IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

MARKA RUR GIBBONS,
Appellant,
v.
REPUBLIC OF PALAU,
Appellee.

Cite as: 2022 Palau 5
Criminal Appeal No. 21-003
Appeal from Criminal Action No. 20-082

Decided: May 11, 2022

Counsel for Appellant ..... Vameline Singeo
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

PER CURIAM:

[¶ 1] A jury convicted Appellant Marka Rur Gibbons of possessing more than one gram of methamphetamine, and the Trial Division sentenced her to 15 years probation. Gibbons appeals her conviction, arguing that the evidence was insufficient for the jury to find that she possessed methamphetamine. The Republic has filed a cross-appeal concerning the proper sentence for possessing methamphetamine. We conclude that the evidence was sufficient for the jury to find Gibbons guilty beyond a reasonable doubt, so we **AFFIRM** her conviction. We **DISMISS** the Republic's cross-appeal because it seeks an advisory opinion.

BACKGROUND

[¶ 2] On April 2, 2020, police officers executed a search warrant at the residence of Gibbons and her husband. Gibbons was present at the house during the entire search. Shortly after the search began, Gibbons asked to leave the property, and officers informed her that the car she was going to leave in—a Toyota RAV4 sport utility vehicle she and her husband shared—would need to be searched before she left.

[¶ 3] Although Gibbons initially said that she did not want the car searched, she eventually brought the officers the keys to the car. In the course of searching the car, officers found a black handbag in the car containing Gibbons's driver's license and ATM card. Gibbons informed the officers that the handbag was hers. In the handbag, the officers found a case containing a pipe that appeared to be used for smoking drugs, a red pouch containing what appeared to be straws of methamphetamine, and a metal container containing Ziploc bags of what appeared to be methamphetamine.

[¶ 4] The officers processed the evidence taken from Gibbons's bag. An officer weighed the suspected methamphetamine and did a field test which showed a presumptive positive for methamphetamine. The evidence was then documented, photographed, sealed, and placed in the evidence room. The evidence was later shipped to Guam for more testing. After making sure the evidence showed no evidence of tampering, an officer in Guam tested the substance, confirming that both the baggies and the straws contained methamphetamine.

[¶ 5] Gibbons was charged with two counts of possession of more than one gram of methamphetamine. At the conclusion of trial, the jury found Gibbons guilty of one count and not guilty on the other count. The Trial Division sentenced Gibbons to 15 years probation. Gibbons now appeals her conviction, and the Republic cross-appeals regarding the proper sentence for possession of methamphetamine.

STANDARD OF REVIEW

[¶ 6] "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 (cleaned up). In doing so, "we do not reweigh the evidence," instead we view the evidence "in the light most favorable to the prosecution." *Id.*

DISCUSSION

I.

[¶ 7] Gibbons first argues that the government failed to establish a sufficient chain of custody at trial to admit the methamphetamine seized during the search. Gibbons bases this argument on alleged discrepancy between the weight of the methamphetamine and related materials as measured in Palau and Guam, as well as the fact that the evidence was handled by unknown postal workers when it was sent from Palau to Guam and back.

[¶ 8] The chain of custody plays two roles in a criminal case. First, a chain of custody is used to lay a proper foundation for the admission of physical evidence by accounting for its handling from the time it was seized until it is offered in evidence. *King v. ROP*, 6 ROP Intrm. 131 (1997); *see also* 23 C.J.S. *Criminal Procedure and Rights of Accused* § 1150. In order to lay a proper foundation, the government must "show that reasonable efforts were taken against the risk of alteration, contamination, or adulteration," but need not exclude all possibilities of tampering. *Kumangai v. ROP*, 9 ROP 79, 82 (2002). Second, if the trial court is satisfied that there is a reasonable probability that the item to be introduced has not been altered in any material respect, any gaps in the chain of custody or concerns about alteration or tampering go to the weight the fact-finder chooses to give the evidence. *Id*. In other words, the chain of custody goes first to admissibility and then to weight.

[¶ 9] Gibbons does not challenge the admissibility of the methamphetamine on appeal. And, even if she had, she would have forfeited that challenge by failing to object to the admission of the methamphetamine during trial. *See* Trial Tr. 277 (admitting methamphetamine without objection); *see also People v. Woods*, 828 N.E.2d 247, 257 (Ill. 2005) ("[A] challenge to the chain of custody is an evidentiary issue that is generally subject to waiver on review if not preserved by defendant's making a specific objection at trial."). Thus, we assume for purposes of this appeal that the Republic met its

initial burden of showing that reasonable efforts were taken against the risk of alteration, contamination, or adulteration and that the trial court properly admitted the methamphetamine.[1]

[¶ 10] Instead of arguing that the methamphetamine was inadmissible, Gibbons argues that there was insufficient evidence to convict her because of gaps in the chain of custody. But gaps in the chain of custody "go to the weight" of the evidence, *Kumangai*, 9 ROP at 82, and "we do not reweigh the evidence" when determining whether sufficient evidence supports a conviction, *Ebert v. ROP*, 2020 Palau 21 ¶ 5. In other words, once evidence has been deemed to be properly admitted, we will not reverse a conviction on appeal for insufficient evidence based on arguments regarding the evidence's chain of custody. *See id*.; *see also Woods*, 828 N.E.2d at 258 (holding that "defendant's challenge to the [government's] chain of custody is properly considered an attack on the admissibility of the evidence, rather than a claim against the sufficiency of the evidence"); *Commonwealth v. Penn*, 132 A.3d 498, 505–06 (Pa. Super. Ct. 2016) (holding that "any gaps in the chain of custody ... go to the weight of the evidence and not to the sufficiency of the evidence").

[¶ 11] The jury heard extensive testimony about the handling of the evidence in this case—including the alleged weight disparities and the fact that

[1] Even if Gibbons had raised a plain error challenge to the admission of the methamphetamine, we would reject it. Although the evidence was in possession and control of unknown postal workers, courts routinely hold that a chain of custody can be established by showing that a package was put into the mail and was received in a sealed condition by the laboratory. *See*, *e.g.*, *United States v. Cannon*, 88 F.3d 1495, 1503 (8th Cir. 1996). And we have held that even "wildly divergent" weights recorded for methamphetamine do not render that evidence inadmissible if the government, as here, shows an "unbroken chain of custody" taking "reasonable precautions." *Kumangai*, 9 ROP at 84, 85. Thus, neither "gap" in the chain of custody Gibbons points to amounts to a "complete breakdown in the chain of custody … raising the probability that the evidence sought to be introduced at trial was not the same substance recovered from that defendant." *Woods*, 828 N.E.2d at 257–58 (explaining when a plain error challenge to chain of custody may properly be raised).

the mail was used to ship the evidence—and these alleged gaps in the chain of custody go to the weight the jury gave the evidence in this case. We will not reweigh that evidence on appeal, so Gibbons's first challenge fails.

II.

[¶ 12] Next, Gibbons argues that insufficient evidence supported the jury's finding that she knowingly possessed the methamphetamine. But Gibbons admits that she owned the bag containing the methamphetamine and that she had access to the car the bag was in. *See* Appellant's Br. 19. This evidence shows that Gibbons "exercised dominion and control" over the car and the purse that contained the methamphetamine. *See Alik v. ROP*, 18 ROP 83 (2011). And the jury could infer from this evidence that Gibbons knew the drugs were in her purse. *See* 28A C.J.S. *Drugs and Narcotics* § 424 ("If the defendant has dominion and control of the premises in which drugs are found, the jury may infer knowledge from the fact of possession."). Thus, construing the evidence in the light most favorable to the Republic, there was sufficient evidence for the jury to find that Gibbons knowingly possessed the methamphetamine. We thus reject Gibbons's second challenge.

III.

[¶ 13] Finally, the Republic filed a cross-appeal concerning the proper sentence for a defendant convicted of possession of more than a gram of methamphetamine. The Republic cites plea negotiations in a *different* case and asks for a "general ruling" on this issue. The Republic's argument—which does not even cite the relevant statute or any facts from *this* case—has all the markings of a request for an advisory opinion. "We do not render advisory opinions." *KSPLA v. Meriang Clan*, 6 ROP Intrm. 10, 13 (1996); *see also Koror State Government v. ROP*, 3 ROP Intrm. 127, 128–29 (1992) ("We decline to enter into speculative inquiries of matters that lack concrete factual situations, fully developed and properly presented for determination."). Thus, we dismiss the Republic's cross-appeal.

CONCLUSION

[¶ 14] We **AFFIRM** Gibbons's conviction for possession of methamphetamine and **DISMISS** the Republic's cross-appeal.