, Sections 9 & 12 of the Florida Constitution, and the Fourth, Fifth, and Fourteenth Amendments to the United States Constitution.

2. The unlawful detention and arrest of [REDACTED] occurred without a warrant, and no exception to the warrant requirement existed.

The Illegal Stop Without Probable Cause Requires Suppression of All Evidence

It is axiomatic that a sworn police officer cannot fabricate a bogus traffic stop. The photographic evidence conclusively establishes that the vehicle headlights were both functioning. *See* Composite Exhibit B (still photo shots taken from videotape recorded by the dash mounted camera used by the arresting officer). Further, the affidavit reporting the results of a timely inspection of the headlights, *see* Exhibit B, further corroborates that the driver was traveling with both headlights functioning. The officer *fabricated the stop*, and all the evidence obtained should be suppressed.

When Deputy [REDACTED] conducted the bogus traffic stop, the detention implicated the Fourth Amendment rule against unreasonable searches and seizures, and there had to be probable cause to believe a traffic violation had been committed. *See Whren v. United States*, 517 U.S. 806, 809-810 (1996). All the evidence derived from the illegal stop without any cause, including but not limited to all statements made and identity, must be suppressed as inadmissible “fruit of the poisonous tree.”

See Perkins v. State, 734 So. 2d 480, 482 (Fla. 4th DCA 1999) (identity like all other “evidence must be suppressed, as fruit of the poisonous tree, where discovered following an unlawful stop”); *State v. Perkins*, 760 So.2d 85, 88-89 (2000) (all of the “officer’s post-stop observations” are subject to the exclusionary rule).

Any “consent” to conduct field sobriety tests and/or exercises was not freely given and involuntary as mere acquiescence to displayed authority. *See Delorenzo v. State*, 921 So.2d 873, 879 (Fla. 4th DCA 2006) (“Consent given after police conduct determined to be illegal is presumptively tainted and deemed involuntary, unless the state proves by clear and convincing evidence that there was a clear break in the chain of events sufficient to dissolve the taint.... With no break in the events, any consent [the driver] provided remained tainted and cannot vitiate the illegality.”) (brackets added). Under the totality of the circumstances, the “consent” of ██████████ to conducting “field sobriety exercises” was mere acquiescence to police authority. *See Mobley v. State*, 335 So.2d 880, 882 (Fla. 4th DCA 1976) (“If this consent is obtained by the use of force or pressure, or where superior authority had any place in the obtaining of the consent, the consent is no consent at all”). The causal chain between the unconstitutional detention and the evidence obtained was never broken. ██████████ incriminated himself immediately after the unconstitutional detention in the absence of any intervening circumstances to attenuate the primary taint of the flagrant police misconduct exposed in detail through this motion to suppress.

All of the evidence derived from the flagrant police misconduct, including from the “inventory search,” must be suppressed as “fruit of the poisonous tree.” See *Wong Sun v. United States*, 371 U.S. 471 (1963) (excluding drugs and statements as fruits derived from illegal police invasion) (“fruit of the poisonous tree” doctrine) (seminal case).

WHEREFORE, Defendant, [REDACTED], respectfully moves this Honorable Court to find that Deputy [REDACTED] violated his rights under Article 1, Sections 9 and 12 of the Florida Constitution, and the Fourth², Fifth,³ and Fourteenth⁴ Amendments to the United States Constitution, and to GRANT this Motion to Suppress, ordering the exclusion of all evidence obtained by the officer including all physical evidence obtained, and all of the statements elicited during the unconstitutional detention, as well as all derivative evidence, including his identity.

Respectfully submitted,

By: s/ Brian H. Mallonee
Brian H. Mallonee, Esquire
Florida Bar No.: 160148
130 S. Indian River Drive, Suite 302
Fort Pierce, FL 34950
Tel.: (772) 464-1991

² The 4th Amendment to the U.S. Constitution and Article 1, Section 12, of the Florida Constitution protect persons against unreasonable searches and seizures.

³ The 5th Amendment to the U.S. Constitution and Article 1, Section 9, of the Florida Constitution protect the right of persons against self-incrimination.

⁴ The 14th Amendment to the U.S. Constitution extended the protections of the U.S. Constitution over the right to life, liberty, and property that previously existed under the Florida Constitution.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via E-mail to the Office of the State Attorney, Okeechobee County, Florida this 29th day of August 2023.

By: s/ Brian H. Mallonee
Brian H. Mallonee, Esquire



OKEECHOBEE COUNTY SHERIFF'S OFFICE

Individual Arrest Affidavit

472023 CT000474

Name: [REDACTED]
 (11064)
 Street Address: [REDACTED] City, State Zip: OKEECHOBEE, FL 34974
 Date of Birth: [REDACTED]
 Jacket Number:
 State ID Number: [REDACTED] FBI number: [REDACTED]
 Attorney: [REDACTED] Occupation: GROUND MAN
 Place of Birth: [REDACTED] State: FL
 Sex: M Race: W
 Height: 5'03" Weight: 150
 Hair Color: BLN Eyes Color: BRO
 Drivers License: [REDACTED] State: FL
 Marital Status: NOT MARRIED
 Home Phone: [REDACTED] Work Phone: (-)
 Employer: [REDACTED]
 Alias For:

Scars, Marks, and Tattoo Information Arrest/Offense Information

Booking Number: [REDACTED] OBTS Number: [REDACTED]
 Time/Date Arrested: 02:58:44 04/21/23 Arresting Officer: [REDACTED]
 Arresting Agency: OCSO Age at Arrest: [REDACTED]
 Statute: 316.193(1) rec#6276, DUI ALCOHOL OR DRUGS Class: Court: 047

Offense Refrnc: Counts: 1 OTN:
Related Incident: [REDACTED]

Defendant required to appear in

COUNTY / CIRCUIT Court on (DATE) 5/22/23
(TIME) 9:10 AM

Bonding Agency: _____

Booking Officer: [REDACTED]

Jail Number: [REDACTED]

Bond: [REDACTED]

BY: _____

THE FOLLOWING IS TRUE TO THE BEST OF MY PRESENT KNOWLEDGE OR BELIEF

D NARRATIVE

[REDACTED]

SWO
NOT
MY

[REDACTED]

AGENCY - OKEECHOBEE COUNTY SHERIFF'S OFFICE

Narrative

On Friday, April 21, 2023, at approximately 0123 hours, [REDACTED] did operate or was in physical control of a motor vehicle on the roadways of Okeechobee County, while his normal faculties were impaired either by alcohol, drugs, or both which is in violation of FSS 316.193 (1).

Vehicle Observation:

On Friday, April 21, 2023, 0055 hours, I, [REDACTED] was stationary at the 100 block of US HWY 441 SE, when I observed a small pickup truck traveling westbound with only one functioning headlight.

I pulled out behind the pickup truck, activated my emergency lights and conducted a traffic stop on the vehicle. The pickup continued from US HWY 441 SE onto US HWY 441 S and stopped in the middle of the right lane of the two (same direction) lanes at the 4800 block of US HWY 441 S.

The vehicle was a 1999 Ford Ranger, FL. tag [REDACTED]. Dispatch advised the tag was unassigned, but registered to [REDACTED].

I later provided dispatch with the VIN [REDACTED] for the truck and they advised the truck did not have a tag attached to it.

Driver observations:

I made contact with driver and explained to him why he was pulled over. I could smell a strong odor of an alcoholic beverage emitting from his breath, which became stronger as he spoke. His words were thick and slurred.

I asked him for his license, the registration and insurance. He had his wallet in his hand and shuffled between three other licenses and his debit card. He handed me his concealed weapon permit with his license. His Florida license identified him as, [REDACTED].

He handed me the registration that had the tag information, however, the registration did not have any vehicle information.

I asked what was wrong with the registration and showed him it was blank. He advised when he bought it they gave him the paper the way it was. He advised his insurance was on his phone but he could not find it because he did not have the app. He attempted to unlock his phone but could not get the passcode right.

I asked him if he had consumed any alcoholic beverages, he advised he had three drinks. He advised he was going home. I asked how far his home was, he gave me his address.

I then asked him if he would consent to conducting some Field Sobriety Exercises to determine if he was okay to drive, he advised me he was refusing to do the exercises. I asked why he was refusing, he stated if he was too messed up, he did not want to get arrested for it.

After explaining to him what the exercises entailed, he agreed to perform the exercises. I asked him if he wore contacts or eye glasses he advised me he used glasses. I asked him if he had any medical conditions which would prevent him from performing any of the exercises and he advised he had stigmatism. The exercises were performed on a smooth asphalt surface. He had on gray tennis shoes. The roadsides were video recorded and later turned into evidence. The results of the Field Exercises are as follows.

Field Exercises Administered

Horizontal Gaze Nystagmus: [REDACTED] was given instructions and a demonstration of the exercise prior to beginning the exercise. He advised me he understood the instructions. I requested him to stand facing away from my emergency lights before conducting this exercise.

While checking his eyes, I noticed his eyes were able to follow the stimulus and his eyes tracked equally. The pupils were of equal size. During Horizontal Gaze Nystagmus, I observed six indicators of impairment. Both eyes had lack of smooth pursuit. Both eyes had distinct and sustained Nystagmus at maximum deviation. Both eyes had onset of Nystagmus prior to 45 degrees, angle of onset was 35 degrees. Vertical Gaze Nystagmus was not present. Lack of Convergence was present. His eyes stared straight out.

Romberg Balance: [REDACTED] was given instructions and a demonstration of the exercise prior to beginning the exercise. He advised me he understood the instructions.

I instructed him to lean his head back, close his eyes and then to begin. He had a back and forth sway. He leaned his head forward, opened his eyes and stated "stop" at 35 seconds. I asked him how many seconds had passed by and he told me "26 seconds". He advised he counted.

Walk and Turn: [REDACTED] was given instructions and a demonstration of the exercise prior to beginning the exercise. He advised me he understood the instructions.

He stepped out of the instruction position once. He missed heel to toe three times. He stepped off the line, four times. He stopped walking and took ten steps forward.

After he reached the end of the forward walk of the walk and turn, [REDACTED] advised he was done. I asked if he was done with just that exercise or done with doing all of them. He advised he was done and for me to take him to jail. I advised him if he did not wish to cooperate any further, I would have to base my decision to make an arrest based on my observations so far. I explained my observations and he advised he understood. He still refused and I then placed him in hand restraints.

Conclusion:

I then placed [REDACTED] under arrest for Driving under the Influence, FSS 316.193 (1), citation # [REDACTED].

[REDACTED] was transported to the Okeechobee County Jail for booking where he will wait for his bond to be set at first appearance by an Honorable Judge.

His vehicle was inventoried by D/S [REDACTED]. On the passenger side of the center console, there was a 9mm Glock 43x, serial # [REDACTED]. Next to the drivers seat was a 12oz Michelob Ultra, between the seat and center console. It was cold and almost completely full. Pictures were taken and later turned into evidence.

It was later collected and turned into evidence. His vehicle was towed by [REDACTED] towing.

Intoxilyzer:

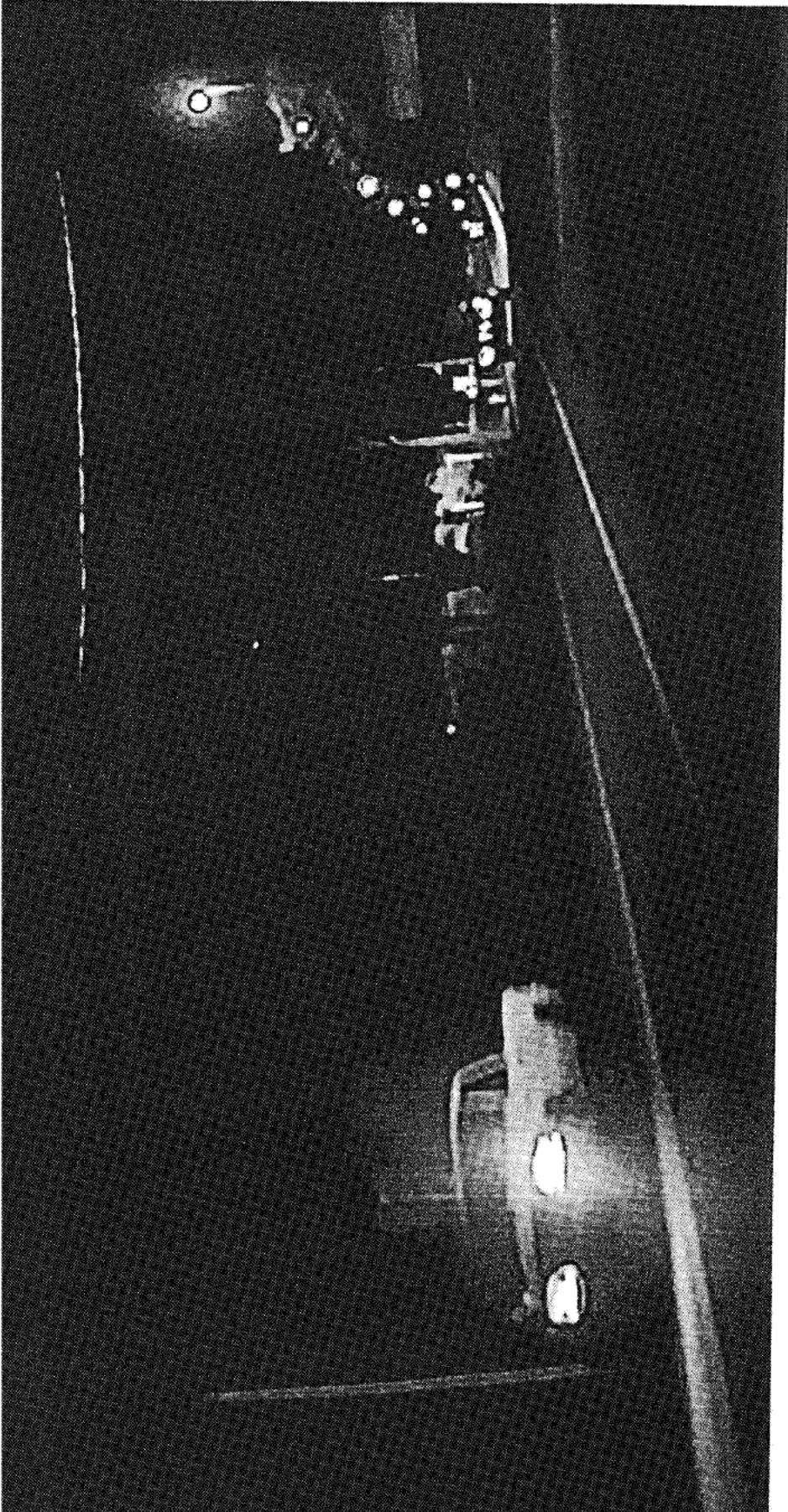
After arriving at the Okeechobee County Jail at approximately 0143 hours, the twenty minute observation process began. I, D/S [REDACTED], operated the

Intoxilyzer instrument. [REDACTED] was asked to provide a breath test in accordance with Florida State Statute which resulted in him consenting to give a sample of breath. The breath test results are as follows, 0.212 and 0.211.

I then read Miranda Warnings to him, after being read he informed me, he was not willing to speak with me .

Case closed end of report. Bond to be set.

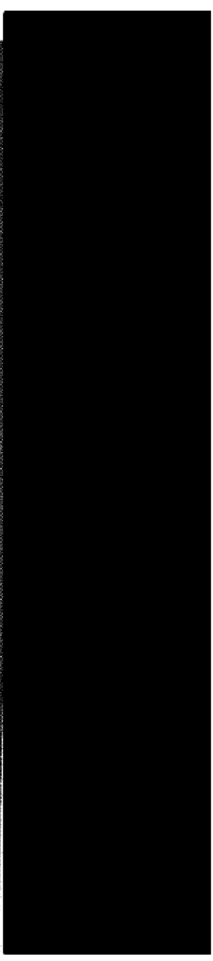
Exhibit 'B'

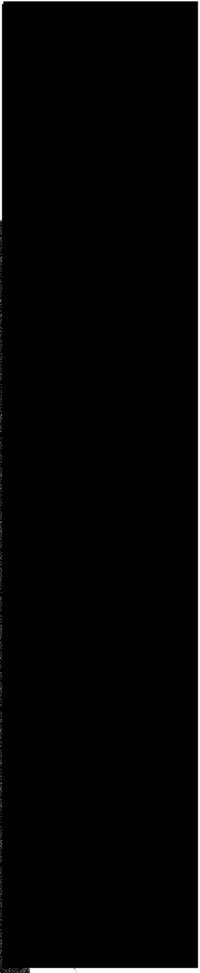
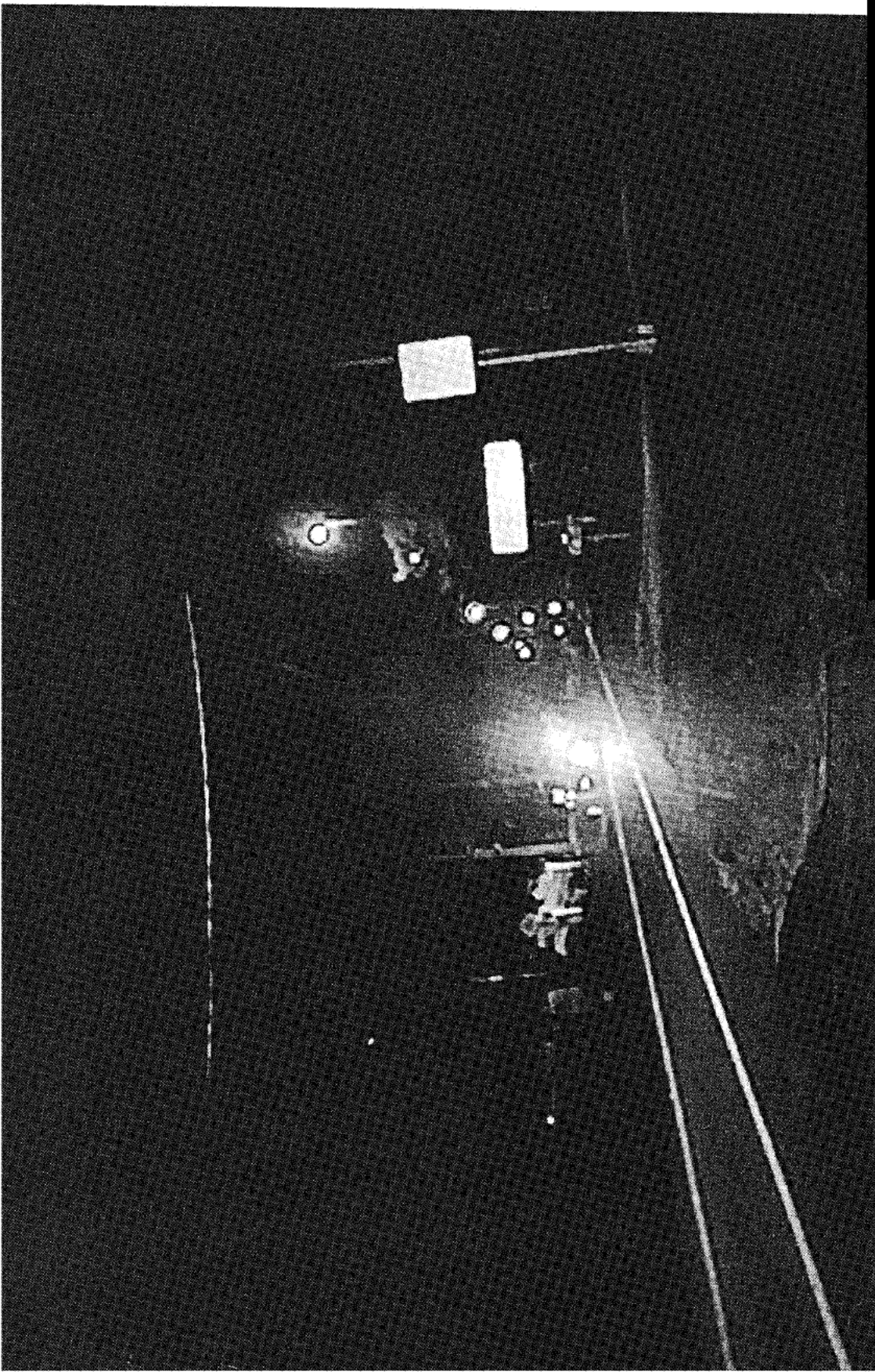


Deputy



Deputy





Deputy