

JILL DINSE
ATTORNEY AT LAW
PMB 208
6327-C CAPITOL HIGHWAY
PORTLAND, OREGON 97239-1937
503-977-9099

COPY

FINAL REPORT

[REDACTED]

CONFIDENTIAL

October 2005

Redacted

CONFIDENTIAL

TABLE OF CONTENTS

Introduction.....	3
Specific Allegations.....	3
Findings and Conclusions.....	4
<i>A. Theft.....</i>	<i>4</i>
1. Captain Cameron's Investigation in June of 2005	4
2. Review of Captain Cameron's Investigation	5
a. Fontenot's Seizure Of The Goggles.....	5
b. References In The Report Which Impact The Gravity Of Fontenot's Actions.....	6
c. References To Fontenot's Personal Stress	6
d. The Decision-Making Process.....	6
<i>B. False Swearing.....</i>	<i>7</i>
1. Captain Cameron's Investigation in June of 2005	7
2. Review of Captain Cameron's Investigation	9
a. The Return of Service.....	9
b. Cameron's Interview with Fontenot.....	10
c. Cameron's Interview of [REDACTED].....	12
c. References To Fontenot's Personal Stress	13
<i>C. Conclusions.....</i>	<i>13</i>

- Cross-examine
 motive, bias
 credibility
 important on
 collateral matter

False Swear
 ① Under oath
 ② Swore he attempted
 service when he
 had NOT! PP. 9

INTRODUCTION

I was asked to review two internal affairs investigations by Sheriff Joe Martin, Marjorie Upham and Clallam County's Labor Attorney. The internal affairs investigations concerned the conduct of Detective Sergeant Fontenot and were conducted by the Sheriff's Office in June, 2005.

SPECIFIC ALLEGATIONS

██████████ filed a complaint with the Clallam County Sheriff's Office (CCSO) on June 7, 2005. ██████████ alleged that Detective Sergeant David Fontenot (his supervisor) had committed both theft and false swearing (Exhibit 1).

(1) Theft – ██████████ alleged Fontenot took antique aviator goggles from a storage facility without logging them into evidence.

██████████ explained in his complaint (Exhibit 1) that he and Fontenot had served a search warrant on a storage facility on January 28, 2005. The search warrant was for "rental contracts and entry logs, hand tools, power tools and power equipment such as" generators, air compressors, air tools, circular saws, table saws, shop saws compound miter saws, drills, grinders, paperwork that indicates dominion, control or occupancy, any evidence of a financial transaction of any kind" (Exhibit 2).

The property room report which contains a log of all evidence seized pursuant to that search warrant shows that 75 items were taken, most of which were power or hand tools, or other construction equipment. The Sheriff's Office also seized two sets of bike rims and tires (item 25), a Canondale Mountain bike (item 26), a Brinks Home Security Safe (item 27), a mobile DVD player (item 61), a home security system (item 62), rock climbing gear (items 68 and 69), a glass float ball (item 70) and a Hitachi flat screen TV (item 71) (Exhibit 3).

██████████ indicated in his report that Fontenot saw a pair of "antique pilot's goggles" (Exhibit 1, page 3), " * * grabbed them and told me he was going to keep them. He made some reference about wanting to wear them while he was having sex. (Exhibit 1, page 3). According to ██████████'s report, he noticed the goggles hanging from Fontenot's County truck, but assumed that Fontenot would log them into evidence. He thereafter forgot about it until the attorney for the storage unit's owner filed a complaint with the department. He was reminded of the goggles and checked the evidence log, finding that the goggles had not been logged into evidence as of June 6, 2005 (Exhibit 1, page 3).

(2) Dishonesty – Fontenot falsely stated on an affidavit that he had served a seizure notice on May 16, 2005 when he did not do so.

Dishonesty. ██████████ indicated in his complaint that Fontenot created a document to reflect service of a seizure notice within the required 15 day period following a property seizure, when in fact the seizure notice had not been served within the 15 day period. ██████████ claimed that Fontenot created a notice of seizure on May 16, 2005, dating the notice May 3, 2005 in an attempt to mislead. In addition, ██████████ said that Fontenot "checked the personal service and had it notarized by Deb Everts on the 16th of May and swore that it was served and it had not been" (Exhibit 1, page 2).

FINDINGS AND CONCLUSIONS

A. THEFT

1. Captain Cameron's Investigation in June of 2005

Captain Ron Cameron investigated [REDACTED]'s complaint. On June 8, 2005, he prepared an "Employee Notification of Investigation" and gave it to Fontenot. The allegation read:

"On or about 1-28, 2005, you removed personal property of a citizen during the execution of search warrant and retained that property for your own gain. This item was outside the scope of the judge's authorization" (Exhibit 4).

Cameron prepared a written record of the steps he took in his investigation (Exhibit 5). In this written record, Cameron summarized what [REDACTED] told him when [REDACTED] first brought the issue to Cameron's attention on June 6, 2005:

"* * * during the execution of a search warrant, * * * Fontenot was present. * * *. During the process, Fontenot came a cross [sic] a set of aviator type goggles and put them on, making a joke. [REDACTED] claimed Fontenot said he wanted to keep them. * * *. [REDACTED] said he later checked the evidence sheets from the investigation, and found that the goggles had not been recorded as items seized that particular night" (Exhibit 5, page 1).

Cameron also summarized his interview with Fontenot, which occurred on June 8, 2005:

"[Fontenot] did admit to taking the goggles for [sic] the search warrant scene, but stated clearly that it was not for self gain. He told me he joked with the goggles with others in the days following the search warrant. Det. Sgt. Fontenot stated after the tape was shut off that he kept intending to enter the items into evidence, but this never happened" Exhibit 5, page 1).

Fontenot gave Cameron the goggles following their interview (Exhibit 5, page 2), and Cameron logged them into evidence on June 10, 2005 (Exhibit 6). Cameron met with [REDACTED] on June 9, 2005. [REDACTED] told Cameron that she recalled meeting Fontenot ([REDACTED]) at a Burger King, along with [REDACTED] in January of 2005. [REDACTED] told Cameron that when she got to the Burger King, Fontenot was wearing the goggles and making jokes about them (Exhibit 5, page 2). Duane Hayden, a good friend of Fontenot's, denied any personal knowledge of this incident (Exhibit 5, page 3).

Cameron interviewed [REDACTED] on June 10, 2005 to find out why [REDACTED] had waited four months to bring the issue forward. [REDACTED] explained to Cameron that a related search warrant had caused him to remember the issue. [REDACTED] also acknowledged that the goggles were not the only items outside the search warrant that were seized (Exhibit 5, page 3).

Cameron explained in his report that:

"there was [sic] literally hundreds of pieces of property that were taken as suspected stolen items. * * *. Some items that were taken as stolen property were outside the scope of the warrant. This is sometimes done in the hopes of returning the property to its rightful owner and there is no intent to prosecute the suspect for that particular item.

"* * *. It is reasonable to believe that Det. Sgt. Fontenot forgot or put off documenting the goggles on an evidence sheet. There is no evidence that he wanted to keep the goggles for personal property as, after over five months, they were still in his police vehicle where he put them that night. He made no attempts to hide the goggles, take them into his house, or sell them. Rather, he immediately turned them over to me after retrieving them from his unit where they had been all along.

"As a result, though there is no evidence of theft, this investigation finds that a violation of Police and Procedures 5.1.2, Performance of basic Duties – Competent Manner has been committed by Det. Sgt. Fontenot [for failing to log the goggles in as evidence]" (Exhibit 5, page 4).

Captain Cameron wrote a memo to Sheriff Martin on June 13, 2005, in which he stated:

"The investigation concludes that though no theft has occurred in this instance, Det. Sgt. Fontenot failed to follow procedure by not admitting the item into evidence and recording in [sic] it on an evidence sheet" (Exhibit 7).

2. Review of Captain Cameron's Investigation

I find a number of things troubling about this investigation and its conclusion. First and foremost, it appeared very plain to me that Fontenot may not have taken the goggles for his own "gain" but he certainly appeared to have taken them for his own use. Second, a number of seemingly innocent references in the report appeared to lessen the importance of Fontenot's actions. Finally, there appeared to be a desire to downplay Fontenot's actions by reference to stress he had been under.

a. Fontenot's Seizure Of The Goggles

Cameron interviewed Fontenot on June 8, 2005. In that interview, which lasted only four minutes, Fontenot stated no less than seven times that he did not take the goggles for his "personal gain," repeating that exact phrase. He also repeated several times that he did not steal them. Furthermore, Fontenot clearly told Cameron five times that he thought the goggles were "funny" or that he was wearing them at the scene as a joke (Exhibit 8, page 2).

██████████ also told Cameron that she met Fontenot at a Burger King on one occasion and when she arrived, he was wearing the goggles and joking about them (Exhibit 5, page 2). Finally, ██████████ told Cameron that when Fontenot saw the goggles, he put them on and said that he would take them because he wanted to wear them having sex (Exhibit 9, page 1). Despite this, Cameron did not ask Fontenot if he announced that he would take the goggles because he thought they were funny, or because he wanted to wear them having sex; Cameron did not ask Fontenot if he had worn the goggles at any time aside from the scene; Cameron did not ask Fontenot if he had used them as "props" for jokes with his friends. Instead, Cameron focused on the narrow question of whether Fontenot had taken the goggles for his own "gain" and failed to consider whether Fontenot took the goggles for his own use (specifically, as a joke prop).

At the conclusion of the four minutes, Cameron said, "I'm not going to dwell on this one for a very long time" and turned off the tape (Exhibit 8, page 3).

I spoke to [REDACTED] on October 4, 2005. She told me that she was in Fontenot's county vehicle driving with him to Burger King to meet [REDACTED] and [REDACTED], a civilian friend of Fontenot's. She said that he drove up to the Burger King wearing the goggles as a joke. She also recalled that he told her he wanted to wear them while having sex. She could not recall if he was on duty or off duty; she was not sure but she thought he left the goggles in his vehicle when they went in for lunch.

Fontenot told Cameron that he had said at the scene that the goggles were stolen, and he threw them in his truck. However, Cameron did not ask [REDACTED], who was with Fontenot at the time, if he recalled Fontenot saying that he thought the goggles were stolen. In addition, there were many items seized from that storage facility, and Cameron was the one who brought a truck for the items to be removed. Cameron never questioned Fontenot about why he put them in his personal county vehicle instead of the evidence truck.

b. References In The Report Which Impact The Gravity Of Fontenot's Actions

There were a couple of factual assertions in Cameron's report that I noted because I thought they were very slightly misleading. First, Cameron stated that there were "literally hundreds of pieces of property that were taken as suspected stolen items" (Exhibit 5, page 4). However, this is not true. There were 75 items seized during the execution of the search warrant on the night Fontenot took the goggles. I believe that Cameron's statement in the report subtly gives the impression that Fontenot could have just made an honest mistake due to the sheer volume of items seized. Cameron also told me that there were numerous items seized that night that were outside the search warrant. Specifically, he told me that there was "all sorts of stuff outside of the scope of the warrant." This statement could give the impression that the goggles were just one of many items outside the search warrant that were seized. However, only nine items outside the search warrant appear to have been seized that night (Exhibit 2), other than the goggles.

c. References To Fontenot's Personal Stress

Cameron wrote an addendum to his report concerning a conversation with [REDACTED] (Exhibit 10)

Cameron noted that [REDACTED] serves on the multi-jurisdictional Crisis Intervention and Stress Management Team, which apparently gives her the professional qualifications to make this statement. [REDACTED]

d. The Decision-Making Process

Cameron told me that he believed that two weeks would be an appropriate suspension before he ever discussed the issue with Snover. He also told me that he did the investigation, he wrote the conclusions, and he stands by them. Snover said that the goggles were kept in plain sight on the dashboard, and that Fontenot had no intent to hide them. Snover said he was trying to treat the valued employee in the best light possible.

B. FALSE SWEARING

1. Captain Cameron's Investigation in June of 2005

Fontenot created a "Notice of Seizure and Intended Forfeiture" on May 16, 2005 (Exhibit 11). The cover letter to Judy K. Larue is dated "5/3/05" and the seizure date reflected is 4/29/05 (Exhibit 11, page 1). The notice is signed by Detective Sergeant David J. Fontenot (Exhibit 11, page 2). The notice of seizure was notarized on May 16, 2005 by Deb Everts, on the "return" (Exhibit 11, page 3). The return (Exhibit 11, page 3) shows that Fontenot swore that he (not Duane Hayden) "mailed certified or personally served this notice to the person named above" on May 16, 2005. The return was dated at 10:41 am (Exhibit 11, page 3).

On June 8, 2005, Cameron gave Fontenot the second employee notification for the false swearing internal affairs investigation (IA) (Exhibit 12). It read:

"On 5-16-05, you had a seizure notice notarized, recording as fact that the notice was served on 5/3/05. The allegation is that this statement was falsely made and the person was served well after 5/3/05" (Exhibit 12).

This notice to Fontenot misstated the issue which [REDACTED] raised in his complaint (Exhibit 1, page 2). In his complaint, [REDACTED] wrote:

"The forfeiture notice that Dave served was created on his laptop computer on the 16th of May and then dated to reflect the date of 5/3/05. Dave checked the personal service box and had it notarized by Deb Everts on the 16th of May and swore that it was served and it had not been.

"The document itself was created, in my opinion, in an effort to deceive. It was made to look as though it was served two weeks prior based on the date of 5/3/05 [on the letter, not the return of service]. If you created a document on the 16th, why date it the 3rd? If you have not served the notice, then why swear that you have? This is troublesome to me" (Exhibit 1, page 2).

In other words, it is clear that [REDACTED] was raising two issues concerning the notice: (1) that the letter was misdated May 3, 2005 in an effort to mislead; and (2) that Fontenot swore that he effected service on May 16th when he did not do so. [REDACTED] made no mention of the service being outside the 15 day window being a problem.

Cameron created a record of his investigation into the false swearing issue (Exhibit 13). In this report, he noted that [REDACTED] had also raised a concern with him about the seizure notice: that it was outside the 15 day window, and that the date of May 3 was misleading.

In his investigation record, Cameron described his conversation with Fontenot which was recorded:

"* * * Fontenot told me that the seizure notice was served outside the 15 day window. He told me that he discovered from Deputy Keegan whom he had thought served the paper that it had not been served. As a result, he made attempts to locate the party. Det. Sgt. Fontenot told me that on Monday, 5-16-05, he located the party. Fontenot said he went to civil Deputy Deb Everts and had the paper notarized indicating he personally served the notice. Short on time, as he was leaving for training, Fontenot contacted Deputy Duane Hayden on the morning of 5-17-05 and requested he locate and serve the notice that day. He admitted to me during the recording that he had the "return" notarized before it was served by Hayden.

"[Fontenot] told me he had no idea how the date was to be displayed on the paper and that he was certain he created the document on 5-16-05 [Exhibit 11].

* * *

"* * *. Fontenot said his only possible explanation was that the document was created over another document that he generated on 5-3-05, and that he failed to change the date" (Exhibit 13, page 2) (emphasis supplied).

Cameron interviewed [REDACTED], who had brought the issue to his attention on May 17, 2005 (Exhibit 13, page 3). [REDACTED] had told Cameron on May 17, 2005 that Fontenot was attempting to effect service outside the 15 day window. [REDACTED] also recalled that Fontenot and Keegan had been discussing the fact that the notice had not been served in time but that Fontenot was going to serve it anyway (Exhibit 13, page 3). [REDACTED] told Cameron that he had learned of this issue through [REDACTED]. He had examined the return of service himself and seen that it may have been turned in as being served before it actually was (Exhibit 13, page 4).

Cameron interviewed Hayden, who said that he had served the seizure notice on May 17, 2005 at approximately 12:00 noon (Exhibit 13, pages 4-5).

Cameron summarized his investigation:

"The complaint from [REDACTED] is multi-layered. First the paper was served outside the fifteen day window outlined by RCW 69.50.505; second that Fontenot created a document with a false date to show that it had been served inside that 15 day window; and third, that Fontenot had deliberately filed the notice of service before it had been served (Exhibit 13, page 5).

Cameron found that service outside the 15 day window was infrequent but acceptable. Cameron also found that Fontenot's misdating of the Notice of Seizure (Exhibit 11, page 1) was likely a typographical error. With respect to the crucial issue of falsely stating information on the return of service, Cameron found:

"Finally, the complaint indicates the paper was signed by Fontenot before it was actually served. This is compounded as he signed the 'return' and had it notarized. This is inappropriate. Det. Sgt. Fontenot found that the item had not been served by deputies as he had thought. Running short on time as he was preparing to leave on training, he began to hurry the process and had the return of service for the notice signed before it actually was served. Moreover, he did not serve the item himself, but assigned a deputy to do it for him. This phase of the allegation is sustained. Det. Sgt. Fontenot's efforts to complete a task in a hurry caused him to make a poor choice by having the return signed and filed before it actually was. This action reflects negatively on his judgment and decision-making.

* * *

"It is recommended that Det. Sgt. Fontenot receive a two week suspension for violating Policy and Procedures chapter 5.1.2 – Performance of basic Duties in a Competent Manner. Additionally, part of the investigation involved attempting to define the root causes for Det. Sgt. Fontenot's recent actions. Det. Sgt. Fontenot is a very busy person, both in his personal and professional life, very often leaving him restricted on time and very likely contributing to stress

and in turn affecting judgment. As a result it is recommended that discipline also include the addressing of this issue in some form to help him be the leader he is capable of being" (Exhibit 16, pages 1-2).

Cameron also hand-wrote on the summary sheet for the IA:

The investigation finds that though Det. Sgt. Fontenot's actions did not rise to a criminal act, he did violate policy by failing to perform basic duties in a competent manner (P&P 5.1.2)" (Exhibit 17).

Fontenot was given a two week suspension, and allowed to "buy back" one of those weeks with 40 hours of vacation time (Exhibit 18). Snover's letter to Fontenot explaining the investigation and results also included a paragraph describing what he believed was the "major contributing factor" to Fontenot's behavior, citing Fontenot's outside business, coaching, playing in a adult league and rebuilding a personal relationship. Snover wrote, "We feel that this extremely busy lifestyle stretches your time to the point that you are unable to give the proper time and attention to detail required of the Detective Sergeant" (Exhibit 18, page 1). As a result, in addition to the suspension, Fontenot was put on a six month period of performance monitoring. If Fontenot had substantiated complaints from or about his unit, among other things, Fontenot might be recommended to return to patrol as either a supervisor or as a deputy (Exhibit 18, page 2). In other words, if Fontenot had additional substantiated complaints, he might be removed from the Detective Sergeant of the Criminal Investigations Bureau (CIB), but he could still be a supervisor in patrol.

On June 22, 2005, Cameron wrote a letter to this IA file concerning the disposition of the seized property (cash). He wrote that Fontenot's actions in regard to the Notice of Seizure had "no bearing on the outcome of the intended seizure and forfeiture" because the owner of the cash, Larue, came by the money in a legitimate way (Exhibit 19).

2. Review of Captain Cameron's Investigation

As before, I find a number of things troubling about this investigation and its conclusions. First and foremost, there is no question but that Fontenot falsely swore that he had served the Larue Notice of Seizure (Exhibit 11) on May 16th and 10:41 am when he had not done so. Second, I was surprised by the way Cameron questioned Fontenot about his misdating of the Notice of Seizure (Exhibit 11, page 1). Third, Cameron did not appear to use important information he gained in [REDACTED]'s interview to question Fontenot. Finally, as before, there appeared to be a desire to downplay Fontenot's actions by reference to stress he had been under.

a. The Return of Service

Fontenot dated the return of service (Exhibit 11, page 3) May 16th and indicated that he had personally served it. The time of the notarization was 10:41 am. Fontenot did not serve the Notice of Seizure, and it was not served on May 16th; it was served the next day. This is more than simple poor judgment; this is falsely stating facts on a document under penalty of perjury. How this act of Fontenot's migrated to "poor judgment" and a policy violation does not make sense to me, even after discussing the matter at length with Steve Snover, Ron Cameron and Alice Hoffman.

Snover was adamant that Fontenot was not falsely swearing because Fontenot had the expectation that the service would be effected the same day. Snover reasoned that because Fontenot intended for the service to be effected that day, there was no intent to falsely swear. This argument

ignores the plain words on the return of service. I asked Snover if it was generally acceptable for a deputy to make an affidavit and swear that the facts in it are true, if the deputy knows that some of the facts are not true, but the deputy hopes or believes that they will soon become true. Snover agreed this would not be acceptable and would indicate dishonesty. When I asked him to explain the difference between my hypothetical and Fontenot's case, he said again that there was no false swearing because Fontenot believed that the service would be effected on May 16th. His reasoning was circular and made no sense.

Snover has had a close relationship with Dave Fontenot for many years. [REDACTED] It was clear to me that Snover's judgment on this issue was seriously impaired by that friendship, and that he had no recognition that his judgment had been impaired.¹

Cameron told me that he and I were not so "far apart" in how we viewed Fontenot's actions. He indicated, without saying so directly, that he had been influenced in his conclusions and recommendations by Snover. He did not attempt to claim that he was forced to make the findings he did; he told me he "stands by" this investigation, but that if there was a place where he was influenced, it was with respect to his finding on the return of service. Cameron said that he himself would never do what Fontenot did.

Hoffman recalled the discussion at the time Fontenot was disciplined and she said she had been persuaded that they had done the right thing. After analyzing it during our interview, however, she said that they had been focusing on whether Fontenot was trying to mislead the Court by indicating service had been effected within the 15 day window when it had not. She recalled that they had all been very concerned about that, and had missed the issue of the return of service being misdated in the first place. She realized (I believe sincerely) during our interview the gravity of Fontenot's actions. Snover never had this realization; I believe that Cameron may have, but felt compelled to stand by his written report.

b. Cameron's Interview with Fontenot

Cameron interviewed Fontenot on June 9, 2005 concerning the Notice of Seizure (Exhibit 14). Fontenot readily admitted that he had the return of service notarized prior to serving it (Exhibit 14, page 5). However, Fontenot did not at first admit that the May 3, 2005 date was wrongly dated the first time it was created. Rather, he appeared to claim that he had created the Notice of Seizure on May 3, and believed that Keegan served it, but that Keegan had not performed his duties:

"RC [Cameron]: * * * specifically the concern is, is that the item indicates there that it was served on May 3rd of this year.

"DF [Fontenot]: That's when the sheet was filled out.

"RC: Okay.

[REDACTED]

"DF: It didn't get served until later.

"RC: Okay.

"DF: And I don't recall the day I had Deputy Hayden go out and serve it that day. I don't remember the day it was because she moved and it was probably a week later, maybe even ...

"RC: Okay, so [you're] indicating that it wasn't served on the 3rd.

"DF: Correct.

"RC: But rather on the 10th?

"DF: I'm going to say * * * at least a week later, because she had moved, the paper got shuffled.

"RC: Okay.

"DF: And it didn't get filled out or it didn't get served on her until later when I gave it to Deputy Hayden, but I don't recall the day he served it.

"RC: Okay, the date of the 16th that shows that you took it to Deb Everts to have it notarized.

* * *

"DF: [indicating that the 16th is the day the return was served] because that was the day I realized that I had thought Keegan had already done this."

(Exhibit 14, pages 1-2)

It seems fairly clear from this part of the conversation that Fontenot is telling Cameron that the Notice of Seizure (Exhibit 11) had been created on May 3, 2005, but that it wasn't served until at least a week later.

Later in the conversation, Cameron asked Fontenot, "I don't understand if you generated that on the 16th, why does it say May 3rd," obviously referring to Exhibit 11, page 1. Fontenot replied:

"I don't know. I don't know the answer to that. * * * I may have generated, no if I generated this the 16th, then I would have put it under a new address. I don't know where the paperwork came from. I know obviously I got it signed on the 16th and Deputy Hayden is the one that served it. Uh, the May 3rd, I don't recall if that's the day I filled it out. I remember filling it out but I know I didn't do it on, I'm pretty sure I didn't do it on the 16th because I would have put in her new address. Because I knew her new address was Greenbelt, Greentree, Green something Lane in Joyce, or near Joyce" (Exhibit 14, page 5)

It appears that at this point in the interview, Fontenot is wavering from his original statement that the Notice (Exhibit 11) was created on May 3rd, but is still claiming that it was created prior to May 16th because it had an old address for Larue on it (Exhibit 11, page 1). Later in the interview, Cameron and Fontenot returned to the issue of the May 3 date:

"DF: *** May 3rd would have probably been the day I filled this out, if I did. Now, it, this may have been filled out and sitting in a computer and I may have just printed out the form on the 3rd and that's why, I may not have even looked at the day because what strikes me about that is the address. I knew the address was changed because I got the paper served up at the new address.

"DF: The address is the old address here, so this paper may, the form itself may have already been completed and just not generated, printed out and filled out until the 16th, which is likely. I'm sure I printed this on the 16th. I'm sure I did.

"RC: Is it possible that you printed it earlier than that and gave it to Keegan?

"DF: No. No because I expected him to follow through with the seizure notices. I expected all the seizure notices to be followed through with, they weren't. *** I probably printed this off without even looking at it.

"DF: Yeah, I just used a template, generated it and printed off because we had, we would have a paper copy so I wouldn't have saved it, no. But I'm sure I printed this out on the 16th because I was at the office, obviously with Deb, got it done that day, got it signed, notarized, backwards fashion. *** (Exhibit 14, pages 7-8).

Thus, by the end of the interview, Fontenot had modified his earlier statement to indicate that the Notice of Seizure (Exhibit 11) had been printed out on the 16th of May. Later in his investigative record, Cameron noted that he and Fontenot checked the "document properties" of the Notice of Seizure after the interview, and found that the document had been created on May 16th (Exhibit 13, page 2). At that point, according to Exhibit 13, page 2, Fontenot explained that the document had been created over another document that he had previously created on May 3rd, and that he had forgotten to change the date (Exhibit 13, page 2). Fontenot could not find a document that he had created on May 3rd to help support this theory (Exhibit 13, page 2).

Thus, Fontenot's version of when he had printed out the letter (Exhibit 11, page 1) appears to have migrated substantially during this interview. However, Cameron did not appear to notice this, or even consider that Fontenot might have intentionally backdated the letter. Rather, he simply accepted Fontenot's word that it was an honest mistake.

c. Cameron's Interview of [REDACTED]

Cameron interviewed [REDACTED] on June 9, 2005, before he interviewed Fontenot (he finished [REDACTED]'s interview at 12:46 pm and he finished Fontenot's at 4:44 pm the same day) (Exhibit 15). [REDACTED] told Cameron:

"Monday morning, on the 16th I asked Dave Fontenot if the seizure notice had been served on [REDACTED] and John Keegan was there and they kind of looked at each other and checked and it was determined no, it hadn't been served. Dave said he would do it. I said, "you guys, really, it's too late. It's after the 15 days." *** Keegan looked at Fontenot and said, "Ah, let's just do it any way." Dave said, yeah, he would. *** I asked him if he got it served [later in the day] and he said, "No" he hadn't found her yet but he had a lead and then I went home. And then Tuesday

morning I came in and I waited the ½ the day and then he called me and told me that the seizure, the service part of it was on his desk * * *. I got it off his desk and then I looked at it and it was signed it had been served the day before and it had a date of May 3rd on it as the date it was created, which I thought was odd. And, it was late, so I just thought the whole situation looked odd.

* * *

"Monday morning. And I explained to them the RCW and 15 days and Keegan said, "well you know, does that include weekends or business days?" and I said, "John. It says 15 days."

(Exhibit 15, pages 1 and 3).

█'s interview makes it clear that she is the person who brought the lack of service to Fontenot's attention, and that the question of it being outside the 15 day period was discussed between she, Keegan and Fontenot. The Notice of Seizure's document properties indicated that it had been created on May 16th (Exhibit 13, page 2). The return of Service (Exhibit 11, page 3) was dated May 16th, and indicated a time of 10:41 am. █ recalled Fontenot telling her that he did not yet have a good address for █. █ was certain this conversation occurred on Monday morning, May 16th, 2005. However, despite this evidence, Cameron ignored the possibility that Fontenot had indeed intentionally misdated the return. Cameron did not ask him about █'s recollections; nor did he recognize that one possible explanation for Fontenot's changing story about the May 3 date was that Fontenot was not being forthright with him.

c. References To Fontenot's Personal Stress

Included in this IA was the same addendum concerning Cameron's conversation with █ (Exhibit 10). Again, Cameron appeared to be focusing on Fontenot's "stress" as a reason for his actions, instead of considering the possibility that Fontenot was not being straightforward with Cameron.

C. CONCLUSIONS

With the important caveat that I was not sitting in Cameron's interviews, especially of Fontenot, I believe that Fontenot's behavior was much more serious than Cameron found in his IA conclusions and recommendations (Exhibits 7 and 16). Cameron appears to have ignored possible avenues in the investigation. It is only speculation, but I believe that either his own personal feelings for Fontenot, or his knowledge of Snover's relationship with Fontenot, led him to conclude that Fontenot had not intended what appears very clear that he did intend to do: take seized property for his own use and make a false statement under penalty of perjury.² At least with respect to the seizure notice, Cameron appeared to understand why I felt it was important. However, Snover was adamant throughout the interview that Fontenot had no intention either to lie under oath or to steal. I believe that Snover's personal feelings colored his judgment in this matter when it was decided in June 2005, and continue to color his judgment at the present time.

² I wish to be clear that I do not suspect Cameron of dishonesty, in the sense that he knowingly misstated any facts. My view is that his personal relationship with Fontenot, or his knowledge of Fontenot's personal relationship with Snover led him to "gloss over" facts which a more objective person (I believe) would have found more significant than Cameron did. In other words, I believe his personal relationships "colored" his view of the facts unconsciously, rather than intentionally.

Exhibit List

Clallam County Sheriff's Office - Fontenot Investigation Review of Internal Investigations Originally Conducted in June, 2005

Exhibit	Description
1	[REDACTED] Complaint
2	Search Warrant
3	Property Room Report (items seized on January 28, 2005, except for goggles)
4	Employee Notification of Investigation
5	Investigation by Captain Ron Cameron A36.740
6	Property Room Report (Goggles only)
7	Cameron's Conclusions and Recommendations (Goggles)
8	Fontenot Interview June 8, 2005 (Goggles)
9	[REDACTED] Interview June 10, 2005 (Goggles)
10	Addendum to Cameron's Report – Conversation with [REDACTED] [REDACTED]
11	Notice of Seizure and Intended Forfeiture
12	Employee Notification of Investigation (Seizure Notice)
13	Investigation by Captain Ron Cameron A36.741
14	Fontenot Interview June 9, 2005 (Seizure Notice)
15	Lowe Interview June 9, 2005 (Seizure Notice)
16	Conclusions and Recommendation (Seizure Notice)
17	Summary Sheet: "Complaint Against Department Member" (Seizure Notice)
18	Snover's letter to Fontenot re: Notice of Disciplinary Suspension, dated June 30, 2005

Exhibit	Description
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19	Cameron's June 23, 2005 Addendum to A36.741 (Seizure Notice Investigation)
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MEMORANDUM

FROM: [REDACTED]

DATE: 6/7/05

TO: Captain Cameron

SUBJECT: Sgt. Fontenot



This is not a document that I want to write. It is internal in nature involving what I believe to be unethical and unlawful behavior of my immediate supervisor. My motivation in writing the memo is fear.

I strongly believe that we as police officers are guardians of our profession. I also believe that it is incumbent on law enforcement as a whole to effectively police itself. I have, on several occasions, been involved in internal matters that have resulted in the discipline of members or termination. I have always strongly believed in the law enforcement code of ethics as well as the oath of office we have all sworn to as police officers in the State of Washington and as deputies of the Sheriff of Clallam County.

I am firmly rooted in my own sense of professional ethics. I conduct myself based on my core principals, both professionally and personally, consistent with the law enforcement code of ethics.

I'm a very proud member of this agency as well as a loyal and proud deputy of Sheriff Martin. All these things being said, there are some things that have happened over the last few months that have forced me into a number of ethical dilemmas and I want to elaborate on a few of them.

I strongly believe that a deputy sheriff in this county is a cut above other officers. I believe that being a detective within this agency is a privilege and yet another cut above the rest. Being a supervisor in this agency is the ultimate in trust and responsibility. A supervisor is supposed to be a cut above all others.

I want to someday be a [REDACTED] in this agency. [REDACTED]
[REDACTED] I would like nothing more than to not make any waves, controversy or cause stress and hardship on others. I do not want to jeopardize my career advancement or my current rank based on what will prove to be a

difficult and unpopular memo to deal with. I have every reason to just let things be, but I cannot.

Everything I have written up until now would mean nothing if I said or did nothing about all of this. I would not be living up to the oath to the citizens of Clallam County, nor the code of ethics, if I failed to act. I have consistently acted with regard matters of an internal nature. I have gone as far as to engage in political activity based on my convictions and principals. I would be a hypocrite and applying a double standard if I did not act in this instance, with regard to [REDACTED], who is my friend and one that I think needs help.

Allow me to recap our previous conversation, just for the record's sake, since I know it will be part of all of this. Sgt. Fontenot and I have known each other [REDACTED]. We have grown up together in this agency, [REDACTED]. I have gotten to know Dave and I'm concerned, not because of who he is, but because of what he has and continues to do.

Dave and I have had some issues lately with his integrity. A few weeks ago [REDACTED] came to me and I could tell something was wrong. She wanted to know what to do about something that she believed to be an ethical violation. She felt she was in some kind of dilemma.

She elaborated and told me about a forfeiture notice that was recently served by Sgt. Fontenot. The brief summary is that Dave was many days passed the required 15 day service deadline and created a document to reflect previous service within the allotted period.

The document I'm referring to was the one served on [REDACTED], stemming from the [REDACTED] case. The date of seizure was, I believe, April 23. The forfeiture notice that Dave served was created on his laptop computer on the 16th of May and then dated to reflect the date of 5/3/05. Dave checked the personal service box and had it notarized by Deb Everts on the 16th of May and swore that it was served and it had not been.

The document itself was created, in my opinion, in an effort to deceive. It was made to look as though it was served two weeks prior based on the date of 5/3/05. If you create a document on the 16th, why date it the 3rd? If you have not served the notice, then why swear that you have? This is troublesome to me.

Narcotics related forfeiture is already a controversial issue and one that cannot have any indication of dishonesty or corruption.

I have recently learned that [REDACTED] has contested the forfeiture. Do we go forward into a hearing or do we give it back? Going forward is risky because it creates the venue for the dishonesty to be compounded and then discovered and giving it back is proof of



A36.740

INVESTIGATION BY CAPT. RON CAMERON

On 6-6-05, at about 1500 hours, [REDACTED] approached me and gave a verbal report outlining concerns for [REDACTED] Det. Sgt. Fontenot. [REDACTED] told me that during the execution of a search warrant conducted on January of 2005, Fontenot was present. The warrant involved the recovery of a multitude of stolen property kept in a commercial mini storage. During the process, Fontenot came across a set of aviator type goggles and put them on, making a joke. [REDACTED] claimed Fontenot said he wanted to keep them. (Comment: I was also at this scene, but I did not witness this report or any reference to the goggles. It was [REDACTED] and my belief that the incident surrounding the goggles happened before my arrival).

[REDACTED] said several days later, he noticed what he believed to be the goggles hanging from the mirror of Fontenot's assigned vehicle. [REDACTED] said he later checked the evidence sheets from the investigation, and found that the goggles had not been recorded as items seized that particular night.

On the morning of 6-7-05, [REDACTED] presented me with a typed formal complaint against [REDACTED]. This complaint included [REDACTED]'s personal feelings and comfort level on his part in making the report, which included a second complaint as well. (See A36.741)

INTERVIEW WITH DET. SGT. FONTENOT 6-8-05 / APPX. 1600 hours

Before beginning the interview, I clearly explained to Det. Sgt. Fontenot that "A36's" had been alleged against him and that they were serious allegations. I afforded him a few moments prior to initiating the interview to review the Policy and Procedure Manual so he could re-familiarize himself with the process and his options. He declined this offer.

The interview involved more than one topic, but the subject of the goggles was separated and recorded with Det. Sgt. Fontenot's permission. Please refer to the transcript for details of this interview.

I began the interview by asking Det. Sgt. Fontenot about the goggles. He told me openly that they were in his assigned vehicle and freely talked of this incident. He did admit to taking the goggles for the search warrant scene, but stated clearly that it was not for self gain. He told me he joked with the goggles with others in the days following the search warrant. Det. Sgt. Fontenot stated after the tape was shut off that he kept intending to enter the items into evidence, but this never happened. I later learned that all the evidence was transported to

Ex 5 p1

a secure location to be cataloged, and that none of the items were placed on an evidence sheet at the scene. The evidence recording took place over one or two days following the seizure due to the amount of stolen property seized. This was a practical solution to a mountain of work to be done. I also learned from Det. Sgt. Fontenot that he did not participate in the cataloging of the seized items.

He commented on the source of the complaint and questioned [REDACTED] motivation for the report.

After the interview was over, Det. Sgt. Fontenot retrieved the goggles from his truck and delivered them to me.

I advised Det. Sgt. Fontenot not to discuss the matter and also to familiarize himself with his responsibilities towards witnesses and the reporting party in this event. I requested him to meet me at the Sheriff's Department at 0900 hours on 6-9-05.

INVESTIGATION (CONT)

On the evening of 6-8-05, I met with Sheriff Martin and Capt. Snover. In reviewing the results of the interview with them, it was concluded that the investigation continue with interviews of all involved, including an interview of [REDACTED]. It was also determined that though the results of this and A36.741 would likely result in discipline, that he would not be placed on administrative leave at this time.

On 6-9-05 at 0900 hours, I met with Det. Sgt. Fontenot and advised him that he should continue his duties as Detective Sergeant. In this short conversation we again talked of his feeling about the source of the complaint and the fact that the complainant, [REDACTED] increases his chances of promotion as he is [REDACTED].

On 6-9-05, at about 1000 hours, I met with [REDACTED]. She vaguely recollected an incident where she saw Det. Sgt. Fontenot with the goggles. She told me she, [REDACTED] and perhaps others, met Det. Sgt. Fontenot at Burger King. On her arrival, he was wearing the goggles and making jokes about them. She seemed to think there was mention that they came from a scene, but was not sure. This is the only time she remembered Det. Sgt. Fontenot displaying the goggles. She believed the event occurred in January of this year and thought it pretty close to the time of the search warrant event.

(Comment: Please see supplement to my conversation with [REDACTED] attached)

Ex-5p2

Also on 6-9-05, I talked with [REDACTED] She had no personal knowledge of the goggles incident. She told me that she was aware of the incident from a conversation with [REDACTED] on 6-6-05, the same day he reported the incident to me. This was the first she knew of the matter.

INTERVIEW WITH [REDACTED] 6-10-05 1140 hours

Though he had filed a written statement, I talked with [REDACTED] on this matter. He consented to a recorded interview.

In our conversation, he reiterated his complaint concerning the taking of the goggles from the search warrant scene. The key to my questioning revolved around why he waited until this moment to report the matter.

[REDACTED] told me that the taking of the goggles bothered him initially, but he passed it off a short time later. However, recent events including a related search warrant that was executed involving the same suspect, at a mini storage, caused him to remember the issue. This, combined with a new, unrelated complaint, caused him to come forward.

[REDACTED] did acknowledged that the goggles were not the only thing that were seized outside the scope of the warrant during the execution of the warrant on the night of January 28, 2005. He said that it was believed that much of the property inside the mini storage was stolen and other items were seized including bikes and a large screen TV that was not on the warrant.

[REDACTED] was not aware of any similar incidences or other properties that Fontenot may have taken without recording.

Outside the taped interview, I asked [REDACTED] if he ever brought the subject of the goggles up to Det. Sgt. Fontenot. He told me he did not.

INVESTIGATION RESULTS:

I did not contact other persons that were at the scene the evening of 1-28-05 to verify they saw Fontenot with the goggles. Nor did I attempt to ascertain if others saw him in the possession of the goggles after that date as Fontenot admitted immediately he took them from the scene, placed them in his assigned vehicle and never followed up by entering them into evidence.

I did talk with [REDACTED] whom [REDACTED] thought may have been with her when she joined Fontenot for lunch one day when he was wearing

the goggles as a joke around the time of the warrant. [REDACTED] was unable to remember this incident or anything concerning Det. Sgt. Fontenot and goggles.

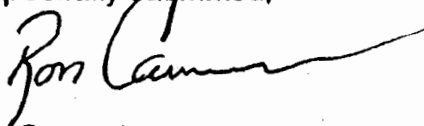
INVESTIGATION RESULTS AND CONCLUSIONS

As a member of the unit that assisted in the search of the mini storage on the night of 1-28-05, I am personally aware that there was literally hundreds of pieces of property that were taken as suspected stolen items. Hundreds, if not thousands more were left. Some items that were taken as stolen property, were outside the scope of the warrant. This is sometimes done in the hopes of returning the property to its rightful owner, and there is no intent to prosecute the suspect for that particular item.

In this case, it is clear that Det. Sgt. Fontenot removed the goggles from the scene and put them in his truck without documenting them that evening. However, the quantity of the items recovered that night, made it impractical to get the cataloging done in a reasonable amount of time. The items were secured in an evidence trailer, then transported to a secure location. A day or so later, the items were catalogued and recorded on to evidence sheets. It is reasonable to believe that Det. Sgt. Fontenot forgot or put off documenting the goggles on an evidence sheet. There is no evidence that he wanted to keep the goggles for personal property as, after over five months, they were still in his police vehicle where he put them that night. He made no attempts to hide the goggles, take them into his house, or sell them. Rather, he immediately turned them over to me after retrieving them from his unit where they had been all along.

As a result, though there is no evidence of theft, this investigation finds that a violation of Policy and Procedures 5.1.2, Performance of Basic Duties-Competent Manner has been committed by Det. Sgt. Fontenot.

Respectfully submitted,



Ron Cameron
Capt. of Investigations

Date: 6-14-05

Ex5p4

1. The first group of respondents (n = 10) was asked to identify the most important factors influencing their decision to use a mobile phone. The results showed that the most important factors were the cost of the phone (n = 8), the ease of use (n = 7), and the availability of the phone (n = 6).

Serial Number/Owner Name
DATE OF REPORT 6/16/05

Serial Number/Owner Name
OF REPORT 6716/05

(Signature)



Clallam County Sheriff's Office

J. A. Martin
Sheriff

223 E. Fourth Street, Suite 12
Port Angeles, WA 98362-3015
www.clallam.net/lawenforcement
Records: (360) 417-2270
Fax: (360) 417-2498

FILE: A36.740

DATE: June 13, 2005

MEMORANDUM TO: Sheriff Martin, through Chain

SUBJECT: Conclusions and Recommendation

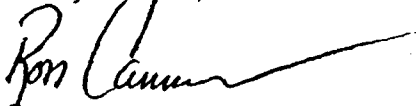
On June 8, 2005, [REDACTED] reported that his supervisor, Det. Sgt. David Fontenot removed an item from a search warrant scene and retained them. [REDACTED] felt these items were out of the scope of the judges authorization and inappropriate behavior by Fontenot. [REDACTED] written complaint concerning the this item suggest theft. The investigation does show that Fontenot removed the item from the scene and never recorded them into evidence, but nothing suggests he was attempting to keep them for personal gain. Fontenot made no secret that he had them in his police vehicle and did not try to secret the item in any way. When confronted with the issue, he admitted that he neglected to record the items on evidence sheet, as would be part of normal procedure.

The investigation concludes that though no theft has occurred in this instance, Det. Sgt. Fontenot failed to follow procedure by not admitting the item into evidence and recording in it on an evidence sheet. As a detective sergeant, Fontenot should demonstrate at all times, completeness and professionalism in everything he does. This includes his performance in basic duties such as the case described here. Anything less, and the quality of leadership in the investigations bureau begins to diminish, and quality fades as well.

Det. Sgt. Fontenot is a good employee and has attained rank in this department relatively quickly and at a young age. He has demonstrated a proactive approach with his subordinates and has produced high performance deputies through his supervision.

Discipline is recommended that in this case for failure to perform basic duties in a competent manner. This is one of two sustained complaints against Det. Sgt. Fontenot that were reported at the same time. Recommended discipline can be found in A36.741.

Respectfully submitted,


Ron Cameron
Capt. of Investigations

Ex7

Narrative Report

RUN DATE: 6/9/2005

Page 1

CONFIDENTIAL

INVESTIGATIVE INTERVIEW BY CAPTAIN RON CAMERON

R.C.: CAPTAIN RON CAMERON

D.F.: DETECTIVE SERGEANT DAVE FONTENOT

R.C.: All right, the date is um, still, it's June 8th, 2005. My name is Captain Ron Cameron of the Clallam County Sheriff's Department Investigative Division. I'm here with Detective Sergeant Fontenot. And it is approximately 1647 hours. Um, David I, this is uh, are you aware that the tape is on?

D.F.: Yes.

R.C.: And it's okay to make the recording?

D.F.: Of course.

R.C.: Um, this is number A36 number 740. And uh, I'm gonna read you the allegations that have been made here. And it stems around a search warrant that was served in January. Which, we were all present. I happen to be there too. And this is what I wrote. Uh, on or about 1/28 of this year, January 28th of this year, 2005. You removed, you being Detective Sergeant Fontenot, removed personal property of a citizen during the execution of a search warrant and retained that property for your own gain. This item is outside the scope of the judge's authorization. Specifically Dave this has to do with the uh, the [REDACTED] uh

D.F.: Uh huh (Positive)

R.C.: the um, incident out there

D.F.: Okay

R.C.: at the mini storage by [REDACTED]

D.F.: Okay.

R.C.: The allegation is, is that ah, there was a set of antique aviator goggles or something like that.

D.F.: And I have them. Absolutely.

R.C.: Okay.

D.F.: And they weren't for my gain. It was, it was part of the grand scheme of things in that, I know exactly what you're talking about.

R.C.: Okay.

J:\personel\A36INVST\A36.740 Fontenot.doc

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Written and signed in Clallam County.

Deputy: _____

Supervisor Approval: _____

Date: _____

Date: 6/14/05

Ex 8 pl

Narrative Report

RUN DATE: 6/9/2005

Page 2

D.F.: And it was not for my personal gain. I didn't steal them. I, it, everything in that storage garage was stolen property. I retained those. I still have them. I have them in my truck right now. Uh, it was, at the time, it was a long-term, long-time investigation. We were all tired. It was funny at the time.

R.C.: Uh huh. (Positive)

D.F.: Uh, and I think that I probably made the comment about them being stolen and through them in my truck and that's where they have been. That's where they remained. I still, I'd be, I have them. Absolutely.

R.C.: Okay.

D.F.: I retained them as part of the investigation. It was, there was tons of stolen property. We had removed tons of things.

R.C.: Uh huh. (Positive)

D.F.: Um, these struck me as funny because they're funny-looking.

R.C.: Uh huh. (Positive)

D.F.: And I, again, take responsibility. Yes, I absolutely removed them. I didn't remove them for my gain. I have not gained monetarily from them. It wasn't for any other reason other than it was full of. The place was full of stuff. I should have documented them.

R.C.: You're telling me that they were not documented.

D.F.: Were not documented. They did not go down on a sheet. Actually, as a recall, I had them on, which may not have been appropriate, but at the time, in the context

R.C.: At the scene you mean?

D.F.: Yeah. At the time, in the context of things, that's, we were joking around. We were, uh, it was a long day, it was very tiring. We were all tired and it was funny. And I had them on and, as I recall, there may even have been a picture taken with me with them on, uh, and I didn't document them, I threw them in my truck. And that's where they've been ever since.

R.C.: Okay.

D.F.: It never occurred to me for a second. I would never steal in a million years. I would never steal anything from anyone and uh, I can understand where. I'm angry right now because, uh, and I'm not gonna throw stones at anyone because it's not appropriate and it's not the time and I see what's going on and I'm not going to stand by. But, the bottom line is I have them, I didn't remove them for my personal gain and that's, bottom line. I will be happy to return them with an apology letter if that's what the department wants, but I didn't steal anything. I, I did have them. I did wear them, they were in my truck, uh, I took them off

J:\personel\A36INVSTA36.740 Fontenot.doc

I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Written and signed in Clallam County.

Deputy: _____

Supervisor Approval: Ron Carson

Date: _____

Date: 6/14/05

Ex 8 p2