

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

**DIVISION II**

STATE OF WASHINGTON,

Respondent,

v.

David C. Dickjose,

Appellant.

No. 39160-1- II

UNPUBLISHED OPINION

Hunt, J. — We granted interlocutory discretionary review of the trial court’s denial of David C. Dickjose’s pretrial motion to suppress narcotics evidence seized during execution of a search warrant at his residence. Dickjose argues that the trial court erred in denying his motion to suppress because the supporting affidavit does not contain facts sufficient to establish a “nexus” between the place to be searched, his residence, and evidence of the suspected crimes of which he was charged (narcotics possession and delivery). Agreeing with Dickjose, we reverse the trial court’s denial of his motion to suppress the evidence seized from his residence<sup>1</sup> and remand for

---

<sup>1</sup> Dickjose did not seek interlocutory review of the trial court’s denial of his motion to suppress evidence seized from his vehicles while executing the search warrant. Nor do we address the legality of the evidence seized from the vehicles and his person, also named in the search warrant under which the officers searched his residence. *See* Br. of Appellant at 17 (“[T]he trial court’s findings of fact do not support the court’s conclusion of law that the complaint for search warrant established a sufficient nexus between Dickjose residence and outbuildings on his property and the controlled buys sufficient for a search warrant to issue.”)

No. 39160-1-II

further proceedings.

## FACTS

### I. Background “Facts”

On December 7, 2007, Officer Sean Conlon of the Lakewood Police Department obtained a warrant to search the residence and garages at “18111 41<sup>st</sup> AV E, Tacoma WA 98446” and “all out buildings, trailers and vehicles on the property” for evidence of possession and delivery of a controlled substance, unlawful under RCW 69.50.401. Clerk’s Papers (CP) at 19. The warrant also listed David C. Dickjose as a person to be searched.

#### A. Controlled Buys

Officer Conlon’s affidavit in support of the search warrant describes three “controlled buy[s]” that he conducted in late 2007 with the assistance of a confidential informant, he calls “Reliable CI 07026.” CP at 22. Reliable CI 07026 “ha[d] known [Dickjose] for several years and kn[ew] [Dickjose] deal[t] [m]ethamphetamine” and “ha[d] first[-]hand knowledge that Dickjose ha[d] been a [m]eth cook in the past.” CP at 22. On August 24, 2007, Reliable CI 07026 told Conlon where Dickjose lived and that Dickjose recently purchased “a silver Dodge [p]ickup, lifted with rims.” CP at 22. Earlier that day, Conlon “drove to Dickjose’s house and saw the pickup parked in the rear of the residence.” CP at 22.

1. First buy

The first controlled buy occurred on August 24. Conlon searched Reliable CI 07026 and his car and issued pre-recorded “buy” funds. CP at 22. Reliable CI 07026 met<sup>2</sup> a middleman, Kenneth Gross, at the 5400 block of South Warner Street. Gross called Dickjose and informed Dickjose that he (Gross) wanted a half ounce of methamphetamine. “Dickjose agreed [to meet him] and said he was in the area.” CP at 22. Reliable CI 07026 drove away from the 5400 block of South Warner Street and informed Conlon that Dickjose was on his way.

Other officers observed a “Silver Dodge [p]ickup, WA #B84621C,” arrive at the front of Gross’s residence. CP at 22. Gross entered the passenger side of the pickup truck. At some point, the driver exited the truck, went to the back door of the truck, and reentered the truck. The search warrant affidavit next states, “A short time later [Dickjose] drove off,” implying that Dickjose was the driver of this silver Dodge pickup truck. CP at 22. Officers followed Dickjose’s truck for a few hours, “during which time [Dickjose] made several short stops contacting different individuals consistent with narcotics trafficking. [The officers] continued keeping him under constant surveillance and followed Dickjose until he returned to his residence.” CP at 23.

Conlon followed Reliable CI 07026 back to the 5400 block of South Warner Street. As Reliable CI 07026 exited his vehicle, Gross approached him. Gross handed Reliable CI 07026 a brown paper bag and then walked off. Reliable CI 07026 then met with Conlon a short distance

---

<sup>2</sup> The search warrant affidavit actually states, “We went . . . to meet with another person, [middleman] Kenny Gross,” but the affidavit does not suggest that Conlon personally met Gross. CP at 22.

away and handed over a paper bag containing 14.1 grams of methamphetamine. Conlon again searched Reliable CI 07026 and his car and did not find narcotics or other contraband.

## 2. Second buy

The second controlled buy occurred on October 25. Conlon again met with Reliable CI 07026, searched him and issued pre-recorded “buy” funds. CP at 23. Reliable CI 07026 met<sup>3</sup> Gross at “72<sup>nd</sup> and Pacific AV,” gave him the funds, and parted ways. CP at 23. Other officers followed Gross and temporarily lost sight of him.

Reliable CI 07026 met Conlon and informed him that “Gross told [Reliable CI 07026] [that] [Gross] was going to meet with Dickjose and [Gross] would meet [Reliable CI 07026] back at [Gross’s] residence” on South Warner Street. CP at 23. With Conlon following, Reliable CI 07026 arrived at Gross’s residence and went inside. Approximately 30 minutes later, Gross arrived at his residence and also went inside.

Meanwhile, another officer was surveilling Dickjose’s residence. “Dickjose returned to his residence in a time consistent with meeting up with Gross.” CP at 23. “A few minutes later,” Reliable CI 07026 met Conlon and handed over 12 grams of methamphetamine. CP at 23. Conlon then searched Reliable CI 07026 and his car and did not find narcotics or other contraband.

## 3. Third buy

The third controlled buy occurred on December 5. Conlon engaged the same informant.

---

<sup>3</sup> The affidavit states, “We met up with Kenneth Gross.” CP at 23. But, again, there is no indication that Officer Conlon interacted with Gross.

No. 39160-1-II

As before, Conlon searched Reliable CI 07026 and his car and provided him with pre-recorded “buy” funds. CP at 23. On the way to Gross’s residence on South Warner Street, Reliable CI 07026 called Gross, who stated that he had called Dickjose and asked for a half ounce of methamphetamine. “Dickjose agreed [to meet] and said he was in the area.” CP at 23.

Other officers observed Gross leave his residence and followed him to a location where he met with the driver of “a white Mercedes WA plate, URDARTZ.” CP at 23. An officer described the driver of the Mercedes vehicle as Dickjose. Gross left the encounter and returned to his residence.

At this point, the facts the search warrant affidavit recites are not so clear. Apparently, before Gross left to meet Dickjose, Reliable CI 07026 met Gross and gave him the “buy” funds inside Gross’s residence. CP at 23. Reliable CI 07026 then returned to his car, drove away to meet Conlon, and told Conlon that “Gross called Dickjose and [Dickjose] was on his way.” CP at 24. Some minutes later, officers observed a white Mercedes pull up in front of Gross’s residence; Gross entered the passenger side of the Mercedes, then exited the Mercedes and returned inside his residence. The Mercedes drove away and other officers followed. One of the officers recognized the Mercedes’ driver as Dickjose.

Reliable CI 07026 returned to Gross’s residence. As Reliable CI 07026 exited his car, Gross approached and engaged in a “brief hand to hand transaction” with Reliable CI 07026. CP at 24. Reliable CI 07026 returned to his car, drove off, later met with Conlon a short distance away, and handed Conlon 13.2 grams of methamphetamine. Conlon then searched Reliable CI 07026 and his car and did not find narcotics or other contraband.

The officers following the white Mercedes temporarily lost sight of it. After regaining sight of the Mercedes, the officers observed it pull into the driveway of “313 S 67<sup>th</sup> ST.” CP at 24. “Dickjose went inside for a few minutes then exited and left.” CP at 24. Conlon pulled up next to the Mercedes and observed that Dickjose was driving. The officers followed Dickjose “directly to his residence . . . where he parked and went inside.” CP at 24.

After describing the three controlled buys, the affidavit recounts Conlon’s extensive training and experience with narcotics investigations and his generalized beliefs about the habits of drug dealers, including: “I know that evidence/records of illegal [n]arcotic sales are frequently kept in the residence and vehicles that the [n]arcotics dealers are using” and “I know that [n]arcotic dealers frequently keep firearms in th[eir] residences and or vehicles to avoid detection from law enforcement.” CP at 25.

#### B. Search Warrant Execution

On December 13, the Lakewood Police Department executed the search warrant. According to the Lakewood Police Department’s “Property Report,” officers searched a “grey Dodge truck” and seized, among other things, a black bag containing approximately 237 grams of methamphetamine. CP at 27. Officers opened the door to this truck with keys that the officers found in Dickjose’s pocket. Officers also searched a vehicle described as “Urdar-z-Merc.,” apparently the white Mercedes with the URDARTZ license plate the officers had previously observed during the controlled buys; they found no narcotics in the Mercedes, but they did seize documents and a laptop. *See* CP at 27-28.

While searching Dickjose’s residence and outbuildings, the officer also seized, among

other things, marijuana, methamphetamine,<sup>4</sup> cash, a bulletproof vest, and packaging material. Dickjose admitted that he had been selling methamphetamine and that he buys about a half pound of it at a time.<sup>5</sup>

## II. Procedure

On December 14, 2007, the State charged Dickjose with three counts of unlawful delivery of a controlled substance and one count of unlawful possession of a controlled substance with intent to deliver under RCW 69.50.401. The State named Gross and Wright as codefendants.

On April 7, 2009, Dickjose filed a CrR 3.6 motion to suppress the evidence, arguing that the search warrant affidavit “failed to establish an adequate nexus between the alleged criminal activity and the Dickjose residence for the purpose of issuing a search warrant for the Dickjose residence.”<sup>6</sup> CP at 10. The next day, the trial court held a CrR 3.6 hearing and denied Dickjose’s motion to suppress, stating:

I think under these circumstances and affording the deference to the judge that reviews the facts with the presenting officer and the four corners of these declarations . . . I have to find that, in fact, [there is] a sufficient link between the criminal activity and the place to be searched, such that they do not violate our current state of the law here in the State of Washington as set forth in *State v. Thein*.<sup>7</sup>

---

<sup>4</sup> Officers seized 10.8 grams of methamphetamine from a jacket owned by Tammie Wright, who was inside Dickjose’s residence at the time of the search, claimed that the methamphetamine was hers, and admitted to dealing methamphetamine.

<sup>5</sup> In this interlocutory appeal, Dickjose does not challenge the admissibility of his statement.

<sup>6</sup> In this interlocutory appeal, Dickjose does not challenge the nexus between the alleged criminal activity and his vehicles.

<sup>7</sup> *State v. Thein*, 138 Wn.2d 133, 977 P.2d 582 (1999).



Partial Verbatim Report of Proceedings (VRP) at 41.<sup>8</sup>

That next day, April 9, Dickjose filed a “notice of appeal for interlocutory discretionary review” under RAP 2.3, seeking review “of the trial court’s denial of Defendant’s motion to suppress the search of his residence in violation of *State v. Thein*.” CP at 30. On August 18, our commissioner granted discretionary review under RAP 2.3(b)(2),<sup>9</sup> noting that the trial court’s ruling probably contradicted *Thein* and other similar cases.<sup>10</sup> See *Spindle* (Ruling Granting Discretionary Review at 1-3).

## ANALYSIS

### I. Standard of Review

As our Supreme Court has explained, two different standards of review apply to our review of a probable cause determination. The first standard applies to “‘historical facts’ in the case, i.e., the events ‘leading up to the stop or search.’” *In re Det. of Petersen*, 145 Wn.2d 789, 799-800, 42 P.3d 952 (2002) (quoting *Ornelas v. U.S.*, 517 U.S. 690, 696, 116 S. Ct. 1657, 134 L. Ed. 2d. 911 (1996)). The trial court or magistrate necessarily must first find whether

---

<sup>8</sup> On May 29, 2009, the trial court issued a written ruling stating, “There is a sufficient nexus between the items to be seized and the place to be searched.” CP at 36.

<sup>9</sup> RAP 2.3(b)(2) permits discretionary review when “[t]he superior court has committed probable error and the decision of the superior court substantially alters the status quo or substantially limits the freedom of a party to act.”

<sup>10</sup> The State contends that Dickjose’s motion for discretionary review was “improvidently” granted because “[p]resumably most, if not all, of the evidence in [the charges of unlawful delivery of a controlled substance] was not obtained as a result of the warrant.” Br. of Resp’t at 26. We do not address this contention because the propriety of our grant of discretionary review is not before us. Moreover, Dickjose sought and we granted discretionary review of the trial court’s denial of his motion to suppress evidence seized from his residence only.

No. 39160-1-II

information from confidential informants or anonymous tips has enough reliability and credibility to qualify as historical fact. *Petersen*, 145 Wn.2d at 799-800 (citing *Ornelas*, 517 U.S. at 696). We review these findings for abuse of discretion, giving appropriate deference to the trial court. *Petersen*, 145 Wn.2d at 800 (citing *Ornelas*, 517 U.S. at 699).

Under the second standard, the trial court or magistrate must also “decide the legal issue whether the qualifying information as a whole amounts to probable cause.”<sup>11</sup> *Petersen*, 145 Wn.2d at 800. This determination is a legal conclusion, which we review *de novo*. *Petersen*, 145 Wn.2d at 800; *State v. Chamberlin*, 161 Wn.2d 30, 40-41, 162 P.3d 389 (2007) (“Appellate courts review *de novo* the legal conclusion of law whether probable cause is established.”) (citing *Petersen*, 145 Wn.2d at 799).

It is well-established that the warrant clauses of the Fourth Amendment to the United States Constitution and article I, section 7 of our state constitution require that a search warrant issue only on a determination of probable cause. *State v. Fry*, 168 Wn.2d 1, 5-6, 228 P.3d 1 (2010) (citing *State v. Vickers*, 148 Wn.2d 91, 108, 59 P.3d 58 (2002)). Probable cause is established if the affidavit sets forth sufficient facts to lead a reasonable person to conclude there is a probability that the defendant is involved in criminal activity and that evidence of the criminal activity can be found at the place to be searched. *State v. Maddox*, 152 Wn.2d 499, 509, 98 P.3d 1199 (2004) (citing *Thein*, 138 Wn.2d at 140). Thus, “probable cause requires a nexus between [1] criminal activity and the item to be seized, and also [2] *a nexus between the item to be seized*

---

<sup>11</sup> “In determining probable cause, the magistrate makes a practical, commonsense decision, taking into account all the circumstances set forth in the affidavit and drawing commonsense inferences.” *Maddox*, 152 Wn.2d at 509-10 (citing *Illinois v. Gates*, 462 U.S. 213, 238 (1983)).

*and the place to be searched.” State v. Goble*, 88 Wn. App. 503, 509, 945 P.2d 263 (1997) (citing Wayne R. LaFave, *Search and Seizure* § 3.7(d), at 372 (3d ed. 1996) (emphasis added)). It is this second nexus, between the item and the place, which is at issue here.

## II. Lack of the Requisite “Nexus”

Dickjose argues<sup>12</sup> that the facts in the search warrant affidavit fail to establish a “nexus” between his residence and evidence related to unlawful possession and delivery of a controlled substance. The State counters that the affidavit contains facts sufficient to establish the requisite nexus. We agree with Dickjose and disagree with the State.

### A. *Thein*

*Thein* is the seminal Washington Supreme Court case on which Dickjose relies. *Thein* resolved a Court of Appeals’ split about whether “if a magistrate determines a person is probably a drug dealer, then a finding of probable cause to search that person’s residence automatically follows,” *Thein*, 138 Wn.2d at 141, by answering in the negative. *Thein*, 138 Wn.2d at 148-49.

In *Thein*, the police executed a valid search warrant on a house containing a marijuana grow operation. *Thein*, 138 Wn.2d at 136. The valid search warrant was supported by affidavits containing facts about two controlled marijuana buys performed by an informant that had taken place at the grow operation house. *Thein*, 138 Wn.2d at 136. The informant had also advised police that Laurence McKone, the suspect living at the house, had fallen behind on rent payments and that another person had purchased the house, thereby becoming McKone’s landlord. *Thein*,

---

<sup>12</sup> Dickjose raises other issues in his Brief of Appellant that he did not raise in the trial court. We do not address these issues because we reverse based on the search warrant affidavit’s lack of the requisite “nexus” between Dickjose’s residence and the evidence to be seized from his residence.

No. 39160-1-II

138 Wn.2d at 138. The informant stated that this landlord supplied McKone with marijuana. *Thein*, 138 Wn.2d at 138.

During the search, the police uncovered several copies of money orders from McKone made out to Stephen Thein bearing the notation “rent.” *Thein*, 138 Wn.2d at 136. Various persons came to the grow operation house and told the police that a man named “Steve” was the landlord and one of the people who supplied McKone with marijuana. *Thein*, 138 Wn.2d at 137-38. Thein did not reside at the grow operation house. *Thein*, 138 Wn.2d at 136. The police also found a box of nails addressed to Thein at his residential address and uncovered boxes of oil filters, one of which was marked “Toyota.” *Thein*, 138 Wn.2d at 137.

On further investigation, the police learned that the oil filters fit 1994 Toyota pickup trucks. *Thein*, 138 Wn.2d at 137. The Washington State Department of Licensing listed Thein as the registered owner of a 1994 Toyota pickup truck. *Thein*, 138 Wn.2d at 138. The police then applied for a warrant to search Thein’s residential address. *Thein*, 138 Wn.2d at 139-40. In the supporting affidavits, the nexus between the suspected criminal activity (the manufacture and distribution of marijuana) and Thein’s residential address was based on two types of information: (1) particular facts; and (2) stereotypes about the practices of drug dealers. *See Thein*, 138 Wn.2d at 150. The particular facts included: (1) the box of nails found at the grow operation house that was addressed to Thein’s residential address; and (2) oil filters that matched the make and model of Thein’s vehicle. *See Thein*, 138 Wn.2d at 150.

The affidavits recited the following stereotypes about the practices of drug dealers:

Based on my experience and training, as well as the corporate knowledge and experience of other fellow law enforcement officers, I am aware that it is

generally a common practice for drug traffickers to store at least a portion of their drug inventory and drug related paraphernalia in their common residences. It is generally a common practice for drug traffickers to maintain in their residences records relating to drug trafficking activities, including records maintained on personal computers. . . . Moreover, it is generally a common practice for traffickers to conceal at their residences large sums of money . . . .

I know from previous training and experiences that it is common practice for drug traffickers to maintain firearms, other weapons and ammunition in their residences for the purpose of protecting their drug inventory and drug proceeds. . . . Firearms and ammunition have been recovered in the majority of residence searches in the drug investigations in which I have been involved.

*Thein*, 138 Wn.2d at 138-39 (quoting Clerks' Papers at 68).

Thein moved to suppress the evidence found during the search of his residence. *Thein*, 138 Wn.2d at 140. He argued that (1) the affidavits did not establish a sufficient nexus between his residence and the manufacture and distribution of marijuana; and (2) even if the police had probable cause to believe he was involved in a grow operation, "there was no evidence connecting any illegal activity to his . . . residence." *Thein*, 138 Wn.2d at 140. The trial court denied Thein's motion to suppress, and Division One of our court affirmed. *Thein*, 138 Wn.2d at 140.

Our Supreme Court reversed, agreeing with Thein that the affidavits failed to establish the requisite nexus. *Thein*, 138 Wn.2d at 150. Characterizing the affidavit's recitation of the box of nails and the oil filter as "innocuous," our Supreme Court ruled these items incapable of establishing a nexus between the residence and evidence of suspected criminal activity. *Thein*, 138 Wn.2d at 150. The court further ruled that stereotypes about narcotic traffickers, standing alone, were insufficient to establish the requisite nexus, no matter how consistent the stereotypes were with commonsense and experience. *Thein*, 138 Wn.2d at 148-49. The court held that the

necessary connection between Their's residential address and evidence of drug-related crimes was not established as a matter of law because neither the particular facts nor the stereotypes about drug dealers could serve as a basis for probable cause. *Thein*, 138 Wn.2d at 147 (internal citations omitted).

#### B. Particular Facts Inadequate To Establish Nexus

Turning to Dickjose's motion to suppress, the search warrant affidavit contains three facts that could support a nexus between Dickjose's residence and evidence of the suspected crimes: (1) Dickjose returned to his residence at some point after each of the three controlled buys; (2) after the first and third controlled buys, Dickjose contacted several other individuals at other locations before returning to his residence, which additional contacts Conlon believed were "consistent with narcotics trafficking," CP at 23; and (3) after the second controlled buy, "Dickjose returned to his residence in a time consistent with meeting up with Gross." CP at 23. The affidavit also contains generalizations about the habits of narcotic traffickers: (1) Conlon "know[s] that evidence/records of illegal [n]arcotic sales are frequently kept in the residence and vehicles that the [n]arcotics dealers are using," CP at 25; and (2) Conlon "know[s] that [n]arcotic dealers frequently keep firearms in th[eir] residences and or vehicles to avoid detection from law enforcement." CP at 25.

The facts recited in the affidavit establish no nexus between Dickjose's residence and the suspected narcotics possession and delivery. First, law enforcement officers never observed Dickjose leaving his residence and then driving to any of the controlled buys. On the contrary, during the times they saw him driving the pickup truck and the Mercedes in connection with the

controlled buys, they observed only that he returned to his residence afterwards.

Second, the other facts the affidavit recites are “innocuous,” like the box of nails and the oil filters in *Thein*; they show merely the unremarkable tendency of Dickjose to return to his home at some point, although not directly, after suspicious activity that Conlon believed was consistent with drug dealing. A person’s return to home after purportedly engaging in illegal activity does not, by itself, mean that evidence of that illegal activity will be found in that person’s home. *See State v. Dalton*, 73 Wn. App. 132, 140, 868 P.2d 873 (1994) (“Probable cause to believe a man has committed a crime on the street does not necessarily give rise to the probable cause to search his home.”) (quoting *Commonwealth v. Kline*, 335 A.2d 361, 364 (Pa. 1975)). These facts do not establish that Dickjose “dealt drugs out of his house, rather than out of a different place (for example, a tavern, his car, or a public park).” *State v. Goble*, 88 Wn. App. at 512 (defendant’s picking up package containing narcotics at post office box did not support search warrant for his residence because there was no evidence that he would take the package back to his residence rather than to another location). Nor do these facts show that Dickjose “stored drugs at his house, rather than in some other place (for example, in his car, at his place of employment, at a friend’s house, or buried in the woods).” *Goble*, 88 Wn. App. at 512.

On the contrary, Dickjose could have stored narcotics in a location other than his residence, driven to that location to obtain the narcotics before the controlled buys, dealt narcotics out of his car or truck, deposited the proceeds of the controlled buys at that other location,<sup>13</sup> and then driven back to his residence with neither narcotics nor proceeds from illegal

---

<sup>13</sup> For example, law enforcement officers observed Dickjose enter residences other than his own after the first and third controlled buys. And the affidavit does not state that officers trailed

sales. Our Supreme Court in *Thein* was concerned with this very problem—law enforcement officers requesting a search warrant without gathering sufficient “independent evidence” linking the drug dealing to the residence for which they seek a warrant. *See Thein*, 138 Wn.2d at 150; *see also Goble*, 88 Wn. App. at 512 (search warrant of residence not supported simply because suspect *might* take package containing narcotics from post office back to residence).

The State’s reliance on *State v. G.M.V.*, 135 Wn. App. 366, 144 P.3d 358 (2006), *review denied* 160 Wn.2d 1024 (2007), does not diminish *Thein*’s application to the facts here. In *G.M.V.*, Division Three of our court upheld a residential search warrant supported by law enforcement officers’ observations of a suspect leaving a residence before *and* returning directly back to it after a single controlled buy.<sup>14</sup> *See G.M.V.*, 135 Wn. App. at 372. Law enforcement officials in *G.M.V.* could eliminate the possibility that the suspect stored drugs or dealt drugs from another location because the suspect took a direct route from the residence to the controlled buy and then back again to the same residence. *See G.M.V.*, 135 Wn. App. at 372.

In contrast, the affidavit here does not describe a comparable factual narrative. Law enforcement officers did not observe Dickjose leaving his residence and driving to any of the

---

Dickjose back to his residence after the second controlled buy. Thus, Dickjose could have stopped at locations other than his residence to deposit proceeds from the controlled buys.

<sup>14</sup> The State misreads *G.M.V.*’s holding as follows: “[I]t is sufficient if the warrant declaration contains information that the dealer left from *or* returned to a location before *or* after selling the drugs.” Br. of Resp’t at 14 (emphasis added) (citing *G.M.V.*, 135 Wn. App. at 372). The holding of *G.M.V.*, however, is in the conjunctive, not the disjunctive. The *G.M.V.* court did not hold that *either* leaving *or* returning to a residence directly before or after a controlled buy was sufficient to establish the required nexus. On the contrary, the *G.M.V.* court explained: “The warrant was to search the place [the suspect] left from *and* returned to before *and* after he sold drugs. This was a nexus that established probable cause that [the suspect] had drugs in the house.” *G.M.V.*, 135 Wn. App. at 372 (emphasis added).



controlled buys. As the State confirmed at the CrR 3.6 hearing, the search warrant affidavit contained no facts about Dickjose's location *before* the controlled buys. Therefore, we agree with Dickjose that *G.M.V.* does not apply.

We hold, therefore, as in *Thein*, the particular facts cited in the affidavit here are “innocuous” and that they do not establish a nexus between Dickjose's residence and evidence of the suspected criminal activity of drug dealing.

### C. Generalizations About Drug Dealers' Habits

Similarly, the affidavit's “generalized statements regarding the common habits of drug dealers<sup>[15]</sup>” fail to establish the requisite nexus. *Thein*, 138 Wn.2d at 149 (citing *State v. Thein*, 91 Wn. App. 476, 487, 957 P.2d 1261 (1998)). *Thein* and other cases held that such generalizations, standing alone, are insufficient to establish the requisite nexus. *See Thein*, 138 Wn.2d at 149; *see also State v. Nusbaum*, 126 Wn. App. 160, 168, 107 P.3d 768 (2005) (invalidating warrant because affidavit contained no particular facts to justify search of suspected drug dealer's residence, but instead relied exclusively on “the familiar ‘drug dealers’ habits” language) (quoting *Thein*, 138 Wn.2d at 148); *State v. Rangitsch*, 40 Wn. App. 771, 780, 700 P.2d 382 (1985) (invalidating search warrant because “officer's belief that habitual users of drugs keep drugs and paraphernalia in their home was mere speculation” and, standing alone, was insufficient to establish probable cause). Neither the particular facts about Dickjose's returning to his residence

---

<sup>15</sup> “I know that evidence/records of illegal [n]arcotic sales are frequently kept in the residence and vehicles that the [n]arcotics dealers are using.” CP at 25. “I know that [n]arcotics dealers frequently keep firearms in th[eir] residences and or vehicles to avoid detection from law enforcement.” CP at 25.

No. 39160-1-II

after engaging in suspicious activity nor the stereotypes about the general practices of narcotics traffickers are sufficient, either independently or jointly, to establish a nexus between Dickjose's residence and the suspected crimes of narcotics possession and delivery.

Accordingly, we hold that probable cause did not support the search warrant for Dickjose's residence and the trial court should have suppressed the evidence seized from the residence under this search warrant. We therefore reverse the trial court's denial of Dickjose's motion to suppress the evidence seized from Dickjose's residence and remand for further proceedings.

A majority of the panel having determined that this opinion will not be printed in the Washington Appellate Reports, but will be filed for public record pursuant to RCW 2.06.040, it is so ordered.

---

Hunt, J.

We concur:

---

Armstrong, P.J.

---

Van Deren, J.