TOMMY E. REMENGESAU, JR.,
Appellant,

v.

REPUBLIC OF PALAU,
Appellee.

CRIMINAL APPEAL NO. 10-001
Criminal Case No. 09-092

Supreme Court, Appellate Division
Republic of Palau

Decided: March 30, 2011

[1] **Appeal and Error:** Standard of Review

The standard of review of a ruling on a motion for judgment of acquittal is clearly erroneous, and the evidence is reviewed to determine whether, in the light most favorable to the prosecution, any reasonable trier of fact could have found that the essential elements of each crime were established beyond a reasonable doubt.

[2] **Appeal and Error:** Standard of Review

The standard of review of an amendment to an information is for harmless or reversible error. ROP R. Crim. P. 7(e).

[3] **Appeal and Error:** Standard of Review

The standard of review for statute of limitations determinations is de novo.

[4] **Appeal and Error:** Standard of

Review

The trial court's conclusion regarding multiplicitous counts is reviewed de novo.

[5] **Criminal Law:** Double Jeopardy

Palau's double jeopardy clause protects against a second prosecution for the same offense after acquittal or conviction and multiple punishments for the same offense at a single trial.

[6] **Criminal Law:** Double Jeopardy

Where a single offense is alleged to have resulted in multiple violations of the same statutory provision, the court must determine what the legislature intended as the allowable unit of prosecution.

[7] **Evidence:** Character

Admission of evidence under ROP R. Evid. 404(b) requires a showing of relevance, proper evidentiary purpose, and satisfaction of ROP R. Evid. 403.

Counsel for Appellant: Oldiais Ngiraikelau
Counsel for Appellee: Jason L. Loughman, Assistant Attorney General

BEFORE: LOURDES F. MATERNE, Associate Justice; ALEXANDRA F. FOSTER, Associate Justice; and RICHARD H. BENSON, Part-Time Associate Justice.

Appeal from the Trial Division, the Honorable KATHLEEN M. SALII, Associate Justice, presiding.

PER CURIAM:

Appellant Tommy E. Remengesau Jr. seeks review of his convictions and sentence for violations of the Palau Code of Ethics.[1] For the following reasons, we affirm the Trial Division's conclusions on all issues raised on appeal with the exception of one.

BACKGROUND

This appeal concerns Remengesau Jr.'s convictions for the failure to properly disclose his interest in property in 2002 and 2003. The Republic charged Remengesau Jr. with violations of the Palau Code of Ethics, which requires public officials to annually disclose the following:

> The location and value of any real property in the Republic in which the public official or candidate held a direct or indirect ownership interest having a fair market value of $1,000 or more, and, if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

33 PNC § 605(c)(5). If the official knowingly or willfully violates this provision, she or he is

[1] Remengesau Jr. requests oral argument. After reviewing the briefs and record, the Court finds this case appropriate for submission without oral argument. ROP R. Civ. P. 34(a) ("The Appellate Division on its own motion may order a case submitted on briefs without oral argument.").

guilty of a misdemeanor, with the penalty set out in 33 PNC § 611.

Remengesau Jr. was the President of the Republic of Palau from 2000 through 2008, and thus was subject to the Palau Code of Ethics reporting requirements. In 2002 and 2003, he filed financial disclosure statements as required by 33 PNC § 605. The 2002 disclosure statement listed the following information about land Remengesau Jr. had an interest in through purchase or sale:

[TABLE OMITTED:

SEE APPENDIX A]

The 2003 disclosure statement referred to the 2002 statement by certifying that Remengesau Jr. had no assets of real property to report that were not reported in the 2002 disclosure statement.

Review of land ownership documents indicates that during that time, Remengesau Jr. also owned the following properties:

1. Metangelrael, Cadastral Lot No. 015 C 01, located in Ngarchelong.
2. Ibkes, Cadastral Lot No. 013 K 10, located in Ngaremlengui, and received from Patrick Remarii.
3. Ngersei, Cadastral Lot No. 003 F 23, located in Ngarchelong.
4. Bedudradebusech, Cadastral Lot No. 017 K 02, located in Ngaremlengui.
5. Ibkes, Cadastral Lot No. 013 K 07, located in Ngaremlengui.[2]
6. Ngeribukel, Cadastral Lot No. 025 C 09, Melekeok.

Due to the discrepancies between the properties he owned and the information he disclosed, the Republic filed an information against Remengesau Jr., bringing 19 counts for violations of 33 PNC § 605(c)(5). In Counts 1-5, the Special Prosecutor alleged that Remengesau Jr. failed to disclose the transfer of five pieces of real property into his possession. In Counts 7-12, the Special Prosecutor alleged that in his 2002 statement, Remengesau Jr. failed to disclose information about the location and value of properties he had a direct or indirect interest in with a fair market value of over $1,000.00. Counts 13-19 are the same allegations for his 2003 statement. Because the 2003 financial statement referred back to the 2002 statement, the lands addressed in Counts 7-12 align with the lands addressed in Counts 13-19. The following chart lays out how the Counts align with the land Remengesau Jr. had an interest in, as well as the fair market value of each property:[3]

[TABLE OMITTED:

SEE APPENDIX B]

I. Pretrial Motions

Prior to trial, Remengesau Jr. filed two motions to dismiss and a motion for bill of particulars, all of which the Trial Division

[2] There are two separate properties referred to as Ibkes.

[3] At trial, Kenneth Uyehara was qualified as an expert witness regarding the property valuation.

denied. In his Motion to Dismiss the Information, Remengesau Jr. argued that the Special Prosecutor should not have been used, and that the action was barred by the statute of limitations. In denying the motion, the court reasoned that prosecution by the Special Prosecutor was appropriate. The court also rejected Remengesau Jr.'s argument that the statute of limitations for the action began to run in 2004, during the ten hours between the expiration of his first term as president and when he was sworn in for his second term. The court reasoned that the purpose of the four-year statute of limitations is to avoid investigating and prosecuting officials while they are in office. According to the court, that purpose would be thwarted if the statute of limitations started running before Remengesau Jr. was out of office.

The trial court also denied the Motion to Dismiss Multiple Charges. The motion sought dismissal or election of Counts 2-5, 7-12, and 13-19 because they were multiplicitous. The court rejected the argument that all these counts amounted to only one violation of 33 PNC § 605(c). The court reasoned that each count represented a separate violation of the failure to disclose transfer, and the failure to disclose the location and value of lands for 2002 and 2003. According to the court, because the statute provided separately for the requirement of disclosing transfer and disclosing the location, value and identity of who purchased or sold the property, the counts were not multiplicitous.

II. Trial

At trial, the court heard testimony from Patrick Remarii, Naura Hideos, Bradley Kumangai, Kenneth Uyehara, Miriam U. Sakuma, and Casmir Remengesau. Remarii testified that after Remengesau Jr. met with him in prison, he sold Ibkes to Remengesau Jr. in 2000, and received $40,000.00–$20,000.00 in $100.00 cash denominations and $20.000.00 in traveler's checks in return. Hideos testified that when she asked Remengesau Jr. to purchase her property in Ngeribukel, he agreed. She received $3,000.00 of the $30,000.00 purchase price, and transferred the property to Remengesau Jr. in 2002. Uyehara testified as an expert about the fair market values of the properties at issue.

Sakuma and Casmir[4] testified about the financial disclosure statements. Sakuma has been a member of the Ethics Commission since 1999, and was the chairperson at the time of trial. She testified that the Commission does not question the veracity of the information on the disclosure forms, and accepts forms that are filled out in summary fashion. Casmir testified that he completed and submitted Remengesau Jr.'s financial disclosure statements in 2002 and 2003. Casmir testified that he looked at the land documents for the Ngaremlengui and Ngarchelong lands, and that he knew that Ibkes had been purchased from Remarii. He also testified that he prepared the financial disclosure statements to the best of his ability and did not believe he was required to include itemized descriptions of the separate lands. Casmir stated that he thought combining the properties based on their location was proper. After he prepared the financial statements, he

[4] To avoid confusing Defendant and Casmir Remengesau, the Opinion refers to Defendant as "Remengesau Jr." and Casmir Remengesau as "Casmir."

placed them in an envelope and sent it to Remengesau Jr. for his signature.

III. Verdict

The trial court found Remengesau Jr. guilty of violating the Code of Ethics described in Counts 7, 8, 9, 11, 12, 13, 14, 15, 17 and 18.[5] The trial court noted that it was undisputed that Remengesau Jr. failed to list the amounts paid for the lands and from whom he purchased land. The court rejected Remengesau Jr.'s defense that he made a good faith mistake in relying on Casmir to properly fill out the form. The court reasoned that the defendant is presumed to know the law; all public officials are educated about the Code of Ethics; and it was highly unlikely that Remengesau Jr. did not understand the requirements of the financial disclosures, given that he is a well-educated, seasoned public official.

In considering the intent element, the court was persuaded by Remarii's testimony to conclude that the failure to disclose information about the property was an attempt to cover up Remengesau Jr.'s interaction with Remarii. Although Remengesau Jr. objected to admission of his testimony as improper character evidence, the court rejected that argument, reasoning that Remarii's testimony was relevant under ROP R. Evid. 404(b) as to Remengesau Jr.'s intent in failing to disclose information in the statements.

In its conclusions of law, the court found Remengesau Jr. guilty of Counts 4 and 5, violations for failure to disclose properties valued at over $1,000 that were transferred into his possession in 2001. These Counts refer to his failure to disclose the 2001 acquisition of Bedudradebusech and Ibkes.

The court also found him guilty of Counts 7, 8, 9, 11 and 12, the Code of Ethics violations for failure to report ownership, location, value and the person from whom he acquired the property for lands owned in 2001 that were not reported in the 2002 disclosure statement. These Counts corresponded to Metangelrael, Ibkes, Bedudradebusech and Ibkes.

Finally, the court found him guilty of Counts 13, 14, 15, 17 and 18 for failure to disclose ownership, location, value and person from whom he acquired the properties in his 2003 disclosure statement. These Counts correspond to the same properties charged in Counts 7, 8, 9, 11 and 12. The Trial Division found Remengesau Jr. not guilty of Counts 6 and 19, relating to the failure to report the acquisition of Ngeribukel in the 2003 disclosure statement.[6]

IV. Sentence

The Code of Ethics penalty statute provides the following:

> Any person who knowingly or willfully violates any provision of this chapter is guilty of a misdemeanor. In addition to other penalties provided by law, a fine of up to $10,000 shall be imposed

[5] The court also found him guilty of Counts 4 and 5, but dismissed them at sentencing as duplicative of Counts 11 and 12.

[6] At the close of the Republic's case, it moved to dismiss the remaining counts, Counts 1, 2, 3, 10 and 16, for failure to meet its burden of proof.

> for each violation. For violations of the reporting requirements, a fine of up to three times the amount the person failed to report properly may be imposed for conviction of each violation.

33 PNC § 611(a). The Republic sought the maximum sentence–three times the amount the Defendant failed to report and the maximum $10,000 fine per violation–which totaled $1,357,500. Remengesau Jr. requested a $1,000.00 fine on the condition that he supplement the 2002 and 2003 disclosure forms.

The court rejected both suggested sentences. In the court's view, the Republic's sentence was too harsh because this was Remengesau Jr.'s first prosecution under the Code of Ethics. And the Defendant's suggestion was too lenient, given that Remengesau Jr.'s conviction was for a knowing violation of the Code of Ethics. The trial court also considered Remengesau Jr.'s argument in his sentencing memorandum that the charges were multiplicitous. The court rejected the argument that separate charges for the 2002 and 2003 disclosure statements were multiplicitous, reasoning that the statutes "clearly and unambiguously require that information be reported each year on the financial disclosure statement of a public official." However, the court accepted Remengesau Jr.'s argument that the failure to report information on the location and value of properties on the disclosure forms, and the failure to report the amount and nature of the consideration received or paid in exchange and the name of the person furnishing or receiving consideration was only one violation of 33 PNC § 605(c)(5). Thus, upon reconsideration, the trial court vacated the convictions for Counts 4 and 5, leaving Counts 11 and 12 intact.

With that, the trial court assessed the fine for the failure to report the location and value of five properties, referenced in Counts 7, 8, 9, 11, 12, 13, 14, 15, 17 and 18. The court decided it would be appropriate to impose a fine equivalent to the 2002 valuations of the properties: Count 7 ($6,700), 8 ($40,600), 9 ($9,200), 11 ($86,700) and 12 ($13,200), totaling $156,400.00. This appeal followed.

STANDARD OF REVIEW

[1] The Appellate Division evaluates the Trial Division's findings of fact under the clearly erroneous standard of review. *Aichi v. ROP*, 14 ROP 68, 69 (2007). Under this standard, the Trial Division's factual findings will not be set aside if they are supported by such relevant evidence that a reasonable trier of fact could have reached the same conclusion, unless the Court is convinced that a mistake has been made. *Espong Lineage v. Airai State Pub. Lands Auth.*, 12 ROP 1, 4 (2004). Conclusions of law are reviewed de novo. *Estate of Rechucher v. Seid, 14 ROP 85, 88-89 (2007).* And finally, discretionary decisions are evaluated under the abuse of discretion standard, where a trial court's decision will not be overturned unless the decision was arbitrary, capricious or manifestly unreasonable, or because it stemmed from an improper motive. *Ngoriakl v. Gulibert*, 16 ROP 105, 107 (2008).

DISCUSSION

Remengesau Jr. argues that the Trial Division committed reversible error in the following ways: (1) denying the motion for judgment of acquittal; (2) amending the information in the Verdict; (3) denying the motion to dismiss argument that the charges were time-barred; (4) rejecting the argument that the counts charged were multiplicitous; (5) imposing a penalty based on the fair market value of the property; and (6) admitting the testimony of Uyehara and Remarii. We address each issue separately.

I. Motion for Judgment of Acquittal

[2] Remengesau Jr. first argues that the Trial Division erred in denying his motion for judgment of acquittal. He contends that the prosecution failed to introduce evidence sufficient to establish each element of each offense beyond a reasonable doubt. The standard of review is clearly erroneous, and the evidence is reviewed to determine whether, in the light most favorable to the prosecution, any reasonable trier of fact could have found that the essential elements of each crime were established beyond a reasonable doubt. *Aichi*, 14 ROP at 69. "Where there are two permissible views of the evidence, the fact finder's choice between them cannot be clearly erroneous." *ROP v. Chisato*, 2 ROP Intrm. 227, 239 (1991) (internal quotations and citations omitted).

Remengesau Jr. simply disagrees with the court's evaluation of the evidence, which is far from reversible error. According to Remengesau Jr., Casmir reported the lands by location and did not realize that he should have itemized the properties separately, and no reasonable trier of fact could conclude that violations occurred based on that testimony. He argues that the court misunderstood the evidence in considering the identification requirement. In addition, Remengesau Jr. argues that the trial court's decision regarding intent was clearly erroneous. He asserts that Casmir's testimony showed that he did not realize that he should have described the lands differently, and thus it was an innocent mistake not a knowing failure to disclose.

This argument fails. There was sufficient evidence to support the convictions. Specifically, documentary evidence showed that the disclosure simply referred to "Land" in Ngarchelong and Ngaremlengui, when there were five separate parcels of land in those locations. Further, the Republic's expert testified as to the fair market value of each parcel, which, in total, far exceeded the amounts reported in the disclosure statement. All of the evidence was subject to the Trial Division's credibility and weight assessment; it was not error to conclude that the Republic met its burden. As to the intent requirement, again the court did not err. The court undertook a lengthy discussion of intent and ultimately concluded that the Republic met its burden. Its reasoned decision was based on the evidence of bills of sale and deeds of transfer for the property, his signature on the disclosure forms, and Sakuma, Casmir and Remarii's testimony.

II. Constructive Amendment

Remengesau Jr. next claims that the trial court committed reversible error by including elements of 33 PNC § 605(c)(5) not stated in the information. The standard of review of an amendment to an information is

for harmless or reversible error. *See* ROP R. Crim. P 7(e).

Under the Constitution of Palau, a person accused of a criminal offense has the fundamental right to be informed of the nature of the accusation. ROP Const. art. IV, § 7. The information filed against the accused must be a "plain, concise, and definite" statement of the facts constituting the offense charged. ROP R. Crim. P. 7(c)(1). An amendment to an information describing the offense charged is permitted if the substantial rights of the defendant are not prejudiced. ROP R. Crim. P. 7(e). As there is no Palauan case law addressing the issue, Remengesau Jr. cites United States cases discussing "constructive amendments" to indictments that were prejudicial to the defendants, and thus per se reversible. *See United States v. Reasor*, 418 F.3d 466, 475 (5th Cir. 2005); *United States v. Cancelliere*, 69 F.3d 1116, 1121 (11th Cir. 1995).[7] Under this authority, a constructive amendment is per se reversible when it "permits the defendant to be convicted upon a factual basis that effectively modifies an essential element of the offense charged." *Reasor*, 418 F.3d at 475.

Remengesau Jr. argues that the Verdict added the elements of failure to disclose the nature and type of consideration paid for property, and to whom Remengesau, Jr. gave consideration for the property. First he posits that the amendment here is per se reversible because the trial court's consideration of the identity and consideration requirements on the disclosure form allowed the Republic to convict Remengesau Jr. on a materially different theory or set of facts than the information charged. He also claims that the amendment prejudiced him and is thus a reversible error because he was convicted of offenses not originally charged. *See* ROP R. Crim. P. 7(e). He also claims that the addition of the identity and consideration elements violates his right to be informed of the charges against him. *See* ROP Const. art. VI, § 7.

Remengesau Jr. is correct that the Verdict added two elements, but this is a harmless–not a reversible–error. In the Information, Counts 7, 8, 9, 11 and 12 allege violations of the Code of Ethics for failure to disclose the location and value of property that Remengesau Jr. had a direct or indirect ownership interest in with a fair market value of over $1,000 in the 2002 disclosure. Counts 13, 14, 15, 17 and 18 make the same allegations for the 2003 disclosure. Thus, the Information addressed only disclosure of the location and value of property. However, as noted above, 33 PNC § 605(c)(5) also requires that financial disclosure statements "shall state for the reporting period":

> . . . if the interest was transferred or obtained during the disclosure period, a statement of the amount and nature of the consideration received or paid in exchange for such interest, and the name of the person furnishing or receiving the consideration.

At trial, the court convicted

[7] In the absence of applicable Palauan statutory or customary law, the "rules of the common law, as expressed in the restatements of the law approved by the American Law Institute and, to the extent not so expressed, as generally understood and applied in the United States, shall be the rules of decision in the courts of the Republic in applicable cases. . . ." 1 PNC § 303.

Remengesau Jr. of Counts 7, 8, 9, 11, 12, 13, 14, 15, 17 and 18. In describing the violations, the court discussed the consideration and identification element, and so the Verdict considered elements not set forth in the information.

We find no constructive amendment. Remengesau Jr. was not convicted based on the addition of the identity and consideration elements. The Verdict is clear that the conviction was based on the failure to disclose the location and value of the property, as well as the failure to describe the consideration given and identify the person who sold or received the property. So the court's conclusion was not based on additional facts. Because the change was not a constructive amendment, the amendment is not per se reversible.[8] We thus turn to whether the amendment was prejudicial and conclude that it was not.

The convictions for Counts 7, 8, 9, 11 and 12 and Counts 13, 14, 15, 17 and 18 did not hinge on whether the 2002 and 2003 disclosure statements omitted the identity and consideration requirements. We acknowledge that the Verdict references the additional elements when the court describes the statute and as an illustration of Remengesau Jr.'s intent. The Verdict notes the failure to include the location and value of the property transferred or owned, in addition to the failure to identify the consideration and the person who purchased or sold the property for Counts 4 and 5 and Counts 8, 11 and 12. However, the court ultimately states the following:

> The Republic has established beyond a reasonable doubt that Defendant did fail to disclose the location and value of real property, as well as information regarding the nature and type of consideration and the person Defendant gave the consideration to for the property. . .

The court concluded that the government established a failure to disclose location and value, and it also established the additional elements. The Trial Division's use of the phrase "as well as" indicates that the convictions would remain, even without consideration of the additional element. Remengesau Jr. was therefore convicted based on the elements described in the information; the additional elements were not prejudicial. The Trial Division's change to the information is therefore not reversible error.

III. Statute of Limitations

[3] The third issue is whether the trial court erred when it denied Remengesau's

[8] The Republic argues that the Court should summarily deny Remengesau Jr.'s "constructive amendment" argument. It points out that the case law Remengesau Jr. cites regarding constructive amendment involves grand jury indictments, and that the amendment is prejudicial in that context because it deprives a defendant of his right to be tried upon the charge in the indictment as found by the grand jury. In Palau, criminal defendants do not have a constitutional right to be charged by a grand jury; rather, defendants are charged through the Information. ROP R. Crim. P. 7(a). The Republic asserts that Remengesau Jr.'s "constructive amendment" argument fails due to this difference. As we conclude that a constructive amendment did not occur, we need not resolve this issue here.

motion to dismiss the information as barred by the four-year statute of limitations. Since the trial court reached a conclusion of law regarding the statute of limitations, the standard of review is de novo. *Isimang v. Arbedul*, 11 ROP 66, 69 (2004).

Under 33 PNC § 611(a), the statute of limitations for actions against public officials under the Code of Ethics is four years, beginning when the official leaves government service. We agree with the Trial Division that the statute of limitations did not begin to run until Remengesau Jr. was out of office after his second term because he did not leave government service until that time.

Remengesau Jr. argues that the statute began running when his first term as president ended, on December 31, 2004, and so the 2009 information is time-barred. Remengesau Jr. cites no authority on point, and it is not a logical interpretation of the statute. For one, the Republic points out that the plain meaning of "leave" is to "to terminate association with: withdraw from," or "to remove himself from participation in or association with." (citing the Merriam Webster online dictionary and *Webster's II New College Dictionary*).[9] This definition indicates a more permanent separation. Because Remengesau Jr. intended to retake his office a few hours after his first term ended, he did not "leave" government service. Moreover, we agree with the Trial Division that the purpose of the four-year limitation is to avoid investigations of a public officer while she or he remains in that position. By the time Remengesau Jr.'s first term ended, he had won a reelection for the same office and planned to retake that office almost immediately. Based on his intent to retake the same office immediately after his first term, and the fact that the actual gap between terms was just a few hours, the only logical way to carry out that purpose is for the statute to begin running after he completed his second term. Otherwise, investigations for the activities he conducted while president would take place while he still held the same office.[10] Accordingly, we affirm the Trial Division's denial of the motion to dismiss on statute of limitations grounds.

IV. Multiplicitous Counts

[4] Remengesau Jr. claims that the trial court erred in denying Remengesau Jr.'s motion to dismiss Counts 7, 8, 9, 11, 12, 13, 14, 15, 17 and 18 as multiplicitous. The trial court's conclusion of law regarding multiplicitous counts is reviewed de novo. *Chieh-Chun Tsai v. ROP*, 9 ROP 142, 143 (2002).

[5, 6] "It has been recognized that the United States Constitution's Double Jeopardy

[9] Words and phrases used in the Palau National Code "shall be read in their context and interpreted according to the common and approved usage of the English language." 1 PNC § 202.

[10] Our conclusion that the statute of limitations began running for Remengesau Jr. when he left office after his second term is limited to his set of facts. It should not be construed to effectively exempt individuals who have been elected to several different public official positions from being subject to the Code of Ethics, nor should it be understood to mean that the statute of limitations clock only starts to tick once the officer is out of all public positions. Rather, because the determination of when the public official leaves government services requires an analysis of the public officer's actions, a factual investigation for each public officer is necessary.

Clause, which is similar to Palau's, protects against (i) a second prosecution for the same offense after acquittal or conviction; and (ii) multiple punishments for the same offense at a single trial." *Kazuo v. ROP*, 3 ROP Intrm. 343, 346 (1993). Where a single offense is alleged to have resulted in multiple violations of the same statutory provision, or if multiple offenses are alleged to have been charged as a single offense, the court must determine what the legislature intended as the "allowable unit of prosecution." *See United States v. Keen*, 104 F.3d 1111, 1118-20 (9th Cir. 1996).

He presents two arguments: (1) the five counts for the failure to disclose in the 2002 statement are one violation of 33 PNC § 605(c)(5); and (2) the 2003 disclosure violations are duplicative of the 2002 disclosure violations because the 2003 statement merely adopted the 2002 statement. We agree with the first argument, but not the second.

As to the first argument, the Republic concedes that the five counts comprising the failures to disclose in the 2002 disclosure statement, and the five counts corresponding to the 2003 disclosure statement are each just one violation of 33 PNC § 605(c)(5). Each of the counts arises under the same statute and corresponds to only two disclosure statements. Remengesau Jr. correctly points out that the purpose of the law is to ensure that one disclosure statement is filled out properly every year, and the statute does not explicitly state that each failure to disclose in the same disclosure statement constitutes a separate offense. Thus, the convictions for Counts 7, 8, 9, 11, 12, 13, 14, 15, 17 and 18 are multiplicitous, and constitute two, not ten, violations. We therefore select Counts 7 and 13 to remain intact and vacate the remaining convictions.[11]

Remengesau Jr. next argues that the 2003 violation is multiplicitous of the 2002 violation. According to him, because the 2003 statement simply certified that there were no changes to the 2002 statement, there was no additional impairment to the ethics commission's functions. He references the "unitary harm" rule, where repetition of the same false statement does not constitute separate charges because it does not cause additional harm to the government. *See United States v. Graham*, 60 F.3d 463, 467 (8th Cir. 1995). However, the Republic points out that Graham does not apply here because in Graham the defendant committed perjury three times during the course of one case, whereas here, Remengesau Jr. had a new obligation every year to fill out disclosure forms. According to the Republic, the content of the form may be factually related, but the obligation to provide information is separate each year.

The Republic's position is more persuasive and logical. Section 605(c)(5) explicitly requires political figures to make annual financial disclosures. Every year there is a new obligation to submit accurate

[11] For the sake of simplicity, we selected Counts 7 and 13 because they were the first Counts corresponding with each financial statement. Although the Court could have vacated and remanded the convictions, the Trial Division's ultimate conclusion and penalty would remain unchanged given that the court did not impose a "per violation" penalty. We therefore conclude that it is a more practical and efficient use of resources to select the Counts that remain in this Opinion, instead of remanding for the trial court to do the same.

statements. It is therefore consistent to hold violators accountable for each reporting period separately. Moreover, treating separate statements as separate violations is consistent with this Court's precedent. *Cf. Uehara v. ROP*, Crim. App. No. 09-001, at 13-14 (April 29, 2010) (concluding that perjury charges grouped together in an information were not duplicative because each charge corresponded to a different disclosure statement). Thus, we agree with the Trial Division's treatment of the 2002 and 2003 disclosures as separate violations, and affirm that decision.

V. Penalty

Remengesau Jr. next takes issue with the $156,400.00 fine. He claims that the trial court erred in imposing a fine under 33 PNC § 611 based on the amount of the appraised market value of the lands involved and by imposing multiple punishments for essentially a single offense. We conclude that the penalty imposed was not an abuse of discretion.

Remengesau Jr. contends that 33 PNC § 611 contemplates a penalty for the amount not reported only where the violation is the failure to report the proper amount. He argues that because the conviction was for the failure to disclose the location and value, not for failing to state the amount paid for the land, the penalty was an error. This argument is not persuasive. The penalty scheme does not distinguish between the types of penalties. Rather, the statute simply states that the penalty for "violations of the reporting requirements" is a fine of up to three times the amount the person failed to report properly. The court held that he violated the reporting requirements. The penalty based on the amount he failed to report was proper. The Trial Division could have imposed a penalty of three times the value he did not report, but in its discretion it decided to fine only the value not properly reported. This was certainly not an abuse of discretion.

Alternatively, Remengesau Jr. asserts that the appraised fair market value should not be the measure of damages. This argument is unpersuasive since Remengesau Jr. provides no support for his assertion and the statute indicates the opposite. By requiring officials to report property with a fair market value of $1,000 or more, section 605(c) contemplates use of fair market value. Further, 33 PNC § 611 provides, in part, that "[f]or violations of the reporting requirements, a fine of up to three times the amount the person failed to report may be imposed for conviction of each violation." It is logical and consistent to conclude that the property's fair market value–"the amount the person failed to report"–could be a proper measurer of damages.

The Trial Division did not abuse its discretion in calculating the penalty amount based on the fair market value of the land. Our selection of Counts 7 and 13 does not affect the penalty assessed. The Sentencing Order did not engage in a "per violation" penalty assessment. The court simply totaled the amount not reported as the penalty. Thus, we affirm the Trial Division's penalty.

VI. Testimony of Kenneth Uyehara and Patrick Remarii

The final issue concerns testimony admitted at trial. Remengesau Jr. contends that the trial court abused its discretion when it admitted Kenneth Uyehara's expert

testimony and opinion as to the market value of the lands, and when it admitted the testimony of Patrick Remarii as Rule 404(b) evidence. We disagree.

As to Uyehara, the Republic submitted his testimony as expert evidence of the market value of the properties. Remengesau Jr. argues that admitting this evidence was an abuse of discretion because the fair market values were irrelevant. The trial court properly admitted Uyehara's testimony as helpful expert testimony related to the Republic's showing that the value reported in the 2002 and 2003 financial statements were wrong. *See* ROP R. Evid. 702. There is nothing in the record indicating that an abuse of discretion occurred.

[7] Remengesau also argues that admission of Remarii's testimony was an abuse of discretion. He claims that to admit the testimony, the Republic had to show that the prior bad act evidence was (1) relevant, (2) similar in kind and close in time to the crime charged, (3) supported by sufficient evidence to support a finding that he committed the prior act, and (4) not overly prejudicial. *See United States v. Kern*, 12 F.3d 122, 124-25 (8th Cir. 1993). Because the Verdict did not address how the prior act was similar to the violations charged and there was no evidence supporting Remarii's testimony, he argues that admission of the testimony was an abuse of discretion. The Republic responds that the proper standard for the admissibility of ROP R. Evid. 404(b) testimony is that the prior wrong must (1) have a proper evidentiary purpose; (2) be relevant; (3) satisfy Rule 403; and (4) be accompanied by a limiting instruction about the purpose for which the jury may consider it. *See United States v. Green*, 617 F.3d 233, 249 (3d Cir. 2010). The Republic argues that the prior act need not be similar in kind and time, and that United States circuits agree that similarity is not always required for 404(b) evidence to be admissible.

Admission of Remarii's testimony was not an abuse of discretion. The Trial Division's Verdict explains the reason for admitting the testimony. It was proper Rule 404(b) evidence because it was helpful to show Remengesau Jr.'s intent, and Section 611 states that a violation of 605 must be knowing or willful, so the Republic bore the burden to submit intent evidence. To that end, the Republic elicited Remarii's testimony about Remengesau Jr.'s prior interaction with him to show that Remengesau Jr. intended to avoid disclosing his interest in the property to cover up his transaction with Remarii. The testimony was relevant and proper intent evidence. Further, given that the court–not a jury–evaluated the evidence, Remengesau Jr.'s proposed test is unnecessarily strict. The Trial Division was more than capable of evaluating the evidence, as illustrated by the Verdict's sound reasoning. We are unconvinced that permitting this testimony constituted an abuse of discretion and affirm the Trial Division on this issue.

CONCLUSION

Counts 7, 8, 9, 11, 12, 13, 14, 15, 17 and 18 constitute two–not ten–violations of section 605(c)(5). We conclude that Counts 7 and 13 remain intact and that Counts 8, 9, 11, 12, 14, 15, 17 and 18 are **VACATED**. We **AFFIRM** the Trial Division's Verdict and Sentencing Order on all remaining issues.

APPENDIX A

Real Estate, Income Sources, and Real Property (list name of business entity or descrition [sic] of gift or other income source). You may distingguish [sic] any entry for a family member by preceding it with S for spouse . . .	Mailing Address of business entity or Location of real property, or Name of person who made a gift and date	$ Value (at least $500 but less than $1,000; at least $1,000 but less than $10,000; at least $10,000 but less than $50,000; at least $50,000 but less than $100,000; or $100,000 or more	For real property that was purchased, sold, or transferred during reporting period, list amount received or paid and name of person buying or selling the property, and date of transaction
Land	Ngarchelong State	>$1,000 but < $10,000	
Land	Kayangel State	>$1,000 but < $10,000	

APPENDIX B

Counts	Land	2002/2003 FMV (assigned by Uyehara at trial)
7, 13	Metangelrael, Cadastral Lot 015 F 01, in Ngarchelong	$6,700.00
8, 14	Ibkes, Cadastral Lot 013 K 10, in Ngaremlengui	$40,600.00
9, 15	Ngersei, Cadastral Lot 003 F 23, in Ngarchelong	$9.200.00
11, 17	Beduradebusch, Cadastral Lot 017 K 02, in Ngaremlengui	$86,700.00