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Division III  
State of Washington

IN THE SUPREME COURT OF THE STATE OF WASHINGTON

*Court of Appeals No. 32029-4-III, consolidated with 32030-8-III*

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STATE OF WASHINGTON, Respondent,

v.

CASEY J. LYNN DUNN, Petitioner.

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**PETITION FOR REVIEW**

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### **I. IDENTITY OF PETITIONER**

Casey J. Lynn Dunn requests that this court accept review of the decision designated in Part II of this petition.

### **II. DECISION OF THE COURT OF APPEALS**

Petitioner seeks review of the decision of the Court of Appeals filed on April 9, 2015, reversing the Columbia County Superior Court's order granting Dunn's motion to suppress. A copy of the Court of Appeals' published opinion and its order granting reconsideration and amending the opinion are attached hereto.

### **III. ISSUES PRESENTED FOR REVIEW**

In *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999), police officers obtained a search warrant for the defendant's residence based on their generalized conclusion that drug dealers commonly keep evidence of their illegal drug dealings in their homes. This Court held that generalized statements in affidavits supporting a search warrant are insufficient, standing alone, to establish the probable cause needed to search a suspected drug dealer's residence. Should this Court grant review to determine whether in seeking a warrant to search for evidence of stolen property, law enforcement authorities may ignore *Thein's* prohibition and

rely upon generalized inferences to establish a nexus between criminal activity occurring off-site and the suspect's residence and outbuildings?

#### **IV. STATEMENT OF THE CASE**

Columbia County Undersheriff Harvey Lee Brown applied for a search warrant for the home of Steven Long based upon the following facts sworn in his affidavit:

On May 3, 2013, I was dispatched to a report of an abandoned vehicle in the ditch on Steve Shoun's property on Ring Canyon Road. While enroute to the field I called Shoun on his cellphone and was told by him that he had observed the same pickup truck on Thursday, May 2, 2013 when it almost ran his hired hand off the road on Hogeys Hollow Road. Shoun told me that he had seen Steven Long driving the pickup and that Long had waved at him. I was also advised by Shoun that there was an ATV in the bed of the pickup which had cammo packs on it.

When I arrived, I observed a Dodge Ram pickup truck with a grey bed and a brown cab in the ditch with the rear of the pickup sticking out of the ditch, the pickup truck had Washington State License plate number B38538R. The pickup was registered to Zachary Zink of Dayton. The vehicle was recovered by Kyle's Towing and placed in his storage. The ATV was not in the back of the pickup truck.

After the pickup was pulled out of the ditch I called Shoun on his cellphone and asked him to come to my location and verify that this was the pickup he had observed Steven Long driving on Thursday. Shoun and his hired hand arrived and verified that they had both observed Long driving that same pickup. Long was employed by Shoun in 2010 and the hired man has known Long for 6 or 7 years.

At approximately 1300 I made contact with the owner of the vehicle in the foyer of the Sheriff's Office. I was advised that the Dodge pickup that was at Kyle's Towing was his and had been at his property located at 628 Robinette Mountain Road being used as a farm vehicle. I was told that the vehicle was not suppose[d] to be off the property and that the last time he had seen it, it was parked next to a horse trailer on his property. According to Zink the last time he had observed the pickup was on Tuesday, April 30, 2013. Zink advised me that he was going to check his property and see if his cabin had been entered.

On May 3, 2013, at approximately 1440 hours I was advised to respond to the Zink cabin on Robinette Mountain Road for a report of a burglary. The property listed in this affidavit was provided by the Zink's who stated that the property was at a cabin and is now missing.

When I arrived I was met by Zink at the front gate and advised that the back door had been kicked in and the outbuildings had also been entered. While driving up to the cabin Zink told me that both his ATV's were gone as well as generators and a rifle. Zink also advised me that the door had a shoe print on it.

As we pulled up to the back door I observed that the door had been kicked in I dusted for latent prints but did not find any at all.

I was advised that one of the ATV's had tannish colored cammo packs on the back of it which matched the description of the ATV in the back on the pickup truck.

CP 6-7. Based upon these facts, Brown requested authority to enter into and search:

A single family one story manufactured home which is tan in color with white trim located at 447 Hoge Hollow Rd in the County of Columbia. Also present is a cinderblock garage with a silver metal roof located in front of the residence. There is also a weathered wooden barn on the

north side of Hogeye Hollow Rd that belongs with the property. This residence and barn is approximately .1 miles from the intersection of Lower Hogeye Road and Hogeye Hollow Road.

CP 6. A handwritten note included the information: “This is the residence of Steven R. Long.” CP 6. The search warrant was authorized and executed the following day. CP 8-9, 14-17.

Based upon evidence seized during the search, the State filed charges against Dunn for possessing a controlled substance, manufacturing marijuana, and possessing stolen property in the second degree. CP 1-4. Dunn moved to suppress the evidence on the grounds that the search warrant affidavit failed to establish a nexus between the suspected criminal activity and the residence. CP 16-17. The trial court granted the motion and entered findings of fact and conclusions of law supporting its ruling, concluding that the search warrant affidavit failed to set forth sufficient facts to establish a reasonable nexus between Long’s residence and the items sought by law enforcement in the affidavit. CP 16-18.

The State appealed the ruling and in a published opinion, the Court of Appeals reversed. CP 19-20; *State v. Dunn*, \_\_ Wn. App. \_\_\_, No. 32029-4-III, slip op. (April 9, 2015). Acknowledging that *Thein* requires more than broad generalizations to establish probable cause, the Court of

Appeals adopted a limited reading of that rule, stating, “We recognized that inferences considered improper for drug crimes may be appropriate for crimes of theft, burglary, or robbery based upon the nature of these offenses.” *Slip op.* at 9-10. The Court of Appeals relied exclusively on LeFave’s *Search and Seizure* treatise and the citation thereto in its prior opinion in *State v. McReynolds*, 104 Wn. App. 560, 17 P.3d 608 (2000) to support its reversal of the trial court’s order. Dunn now petitions for review, contending that the Court of Appeals’ ruling conflicts with this Court’s decision in *Thein* prohibiting reliance upon broad generalizations to establish probable cause without specific facts associating the suspected criminal activity with the place to be searched.

#### **V. ARGUMENT WHY REVIEW SHOULD BE ACCEPTED**

Review should be granted in a matter of first impression to decide whether *Thein*’s prohibition against relying upon generalized inferences to establish a nexus with the area to be searched is limited to drug crimes. The Court of Appeals’ opinion is in conflict with the rule set forth by the Washington Supreme Court in *Thein*. Moreover, its ruling alters the quantum of evidence required to establish probable cause to search a home, and therefore involves a significant question of law under the Constitutions of Washington and the United States as well as an issue of substantial public interest that should be determined by the Supreme

Court. Accordingly, review is appropriate under RAP 13.4(b)(1), (3) and (4).

A. The Court of Appeals' ruling conflicts with *State v. Thein's* requirement that individualized suspicion, rather than generalized inferences, is required to establish probable cause to search a home.

In *State v. Thein*, 138 Wn.2d 133, 141, 977 P.2d 582 (1999), this Court rejected the State's contention that probable cause existed to search a suspected drug dealer's home even absent proof of criminal activity occurring at the residence. The *Thein* Court recognized the principle that probable cause to believe a suspect has committed a crime is inadequate, alone, to support a search warrant for the suspect's home. *Id.* at 148. This determination, which is constitutionally grounded, requires a basis in fact to conclude that evidence of a crime will likely be found in the area to be searched. *Id.* at 147.

Under *Thein*, conclusory affidavits, or allegations based upon information and belief, are insufficient; the record must establish objective criteria "going beyond the personal beliefs and suspicions of the applicants." *Id.* at 147 (citing *State v. Patterson*, 83 Wn.2d 49, 52, 61, 515 P.2d 496 (1973)). Likewise, general blanket inferences in the absence of

specific underlying circumstances connecting the criminal activity with the home cannot support a finding of probable cause. *Id.* at 147-48. Noting that an alternative conclusion would subvert the requirement that probable cause to search a specific location must be based upon the evidence sought and the place to be searched, the *Thein* Court concluded, “Although common sense and experience inform the inferences reasonably to be drawn from the facts, broad generalizations do not alone establish probable cause.” *Id.* at 148-49.

At issue in *Thein* were generalized conclusions that “drug dealers are likely to keep evidence of illegal drug dealing in their homes,” as well as evidence ruling out an alternative location where the drugs may have been kept. *Id.* at 150. But because there was no evidence linking any drug activity to the home beyond these types of broad inferences, probable cause did not support the warrant. *Id.* at 150-51.

In the present case, the Court of Appeals declined to apply the *Thein* standard because, in its view, “inferences considered improper for drug crimes may be appropriate for crimes of theft, burglary or robbery based upon the nature of these offenses.” *Slip. op.* at 9-10. In concluding that the search warrant was justified, the Court of Appeals relied squarely upon the broad conclusions rejected in *Thein*, specifically, (1) the items at

issue were not inherently incriminating in the same way as narcotics, and (2) many of the items were bulky and, therefore, likely to be hidden inside a building. *Slip op.* at 11. Accordingly, even though no facts were presented to show that Long's alleged criminal activity was connected with his home in any way other than the mere fact that he lived there, the Court of Appeals held that the issuing court "was entitled to draw the reasonable inference that Mr. Long was driving to his residence with the missing property, and that the property would likely be found there." *Slip op.* at 11.

Both the Court of Appeals' rationale and its holding squarely conflict with *Thein*. Despite the Court's analysis, nothing in *Thein* suggests that its holding is limited to cases involving narcotics. To the contrary, *Thein*'s rationale is premised upon the necessity to distinguish between criminal activity and criminal activity that likely involves the home, such that mere suspicion of criminal activity alone does not become adequate cause to enter and search a person's home. 138 Wn.2d at 148 ("We reiterate that '[p]robable cause to believe that a man has committed a crime . . . does not necessarily give rise to probable cause to search his home.'). Moreover, the Court of Appeals' reasoning is exactly the same as the reasoning in *State v. O'Neil*, 74 Wn. App. 820, 879 P.2d 950 (1994), which the *Thein* Court expressly repudiated. In *O'Neil*, the Court

of Appeals upheld a home search authorized exclusively upon evidence that the defendant was engaged in drug dealing, and that the defendant resided there. It reasoned that “[f]ew places are more convenient for hiding contraband or evidence of criminal activity – and, therefore, more appropriate to search – than the suspect’s home.” *Thein*, 138 Wn.2d at 143 (quoting *O’Neil*, 74 Wn. App. at 826). Recognizing that this line of reasoning would amount to authorization of general exploratory searches without proof of any crime connected to the area searched, the *Thein* Court expressly repudiated and overruled *O’Neil*. 138 Wn.2d at 149.

The constitutional considerations underlying the *Thein* decision cannot be squared with the Court of Appeals’ ruling in this case. General searches are no less constitutionally prohibited for property crimes as for drug crimes, and the Court of Appeals’ attempt to distinguish *Thein* on those grounds is invalid. This Court should accept review to reaffirm that *Thein* is grounded in the constitutional requirement that probable cause support a search and reject its reliance upon conclusory inferences to support search warrants in non-drug cases.

B. Whether a reasonable nexus to search an individual's home exists when the individual is suspected of possessing stolen property inside a stolen vehicle on a public road away from the home involves a significant constitutional issue and an issue of substantial public interest.

The Court of Appeals' published decision establishes as a matter of binding precedent that the *Thein* requirement for specificity in establishing a nexus with the area to be searched does not apply to non-drug cases. Because the nexus requirement to show probable cause is of constitutional magnitude and because of the potentially far-reaching consequences of the Court of Appeals' decision, review should be granted.

It is well established that the rights of individuals to be secure from government intrusion into their persons and property are protected by both the United States and Washington constitutions. U.S. Const. Amend. IV; Wash. Const. Art. 1, § 7. Subject to only a few narrowly-tailored and jealously guarded exceptions, the government may only search a person's home upon the authority of a warrant. *Id.*; *State v. Reichenbach*, 153 Wn.2d 126, 131, 101 P.3d 80 (2004).

A search warrant may only issue upon a determination of probable cause. *Thein*, 138 Wn.2d at 140; *State v. Cole*, 128 Wn.2d 262, 286, 906

P.2d 925 (1995). Probable cause exists if the affidavit in support of the warrant sets forth facts and circumstances sufficient to establish a reasonable inference that the defendant is probably involved in criminal activity, and evidence of the crime can be found at the place to be searched. *Thein*, 138 Wn.2d at 140. Accordingly, the probable cause determination requires (1) a nexus between criminal activity and the item to be seized, and (2) a nexus between the item to be seized and the place to be searched. *Id.* General exploratory searches are forbidden. *State v. Helmka*, 86 Wn.2d 91, 93, 542 P.2d 115 (1975).

The *Thein* rule requires that a search warrant affidavit set forth specific facts from which the issuing magistrate can conclude that the alleged criminal activity is reasonably associated with the place to be searched. 138 Wn.2d at 147. The requirement for a specific factual basis serves two functions, both of which implicate constitutional protections. First, it ensures that the detached and independent function of the magistrate's evaluation is fulfilled. *Id.* Second, it prevents the right to privacy in one's home from being subverted by a presumption that involvement in criminal activity implicates the home, simply because the criminal lives there. *Id.* at 147-48. The *Thein* rule thereby circumscribes the probable cause requirement by establishing the type and quantum of evidence needed to associate criminal activity with a home. Because it

serves to delineate the probable cause required to constitutionally sanction an entry into a person's home, the scope and continuing validity of the *Thein* rule is a matter of considerable constitutional significance.

Because the Court of Appeals' published opinion sharply limits the applicability of this rule, and thereby the constitutional protection it affords, review should be granted. Furthermore, because the Court of Appeals' opinion is published and will have precedential value under RCW 2.06.040, its rejection of *Thein's* rule in non-drug cases will be of considerable public interest as it implicates the constitutional rights of all individuals whose property may become the subject of search warrants under its standard.

## VI. CONCLUSION

For the foregoing reasons, the petition for review should be granted under RAP 13.4(b)(1), (3) and (4) and this Court should enter a ruling that insufficient facts establish a nexus between Long's suspected criminal behavior and the residence to support the search warrant.

RESPECTFULLY SUBMITTED this 8<sup>th</sup> day of May, 2015.

  
ANDREA BURKHART, WSBA #38519  
Attorney for Petitioner

**DECLARATION OF SERVICE**

I, the Undersigned, hereby declare that on this date, I caused to be served a true and correct copy of the foregoing Petition for Review upon the following parties in interest by depositing them in the U.S. Mail, first-class, postage pre-paid, addressed as follows:

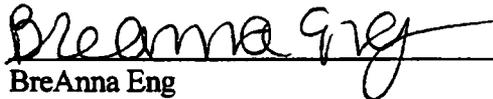
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I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Signed this 8th day of May, 2015 in Walla Walla, Washington.

  
BreAnna Eng

# APPENDIX

**FILED**  
**APRIL 9, 2015**  
In the Office of the Clerk of Court  
WA State Court of Appeals, Division III

**IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON**  
**DIVISION THREE**

STATE OF WASHINGTON,	)	No. 32029-4-III
	)	(consolidated with
Appellant,	)	No. 32030-8-III)
	)	
v.	)	
	)	
CASEY J. LYNN DUNN,	)	
	)	
Respondent.	)	<b>PUBLISHED OPINION</b>
<hr/>	)	
STATE OF WASHINGTON,	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
STEVEN RAY LONG,	)	
	)	
Respondent.	)	

LAWRENCE-BERREY, J. — Witnesses saw Steven Long driving a pickup truck on Hogeys Hollow Road in Columbia County. In the bed of the truck was an ATV<sup>1</sup> with camouflage packs. The next day, after the same truck was found abandoned, a property owner reported that truck, an ATV with camouflage packs, and several other large items of personal property missing. Based on these facts, a judge issued a warrant to search for

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<sup>1</sup> An ATV is a commonly used acronym for all terrain vehicle.

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the missing items at Mr. Long's home and adjacent buildings located on Hogeys Hollow Road. The search uncovered stolen property and controlled substances. Mr. Long and his roommate Casey Dunn were charged with various offenses. Both defendants moved to suppress the evidence gathered in the search. The trial court granted the motions, concluding that the affidavit in support of the warrant failed to establish a reasonable nexus between the missing items and Mr. Long's residence. The State moved for findings that the cases could not proceed based upon the suppression orders, and the court entered such findings. The State appealed, and we consolidated both cases. We conclude that there was a reasonable nexus between the missing items and Mr. Long's residence to support the warrant. We therefore vacate the suppression orders and the orders of dismissal.

#### FACTS

Undersheriff Lee Brown investigated the circumstances surrounding an abandoned vehicle found on Ring Canyon Road in Columbia County. After his investigation, he set forth the following facts in his application for a search warrant.

On May 3, 2013, Undersheriff Brown was dispatched to investigate an abandoned vehicle in a ditch on Steve Shoun's property on Ring Canyon Road. While en route to the field, he called Mr. Shoun. Mr. Shoun said that he observed the same pickup truck on

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Hogeye Hollow Road the day prior when it almost ran his hired hand off the road. Mr. Shoun said that he saw Steven Long driving the pickup truck and that Mr. Long waved to him. Mr. Shoun also said that there was an ATV with camouflage packs in the bed of the pickup truck.

When Undersheriff Brown arrived at the scene, he observed a Dodge Ram pickup truck with a gray bed and a brown cab. The pickup truck was in the ditch with the rear of the truck sticking out. The ATV seen the previous day was no longer in the truck. Undersheriff Brown then called Mr. Shoun and asked him to come and verify that the pickup truck was the same one that he observed Mr. Long driving the previous day. Mr. Shoun and his hired hand arrived at the scene and verified that they both observed Mr. Long driving the same pickup truck. Mr. Long was employed by Mr. Shoun in 2010, and the hired hand had known Mr. Long for six or seven years. The truck was registered to Zackary Zink of Dayton. The vehicle was towed and placed in a storage yard.

At around 1:00 p.m., Undersheriff Brown met and spoke with Mr. Zink in the foyer of the sheriff's office. Mr. Zink said that the Dodge pickup truck in the storage yard belonged to him and had been at his property located at 628 Robinette Mountain Road. According to Mr. Zink, he last saw the pickup truck on Tuesday, April 30, 2013.

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Mr. Zink told Undersheriff Brown that he was going to his property to see if his cabin had been entered.

Around 3:30 p.m., Undersheriff Brown responded to a burglary at Mr. Zink's cabin on Robinette Mountain Road. When Undersheriff Brown arrived, Mr. Zink said that the back door was kicked in and the outbuildings had been entered. Mr. Zink also reported a shoe print on the door. Undersheriff Brown observed that the door was kicked in. He also dusted for latent prints, but found none.

Mr. Zink reported that property was missing from the cabin, including both his ATVs, his generators, and a rifle. Undersheriff Brown was advised that one of the ATVs had tannish colored camouflage packs on the back of it, which matched the description of the ATV seen by Mr. Shoun in the back of the pickup truck. Mr. Zink provided a list of missing property with serial numbers or other identifying characteristics.

In the affidavit, Undersheriff Brown listed the missing property reported by Mr. Zink. The property list included two ATVs, three generators, one rifle, two chainsaws, one box of movies, three pairs of binoculars, a tree planter, an alcoholic drink dispenser, and an air compressor.

Also in the affidavit, Undersheriff Brown listed the premises to be searched as a single family manufactured home, garage, and wooden barn at 447 Hogeye Hollow Road

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in Columbia County. He described the buildings as approximately .1 mile from the intersection of Lower Hogeye Road and Hogeye Hollow Road. He described the premises as the residence of Steven Long.

Based on the above facts, a judge granted the search warrant. During a search of Mr. Long's home, officers found several items that Mr. Zink reported missing. Officers also found methamphetamine. Mr. Long was charged with second degree burglary, two counts of second degree theft, two counts of third degree malicious mischief, one count of residential burglary, three counts of second degree possession of a stolen vehicle, three counts of possession of a stolen vehicle, two counts of possession of stolen property, theft of a firearm, possession of methamphetamine, and manufacture of marijuana. Ms. Dunn, who lived at the home with Mr. Long, was charged with possession of methamphetamine, manufacture of marijuana, and second degree possession of stolen property.

Both Mr. Long and Ms. Dunn moved to suppress the evidence found in the search. The defendants argued that the warrant was not supported by probable cause because the affidavit failed to establish a reasonable nexus between the criminal activity and the place to be searched.

The trial court granted the defendants' motions. The court concluded that the search warrant did not set forth sufficient facts to support a reasonable nexus between Mr.

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Long's residence and the items sought in the search warrant; and, without a reasonable nexus, probable cause did not exist. The court therefore concluded that the warrant was not valid and suppressed all evidence gathered as a result of the warrant. The court entered findings, at the State's request, that the cases could not proceed without the evidence, and dismissed the cases without prejudice. The State appeals, contending that the trial court erred in suppressing the evidence, and requests vacation of the orders of dismissal.

#### ANALYSIS

The sole issue presented is whether there was a reasonable nexus between Mr. Long's home, garage, and barn and the items sought to be located so to support the search warrant.

A search warrant may only be issued upon a determination of probable cause. *State v. Cole*, 128 Wn.2d 262, 286, 906 P.2d 925 (1995). Probable cause exists as a matter of law if the affidavit supporting the search warrant contains sufficient facts and circumstances to establish a reasonable inference that the defendant participated in criminal activity and that evidence of the crime is at a certain location. *State v. Thein*, 138 Wn.2d 133, 140, 977 P.2d 582 (1999).

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“‘[P]robable cause requires a nexus between criminal activity and the item to be seized, and also a nexus between the item to be seized and the place to be searched.’” *Id.* (quoting *State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997)). A nexus must be established by specific facts. *Thein*, 138 Wn.2d at 145. “Absent a sufficient basis in fact from which to conclude evidence of illegal activity will likely be found at the place to be searched, a reasonable nexus is not established as a matter of law.” *Id.* at 147.

Generally, we review the validity of a search warrant for an abuse of discretion, giving great deference to the issuing judge. *State v. Neth*, 165 Wn.2d 177, 182, 196 P.3d 658 (2008). However, when a trial court assesses a search warrant affidavit for probable cause at a suppression hearing, we review the trial court’s conclusion on suppression de novo. *Id.*

Using de novo review, we determine whether the qualifying information as a whole amounts to probable cause. *State v. Emery*, 161 Wn. App. 172, 202, 253 P.3d 413 (2011) (quoting *In re Det. of Petersen*, 145 Wn.2d 789, 800, 42 P.3d 952 (2002)), *aff’d*, 174 Wn.2d 741, 278 P.3d 653 (2012). We consider only the information that was available to the issuing judge. *State v. Olson*, 73 Wn. App. 348, 354, 869 P.2d 110 (1994). “‘It is only the probability of criminal activity, not a prima facie showing of it, that governs probable cause. The [issuing judge] is entitled to make reasonable

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inferences from the facts and circumstances set out in the affidavit.’” *Emery*, 161 Wn. App. at 202 (alteration in original) (quoting *State v. Maddox*, 152 Wn.2d 499, 505, 98 P.3d 1199 (2004)).

The existence of probable cause is to be evaluated on a case-by-case basis. *Thein*, 138 Wn.2d at 149. Facts that would not support probable cause when standing alone can support probable cause when viewed together with other facts. *State v. Garcia*, 63 Wn. App. 868, 875, 824 P.2d 1220 (1992). The application for a search warrant must be judged in the light of common sense, resolving all doubts in favor of the warrant. *State v. Partin*, 88 Wn.2d 899, 904, 567 P.2d 1136 (1977).

Despite the deference given to the issuing judge, our precedent requires that probable cause be based on more than conclusory predictions. *Thein*, 138 Wn.2d at 147. Blanket inferences and generalities cannot be a substitute for the required showing of “reasonably specific ‘underlying circumstances’ that establish evidence of illegal activity will likely be found in the place to be searched in any particular case.” *Thein*, 138 Wn.2d at 147-48. Probable cause to believe a person has committed a crime does not necessarily give rise to probable cause to search that person’s home. *Id.* at 148 (quoting *State v. Dalton*, 73 Wn. App. 132, 140, 868 P.2d 873 (1994)).

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Nonetheless, it may be proper to infer that stolen property is at a perpetrator's residence, especially if the property is bulky, and if the perpetrator had an opportunity to return home before his apprehension by police. WAYNE R. LAFAYE, SEARCH AND SEIZURE § 3.7(d), at 381-84 (3d ed. 1996) (cited in *State v. McReynolds*, 104 Wn. App. 560, 570, 17 P.3d 608 (2000)). "Judges looking for probable cause in an affidavit may draw reasonable inferences about where evidence is likely to be kept, including nearby land and buildings under the defendant's control." *State v. Gebaroff*, 87 Wn. App. 11, 16, 939 P.2d 706 (1997).

In *Thein*, police officers obtained a search warrant for the defendant's residence based on their generalized conclusion that drug dealers commonly keep evidence of their illegal drug dealings in their homes. *Thein*, 138 Wn.2d at 138-40. The Supreme Court held that generalized statements in affidavits supporting a search warrant are insufficient, standing alone, to establish the probable cause needed to search a suspected drug dealer's residence. *Id.* at 148. "Although common sense and experience inform the inferences reasonably to be drawn from the facts, broad generalizations do not alone establish probable cause." *Id.* at 148-49.

In *McReynolds*, our court addressed the boundaries of *Thein*. We recognized that inferences considered improper for drug crimes may be appropriate for crimes of theft,

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burglary, or robbery based on the nature of these offenses. *McReynolds*, 104 Wn. App. at 569-70. In support, we quoted LeFave's *Search and Seizure* treatise, also cited in *Thein*, stating,

Perhaps because stolen property is not inherently incriminating in the same way as narcotics and because it is usually not as readily concealable in other possible hiding places as a small stash of drugs, courts have been more willing to assume that such property will be found at the residence of the thief, burglar, or robber. It is commonly said that in such circumstances account may be taken of the 'type of crime, the nature of the missing items, the extent of the suspect's opportunity for concealment, and normal inferences as to where a criminal would be likely to hide stolen property.' It is most relevant, therefore, that the objects are 'the sort of materials that one would expect to be hidden at [the offender's] place of residence, both because of their value and bulk,' and also that the offender 'had ample opportunity to make a trip home to hide' the stolen property before his apprehension.

*McReynolds*, 104 Wn. App. at 569-70 (alteration in original) (quoting LEFAVE, *supra*).

Thus, instead of expanding the *Thein* ruling to limit inferences made in nondrug offenses, the *McReynolds* court suggested a more limited reading of *Thein*. *McReynolds*, 104 Wn. App. at 570. We construed *Thein* to require a careful examination of the officer's affidavit, and the specific facts and circumstances therein, to determine whether it establishes a reasonable inference that evidence of criminal activity could be found at the place to be searched. *Id.*

No. 32029-4-III; No. 32030-8-III  
*State v. Dunn; State v. Long*

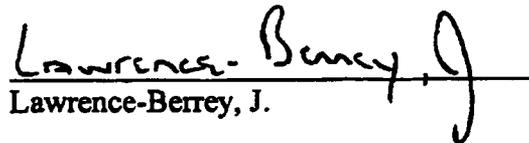
Here, the defendants argue that the facts in the affidavit do not establish a reasonable nexus between the items sought and Mr. Long's residence. We disagree. After reviewing the affidavit in its entirety, including Undersheriff Brown's account of the circumstances, the description of the premises to be searched, and the list of items to be seized, we conclude that the affidavit contains specific facts to establish a reasonable nexus between the items to be seized and the place to be searched.

Based on the facts and circumstances presented in the affidavit, it was reasonable to conclude that the missing items would likely be found at Mr. Long's residence on Hogeye Hollow Road. According to the affidavit, Mr. Long was seen in possession of a truck carrying an ATV. The truck belonged to Mr. Zink, and the ATV with camouflage packs matched Mr. Zink's description of one of his two missing ATVs. When witnesses observed Mr. Long with the truck and missing ATV, he was driving on Hogeye Hollow Road. According to the description of the premises to be searched, Hogeye Hollow Road is where Mr. Long's residence is located. Moreover, the items stolen were not inherently incriminating in the same way as narcotics, and many of the items were bulky and, therefore, likely to be hidden inside a building. The judge issuing the warrant was entitled to draw the reasonable inference that Mr. Long was driving to his residence with the missing property, and that the property would likely be found there.

No. 32029-4-III; No. 32030-8-III  
*State v. Dunn; State v. Long*

We conclude that the trial court erred in suppressing the evidence found in the search of Mr. Long's home, garage, and barn. Specific facts support both that Mr. Long participated in the burglary and that the missing items would likely be found at Mr. Long's home, garage, or barn. The search warrant therefore was supported by probable cause.

We vacate the suppression orders. Additionally, we vacate the orders of dismissal and remand for further proceedings.

  
Lawrence-Berrey, J.

WE CONCUR:

  
Siddoway, C.J.

  
Korsmo, J.

**BURKHART & BURKHART, PLLC**

**May 08, 2015 - 4:22 PM**

**Transmittal Letter**

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May 8, 2015  
Court of Appeals  
Division III  
State of Washington

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Case Name: State of Washington v. Casey J. Lynn Dunn

Court of Appeals Case Number: 32029-4

Party Represented: Casey J. Lynn, Petitioner

Is This a Personal Restraint Petition?  Yes  No

Trial Court County: \_\_\_\_ - Superior Court # \_\_\_\_

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Petition for Review

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