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IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

SUPREME COURT
OF THE
REPUBLIC OF PALAU

AIKEN UEHARA,
Appellant,
v.
REPUBLIC OF PALAU
Appellee.

Cite as: 2022 Palau 20
Criminal Appeal No. 21-006
Appeal from Criminal Action No. 20-065

Decided: September 15, 2022

Counsel for Appellant Johnson Toribiong
Counsel for Appellee Rebecca Sullivan

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice
JOHN K. RECHUCHER, Associate Justice
KEVIN BENNARDO, Associate Justice

Appeal from the Trial Division, the Honorable Kathleen M. Salii, Presiding Justice, presiding.

OPINION

NGIRAIKELAU, Chief Justice:

[¶ 1] On June 18, 2021, a jury returned a verdict finding Appellant Aiken Uehara guilty of trafficking methamphetamine and possession of more than one gram of methamphetamine. Uehara appeals his convictions claiming that the jury’s guilty verdict was clearly erroneous and the trial court committed several legal errors. Because we conclude that there was sufficient evidence to support Uehara’s convictions and the trial court committed no error, we **AFFIRM**.

BACKGROUND

[¶ 2] Uehara, an admitted user and seller of drugs, was charged with one count of trafficking methamphetamine and one count of possession of more than one gram of methamphetamine. The trafficking charge stemmed from a controlled buy that occurred on January 29, 2020. On that day, officers from the Narcotics Enforcement Agency (NEA) set up a controlled buy with a confidential informant, to buy a plate of methamphetamine from Uehara for \$100. Before embarking on the buy operation, the officers searched the CI and found no drugs on him. The CI drove to Uehara's residence in Ngerbeched with the NEA officers trailing behind. Upon arriving at Uehara's residence, the CI met Reginald Tmetuchl, aka C-Boy, and gave him the money to buy the plate from Uehara. Tmetuchl walked over to a car where Uehara was sleeping and returned with a plate and gave it to the CI. Shortly thereafter, the CI met with the NEA officers again and gave them the plate. The plate contained a substance that was later tested and identified as methamphetamine. Neither the CI nor the NEA officers actually witnessed any exchange of money and drugs between Tmetuchl and Uehara. However, the CI told Detective Lieutenant Jovian Adelbai, one of the officers who participated in the controlled buy, that Tmetuchl told him he got the plate from Uehara. Transcript at 140, lines 12 – 21 and 327, lines 19 – 26.

[¶ 3] On April 2, 2020, approximately a month after the controlled buy operation, the NEA officers conducted a search of Uehara's residence pursuant to a search warrant. During the search, officers seized numerous drug paraphernalia such as plastic straws, lighters, clear glass tubes, and ziploc bags. Some of these items were found inside Uehara's house and others were seized from cars that were parked outside the residence, including thirty-eight (38) plastic straws and two ziploc bags which contained white crystalline substance with a total weight of 14.51 grams.

[¶ 4] Following the execution of the search warrant, the officers arrested Uehara and brought him to the NEA office. There he was informed of his rights which he waived and proceeded to give a statement. Uehara confessed to using and selling methamphetamine. He also admitted to the ownership of the thirty-eight (38) plastic straws and two ziploc bags which the NEA officers seized on April 2.

[¶ 5] On April 3, 2020, Uehara pled not guilty to the trafficking and possession charges. A \$50,000 cash bail was imposed. Uehara's counsel paid the bail and Uehara was released under certain pretrial conditions pending trial. While out on bail Uehara violated the conditions of his release by failing to obey the laws of Palau. As a result, the court revoked bail and remanded him to Koror jail.

[¶ 6] Jury trial was scheduled for March 22 -26, 2021. On March 29, 2021 the jury was impaneled and the Republic began its case-in-chief. The trial was postponed to April 2, 2021, before the Republic could complete its case-in-chief due to continued illness of the Republic's counsel.

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[¶ 7] On April 2, 2021, Uehara filed a motion for mistrial and dismissal of the information. In his motion Uehara asked the court to declare a mistrial “due to the multiple substantial delays in the trial proceedings resulting in the integrity of the jury likely becoming compromised.” Uehara’s Motion for a Mistrial at 1. On April 7, 2021, the trial court granted Uehara’s motion for a mistrial but denied his motion to dismiss the information. Instead, the court discharged the jury and ordered the trial to resume on June 14, 2021 with a new jury.

[¶ 8] On April 21, 2021, approximately two weeks after the court granted his motion for a mistrial, Uehara filed a motion to dismiss with prejudice, arguing that to impanel the jury for the second time and to prosecute him again for the same offenses is prohibited under the double jeopardy clause of the Palau Constitution.

[¶ 9] On April 30, 2021, the trial court denied Uehara’s motion to dismiss. In so doing, the court specifically found, among other things, that Uehara moved for a mistrial on grounds unrelated to his guilt or innocence, a mistrial was declared when the prosecutor fell ill and there were no other prosecutors available to continue the trial, and there was no evidence of improper motive or conduct on the part of the prosecutor. Order Denying Def.’s Mot. To Dismiss at 4.

[¶ 10] At trial, the Republic introduced, without objection, Uehara’s statement in which he admitted to drug use, sale, and possession of methamphetamine. In particular, Uehara admitted possession of the thirty-eight (38) plastic straws and two ziploc bags that the NEA officers seized during the search of his residence. The Republic also introduced evidence, without objection, that the crystalline substance contained in the 38 straws and the single plate that was obtained during the January 29 buy was identified to contained methamphetamine.

[¶ 11] During trial, defense counsel attempted to introduce into evidence that the substance contained in the 38 plastic straws and two ziploc bags, which was identified to contain methamphetamine, had been used to convict another person. The Republic objected and the trial court sustained the objection.

[¶ 12] On June 18, 2021, the jury returned a unanimous verdict finding Uehara guilty of both charges: trafficking methamphetamine and possession of more than one gram of methamphetamine, a controlled substance.

[¶ 13] On July 7, 2021, shortly after the jury’s guilty verdict, Uehara requested withdrawal of the \$50,000 cash bail on the grounds that the third party who paid the bail demanded its release. On July 19, 2021, the court denied Uehara’s request. Instead, the court ordered the bail forfeited and applied it to the payment of Uehara’s \$50,000 fine for the trafficking conviction. This timely appeal followed.

STANDARD OF REVIEW

[¶ 14] “We review the sufficiency of the evidence underlying a criminal conviction for clear error, asking whether the evidence presented was sufficient for a rational fact-finder to conclude

that the appellant was guilty beyond a reasonable doubt as to every element of the crime.” *Xiao v. ROP*, 2020 Palau 4 ¶ 8 (citation omitted). In doing so, “we do not reweigh the evidence,” instead we view the evidence “in the light most favorable to the prosecution.” *Id.* “[C]onclusions of law, such as matters of constitutional and statutory interpretation” are reviewed *de novo*. *Ngirameketii v. Republic of Palau*, 2022 Palau 9 ¶ 16.

DISCUSSION

[¶ 15] Uehara raises four issues in this appeal. First, he argues that there was insufficient evidence to support the jury’s guilty verdict. Second, he contends that the trial court erred when it sustained the prosecution’s objection and prevented him from introducing evidence that the same drug evidence was used to convict another person of the same offense. Third, he claims that the trial court erred when it refused to dismiss the case on the grounds of double jeopardy. Finally, Uehara argues that the trial court erred when it forfeited bail that a third party paid. We first address Uehara’s double jeopardy argument, followed by his contention regarding the sufficiency of the evidence, and we address last his two remaining arguments.

A. Double Jeopardy Arising From a Mistrial

[¶ 16] Generally, “[W]hen a mistrial is declared upon defendant’s motion, or otherwise with his consent,” the double jeopardy does not operate as a bar to re-prosecution. *Akiwo v. Supreme Court*, 1 ROP Intrm. 96, 101 (1984) citing *United States v. Jorn*, 400 U.S. 470 (1971). Although Uehara concedes that double jeopardy does not “bar a second trial if the first ended in a mistrial” as is the case here, *Blueford v. Arkansas*, 566 U.S. 599, 601 (2012), he points to an exception to this rule: where “the prosecutor purposefully instigated the mistrial or if he committed misconduct designed to bring one about”, citing *United States v. McIntosh*, 380 F.3d 548 (1st Cir. 2004) and *Oregon v. Kennedy*, 456 U.S. 667, 673 (1982). This exception only applies if the defendant can demonstrate that “the reason giving rise to the successful motion for a mistrial was prosecutorial or judicial conduct intended to provoke the defendant into moving for a mistrial.” *Akiwo*, 1 ROP Intrm. at 101.

[¶ 17] Here, Uehara successfully moved for a mistrial after the Republic sought for and obtained a break in the proceedings due to its counsel falling ill. Although Uehara invokes the exception, he does not argue that he was provoked into moving for a mistrial based on some misconduct on the part of the prosecutor or the trial judge. Nor does he provide any facts, gleaned from the trial record, which show that the prosecutor either purposefully instigated the mistrial or committed some misconduct designed to force Uehara to move for a mistrial. Instead, Uehara contends that after securing a continuance of the trial due to its counsel’s illness, the Republic improperly took advantage of the continuance, which was prejudicial to him, by amending the information, failing to convince its key witness to testify, and creating a greater opportunity for the jury to be exposed to media coverage of the case. We reject these claims because they were not the reasons Uehara advanced when he moved for and obtained a mistrial on April 2. Nor does

Uehara cite any authority for any of these acts as demonstrating prejudice. More importantly, in declaring the mistrial, the trial court specifically found that the mistrial was unrelated to Uehara's guilt or innocence and there was no evidence of improper motive or conduct on the part of the prosecutor. Order Denying Def.'s Mot. To Dismiss at 4. These findings are subject to the clear error standard. Uehara has failed to demonstrate that these findings are clearly erroneous. We therefore conclude that the exception does not apply and reject this argument.

B. Insufficient Evidence

[¶ 18] In determining the sufficiency of the evidence to convict, a court must view the evidence in the light most favorable to the government. *Wasisang v. Republic of Palau*, 19 ROP 87, 90 (2012). Further, the jury verdict must be upheld if "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). Before addressing Uehara's insufficiency of the evidence argument, we observe at the outset that the argument is limited to the trafficking conviction. Therefore, we limit our discussion to that conviction. Uehara contends there was insufficient evidence to convict him of the trafficking charge because (1) there was no evidence that he sold methamphetamine to the CI, (2) the CI's credibility was questionable, and (3) the failure of the Republic to call Tmetuchl to testify gave rise to an adverse inference unfavorable to the Republic.

[¶ 19] Here, there was indeed no direct eyewitness evidence that Uehara sold drugs to the CI on January 29, 2020. But direct evidence of a sale or delivery of a controlled substance is not the only means of proving the commission of a trafficking offense. A crime, including trafficking in a controlled substance, may be proved by circumstantial evidence. *Ngirarorou v. ROP*, 8 ROP Intrm. 136, 139 (2000). Thus, a criminal conviction may be based on circumstantial evidence. In this case, both the CI and Det. Lt. Jovian Adelbai testified that the CI gave \$100 to Tmetuchl, Tmetuchl walked over to a car where Uehara was, returned with a single plate that contained a substance and gave it to the CI, telling the CI that he got it from Uehara. The substance was later tested to contain methamphetamine. Even though there was no direct eyewitness testimony that Uehara sold methamphetamine to the CI, the jury could reasonably infer from the circumstantial evidence that Uehara did sell a plate of methamphetamine to the CI. Viewed in the light most favorable to the Republic, this evidence provides sufficient support for the trafficking conviction. Uehara next argues that the CI's credibility was questionable. But credibility determination is a matter for the jury to decide, not this Court. Finally, Uehara claims that the failure of the Republic to call Tmetuchl to testify gave rise to an adverse inference unfavorable to the Republic. Uehara misstates the evidence. The Republic did not fail to call Tmetuchl to testify. To the contrary, Tmetuchl was subpoenaed to testify but absented himself on the day he was scheduled to give testimony. For all these reasons, we reject this argument as well.

C. Evidentiary Ruling and Bail Forfeiture

[¶ 20] Uehara’s remaining arguments, which we address simultaneously, deal with the trial court’s ruling on evidence and bail. During trial, Uehara attempted to show to the jury that the same drug evidence being introduced in his case was used to convict another person in another case. The prosecutor objected and the trial court sustained the objection. Uehara claims that the court erred in sustaining the objection because in doing so, the trial court effectively prevented him from presenting to the jury his theory of a “spent bullet”. Uehara also argues that the trial court erred in ordering the bail forfeited and applying it to the payment of the fine imposed for the trafficking conviction. We have held that a party asserting legal error on appeal must cite relevant legal authority in support of his or her argument. *Aimeliik State Pub. Lands. Auth. v. Rengehol*, 17 ROP 276, 282 (2010). Otherwise, we will not consider the argument. *Gibbons v. Seventh Koror State Legislature*, 13 ROP 156, 164 (2006) (holding that unsupported legal arguments need not be considered by the Court on appeal). Because Uehara advances these two arguments without any citation to relevant authority in support thereof, we will not consider them.¹

CONCLUSION

[¶ 21] For the reasons set forth above, we **AFFIRM** Uehara’s convictions for trafficking methamphetamine and possession of more than one gram of methamphetamine.


SO ORDERED, this 15th day of September, 2022.



OLUVAIS NGIRAIKELAU
Chief Justice



JOHN K. RECHUCHER
Associate Justice



KEVIN BENNARDO
Associate Justice

¹ Even if we were to consider these two arguments, we would nevertheless reject them. Evidentiary rulings are reviewed for abuse of discretion, *General Electric Co. v. Joiner*, 522 U.S. 136 (1997); see also *Temaungil v. ROP*, 9 ROP 139, 140 (2002) and *Kumangai v. ROP*, 9 ROP 79, 85; (2002), and a party seeking review must show his substantial rights were affected. *Fanna v. Sonsorol State Govt.*, 8 ROP Intrm. 9 (1999). Uehara has not met this standard. As to the bail, Uehara has not shown why it was error for the court to revoke and forfeit the bail following violation of his release conditions.