

**NO. 63356-2-1**

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

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**STATE OF WASHINGTON**  
Respondent,

v.

**HUMBERTO VELASQUEZ-MEDINA,**  
Appellant.

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

The Honorable Michael Rickert, Judge

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**RESPONDENT'S BRIEF**

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## **I. SUMMARY OF ARGUMENT**

Humberto Velazquez-Medina was convicted at jury trial of two counts of delivery of methamphetamine, one count of conspiracy to deliver methamphetamine and one count of maintaining a vehicle for drug trafficking. He challenges only the maintaining a vehicle for drug trafficking charge, contending there was insufficient evidence the vehicle was maintained for drug trafficking.

Testimony at trial was that Velazquez-Medina was a mid-level dealer of methamphetamine and that he used multiple vehicles which were not in his name to deliver the controlled substances. Given the level of dealing that Velazquez-Medina operated at and his use of the vehicles in getting ready for and completing the sales, there was sufficient evidence for the jury to find that he did maintain the vehicles for drug trafficking.

## **II. ISSUES**

Where a defendant was a mid-level dealer of methamphetamine and engaged in multiple deliveries using vehicles registered in the names of others to complete the sales, was there sufficient evidence for a rational trier of fact to find that the trucks were maintained for drug trafficking?

### III. STATEMENT OF THE CASE

#### 1. Statement of Procedural History

On June 10, 2008, Humberto Velasquez-Medina was charged with two counts of Delivery of a Controlled Substance alleged to have occurred on January 7, 2008, and January 22, 2008, Maintaining a Vehicle for Drug Trafficking alleged to have occurred between January 7, 2008 and February 7, 2008, and Conspiracy to Deliver Controlled substance between January 7, 2008, and February 7, 2008. CP 1-3

On October 23, 2008, the State amended the information to add a school zone enhancement on the delivery on January 22, 2008, in count 2 and a count of intimidating a witness as count 5. CP 43-5.

On February 9, 2009, the case proceeded to trial. 2/9/09 RP 1.<sup>1</sup> During trial, the court dismissed the charge of intimidating a

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<sup>1</sup> The State will refer to the verbatim report of proceedings by using the date followed by "RP" and the page number. The report of proceedings in this case are as follows:

9/25/08 RP	Motion Hearing
10/23/08 RP	Arraignment on Amended Information and Continuance
11/13/08 RP	Hearing Regarding Conflict and Continuance
1/2/09 RP	Motion Hearing
2/9/09 RP	Trial Day 1
2/10/09 RP	Trial Day 2
2/11/09 RP	Trial Day 3
2/12/09 RP	Trial Day 4 (Jury Instructions and Closing Argument)

witness due to insufficiency of the evidence, but denied the similar motion as to the charge of maintaining a vehicle for drug trafficking.

2/12/09 RP 26-7

On February 12, 2009, the jury returned verdicts finding Velasquez-Medina guilty of the two delivery counts, the count of maintaining a vehicle for drug trafficking and conspiracy to deliver a controlled substance. CP 77-80.

The jury also returned special verdicts finding that all crimes were major violations of the Uniform Controlled Substances act and the school zone enhancement on the delivery count on January 22, 2009. CP 81-5.

On April 8, 2009, Velasquez-Medina was sentenced. He was facing the highest standard range on the charges of 44 to 84 months on the delivery charge with the school zone enhancement. 4/8/09 RP 4, CP 88. The prosecutor sought an exceptional sentence 6 months above that range of 90 months. 4/8/09 RP 4.

The trial court sentenced Velazquez-Medina to an exceptional sentence on the two delivery counts and the conspiracy charge of 90 months and 24 months on the maintaining a vehicle for drug trafficking. 4/8/09 RP 26, CP 90-1, 98.

On April 8, 2009, Velazquez-Medina timely filed a notice of appeal. CP 87.

## **2. Statement of Facts**

Trial testimony was taken over four days regarding one delivery made by Velazquez-Medina in person, one delivery made by an associate after Velazquez-Medina had arranged the delivery and a third attempted delivery of a month time frame. Because Velazquez-Medina challenges the sufficiency of the evidence as to the maintaining a vehicle for drug trafficking charge, the State presents the following detailed summary of the testimony at trial.

Chris Fuller, was a detective with the Skagit County Drug Task Force who testified about his involvement in the Velazquez-Medina investigation. 2/9/09 RP 3-4. Fuller had special training as an undercover task force detective. 2/9/09 RP 5-6. Fuller testified about how investigations used informants to arrange drug purchases. 2/9/09 RP 7-15.

In January of 2008, a known informant provided Fuller information about a person known as Kevin who was dealing in methamphetamine from a trailer off of East Whitmarsh Road in Burlington. 2/9/09 RP 15-7. Another officer testified that the trailer

was not an expensive trailer. 2/10/09 RP 145. The informant had previously been a criminal informant working off a criminal case, but when he provided the information, that case had been taken care of so he was simply a citizen informant. 2/9/09 RP 19-20.

In early January, 2008, the citizen informant arranged a deal to buy an ounce of methamphetamine for \$1,200. 2/9/09 RP 23. Fuller anticipated that deal would initially be made at the trailer on Whitmarsh Road. 2/9/09 RP 24.

On January 7, 2008, the deal was arranged. 2/9/09 RP 26. While other officers kept surveillance on the Whitmarsh trailer, Fuller was following the informant. 2/9/09 RP 25. While Fuller was following the informant to the Whitmarsh trailer, the location of the sale was changed to Wal-Mart in Mount Vernon. 2/9/09 RP 29. Fuller observed the suspect vehicle, a white Dodge pickup truck with Oregon plates circling the parking lot a couple of times. 2/9/09 RP 31, 33, 73. Another officer testified that the Dodge was not an expensive truck. 2/10/09 RP 145. Fuller observed the driver of the white pickup get in the informant's vehicle. 2/9/09 RP 34. After the sale occurred, Fuller kept visual contact with the informant until the drugs purchased were obtained. 2/9/09 RP 35-6.

Fuller found out where the person had sold drugs went and passed his truck while driving and observed the driver. 2/9/09 RP 42-3. Fuller identified the defendant, Humberto Velazquez-Medina as the person who he had seen driving the white truck. 2/9/09 RP 47. Fuller contacted a patrol officer who stopped the vehicle due to a defective taillight. 2/9/09 RP 44.

Fuller was told by the informant on that date that he had discussed with Velazquez-Medina purchasing larger quantities up to a pound. 2/9/09 RP 48. Fuller passed of the investigation to another detective. 2/9/09 RP 48-9.

Fuller testified about his experience in drug investigations. 2/9/09 RP 50. He testified that it was common for vehicles to be registered to people other than the suspected dealers to avoid identifying themselves by their vehicle. 2/9/09 RP 50. Fuller also testified that dealers are aware that their assets are up for seizure and used vehicles registered to others to permit those people to claim they are innocent owners to avoid seizure. 2/9/09 RP 51.

Officer Rick Vandergriend testified about stopping the white Dodge truck driven by Velazquez-Medina on January 7, 2008. 2/10/09 RP 86-90. Velazquez-Medina told Vandergriend that he did

not have insurance on the truck and had just purchased the vehicle.

2/10/09 RP 90-1.

The informant was named and testified at trial as a witness. 2/9/09 RP 16, 2/10/09 RP 7. The witness was referred to Velazquez-Medina and found out where he lived. 2/10/09 RP 10-11, 38. The witness testified that Velazquez-Medina had a white pickup truck with Oregon plates. 2/10/09 RP 13-4. The witness had talked to Velazquez-Medina about prices and quantity to arrange to buy. 2/10/09 RP 14. Velazquez-Medina initially offered to sell an ounce for \$1,500. 2/10/09 RP 14-5. The witness testified the defendant could get him pounds of methamphetamine that came from Mexico. 2/10/09 RP 15-7. The witness testified that he was able to negotiate a lower price of \$1,200 because this was a first buy and Velazquez-Medina appeared to want to start a dealing relationship. 2/10/09 RP 24-5.

The sale was first arranged to occur at the residence of Velazquez-Medina, but he changed that location shortly before the deal. 2/10/09 RP 26-7. The witness testified that Velazquez-Medina was driving his white Dodge truck when he made the delivery on January 7, 2008. 2/10/09 RP 32. Velazquez-Medina asked the witness to drive around to avoid suspicion, but the witness refused.

2/10/09 RP 32-3. Velazquez-Medina said the drugs were pretty good quality and that he would take it back if it was not. 2/10/09 RP 33-4. They also talked about purchasing more ounces in the future. 2/10/09 RP 36.

After the deal, Velazquez-Medina called the witness a number of times to see if the witness was interested to buy more. 2/10/09 RP 40. Velazquez-Medina told the witness he was selling drugs obtained from people in Bellingham and Sedro Woolley. 2/10/09 RP 41. They arranged a second deal about two and a half weeks later. 2/10/09 RP 43. In between the deals, the witness had seen Velazquez-Medina driving the white Dodge pickup truck a couple of times. 2/10/09 RP 43.

The second deal was arranged for \$4,800 for four ounces. 2/10/09 RP 44. The deal was also arranged to occur at the residence of Velazquez-Medina. 2/10/09 RP 45. But as in the first sale, it was moved to Wal-Mart. 2/10/09 RP 45. After the witness had waited for ten to fifteen minutes at Wal-Mart, Velazquez-Medina changed the location to a Mexican restaurant. 2/10/09 RP 48. When he arrived, the witness was flagged down by a person that Velazquez-Medina said was his cousin, who delivered the drugs to the witness. 2/10/09 RP 51-56. Velazquez-Medina called the witness later in the day after

the delivery to ask the witness if the deal was okay. 2/10/09 RP 61-2. They also talked about doing another deal where Velazquez-Medina would be present. 2/10/09 RP 62.

Over a few days they talked a few more times about prices and Velazquez-Medina talked about delivering cocaine. 2/10/09 RP 63-4. The next deal was arranged of February 7<sup>th</sup> for four ounces. 2/10/09 RP 64-5. Again, the deal was first arranged to occur at the house of Velazquez-Medina but changed to Wal-Mart. 2/10/09 RP 66. Velazquez-Medina showed up driving a brown Mazda that the witness had not seen before. 2/10/09 RP 66. They talked across opened windows in their trucks. 2/10/09 RP 67-8. Velazquez-Medina told the witness that he was waiting for his supplier and was going to go to a Mexican restaurant to pick up the drugs. 2/10/09 RP 69. The witness waited and they spoke a number of other times, but they eventually called off the deal. 2/10/09 RP 69-70. Velazquez-Medina called the witness the day after and said that he had the stuff in and said he was sorry. 2/10/09 RP 71-2. The witness tried to set up another delivery but Velazquez-Medina's phone was not working and he later called saying he moved from the trailer park. 2/10/09 RP 73.

Daniel Van Wyk, a forensic scientist from the Washington State Patrol Crime Laboratory, testified about his testing of the drugs purchased in the case. 2/10/08 RP 213. Van Wyk testified that one of the bags contained 26.9 grams of crystal containing methamphetamine. 2/10/08 RP 219. The second evidence bag he evaluated contained four bags of about the same weight. 2/10/08 RP 221. Van Wyk tested all four bags and found them all to weigh about 27 grams of crystal containing methamphetamine. 2/10/08 RP 223.

Miguel Alvarez, a United States Border Patrol Agent assigned to the Skagit County Drug Task Force as a detective, testified at trial. 2/10/09 RP 96. Detective Alvarez was assigned to watch the address of Velazquez-Medina at the Whitmarsh trailer park on the day of the first delivery. 2/10/09 RP 101. The white Dodge truck with Oregon plates was at the trailer park. 2/10/09 RP 102. Alvarez saw the truck arrive for the delivery and leave afterward. 2/10/09 RP 115-6. Alvarez was also present during the delivery on January 22, 2008. 2/10/09 RP 116-7. Alvarez observed the delivery get moved from Wal-Mart to a Mexican restaurant. 2/10/09 RP 120-1. After the delivery had occurred, Alvarez collected the drugs from the witness. 2/10/09 RP 125-6.

Alvarez next attempted to set up a sale with the witness on February 7, 2008. 2/10/09 RP 134. On that day Alvarez was present for the delivery and observed a maroon or brown Mazda pickup truck meeting with the witness. 2/10/09 RP 136. The truck was not very expensive in the officer's opinion. 2/10/09 RP 145. Alvarez saw the brown truck drive away a couple times. 2/10/09 RP 137. Due to the delays, Alvarez called off the deal. 2/10/09 RP 137-8.

On redirect examination, Alvarez testified that drug dealers typically don't use flashy cars to keep a low profile. 2/10/09 RP 146.

Detective Alvarez also testified about taped jail phone calls of the defendant to which he listened. 2/11/08 RP 58-63. Alvarez testified that Velzquez-Medina said on a tape that he got arrested for a job he did when he was driving the little truck. 2/11/08 RP 63. He said the delivery happened at Wal-Mart. 2/11/08 RP 64. During the phone calls, Velazquez-Medina also mentions that the officers took pictures of when he was in the white truck as well as the little truck. 2/11/08 RP 82. Velazquez-Medina also admitted to selling drugs on two occasions and attempting a sale on the third occasion. 2/11/08 RP 86-7. Velazquez-Medina also admitted during the calls that the deal at Wal-Mart occurred with the white truck he owned. 2/11/08 RP 96.

Detective Dave Floyd of the Skagit County Drug Task Force testified. 2/10/09 RP 149-50. Detective Floyd was the surveillance officer on January 7, 2008. 2/10/09 RP 150. Floyd was watching the Whitmarsh trailer when he observed Velazquez-Medina leave driving a white Dodge pickup truck with Oregon plates. 2/10/09 RP 152. Floyd watched the Dodge truck enter the parking lot and the driver contact the informant's vehicle. 2/10/09 RP 155. Floyd saw a passenger in the truck looking around as if doing surveillance. 2/10/09 RP 156. Floyd also did surveillance on the attempted deal of February 7, 2008. 2/10/09 RP 162. Floyd saw a maroon colored Mazda truck at the trailer court before it showed up for the delivery later in the day. 2/10/09 RP 163-4. Floyd followed the vehicle after it left the trailer court to a Mexican restaurant. 2/10/09 RP 164-5. Velazquez-Medina got out of the truck and met with a person inside the restaurant. 2/10/09 RP 165, 167. After Velazquez-Medina left in the Mazda, he appeared to be driving erratically. 2/10/09 RP 166. This was significant to Floyd because it appears that the driving by Velazquez-Medina was an attempt to see if he was being followed. 2/10/09 RP 166.

Sergeant Coglizer of the Washington State Patrol testified about his role as a task force surveillance officer during the drug

deals. 2/10/09 RP 171-8. Coglizer took photographs of the vehicles in the Wal-Mart parking lot on February 7, 2008. 2/10/09 RP 179. Due to concerns about the possibility that the officers had been identified, Coglizer called off the attempted deal on that day. 2/10/09 RP 181-2.

Deputy Duane Neufeld was also working for the Skagit County Task Force and involved in surveillance in the case. 2/10/09 RP 183-8. Neufeld saw Velazquez-Medina leave the Whitmarsh trailer in the white Dodge Ram pickup truck. 2/10/09 RP 186. When the vehicle arrived at Wal-Mart, Neufeld saw the Dodge truck driving slowly around the parking lot. 2/10/09 RP 187. Neufeld also observed that after the deal, Velazquez-Medina was turning his head a lot and looking in his mirrors to see if someone was following him. 2/10/09 RP 191. Neufeld saw Velazquez-Medina leaving the Whitmarsh trailer on February 7, 2008, and took photographs. 2/10/09 RP 201-2. Neufeld saw Velazquez-Medina leave in a small burgundy colored truck. 2/10/09 RP 203.

Neufeld testified that dealers typically deliver to other dealers in larger quantities and that users only use amounts of less than a gram. 2/10/09 RP 207. Neufeld also testified that dealers typically

registered their vehicles in the names of others to avoid identification and seizure. 2/10/09 RP 209.

Drug Enforcement Agent Tim Rybka testified. 2/11/08 RP 15-6. Agent Rybka testified about his training and experience with drugs as well as the methods of manufacture of methamphetamine. 2/11/08 RP 16-23. Rybka testified about the methods of cutting methamphetamine to increase the volume and profit. 2/11/08 RP 25-7. Rybka identified Mount Vernon as a hub for trafficking of drugs from Mexico to northwest Washington Counties. 2/11/08 RP 29. Rybka testified that dealers of ounce to pound quantities are high level dealers. 2/11/08 RP 36-7. Rybka testified that addicts purchase about a quarter gram quantities to use, typically costing \$20. 2/11/08 RP 37. Rybka testified that four ounces of methamphetamine selling for \$4,800 is consistent with a wholesale price of methamphetamine. 2/11/08 RP 39.

Rybka also testified that dealers usually don't keep vehicles registered in their own names to avoid finding out where they live. 2/11/08 RP 45-6. Rybka also testified that dealers change locations at the last minute to avoid detection and arrest. 2/11/08 RP 47. Rybka also testified that dealers scope out the areas of the deal to avoid arrest and ambushes to rip off drugs. 2/11/08 RP 47-8. Rybka

testified that dealers often bring along another person as a second set of eyes to look around to see something suspicious or a police car. 2/11/08 RP 48. Rybka testified that dealers often drive inconspicuous ratty cars to avoid arrest. 2/11/08 RP 48-9.

Harriet Stargel was the manager of the Whitmarsh trailer park. 2/12/09 RP 5-6. Ms. Stargel testified that Velazquez-Median bought a trailer in the park and began living there in November of 2007. 2/12/09 RP 6-7. When Velazquez-Medina moved in Stargel obtained a copy of his driver's license. 2/12/09 RP 9. Stargel identified two trucks that Velazquez-Medina drove frequently. 2/12/09 RP 9. She described one as a little reddish-brown truck and the other as a white Dodge truck. 2/12/09 RP 9. Stargel observed Velazquez-Medina driving the reddish-brown truck which was the one he put down when he registered at the park. 2/12/09 RP 10. Stargel later saw Velazquez driving the white truck a number of times and figured Velazquez-Medina has just gotten a new truck. 2/12/09 RP 10.

Stargel also testified that Velazquez-Medina had told her he had a job on College Way but she saw him going in and out quite often during the course of a day. 2/12/09 RP 11. Stargel was able to observe this since she sat in the office every day, six days a week. 2/12/09 RP 11. Stargel also observed a lot of traffic going to

Velazquez-Medina's trailer during the night. 2/12/09 RP 12. She observed vehicles frequently staying for ten minutes and then leaving. 2/12/09 RP 12. This also occurred during the day time as well. 2/12/09 RP 13. In February of 2008, Velazquez-Medina suddenly sold his trailer to a young lady. 2/12/09 RP 7-8.

Detective Alvarez was recalled to testify that based upon his training and experience, extensive vehicle traffic resulting in frequent short stays of individuals at residences is indicative of drug trafficking. 2/12/09 RP 17.

The defense did not call any witnesses.

#### **IV. ARGUMENT**

**Where evidence established the defendant was a significant drug dealer who used his trucks to make sales of drugs and attempt a sale on a third occasion, there was sufficient evidence for a rational trier of fact to find that the defendant was maintaining vehicles for drug trafficking.**

Velazquez-Medina contends that sales of the controlled substances actually had to occur in his Dodge pickup truck on January 7, 2008, to support his conviction on that count. Opening Brief of Appellant at page 10. He claims that the transporting of the drugs in his truck was insufficient to sustain the conviction. Opening Brief of Appellant at page 10. Velazquez-Medina also contends that

the single use of his vehicle was insufficient to support the charge of maintaining a vehicle for drug trafficking. Opening Brief of Appellant at page 11.

The State charged Velazquez-Medina with maintaining a vehicle for drug trafficking over a month period of time. The State contends that over that period of time Velazquez-Medina was a dealer of drugs who used his two trucks to make large quantity sales of drugs and his conduct in his vehicles at the times of the deliveries supports the conviction for maintaining a vehicle for drug trafficking.

Evidence is sufficient to support a conviction if, viewed in the light most favorable to the prosecution, it permits any rational trier of fact to find the essential elements of the crime beyond a reasonable doubt. State v. Salinas, 119 Wn.2d 192, 201, 829 P.2d 1068 (1992). "A claim of insufficiency admits the truth of the State's evidence and all inferences that reasonably can be drawn therefrom." Salinas, 119 Wn.2d 201. Circumstantial evidence and direct evidence are equally reliable. State v. Delmarter, 94 Wn.2d 634, 638, 618 P.2d 99 (1980).

State v. McNeal, 98 Wn. App. 585, 592, 991 P.2d 649 (1999).

In determining whether the necessary quantum of proof exists, the reviewing court need not be convinced of the defendant's guilt beyond a reasonable doubt, but only that substantial evidence supports the State's case. State v. Fiser, 99 Wn. App. 714, 718, 995 P.2d 107 (2000), *rev. denied*, 141 Wn.2d 1023, 10 P.3d 1074 (2000). Substantial evidence is evidence that "would convince an unprejudiced, thinking mind of the truth of the fact to which the evidence is directed." State v.

Hutton, 7 Wn. App. 726, 728, 502 P.2d 1037 (1972). In finding substantial evidence, we cannot rely upon guess, speculation, or conjecture. Hutton, 7 Wn. App. at 728, 502 P.2d 1037.

**Credibility determinations are for the trier of fact and are not subject to review.** State v. Camarillo, 115 Wn.2d 60, 71, 794 P.2d 850 (1990). **We must defer to the trier of fact on issues of conflicting testimony, credibility of witnesses, and the persuasiveness of the evidence.** State v. Walton, 64 Wn. App. 410, 415-16, 824 P.2d 533, *rev. denied*, 119 Wn.2d 1011, 833 P.2d 386 (1992). **The trier of fact is free to reject even uncontested testimony as not credible as long as it does not do so arbitrarily.** State v. Tocki, 32 Wn. App. 457, 462, 648 P.2d 99, *rev. denied*, 98 Wn.2d 1004 (1982).

State v. Prestegard, 108 Wn. App. 14, 22-3, 28 P.2d 817 (2001)

The charge of maintaining a vehicle for drug trafficking is based upon RCW 69.50.402(1)(f) which provides in pertinent part:

(1) It is unlawful for any person:

...

(f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

RCW 69.50.402(1)(f). The jury instruction pertaining to the count read in pertinent part:

To convict the defendant of the crime of Maintaining a Vehicle for Drug Trafficking as charged in count 3, each of the following elements of the crime must be proved beyond a reasonable doubt:

- (1) That on or about and between January 7, 2008 and February 7, 2008, the defendant did keep or maintain any vehicle, and
- (2) That the defendant knew such vehicle was used for selling controlled substances, and
- (3) That this act occurred in the State of Washington.

CP 69.

There are two significant appellate cases pertinent to the claim of Velazquez-Medina.

The case of State v. Ceglowski, 103 Wn. App. 346, 12 P.3d 160 (2000) dealt with the sufficiency of the evidence in a case of keeping or maintaining a drug house. In Ceglowski, the defendant had a bait and tackle shop in which were found a rolled up bill of U.S. Currency, a small tray with traces of brown powder, a marijuana pipe, two small bags with brown powder totaling 0.9 grams of methamphetamine, \$600. In addition, the office safe was found to have pay and owe sheets consistent with drug transactions and Ceglowski had money in his pockets from a drug transaction a few minutes before the execution of the search warrant. The Court of Appeals stated:

Therefore, we hold that to constitute the crime of maintaining a premises for the purpose of unlawfully keeping or selling controlled substances there must be: **(1) some evidence that the drug activity is of a continuing and recurring character; and (2) that a**

**substantial purpose of maintaining the premises is for the illegal drug activity. Barnes, 339 S.E.2d at 234. This rule does not mean that a small quantity of drugs or evidence found on only "a single occasion cannot be sufficient to show a crime of a continuing nature." Barnes, 339 S.E.2d at 234. The evidence could be sufficient if the totality of the evidence proves that the defendant "maintained" the premises for selling or keeping controlled substances.**

State v. Ceglowski, 103 Wn. App. at 352-3 (emphasis added). In Ceglowski, the Court of Appeals found there was insufficient evidence because the evidence did not support the reasonable inference that the keeping or selling of drugs was a recurring activity. The Ceglowski court noted that the only possible evidence were pay and owe sheets which may or may not have been drug related. In addition, the court noted that the jury acquitted the defendant on charges of possession with intent to deliver and that the small amount of drugs found did not establish a continuing course of conduct.

Subsequent to Ceglowski, the Court of Appeals addressed the sufficiency of the evidence for maintaining a vehicle for drug trafficking in State v. Marin, 150 Wn. App. 434, 208 P.3d 1184 (2009).

In Marin, the defendant was stopped for erratic driving arrested and the vehicle searched. In the vehicle were located multiple small bags of methamphetamine containing more than 45 grams of methamphetamine, a digital scale and pipe. There was also

a hidden compartment constructed under the hood of the van. State v. Marin, 150 Wn. App. at 437-8. The court determined that even though Marin was not the registered owner, the testimony of Detective Chris Fuller was that drug dealers rarely conduct drug operations in vehicles in their own name and that Marin had been using the vehicle for far longer than a few days. State v. Marin, 150 Wn. App. at 439. In addition, testimony established that the scales and substantial drugs in the vehicle showed more than an amount for personal use. State v. Marin, 150 Wn. App. at 339.

The court in Marin cited to Ceglowski for the proposition that the maintaining charge “requires some evidence that the drug activity was continuing and recurring in nature, and that a substantial purpose in the maintenance of the vehicle was to conduct illegal drug activities.”<sup>2</sup> State v. Marin, 150 Wn. App. at 438-8, *citing*, State v. Ceglowski.

Here the evidence established that Humberto Velazquez-Medina was a drug dealer. In fact, the jury verdicts included special verdicts that all of the offenses and the offense of Maintaining a Vehicle for Drug Trafficking in particular were major violations of the violation of uniform controlled substances act. CP 76, 82-5.

There was also testimony establishing two completed deliveries of methamphetamine for a total of five ounces costing \$6,000 and a third attempted delivery of four additional ounces for \$4,800 occurring over a one month time frame. 2/10/09 RP 14-5, 44. Velazquez-Medina also claimed to the informant that he had the ability to deliver pound quantities of drugs and was working with dealers from Mexico. 2/10/09 RP 15-7. Both of the vehicles driven by Velazquez-Medina were used in a manner indicating that he was acting as a dealer to try to avoid being followed and caught. 2/9/09 RP 31, 33, 73, 2/10/09 RP 155, 166, 191. He told the manager of the trailer court where he lived that the reddish-brown Mazda was his when he moved in and he told an officer on a traffic stop that the white Dodge was his truck even though not registered to him. 2/12/09 RP 9, 2/10/09 RP 90-1. Multiple officers testified that dealers frequently use vehicles registered to others to avoid detection and seizure. Velazquez-Medina was overheard on taped jail phone calls admitting to using the two vehicles to make the deals. 2/9/09 RP 50-1, 2/11/09 RP 45-6. In addition, the manager of the trailer court where he lived testified about Velazquez-Medina frequently coming and going from his trailer and also that there were many vehicles that

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<sup>2</sup> This "substantial purpose" component of the offense applied by Cegowski

came to the trailer for short stays. 2/12/09 RP 12. A drug detective testified that activity is consistent with the activity of drug trafficking. 2/12/09 RP 17. At that high level of drug trafficking proved in this case a rational trier of fact could draw the reasonable inference that Velazquez-Medina's method of earning a living was drug dealing and that the vehicles were used to accomplish the dealing.

Therefore, unlike the defendant in Ceglowski, where there was insufficient evidence to support that the bait shop was for ongoing sales of drugs, here, there is sufficient evidence that Velazquez-Medina's trucks were part of ongoing drug dealing and therefore a rational trier of fact could find that they were maintained for drug trafficking.

## **V. CONCLUSION**

For the foregoing reasons, there was sufficient evidence for a rational trier of fact to find that Velazquez-Medina maintained vehicles for drug trafficking. Therefore, his conviction and sentence must be affirmed.

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is not provided for by the pertinent statute and not an implied element of the offense.

DATED this 29<sup>th</sup> day of January, 2010.

SKAGIT COUNTY PROSECUTING ATTORNEY

By:   
ERIK PEDERSEN, WSBA#20015  
Deputy Prosecuting Attorney  
Skagit County Prosecutor's Office #91059

DECLARATION OF DELIVERY

I, Karen R. Wallace, declare as follows:

I sent for delivery by;  United States Postal Service;  ABC Legal Messenger Service, a true and correct copy of the document to which this declaration is attached, to: Kary Dady and David B. Koch, addressed as Nielsen, Broman & Koch, PLLC, 1908 East Madison, Seattle, WA 98122. I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct. Executed at Mount Vernon, Washington this 29<sup>th</sup> day of January, 2010.

  
KAREN R. WALLACE, DECLARANT