

NO. 63356-2-I

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

STATE OF WASHINGTON,

Respondent,

v.

HUMBERTO VALASQUEZ-MEDINA,

Appellant.

ON APPEAL FROM THE SUPERIOR COURT OF THE
STATE OF WASHINGTON FOR SKAGIT COUNTY

The Honorable Michael E. Rickert, Judge

2010 MAR 10 PM 3:45
FILED
COURT OF APPEALS
STATE OF WASHINGTON

REPLY BRIEF OF APPELLANT

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A. ARGUMENT IN REPLY

THE STATE FAILED TO PROVE THAT A SUBSTANTIAL PURPOSE IN THE MAINTENANCE OF THE VEHICLES WAS TO SELL CONTROLLED SUBSTANCES.

The State contends that there is sufficient evidence to uphold the verdict because there was evidence that Velazquez-Medina was a drug dealer and that he drove two trucks. Br. of Resp't at 23. It is not enough to show that Velazquez-Medina engaged in a continuing pattern of selling or attempting to sell methamphetamine to the confidential informant. The State has to link the continuing pattern of drug activity to the vehicles allegedly maintained for drug trafficking.

The respondent's brief does not address Velazquez-Medina's contention, presented in the opening brief, that the State specifically elected to prosecute only for selling controlled substances in the truck by omitting the two other means of violating RCW 69.50.402(1)(f) from the jury instructions. Br. of Appellant at 9. When prosecuting under the selling prong of RCW 69.50.402, the State has to prove that sales "continually took place on the premises" alleged to be maintained for drug trafficking. State v. Ceglowski, 103 Wn. App. 346, 353, 12 P.3d 160 (2000)(emphasis in original).

Here, the State failed to prove that Velazquez-Medina ever sold controlled substances in either truck. At most, Velazquez-Medina transported methamphetamine in his white truck on one occasion and drove around in a brown truck while discussing a future sale. If the State wanted to prosecute Velazquez-Medina for transporting drugs in the truck, the State should have included the “used for keeping” prong of RCW 69.50.402(1)(f) in the jury instructions. State v. Fernandez, 89 Wn. App. 292, 299-300, 948 P.2d 872 (1997).

In order to convict a defendant of maintaining a vehicle for drug trafficking, there must be some evidence “that a substantial purpose in the maintenance of the vehicle was to conduct illegal drug activities.” State v. Marin, 150 Wn. App. 434, 439, 208 P.3d 1184 (2009). In Marin, the State presented evidence that the defendant’s vehicle had recently been modified to add a secret compartment under the hood of the van for storing drugs. Marin, 150 Wn. App. at 439. Police found a second hidden compartment for storing drugs in an armrest. Marin, 150 Wn. App. at 437.

The retrofitting of the car was strong evidence that a substantial purpose of maintaining the vehicle was to store and transport large quantities of drugs. Marin, 150 Wn. App. at 439.

The court also noted the presence of sealed plastic bags with drug residue, a canister in the glove compartment containing methamphetamine, a key fob in the center console containing methamphetamine, a pouch stashed in the armrest containing methamphetamine, a digital scale, and a pipe. Marin, 150 Wn. App. at 437.

Unlike Marin, there is no evidence that either vehicle was modified in order to conceal controlled substances. Police did not find evidence of drug trafficking in either vehicle. There is no evidence that a substantial purpose in maintaining the trucks was for drug trafficking purposes.

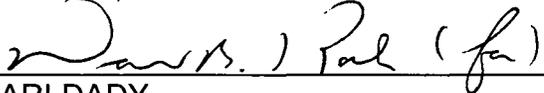
B. CONCLUSION

The State failed to prove that Velazquez-Medina ever sold controlled substances in either of his trucks, or that a substantial purpose in owning the trucks was for drug trafficking purposes. This Court should reverse his conviction.

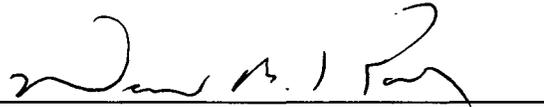
DATED this 10th day of March 2010.

Respectfully submitted,

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Appellant.)	

DECLARATION OF SERVICE

I, PATRICK MAYOVSKY, DECLARE UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOLLOWING IS TRUE AND CORRECT:

THAT ON THE 10TH DAY OF MARCH 2010, I CAUSED A TRUE AND CORRECT COPY OF THE **REPLY BRIEF OF APPELLANT** TO BE SERVED ON THE PARTY / PARTIES DESIGNATED BELOW BY DEPOSITING SAID DOCUMENT IN THE UNITED STATES MAIL.

- [X] SKAGIT COUNTY PROSECUTOR'S OFFICE
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- [X] HUMBERTO VELAZQUEZ-MEDINA
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AIRWAY HEIGHTS, WA 99007

SIGNED IN SEATTLE WASHINGTON, THIS 10TH DAY OF MARCH 2010.

x *Patrick Mayovsky*