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SUPREME COURT
STATE OF WASHINGTON

2009 JAN 22 11:00 AM

BY RONALD R. CARPENTER

CLERK

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

KITSAP COUNTY DEPUTY SHERIFF'S
GUILD and DEPUTY BRIAN LaFRANCE and
JANE DOE LaFRANCE, and the marital
community composed thereof,

Petitioner,

v.

KITSAP COUNTY and KITSAP COUNTY
SHERIFF,

Respondent.

NO.80720-5

STATEMENT OF ADDITIONAL
AUTHORITIES

Oral Argument Scheduled for
January 22, 2009

COMES NOW amicus curiae Washington Association of Prosecuting Attorneys ("WAPA") by and through, Pamela B. Loginsky, Staff Attorney, and respectfully requests that the Court consider the following additional authority pursuant to RAP 10.8:

ER 608(b) ("Specific Instances of Conduct. Specific instances of the conduct of a witness, for the purpose of attacking or supporting the witness' credibility, other than conviction of crime as provided in rule 609, may not be proved by extrinsic evidence. They may, however, in the discretion of the court, if probative of truthfulness or untruthfulness, be inquired into on cross examination of the witness (1) concerning the witness' character for truthfulness or untruthfulness, or (2) concerning the character for truthfulness or untruthfulness of another witness as to which character the witness being cross-examined has testified.").

State v. Clark, 143 Wn.2d 731, 24 P.3d 1006 (2001) ("Failing to allow cross-examination of a state's witness under ER 608(b) is an abuse of discretion if the witness is crucial and the alleged

1 misconduct constitutes the only available impeachment.”)

2 *Woods v. Bartholomew*, 516 U.S. 1, 116 S. Ct. 7, 133 L. Ed. 2d 1 (1995) (inadmissible
3 evidence is not “material” under *Brady v. Maryland*, 373 U.S. 83, 10 L. Ed. 2d 215, 83 S. Ct. 1194
4 (1963).

5 *Napue v. Illinois*, 360 U.S. 264, 79 S. Ct. 1173, 3 L. Ed. 2d 1217 (1959) (prosecutor has an
6 obligation to correct testimony of a witness that the prosecutor knows to be false)

7 *State v. Watson*, 846 A.2d 249 (Del. Super. 2002) (three findings that a police officer was
8 untruthful may, in certain circumstances, can be utilized on cross-examination to attack the
9 credibility of an officer on trial for unrelated charges)

10 *United States v. Davis*, 183 F.3d 231, 257 n. 1 (3d Cir. 1999) (Fed. R. Evid. 608(b) allows
11 the government to inquire of a police officer who was charged with a crime “about misappropriating
12 departmental gasoline for personal use and putting a false name in a gas log, and it may question
13 Davis about lying to an Internal Affairs officer about ripping up an individual's subway pass. If he
14 denies that such events took place, however, the government cannot put before the jury evidence that
15 he was suspended or deemed a liar by Internal Affairs”)

16 *United States v. Bravo*, 808 F. Supp. 311 (S.D.N.Y. 1992) (granting motion for new trial
17 based upon non-disclosure of admissible impeachment evidence that one of the officers involved in
18 the defendant’s arrest was part of a group of officers that were being investigated for lying and other
19 misconduct, and the particular officer was accused, among other things, of signing DEA forms
20 authorizing payments to informants for cases regarding which the informants state they were not
21 involved in and did not receive any money)

22 *State ex rel. Dean v. City Court*, 140 Ariz. 75, 680 P.2d 211 (App.1984) (a police officer may
23 be questioned by a defendant about specific misconduct contained in his internal affairs record that
24 relate to his untruthfulness)

25 Respectfully Submitted this 21st day of January, 2009.

26 

27 PAMELA B. LOGINSKY, WSBA NO. 18096
28 Staff Attorney

1 Proof of Service

2 I, Amber Haslett, declare that I have personal knowledge of the matters set forth
3 below and that I am competent to testify to the matters stated herein.

4 On January 21, 2009, I deposited in the mails of the United States of America,
5 postage prepaid, an envelop containing a copy of the document to which this proof of service is
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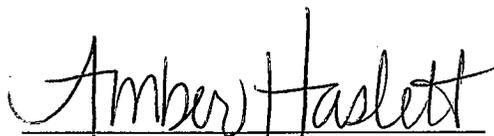
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18 Signed under the penalty of perjury under the laws of the state of Washington this
19 21st day of January, 2009, at Olympia, Washington.

20
21 
22 Amber Haslett