

IN THE UTAH COURT OF APPEALS

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State of Utah,	)	MEMORANDUM DECISION
	)	(Not For Official Publication)
Plaintiff and Appellee,	)	
	)	Case No. 20060070-CA
v.	)	
	)	F I L E D
Loreto Rojas Salgado,	)	(December 29, 2006)
	)	
Defendant and Appellant.	)	<span style="border: 1px solid black; padding: 2px;">2006 UT App 523</span>

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Second District, Ogden Department, 051902361  
The Honorable Roger S. Dutson

Attorneys: Randall W. Richards, Ogden, for Appellant  
Mark L. Shurtleff and Joanne C. Slotnik, Salt Lake  
City, for Appellee

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Before Judges Davis, McHugh, and Orme.

PER CURIAM:

Loreto Rojas Salgado appeals from her convictions on two counts of distributing a controlled substance. We affirm.

Salgado asserts that she received ineffective assistance of counsel because her trial counsel failed to move to dismiss the charges based on insufficient evidence. In a similar vein, she also asserts that the trial court plainly erred in submitting the case to the jury because of insufficient evidence. Both of these alleged errors are premised on Salgado's assertion that the State failed to put on sufficient evidence to prove that the transactions occurred in a public parking lot, an enhancement to the charges and an element of the first degree felony crimes. See Utah Code Ann. § 58-37-8(4)(a) (Supp. 2006).

Salgado challenges the sufficiency of evidence only relating to establishing that the transactions took place in a public parking lot. When an appellant challenges the sufficiency of the evidence, she takes on a heavy burden. See State v. Larsen, 2000 UT App 106, ¶11, 999 P.2d 1252. Salgado "must marshal all of the evidence in support of the [verdict] and then demonstrate that the evidence, including all reasonable inferences drawn

therefrom, is insufficient to support the [verdict] against attack." Id. (quotations and citation omitted). The failure to marshal the evidence permits this court to affirm a verdict on that basis alone without reaching the merits of an issue. See State v. Widdison, 2001 UT 60, ¶61, 28 P.3d 1278.

Here, Salgado acknowledges that she has not marshaled the evidence, but asserts it is because there is no evidence to marshal. However, a review of the record shows that there was evidence presented from which the jury could infer that the Chevron parking lot was a public parking lot. Salgado has failed to meet her burden to marshal the evidence and show that it was insufficient. As a result, Salgado's assertions of ineffective assistance of counsel and plain error premised on insufficient evidence fail.

Salgado also asserts that the trial court erred in denying her motion to exclude witnesses not timely identified or grant a continuance of the trial. Her assertion lacks any factual basis. Salgado did not move to exclude witnesses or continue trial. The record shows only that she objected to the amendment of the information on one count. Absent any factual basis for her challenge, it must fail.

Accordingly, Salgado's convictions are affirmed.

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James Z. Davis, Judge

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Carolyn B. McHugh, Judge

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Gregory K. Orme, Judge