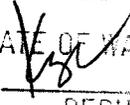


FILED  
COURT OF APPEALS  
DIVISION II

09 SEP 29 PM 2:48

No. 38520-1-II

STATE OF WASHINGTON  
BY 

DEPUTY

IN THE COURT OF APPEALS  
OF THE STATE OF WASHINGTON  
DIVISION II

---

STATE OF WASHINGTON,  
Respondent,

v.

ROBERT K. RATHBUN,  
Appellant.

---

APPEAL FROM THE SUPERIOR COURT OF THE STATE  
OF WASHINGTON FOR GRAYS HARBOR COUNTY

---

THE HONORABLE DAVID L. EDWARDS, JUDGE

---

BRIEF OF RESPONDENT

---

H. STEWARD MENEFEE  
Prosecuting Attorney  
for Grays Harbor County

BY: 

WILLIAM A. LERAAS  
Deputy Prosecuting Attorney  
WSBA #15489

OFFICE ADDRESS:  
Grays Harbor County Courthouse  
102 West Broadway, Room 102  
Montesano, Washington 98563  
Telephone: (360) 249-3951

62-020-1-1111

**T A B L E**

**Table of Contents**

COUNTERSTATEMENT OF THE CASE ..... 1  
ARGUMENT ..... 1  
CONCLUSION ..... 4

**TABLE OF AUTHORITIES**

**Table of Cases**

State v. Blight, 89 Wn.2d 38, 41, 569  
P.2d 593 (1994) ..... 2, 4

State v. Gunwall, 106 Wn.2d 54, 73, 729  
P.2d 808 (1986) ..... 1

State v. Harrison, 5 Wn.App. 454, 488  
P.2d 532 (1967) ..... 2

State v. Matlock, 27 Wn.App. 152, 616  
P.2d 684 (1980) ..... 1

State v. Maxwell, 114 Wn.2d 761, 691  
P.2d 223 (1990) ..... 1

State v. Osborne, 18 Wn.App. 318, 569  
P.2d 1176 (1977) ..... 1

State v. Perone, 199 Wn.2d 538, 551, 834  
P.2d 611 (1992) ..... 1

State v. Powell, 126 Wn.2d. 244, 258,  
893 P.2d 615 (1995) ..... 2

State v. Remboldt, 64 Wn.App. 505, 509, 827  
P.2d 282 (1992) ..... 2

<u>State v. Thein</u> , 138 Wn.2d 133, 977 P.2d 582 (1999) .....	2
<u>State v. Walcott</u> , 72 Wn.2d 959, 435 P.2d 994 (1967) .....	2

**OTHER**

Fourth Amendment and article 1, § 7 of the Washington Constitution .....	2
Fourth Amendment of the United States Constitution .....	4
Article 1 § 7 of the Washington State Constitution .....	4

## COUNTERSTATEMENT OF THE CASE

The State essentially agrees with the facts as set forth by appellant.

## ARGUMENT

Probable cause is established in an affidavit supporting a search warrant by setting forth facts sufficient for a reasonable person to conclude the defendant is probably involved in criminal activity. State v. Perone, 199 Wn.2d 538, 551, 834 P.2d 611 (1992); State v. Maxwell, 114 Wn.2d 761, 691 P.2d 223 (1990). “An affidavit need not establish proof of criminal activity, but merely probable cause to believe it may have occurred.” State v. Gunwall, 106 Wn.2d 54, 73, 729 P.2d 808 (1986) (emphasis added).

The question of whether or not probable cause exists for the issuance of the search warrant should not be analyzed in a “hypertechincal” manner. State v. Matlock, 27 Wn.App. 152, 616 P.2d 684 (1980). Nor must the issuing magistrate be convinced beyond a reasonable doubt that there is probable cause; there must only be *prima facie* showing of probable cause. State v. Osborne, 18 Wn.App. 318, 569

P.2d 1176 (1977); State v. Lehman, 8 Wn.App. 408, 506 P.2d 1316 (1973).

The affidavit is evaluated in a common sense manner with doubts resolved in favor of its validity, and with considerable deference being accorded to the issuing judge's determination. State v. Partin, 88 Wn.2d 899, 567 P.2d 1136 (1977); State v. Freeman, 47 Wn.App. 870, 737 P.2d 704 (1987). "A magistrate's determination that a warrant should issue... is reviewed under the abuse of discretion standard." State v. Remboldt, 64 Wn.App. 505, 509, 827 P.2d 282 (1992). An abuse of discretion occurs when a judge's decision is manifestly unreasonable or based upon untenable grounds or reasons. State v. Powell, 126 Wn.2d 244, 258, 893 P.2d 615 (1995). "[D]iscretion is abused only where it can be said no reasonable man would take the view adopted by the trial court. State v. Blight, 89 Wn.2d 38, 41, 569 P.2d 593 (1994). Affidavits of probable cause are tested by much less regular standards than those governing the admissibility of evidence and the issuing magistrate are not to be confined by restrictions on the use of good common sense. State v. Harrison, 5 Wn.App. 454, 488 P.2d 532 (1967). Doubts as to the sufficiency of information to support probable cause must be resolved in favor of validity of the warrant. State v. Walcott, 72 Wn.2d 959, 435 P.2d 994 (1967).

Appellant cites State v. Thein, 138 Wn.2d 133, 977 P.2d 582 (1999) for the proposition that "[g]eneralizations cannot provide the individualized suspicion required under the Fourth Amendment and article

1, § 7 of the Washington Constitution.” Appellant’s opening brief, page 5. In Thein, the officer seeking a search warrant for the defendant’s home provided evidence that the defendant was a drug dealer and then stated in the affidavit that, based on his experience, drug dealers commonly store drugs, drug proceeds, drug paraphernalia and other items and documentation related to their drug dealing in their residences. In Thein there was no criminal activity associated or connected with Thein’s residence. Here, that is not the case. Detective Peterson saw a shotgun, ammo and a possible stolen cabinet in the carport of the defendant’s residence. As the defendant was a convicted felon, this was criminal activity in and of itself. As Judge Edwards noted in his oral ruling on the motion to suppress:

The - one of the arguments of the defendant is that there must be a nexus between the criminal activity and the items to be seized. Well, probable cause exists if the affidavit supporting the search warrant presents facts sufficient for the Court to reasonably infer that criminal activities occurred. That's all. And what - so Detective Peterson now has two people at this residence who he has determined are convicted felons, who have a shotgun with ammunition next to it in a dresser drawer in the carport, and they're in possession of what the detective believes is a stolen cabinet. Clearly there were sufficient facts to allow the issuing magistrate, in this case Judge Brown, to infer that criminal activity had - had occurred. And so the next part of the test in the nexus is whether or not the place to be searched is reasonably related to the criminal activity. And when - when Detective Peterson obtained probable cause to arrest Mr. Rathbun for being a felon in

possession of a firearm, because the firearm was located at his residence, was in the carport, may not have been inside the four walls of the mobile home, that certainly gave him probable cause to believe that there may be other evidence of criminal activity related to firearms in the home, or ammunition, evidence of ownership of the firearm, other firearms, the list would be much longer than what I've just delineated.

But - but the search warrant was properly issued, I believe that the facts sufficient to justify it.

07-15-2008 RP 40-41.

There was probable cause for the issuance of the search warrant in this case under the Fourth Amendment of the United States Constitution, Article 1 § 7 of the Washington State Constitution. There was no abuse of discretion in the issuance of the search warrant.

### CONCLUSION

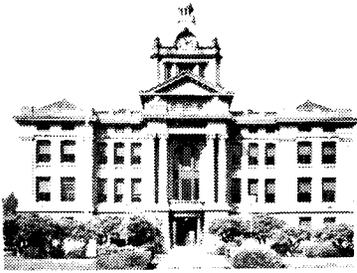
It cannot be said that no reasonable man would take the view adopted by the trial court. Blight, supra. There was probable cause for the issuance of the search warrant.

The conviction of the appellant should be affirmed and this Brief of Respondent be dismissed.

Respectfully Submitted,

By: 

WILLIAM A. LERAAS  
Deputy Prosecuting Attorney  
WSBA #15489



H. STEWARD MENEFEE  
Grays Harbor County Prosecuting Attorney

102 W. Broadway, Room 102  
Montesano, Washington 98563  
360-249-3951  
SCAN 234-5231  
FAX 360-249-6064

CHIEF CRIMINAL DEPUTY  
Gerald R. Fuller

OFFICE ADMINISTRATOR  
Randi Toyra

SENIOR DEPUTIES  
Jennifer L. Wieland  
Rebecca L. Bernard  
James G. Baker  
William A. Leraas  
Craig C. Newman

DEPUTIES  
Katherine L. Svoboda  
Megan M. Valentine  
Gordon Wright  
Edgar M. Korzeniowski  
Lacey Blair

September 28, 2009

RECEIVED  
SEP 29 2009  
CLERK OF COURT OF APPEALS DIV II  
STATE OF WASHINGTON

Mr. David Ponzoha, Clerk  
Court of Appeals  
Division II  
950 Broadway, Suite 300  
Tacoma, WA 98402-4454

RE: *State v. Robert K. Rathbun*  
Court of Appeals No. 38520-1-II

Dear Mr. Ponzoha:

Please find enclosed an original and one copy of the Brief of Respondent in the above-entitled matter. By cover of this letter, a copy has also been sent to Jodi R. Backlund and Manek R. Mistry; attorneys for appellant; and Robert K. Rathbun.

Very truly yours,

H. STEWARD MENEFEE  
Prosecuting Attorney  
for Grays Harbor County

By:   
WILLIAM A. LERAAS  
Deputy Prosecuting Attorney

WAL/jab  
Enclosure

cc: Jodie R. Backlund ✓  
Manek R. Mistry ✓  
Robert K. Rathbun ✓