IN THE

Supreme Court

OF THE

Commonwealth of the Northern Mariana Islands

COMMONWEALTH OF THE NORTHERN MARIANA ISLANDS,
Plaintiff-Appellee,

v.

AMBROSIO T. OGUMORO,
Defendant-Appellant.

Supreme Court No. 2017-SCC-0028-CRM

OPINION

Cite as: 2020 MP 8

Decided April 30, 2020

ASSOCIATE JUSTICE JOHN A. MANGLOÑA
JUSTICE PRO TEMPORE WESLEY M. BOGDAN
JUSTICE PRO TEMPORE TIMOTHY H. BELLAS

Superior Court Criminal Case No. 15-0055
Associate Judge Kenneth L. Govendo, Presiding

MANGLOÑA, J.:

¶ 1 Defendant-Appellant Ambrosio T. Ogumoro ("Ogumoro") appeals his conviction and sentence for theft by deception and misconduct in public office. For the following reasons, we AFFIRM Ogumoro's conviction for theft by deception but REVERSE the conviction for misconduct in public office because it is time-barred by the statute of limitations. We REMAND this matter for re-sentencing consistent with this opinion.

I. FACTS AND PROCEDURAL HISTORY

¶ 2 In September 2012, the Commonwealth of the Northern Mariana Islands Department of Public Safety ("DPS") incurred $2,500 in expenses, including $1,553 for auto parts, for repair of a 1995 automobile by ELS Auto Shop ("ELS"). Weeks later, in October 2012, Ogumoro, then DPS Deputy Commissioner, submitted to the Division of Procurement and Supply a "request for survey" form, which represented that the vehicle had "[n]o value except as scrap." Appellant's Appendix ("App.") 869. The request was approved. The same day, Ogumoro and Herman Manglona ("Manglona")[1] appeared before Division of Procurement and Supply, where Manglona purchased the vehicle for $50.

¶ 3 The Commonwealth of the Northern Mariana Islands ("Commonwealth") charged Ogumoro with several offenses including theft by deception under 6 CMC § 1603 ("Section 1603")[2] and misconduct in public office under 6 CMC § 3202.[3] It argued Ogumoro purposely deceived the government by facilitating the sale of the vehicle to Manglona. The Commonwealth presented evidence that Ogumoro knew of but failed to disclose substantial recent repairs when he submitted the request for survey. It therefore argued, through the testimony of Manny Vitug ("Vitug"), that Ogumoro misrepresented the vehicle's value. Vitug testified that he believed that, if properly cared for, the vehicle would have been operable for years following the repair. Tr. 646. The Commonwealth also presented evidence of Manglona's July 2013 sale of the vehicle to a third party for $700 and of the vehicle's December 2012 and July 2013 safety inspections, which were struck from the record after testimony that the business had a practice of issuing such documents without conducting inspections.

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[1] The trial court made no factual finding as to whether Herman Manglona was Ogumoro's brother-in-law, but the prosecutor made several references to him as such throughout his closing arguments and arguments at the sentencing hearing. Tr. 1055, 1064, 1081, 1096, 1185, 1191. In view of our holding, the relationship between a defendant and a transferee is immaterial for the purposes of the elements of theft by deception.

[2] 6 CMC § 1603 reads, in pertinent part: "A person commits theft if he or she purposely obtains property of another by deception."

[3] 6 CMC § 3202 reads, in pertinent part: "Every person who, being a public official, does any illegal act under the color of office, or wilfully neglects to perform the duties of his or her office as provided by law, is guilty of misconduct in public office[.]"

¶ 4 At trial, Ogumoro disputed the court's interpretation of the theft by deception statute, asserting that to have "obtained" the vehicle, he had to either acquire a legal interest in the vehicle or transfer it to himself. He also argued the value was not misrepresented. He claimed the vehicle continued to have problems after it was repaired such that evidence of the repairs did not reflect the value. Three police officers testified in support of the claimed defense. When Ogumoro moved to admit expert testimony to rebut Vitug's opinion testimony, the court denied his motion on the basis that the proposed expert, Manny Manuel, "never . . . saw the vehicle." Tr. 946. Ogumoro also argued in a pre-trial motion that the applicable statute of limitations barred the misconduct in public office charge.

¶ 5 A jury found Ogumoro guilty of theft by deception and the trial judge found him guilty of the misconduct in public office count, predicated on the illegal act of theft by deception. The court sentenced him to six years of imprisonment, all suspended, and placed him on probation. The court imposed a number of probation conditions, including writing an apology letter for publication, paying $2,500 in restitution, and prohibition from CNMI Government employment for ten years, to begin after the conclusion of his period of probation in a separate criminal case, Criminal Case No. 12-0134. He now appeals his conviction and sentence.

II. JURISDICTION

¶ 6 We have jurisdiction over final judgments and orders of the Commonwealth Superior Court. NMI CONST. Art. IV, § 3.

III. STANDARDS OF REVIEW

¶ 7 Seven issues are presented on appeal. First, we review the court's denial of Ogumoro's motion for judgment of acquittal de novo. *Commonwealth v. Pua*, 2009 MP 21 ¶ 23; *Commonwealth v. Fitial*, 2015 MP 15 ¶ 15; *Commonwealth v. Tian*, 2019 MP 9 ¶ 16. "The test applied is the same as that for a challenge to the sufficiency of the evidence." *Commonwealth v. Ramangmau*, 4 NMI 227, 237 (1995). We consider "whether any reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Fitial*, 2015 MP 15 ¶ 15 (quoting *Commonwealth v. Caja*, 2001 MP 6 ¶ 3). Our review "must encompass all of the evidence, direct or circumstantial, viewed in the light most favorable to the government." *Ramangmau*, 4 NMI at 237. Second, we review alleged evidentiary errors for abuse of discretion. *Commonwealth v. Blas*, 2018 MP 2 ¶ 7. Third, we review whether the trial court's jury instructions misstated the law. Jury instructions challenged as a misstatement of the law are reviewed de novo. *Commonwealth v. Sanchez*, 2014 MP 3 ¶ 11 (reviewing de novo an instruction which plaintiff alleged misstated an element); *Commonwealth v. Demapan*, 2008 MP 16 ¶ 12; *Ramangmau*, 4 NMI at 238. We then review de novo whether the applicable statute of limitations barred Ogumoro's misconduct in public office charge. *Demapan*, 2008 MP 16 ¶ 12.

¶ 8 We then turn to whether the trial court erred in denying Ogumoro's motion for a mistrial, which he based on prosecutorial misconduct allegations. A trial

court's denial of a motion for a mistrial is reviewed for abuse of discretion. *Ishimatsu v. Royal Crown Ins. Corp.*, 2010 MP 8 ¶ 49 (citing *Commonwealth v. Camacho*, 2002 MP 6 ¶ 21). We next review prosecutorial misconduct claims de novo when a timely objection was made and for plain error when no timely objection was made. *See Commonwealth v. Jing Xin Xiao*, 2013 MP 12 ¶ 16; *see also Commonwealth v. Saimon*, 3 NMI 365, 379–80 (1992). Finally, we review cumulative error claims de novo. *Commonwealth v. Cepeda*, 2014 MP 12 ¶ 37.

IV. DISCUSSION

¶ 9 For the theft by deception count, Ogumoro takes issue with the court's findings on each of the elements because the evidence was allegedly insufficient. But we reach the opposite conclusion and affirm that count. In doing so, we find the third-party sale price relevant, the safety inspection exhibits' relevance moot, and the admission of Vitug as a lay witness and the exclusion of Manny Manuel to be harmless errors. We also find the statements and conduct allegedly constituting prosecutorial misconduct either not plain error, or if error, harmless. Finally, we likewise find no cumulative error. However, Ogumoro's count for misconduct in public office is reversed because the statute of limitations had run before the Commonwealth brought the charge. Because we remand for resentencing based on this reversal, we do not address Ogumoro's sentencing arguments.

A. Judgment of Acquittal

¶ 10 Ogumoro contends the evidence was insufficient to support his conviction for theft by deception for three reasons. He argues the Commonwealth failed to show: (1) he "obtained" the vehicle within the meaning of 6 CMC § 1603(a); (2) he used deception to obtain the vehicle in violation of 6 CMC § 1603(a); and (3) the violation occurred on or about December 5, 2012, the date alleged in the information. When reviewing a judgment of acquittal, we consider "whether any reasonable trier of fact could have found the essential elements of the crime in question beyond a reasonable doubt." *Fitial*, 2015 MP 15 ¶ 15.

i. Definition of "Obtain"

¶ 11 Ogumoro claims the Commonwealth failed to show he "obtained" the vehicle within the meaning of 6 CMC § 1603(a). He posits that the court should interpret the statute's language to apply only to situations in which the defendant himself receives the transferred property. Because he never acquired a legal interest in it or transferred it to himself, Ogumoro concludes he never "obtained" the vehicle.[4]

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[4] Ogumoro argues that "[i]f the Government seeks to assert criminal liability for a transfer to a third person it may do so through the use of the conspiracy statute or through a charge of aiding and abetting the commission of theft by deception." Br. 8. We are not persuaded by the argument that the Commonwealth may impose criminal liability through the use of the conspiracy statute or an aiding and abetting charge. Criminal conspiracy requires that a person "agree[] with one or more persons" to engage in or solicit criminal conduct. 6 CMC § 303(a)(1). A person who, acting alone, causes the transfer of property to an unknowing party through the use of deception

¶ 12 Statutory language is reviewed "for its plain meaning if it is clear and unambiguous." *Commonwealth v. Sanchez*, 2014 MP 3 ¶ 14. A statute is ambiguous if it is "capable of more than one meaning." *Id*. "A person commits theft if he or she purposely obtains property of another by deception." 6 CMC § 1603(a). "Obtain" is defined as "[i]n relation to property, to bring about a transfer or purported transfer of a legal interest in the property." 6 CMC § 103(a)(1) ("Section 103(a)(1)").

¶ 13 According to the statute's plain language, Ogumoro is not required to receive the transferred property. Section 1603(a)'s elements of theft by deception and the attendant definition of "obtain" at Section 103(a)(1) do not preclude Ogumoro from being guilty of theft. Placing the definition of "obtain" into Section 1603(a) yields a clear and unambiguous meaning that encompasses transfers to those other than Ogumoro. We thus construe theft by deception as applicable to anyone who purposely and deceptively brings about a transfer of property to themselves or others. In this case, Ogumoro purposefully and deceptively brought about a transfer of the government's vehicle to Manglona. In its jury instructions, the court applied Section 103(a)(1) when it stated that "[i]n the Commonwealth, 'Obtain' means, to bring about a transfer or purported transfer of a legal interest in the property." App. 937. A reasonable trier of fact could have found that Ogumoro brought about a transfer of the vehicle because it was his survey request that eventually resulted in the sale of the vehicle to Manglona.[5] We find the court correctly interpreted and applied the definition of "obtain" and that there was sufficient evidence that Ogumoro obtained the

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could therefore avoid criminal liability for conspiracy. Both those who aid or abet the commission of a crime and "a principal who commits the offense" incur liability. 6 CMC § 201. If the Court were to accept Ogumoro's arguments, Section 1603 would stand for the proposition that a person may purposely use deception to transfer the legal interest in another's property, yet remain immune to prosecution, so long as the property is transferred to *another person*. Such interpretation runs afoul of the rule that "[a] court should avoid interpretations of a statutory provision which would defy common sense [or] lead to absurd results . . ." *Commonwealth Ports Auth. v. Hakubotan Enters.*, 2 NMI 212, 224 (1991). Read in conjunction with 6 CMC § 103(a)(1), the "obtain" element in Section 1603(a) is satisfied when a person causes the "transfer or purported transfer of a legal interest" in property. Such a person commits the offense of theft by deception as a principal, making an aiding and abetting charge unnecessary and inappropriate.

[5] Ogumoro concludes his argument on this element by asserting that should his argument as to the interpretation of "obtain" be rejected, the rule of lenity should be applied to construe the statute in his favor, i.e., that the statute means to obtain property for himself. He fails to analyze this argument and therefore waives it. *Ki Dong Kim v. Hong Sik Baik*, 2016 MP 5 ¶ 30 ("An issue is insufficiently developed when the party's principal brief fails to 'provide[] legal authority or public policy, [or] appl[y] the facts of the case to the asserted authority in a non-conclusory manner.'" (quoting *Commonwealth v. Calvo*, 2014 MP 10 ¶ 8)).

vehicle within the meaning of Section 103(a)(1).[6]

ii. Deception

¶ 14 Ogumoro argues that there was insufficient evidence to support a finding beyond a reasonable doubt that he deceived DPS as to the value. Even though the vehicle underwent repairs, three police officers testified that it continued to have problems.[7] Despite this testimony, Ogumoro claims that they were the only people with knowledge of the vehicle between the time it was repaired and when it was surveyed. Ogumoro further argues that, although Vitug quoted $700 to $800 for additional repairs, that was not conclusive evidence of the vehicle's value on the day it was surveyed.

¶ 15 It is the exclusive province of the jury to determine the credibility of witnesses and to resolve evidentiary conflicts. *Commonwealth v. Castro*, 2007 MP 9 ¶ 11 (citing *United States v. Ramos*, 558 F.2d 545, 546 (9th Cir. 1977)). In reviewing a challenge to the sufficiency of the evidence, the court "must resolve issues of witness credibility in favor of the prosecution." *Castro*, 2007 MP 9 ¶ 9 (citations omitted). "A person deceives if he or she purposely . . . [c]reates or reinforces a false impression, including false impressions as to . . . value[.]" 6 CMC § 1603(a)(1).

¶ 16 Here, although witnesses testified that the vehicle continued to exhibit problems after it was repaired and that a quote for additional repairs was provided, this countervailing testimony was disputed. Vitug testified that he did not see the vehicle again after the September 2012 repairs. He also testified that he believed the vehicle would have been operable for "years" after the initial repairs. Tr. 646. Moreover, the jury was presented with the following evidence: (1) a September 12, 2012 repair invoice for $2,500 that included $1,553 for a timing belt, water pump, radiator, battery, air-conditioning and radiator fan motors, and a transmission tune-up; and (2) a bill of sale showing the vehicle was sold for $700 on July 1, 2013. It was undisputed that Ogumoro was aware of the

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[6] Because Ogumoro argues that "obtain" means he had to transfer the property to himself, he contends the court erred because it failed to instruct the jury that "obtain" had that meaning. Here, the jury was instructed that "[i]n the Commonwealth, 'Obtain' means, to bring about a transfer or purported transfer of a legal interest in the property." App. 937. This is the definition of "obtain" throughout Title 6 of the Commonwealth Code. 6 CMC § 103(a)(1). Ogumoro did not have to transfer the vehicle to himself in order to "obtain" it. *See supra* ¶¶ 11–13. The instructions contained all the legal elements and correctly stated the law as written, and we therefore find no error.

[7] The following police officers testified that the vehicle continued to exhibit problems after it was repaired: (1) former DPS Officer Tarcisio K. Olopai, who testified that he was operating the vehicle in October 2012 when it overheated and stopped running; (2) former DPS Officer Martin I. Kapileo, who testified that he retrieved the vehicle at ELS after it was repaired and that, within a week's time, it exhibited overheating problems and could not operate in reverse; and (3) DPS Officer Ramon S. Pangelinan, who testified that the vehicle was towed to ELS after the September repairs and that Vitug informed him it would cost an additional $700 to $800 to repair it. Tr. 795, 975, 839.

September 2012 repairs but did not disclose them at the time he submitted the survey request. Ultimately, the jury weighed all testimony and evidence and found the vehicle had a value of over $250 but less than $20,000 when it was surveyed. Based on the evidence, we find a reasonable trier of fact could have found Ogumoro used deception to obtain the vehicle within the meaning of Section 1603(a) and therefore find there was sufficient evidence Ogumoro used deception.

iii. Date of Deception

¶ 17 Ogumoro claims the Commonwealth must show the elements of the crime occurred reasonably close to December 5, 2012, the date as charged. He contends that because the element of deception could have occurred only on the day the vehicle was surveyed, October 25, 2012, the Commonwealth could not have shown the violation occurred reasonably close to December 5, 2012.

¶ 18 Generally, the alleged date in an indictment does not have to be exact. *See, e.g.*, *United States v. Austin*, 448 F.2d 399, 401 (9th Cir. 1971). As long as the applicable date is within the statute of limitations and there is no prejudice, generality in dates may be permitted. *See*, *e.g*., *United States v. Nunez*, 668 F.2d 10, 12 (1st Cir. 1981) ("great generality in the allegation of date" is permitted where the time of the offense is unimportant under the statute violated (quoting 1 Wright, Federal Practice and Procedure: Criminal § 125 at 246–47)); *see also Austin*, 448 F.2d at 401 (rejecting appellant's error claim where indictment stated "on or about August 29, 1969" when "correct dates were some time after July 9, 1969" and "some time before August 25, 1969," because no prejudice was shown).

¶ 19 Here, the jury was instructed that the Commonwealth had to show the elements of the crime occurred "on or about December 5, 2012," App. 935, when it alleged Ogumoro completed the sale to Manglona constituting the theft by deception. At trial, the Commonwealth argued the deception occurred on October 25, 2012, when Ogumoro represented that the vehicle was valued at $50. That date was within the applicable statute of limitations and the statute's language does not indicate the time of deception is important. *See* 6 CMC § 1603. Ogumoro also fails to provide any evidence that he was prejudiced. We find the date as charged, December 5, 2012, to be only forty-one days from the date of deception, October 25, 2012, and therefore reasonably close.

¶ 20 A reasonable trier of fact could have found the essential elements of the crime beyond a reasonable doubt. The court correctly interpreted "obtain" and found sufficient evidence that Ogumoro obtained the vehicle within the meaning of Section 103(a)(1). It also correctly found Ogumoro deceived DPS as to the value of the vehicle. Finally, the date charged for Ogumoro's theft by deception was only forty-one days from the date Ogumoro contends any alleged deception occurred. We find there was sufficient evidence to convict Ogumoro of theft by deception and the court therefore properly denied the motion for judgment of acquittal. We now turn to whether the court made evidentiary errors that warrant reversal.

B. Relevance

¶ 21 Ogumoro contends the court erred when it initially admitted evidence of the vehicle's safety inspections and sale price. He asserts that evidence of the

safety inspections and sale price was inadmissible as irrelevant, and that, though the safety inspections were ultimately struck from the record, "the damage was already done." Opening Br. 15. He argues the time between the inspections and the sale renders this evidence irrelevant, which affects whether the Commonwealth could prove Ogumoro's deception as to the vehicle's value. He contends that for this evidence to be relevant and therefore admissible, the Commonwealth must show that the vehicle's condition when it was inspected and sold was the same as it was when it was surveyed. Ogumoro further asserts that even if this evidence was relevant, that relevance was outweighed by the danger of unfair prejudice. We review evidentiary errors for abuse of discretion. *Blas*, 2018 MP 2 ¶ 7.

¶ 22 Under NMI Rule of Evidence 401, "[e]vidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." NMI R. EVID. 401. Evidence "may relate to acts committed or conditions existing prior to, concurrent with, or subsequent to, the commission of the crime." *Ramangmou*, 4 NMI 227, 235 (1995) (quoting Charles E. Torcia, WHARTON'S CRIMINAL EVIDENCE § 91 (14th ed. 1985)). "The only limitation with respect to time is that the evidence should not be so remote as to cease to have any probative value." *Id*. Generally, remoteness in time affects the "weight of evidence," not its admissibility. *See, e.g.*, *United States v. 428.02 Acres of Land*, 687 F.2d 266, 271 n.4 (8th Cir. 1982) (recognizing, in a condemnation proceeding, that "even sales remote in time are admissible, remoteness going to the weight of the evidence rather than its admissibility"); *United States v. Becktold Co.*, 129 F.2d 473, 479 (8th Cir. 1942) (finding purchase price of building fourteen years prior to condemnation, "went to the weight of the evidence, rather than to its admissibility"). Under Rule 104(b), "[w]hen the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist." NMI R. EVID. 104(b). Importantly, Rule 104(e) "does not limit a party's [right] to introduce before the jury evidence that is relevant to the weight or credibility of other evidence." NMI R. EVID. 104(e).

¶ 23 Relevant evidence may be excluded, however, "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." NMI R. EVID. 403. Evidence is unfairly prejudicial if it has "an undue tendency to suggest decision on an improper basis[.]" *Xiao*, 2013 MP 12 ¶ 79 (quoting *Dream Games of Ariz., Inc. v. PC Onsite*, 561 F.3d 983, 993 (9th Cir. 2009)). "The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged." *Old Chief v. United States*, 519 U.S. 172, 180 (1997). The court must consciously balance the evidence's costs and benefits. *Blas*, 2018 MP 2 ¶ 28 (quoting *Commonwealth v. Hong*, 2013 MP 19 ¶ 18). An evidentiary ruling may be made on either an explicit or implicit balance of the evidence's probative value and prejudicial effect without constituting an abuse of discretion. *Id*. ¶ 20.

¶ 24 Even if relevant evidence is prejudicial, the impact may be mitigated by curative instructions. *See State v. Koedetich*, 548 A.2d 939, 990 (N.J. 1988) (holding a prosecutor's improper remarks were not prejudicial when objected to

and struck from the record with a curative instruction). A jury is presumed to have followed an instruction. *See Commonwealth v. Calvo*, 2014 MP 7 ¶ 33 (citing *Greer v. Miller*, 483 U.S. 756, 766 n.8 (1987)) (presuming jury followed a jury instruction).

¶ 25 The safety inspections' relevance became moot when they were discredited and then struck from the record. The jury instructions, both verbally and in writing, stated that only exhibits received in evidence may be considered. The safety inspection documents were not admitted into evidence. Tr. 731. We presume the jury followed the court's instructions and did not consider the safety inspections. Striking the safety inspections along with a curative instruction at the conclusion of the trial, Tr. 1125, was sufficient to mitigate any prejudicial impact. We find the striking of the safety inspections and the jury instruction point to the implicit weighing of their probative value and prejudicial effect.

¶ 26 While Ogumoro argues the sale price was irrelevant and therefore inadmissible, the evidence lent weight to other evidence proving Ogumoro's deception. Here, the sale price demonstrates that, as of July 2013, the vehicle still had a market value of several hundred dollars. This is not conclusive proof alone that Ogumoro falsely represented it to have no value except as scrap as of December 2012, but this evidence makes it substantially more probable that the vehicle had some value greater than $50 in December 2012 and thus that Ogumoro engaged in deception. This evidence was admissible because it was relevant to the weight or credibility of other evidence under Rule 104(b). Ogumoro also argues the third-party sale price was inadmissible due to the period in time between the survey and that sale. The third-party sale occurred on July 11, 2013, nearly nine months after the survey. By showing the vehicle was operable months after the survey, it was more probable the vehicle was operational on the day it was surveyed. This evidence also bears on whether Ogumoro misrepresented the vehicle's value. The government's failure to maintain custody of the vehicle after it was surveyed, affected the weight of the evidence, not its admissibility. All of the evidence regarding the third-party sale provides some probative value.

¶ 27 The admissibility of this evidence did not result in any unfair prejudice to Ogumoro. The safety inspections were stricken from the record after they were discredited. As to the sale price, nothing in the court's consideration of the evidence signals an undue tendency to base its decision of admissibility on an improper basis. The July 2013 sale price contributed to the inference that the vehicle had greater value in December 2012 than Ogumoro let on. Not only was the later sale price probative of the vehicle's value at the time of Ogumoro's alleged misrepresentation, but it also in no way tended to mislead the factfinder by, for example, making Ogumoro seem blameworthy for reasons unrelated to the charged offense. We find the court properly weighed the evidence's probative value against any unfair prejudice and therefore, the court did not abuse its discretion.

C. Expert Testimony

¶ 28 Ogumoro claims the court improperly admitted expert opinion testimony because it allowed Vitug to testify that the vehicle could have been operable for "years" after it was repaired. Ogumoro argues the court erred because Vitug was neither listed nor qualified as an expert to give this testimony. In response, the

Commonwealth argues his testimony was never admitted as an expert by the court, but was admitted as lay opinion testimony because it was based on personal knowledge rather than "specialized or scientific knowledge." Ogumoro also argues the court improperly excluded expert testimony from Manny Manuel because an expert was needed to rebut the opinion that the vehicle would have been operable for years. The Commonwealth objected on the bases that Manny Manuel had no personal knowledge and that Vitug's testimony was lay opinion, precluding the need for expert rebuttal. The court agreed with the Commonwealth and denied the admission of the rebuttal expert testimony.

¶ 29 Lay opinion testimony is "limited to one that is: (a) rationally based on the witness's perception; (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702." NMI R. EVID. 701. In contrast, expert testimony under NMI Rule of Evidence 702 ("Rule 702") is not limited to a witness's perception. "A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if: (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact." NMI R. EVID. 702(a). Opinions may be "common enough" and require limited expertise that they may qualify as lay witness testimony rather than expert witness testimony. *United States v. Von Willie*, 59 F.3d 922, 929 (9th Cir. 1995). "The mere percipience of a witness to the facts on which he wishes to tender an opinion does not trump Rule 702." *United States v. Figueroa-Lopez*, 125 F.3d 1241, 1246 (9th Cir. 1997).

¶ 30 In *Commonwealth v. Crisostomo*, we discussed the court's gatekeeping role regarding expert witness testimony under Rule 702. 2018 MP 5 ¶¶ 20–24. As gatekeepers of evidence, the trial court must first "allow presentation of evidence as to the relevance and reliability of the expert's proffered testimony." *Id*. ¶ 21. Then, it "must make specific findings regarding the evaluation of the expert." *Id*. ¶ 23. The summary admission or exclusion of "testimony without assessing reliability is inadequate—*Daubert* and its progeny require 'some kind of reliability determination' to be made on the record."[8] *Id*. In *Commonwealth v. Taitano*, we elaborated on this requirement, holding that "in the Commonwealth, trial courts must make findings on all four [(a)–(d)] Rule 702 requirements[9] so as to avoid unnecessary expense and delay." 2018 MP 12 ¶ 13. The trial court must provide more than a "mere conclusory statement[], which without any

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[8] We apply the federal interpretation of Rule 702 in *Daubert* in the Commonwealth. *Crisostomo*, 2018 MP 12 ¶ 11.

[9] Rule 702(a) requires that "the expert's scientific, technical, or other specialized knowledge" assist "the trier of fact . . . understand the evidence or to determine a fact in issue." NMI R. EVID. 702; *see also Kumho Tire Co. v. Carmichael*, 526 U.S. 137, 141 (1999) (stating that *Daubert's* holding is applicable not only to "scientific" knowledge, but also to "technical" and "other specialized knowledge"). Rule 702(b) requires "the testimony is based on sufficient facts or data." NMI R. EVID. 702(b). "Parts (c) and (d) of Rule 702 require that 'the testimony is the product of reliable principles and methods' and that 'the expert has reliably applied the principles and methods to the facts of the case.'" *Crisostomo*, 2018 MP 5 ¶ 20 (quoting FED. R. EVID. 702).

meaningful analysis or explanation, manifest[s] an inadequate performance of its gatekeeping duties." *Id.* ¶ 17. A *Daubert* ruling should not, however, be premature; it must be made when the record is "complete enough to measure the proffered testimony against the proper standards of reliability and relevance." *Id.* ¶ 13. At the same time, errors in the admission of expert testimony are harmless if it is more probable than not the error did not materially affect the verdict. *Crisostomo*, 2018 MP 5 ¶ 35.

¶ 31 Here, Vitug testified the vehicle repairs included a transmission tune-up and replacement of a timing belt, water pump, radiator, and air-conditioning and radiator fan motors. The knowledge required to form an opinion on the quality of repairs involving such parts is too technical to qualify as lay opinion testimony. *See Asplundh Mfg. Div. v. Benton Harbor Eng'g*, 57 F.3d 1190, 1199–1206 (3d Cir. 1995). Although Vitug was familiar with the vehicle, that personal knowledge may not "trump" Rule 702.

¶ 32 Further, the Commonwealth could have qualified Vitug as an expert. Before giving his opinion, he (1) stated he had experience as a mechanic since 1983; (2) stated he had been ELS's manager since 2012; (3) stated the vehicle could go forward but not in reverse due to transmission fluid leaks that caused "reverse plates" to burn and not "activate"; (4) described parts used to rebuild transmissions; (5) described procedures used to test transmissions after repairs; and (6) test drove the vehicle after it was repaired. Tr. 637, 643, 644. On at least one question, the Commonwealth asked him to respond "as a mechanic." Tr. 645. Despite eliciting Vitug's qualifications, the Commonwealth made no attempt to qualify him as an expert under Rule 702. The Commonwealth argues this was permissible because he had personal knowledge. However, a holding in support of the Commonwealth's argument "would encourage the [g]overnment to offer all kinds of specialized opinions without pausing first [to] properly establish the required qualifications of their witnesses." *Figueroa-Lopez*, 125 F.3d. at 1246. Again, such lay opinion testimony must "not [be] based on scientific, technical, or other specialized knowledge within the scope of Rule 702." NMI R. EVID. 701. We conclude the court abused its discretion because it failed to decide whether Vitug was qualified to give an expert opinion.

¶ 33 This abuse of discretion—an error by the court—may be considered harmless, however, if it did not materially affect the verdict. *See Crisostomo*, 2018 MP 5 ¶ 35. We find other evidence, including the repair expenses and their impact on the vehicle's value, was sufficient to support the jury's finding as to the value. It is thus unlikely that the error affected the verdict and was therefore harmless.

¶ 34 As to the exclusion of Manny Manuel as an expert witness, in its ruling, the court stated "[t]he motion to exclude Manny Manuel [the proposed expert witness] from testifying as an expert is granted. I am not going to allow him to testify as an expert witness. He never even saw the vehicle. . . ." Tr. 666. Initially, after hearing arguments on whether Vitug testified as an expert, the court stated it would rule on the matter when the time came. It does not appear that the court allowed the parties to explore the proposed testimony's relevance and reliability. *See Taitano*, 2018 MP 12 ¶ 12. Though the record before us is unclear on this issue, we doubt that a sufficient opportunity was given. By not allowing meaningful exploration of the relevance and reliability of the proposed testimony

of Manny Manuel, the court fell short of its gatekeeping role. *Crisostomo*, 2018 MP 5 ¶ 23. Such a ruling also falls short of making "some kind of determination as to each [Rule 702] requirement." *Taitano*, 2018 MP 12 ¶ 17. The court's statements in support of the ruling were merely conclusory statements, with no meaningful analysis or explanation, constituting an abuse of discretion.

¶ 35 We now consider whether this abuse of discretion was harmless error. *Crisostomo*, 2018 MP 5 ¶ 35. Here, Vitug was cross-examined extensively, minimizing the need to rebut him with another expert. Ogumoro thereby received the opportunity to challenge Vitug's opinion that the vehicle would have been operable for years after it was repaired. Vitug admitted it was possible for the vehicle's transmission to leak fluid after the repairs and that such leaks could lead to the transmission's failure. While the court refused to admit Ogumoro's expert, Manny Manuel, Ogumoro's cross-examination of Vitug served as a rebuttal of Vitug's testimony. We find it more probable than not the exclusion did not materially affect the verdict and if there was error, it was therefore harmless.

D. Misconduct in Public Office

¶ 36 We next review whether the statute of limitations time-barred the misconduct in public office charge. Ogumoro argues that the two-year statute of limitations began to run on March 17, 2013 because he was removed from office on that date and the day he received the employment termination notice. The Commonwealth argues he remained in office for seven days thereafter because the notice indicated it was not effective until March 24, 2013, and so Ogumoro was still employed until that date. We review de novo whether the applicable statute of limitations barred Ogumoro's misconduct in public office charge. *Demapan*, 2008 MP 16 ¶ 12.

¶ 37 Generally, a prosecution for misconduct in public office must commence "within two years after it is committed." *See* 6 CMC § 107(b)(3). An exception is provided: "[a]ny offense based on misconduct in office by a public officer or employee [is subject to prosecution] at any time when the defendant is in the same public office or employment or within two years thereafter." 6 CMC § 107(c)(2). Whether Ogumoro was still in the same public office from the date he received his termination notice depends on how we have construed public office.

¶ 38 Although the Commonwealth Code does not define "public office", we have previously discussed what it means for an individual to hold "public office" in *Commonwealth v. Kaipat*, 2 NMI 322 (1991). There, we affirmed that police officers are "public officials" who may be prosecuted for misconduct in public office under 6 CMC § 3202. We reasoned that "police officers share in and exercise the power of the sovereign. An officer is called upon to use good judgment and sound discretion in determining whether an offense has been committed, and has the unique authority to arrest persons for violating the law." *Kaipat* at 333; *see also Commonwealth v. Pangelinan*, 3 CR 839, 851 (D.N.M.I. App. Div. 1989) (acknowledging that "[a] police officer is entrusted with the safety and welfare of the citizenry"). This underscored a police officer's unique power to arrest persons and duty to exercise good judgment and sound discretion. *See id*. Reviewing the relevant Commonwealth precedent, it stands to reason that in the Commonwealth, police officers are held to be in public office on account of their powers and duties. This conclusion comports with the significance given to "public office" by another court. *See, e.g.*, *Spreckles v. Graham*, 228 P. 1040, 1045 (Cal. 1924) (recognizing that while the definition of "public office" varies across jurisdictions, elements generally include "a tenure of office which is not . . . incidental" and the exercise "of some portion of the sovereign functions of government"). Thus, police officers are held to be in public office when they exercise the power of the sovereign by using their discretion and judgment to arrest persons for violating the law.

¶ 39 In light of our understanding in previous cases, we hold that the Commonwealth's charge for Misconduct in Public Office is time-barred for two reasons. First, Ogumoro was stripped of his authority to "exercise the power of the sovereign" when he received his employment termination notice. The notice ordered him to (1) immediately surrender his firearm and any other government property; (2) report on projects and duties for reassignment; (3) "expend no further CNMI funds nor make any binding decisions in the name of DPS"; and (4) enter "the non-public areas of the CNMI police station facilities" only when escorted. App. 910. Additionally, Ogumoro stated he was placed on house arrest and indicated his gun and badge were confiscated. Tr. 1145. As a result of the notice, Ogumoro no longer had the authority to make arrests. Moreover, he could not enter his own office unless escorted. Although the notice stated it was not effective until March 24, 2013, Ogumoro could no longer exercise any of the unique powers or duties of a police officer on the date the termination was received.

¶ 40 Second, Ogumoro no longer occupied the "*same* public office" within the meaning of 6 CMC § 107(c)(2) when he received his termination notice, so the statute of limitations started running on March 17, 2013. At trial, the Commonwealth argued that the statute of limitations began to run on March 24, 2013, because (1) Ogumoro received salary and employment benefits up until that date; (2) the effective termination date was unambiguous and represented the clearest date for purposes of the statute of limitations; and (3) the purpose of the special tolling provision in 6 CMC § 107(c)(2) is to extend the statute of limitations. Tr. 1153. But neither salary nor benefits were considered by the *Kaipat* court when it affirmed that police officers are "public officials" under 6 CMC § 3202. *See Kaipat*, 2 NMI at 332–33; *see also Robinson v. City of Chowchilla*, 202 Cal. App. 4th 368, 379 (2011) (finding plaintiff-police chief was removed from office "despite the fact that City [defendant] continued his pay and benefits" and that "the office of chief of police involves more than receiving compensation"). Thus, the moment Ogumoro was stripped of his powers and duties as a police officer, and not the moment when his salary and benefits were cut off, was the moment statute of limitations clock began ticking.[10]

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[10] The rule of lenity counsels that any ambiguity must be resolved in favor of Ogumoro, *Commonwealth v. Manglona*, 1997 MP 28 ¶ 6, which Ogumoro briefly mentions in his brief after his other arguments. The statutory definition of "same public office" is not unambiguous where a public official was divested of authority before his termination date. Although the statute's tolling provision addresses the difficulty of discovering crimes while a public official is still in office, *see People v. Glowa*, 87 Misc. 2d 471, 474 (N.Y. Sup. Ct. 1976), in this case, the crimes had already been discovered by March 17, 2013, when DPS served the notice of termination. The lack of ambiguity negates the application of lenity here.

¶ 41 Under the two-year statute of limitations, time began to accrue on March 17, 2013, and the charges were not filed until March 23, 2015, five days after the statute of limitations expired. The prosecution for misconduct in public office is time-barred and Ogumoro's conviction for misconduct in public office must therefore be reversed.

E. Prosecutorial Misconduct

¶ 42 Ogumoro claims the prosecutor committed misconduct by making a number of improper statements. He also contends the prosecutor exhibited reckless conduct by eliciting perjured testimony and presenting fraudulent exhibits about the vehicle's safety inspections. He claims the misconduct resulted in the denial of his right to a fair trial, warranting reversal of his convictions or a new trial. We disagree.

¶ 43 Prosecutorial misconduct claims are reviewed for harmless error when an objection was made at trial. *Saimon*, 3 NMI 365, 379–80. Under harmless error review, errors that do not affect substantial rights are disregarded. NMI R. CRIM. P. 52 (a).[11] Substantial rights are affected if the error was prejudicial, meaning "[i]t must have affected the outcome of the . . . court proceedings." *United States v. Olano*, 507 U.S. 725, 734 (1993). If no objection was made, prosecutorial misconduct claims are reviewed for "plain error." *See* NMI R. CRIM. P. 52 (b)[12]; *see also Saimon*, 3 NMI at 380. When reviewing for plain error, we review whether: "(1) there was error; (2) the error was plain or obvious; [and] (3) the error affected the appellant's substantial rights." *Crisostomo*, 2018 MP 5 ¶ 59. Like harmless error review, plain error review determines whether substantial rights have been affected. *Olano*, 507 U.S. at 734. Under NMI Rule of Criminal Procedure 52(b), however, "[i]t is the defendant rather than the Government who bears the burden of persuasion with respect to prejudice." *Id.*; *see also Crisostomo*, 2018 MP 5 ¶ 62. Even if all three prongs are met, we may exercise our discretion to remedy the plain error "only if [it] seriously affects the fairness, integrity or public reputation of judicial proceedings." *Crisostomo*, 2018 MP 5 ¶ 59 (quoting *Commonwealth v. Hocog*, 2015 MP 19 ¶ 24).

¶ 44 In determining whether prosecutorial misconduct affected the substantial rights of the defendant, it must have "so infected the trial with unfairness as to make the resulting conviction a denial of due process." *Xiao*, 2013 MP 12 ¶ 18 (quoting *Parker v. Matthews*, 567 U.S. 37, 45 (2012)). In this analysis, we

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[11] NMI Criminal Procedure Rule 52(a) provides that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded." NMI R. CRIM. P. 52(a). This rule is substantively equivalent to Federal Rule of Criminal Procedure 52(a): "(a) Harmless Error. Any error, defect, irregularity, or variance that does not affect substantial rights must be disregarded." FED. R. CRIM. P. 52(a). Therefore, we turn to federal case law in our analysis. *Tudela v. Superior Court*, 2010 MP 6 ¶ 8.

[12] NMI Criminal Procedure Rule 52(b) ("Rule 52(b)") provides that "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court." NMI R. CRIM. P. 52(b). This rule parallels Federal Rule of Criminal Procedure 52(b), which states: "[a] plain error that affects substantial rights may be considered even though it was not brought to the court's attention." FED. R. CRIM. P. 52(b). Federal case law is again pertinent to our analysis. *Tudela*, 2010 MP 6 ¶ 8.

consider (1) the effect the conduct had on the trial; (2) the efficacy of the court's curative instructions; and (3) the force of the evidence supporting the conviction. *Id*. Where an instance of prosecutorial misconduct did not affect a trial's outcome, we may not vacate a defendant's conviction. *See Commonwealth v. Monkeya*, 2017 MP 7 ¶ 38. We find the arguments as to two statements waived,[13] but review Ogumoro's remaining prosecutorial misconduct allegations.

i. Reference to Prohibited Testimony

¶ 45 Ogumoro claims it was misconduct for the prosecutor to tell the jury, during closing arguments, that Vitug stated, "it [the car] would run for years without abuse." He claims the prosecutor committed misconduct because the court prohibited the prosecutor from eliciting an opinion as to the vehicle's value. Because Ogumoro did not timely object at trial, we review the statement for plain error. *Xiao*, 2013 MP 12 ¶ 16.

¶ 46 Prosecutors may refer to evidence admitted at trial. *Monkeya*, 2017 MP 7 ¶ 32. They may also "strike hard blows" in closing arguments "based on the evidence and all reasonable inferences" drawn from it. *United States v. Sanchez-Soto*, 617 F. Appx. 695, 697 (9th Cir. 2015) (quoting *United States v. Tucker*, 641 F.3d 1110, 1120 (9th Cir. 2011)).

¶ 47 Here, the Prosecutor referred to admitted evidence. By the time the prosecutor was ordered to refrain from inquiring into the vehicle's value, Vitug had already given his opinion:

> PROSECUTOR: Okay. And how long would you've expected that car to run if not abused?
>
> VITUG: Speaking of the last work abuse, if you will take care of it properly, maybe years, we are talking about years.

Tr. 646. Ogumoro did not object to this testimony and the court did not instruct the jury to disregard the opinion. The court then ordered the prosecutor to refrain from eliciting an opinion as to the vehicle's value. Tr. 648. The restriction did not encompass eliciting an opinion as to how many years the vehicle may have been operable after it was repaired. The prosecutor was allowed to refer to the statement as part of the record. We therefore find no plain error.

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[13] Ogumoro claims the prosecutor made improper statements to the jury during voir dire, Second, he claims the prosecutor misstated the testimony of Bill Rathburn, a former DPS network administrator, who testified regarding government computer equipment Ogumoro was accused of appropriating for personal use, during his closing argument. As this Court has previously held in *Kim v. Baik*, "[a]n issue is insufficiently developed when the party's principal brief fails to 'provide[] legal authority or public policy, [or] appl[y] the facts of the case to the asserted authority in a non-conclusory manner.'" 2016 MP 5 ¶ 30 (quoting *Commonwealth v. Calvo*, 2014 MP 10 ¶ 8). When an argument is "insufficiently developed," we may exercise our discretion to find an issue is waived. *Id*. Ogumoro generally fails to explain why the statements during voir dire were improper or apply the facts to any authority. With respect to the second statement, the argument is vague because he does not proffer what Rathburn actually stated. As a result, he fails to sufficiently develop his arguments. We exercise our discretion and find the misconduct issues in the first two statements waived.

ii. Extra-record Evidence

¶ 48 We now review two instances in which Ogumoro alleges the prosecutor referred to extra-record evidence. The first statement concerned Martin Kapileo ("Kapileo"). Kapileo, a former police officer with a felony hit-and-run conviction, testified the vehicle had overheating and transmission problems after it was repaired. Ogumoro contends the prosecutor referred to extra-record facts when he told the jury "[t]he first thing is, he [Kapileo] couldn't remember when he got into a hit and run, escaped the police, fled the police on the streets of Saipan, got arrested and ultimately got convicted and sent to prison." Tr. 1060. Because a timely objection to the statement was made, Tr. 958–63, 1060–61, we review the statement for harmless error. *Xiao*, 2013 MP 12 ¶ 16. The second instance consists of several closing argument statements that referred to Manglona as Ogumoro's brother-in-law. Ogumoro asserts the references were improper because they consisted of extra-record evidence that suggested the vehicle was surveyed to transfer it to his family. Because no objection to any of the statements was made, we review the statements for plain error. *Xiao*, 2013 MP 12 ¶ 16.

¶ 49 Prosecutors may argue inferences, but such arguments must be drawn from the evidence. *Monkeya*, 2017 MP 7 ¶ 32. They also have a "special obligation to avoid 'improper suggestions, insinuations, and especially assertions of personal knowledge.'" *Commonwealth v. Shoiter*, 2007 MP 20 ¶ 21 (citing *United States v. Roberts*, 618 F.2d 530, 533 (9th Cir. 1980)). They may not, however, refer to extra-record evidence. *Monkeya*, 2017 MP 7 ¶ 32.

¶ 50 The Commonwealth's first reference to extra-record evidence was its statements about Kapileo's testimony, but these references were harmless. Here, Kapileo's testimony did not include admissions that he "escaped the police," or "fled the police on the streets of Saipan." There is also nothing in the record to suggest such facts may have been inferred from admitted evidence. Thus, when the Commonwealth mentioned how Kapileo acted in a separate, unrelated criminal context, it was referring to extra-record evidence. Even so, as to the first *Xiao* factor—the efficacy of the court's curative actions—the jury was instructed, both verbally and in writing, that attorney statements made during closing arguments were not evidence. This weighs in the Commonwealth's favor. As to the second factor, the context of the remark, the statement was made during closing arguments and attacked the credibility of a witness who testified in support of a key defense theory, that the vehicle continued to exhibit problems after it was repaired. This weighs in Ogumoro's favor. However, Kapileo admitted on direct examination that he was imprisoned for a felony hit-and-run conviction. Because Kapileo had already compromised his credibility with that admission, any effect the prosecutor's statement about Kapileo fleeing the police would have been minimal. Considering the third factor, the force of the evidence supporting the conviction, the evidence included the $2,500 repair invoice and a bill of sale showing the vehicle was sold for $700 months after it was surveyed. That evidence was sufficient to support the jury's finding that the vehicle's value exceeded $250 when it was surveyed. Taken together, the factors do not counsel that the statement infected the trial with such unfairness that the conviction resulted from a denial of due process. It is unlikely that the misconduct affected the outcome of the trial, and therefore the error was harmless.

¶ 51 As for the statement referring to Manglona as Ogumoro's brother-in-law, the record shows several statements that referred to the familial relationship, including the following:

> (1) "He had intent to get his brother-in-law to be able to purchase it for $50.00."
>
> (2) "It's not like there's some coincidence where he was thinking about it was going to go out for auction and then an hour later he realizes, oh, my brother-in-law is going to buy it."
>
> (3) "The defendant went down to Lower Base, he convinced Mr. Sablan that the car was worth $50.00, that a few weeks before had been repaired for $2,500.00 and he got his brother-in-law to buy it and they registered it, insured it and went along their way."

Tr. 1055, 1063–64.[14] In making these statements, the prosecutor argued Ogumoro had the vehicle surveyed because he intended to have a close family member purchase it. But the familial relationship was not in the record and there was no evidence from which the relationship could have been inferred. The statements were also made during closing arguments and the trial court properly instructed the jury that such statements were not evidence. As discussed above, the jury had ample evidence to support the conviction without considering these statements. Moreover, if the definition of "obtain" required a showing that the defendant transferred property for his or her benefit, then reference to an extra-record familial relationship may have been more prejudicial. But the statute contains no such requirement. We therefore find no prejudice and no plain error.

iii. Vouching

¶ 52 Next, Ogumoro claims the prosecutor vouched for the witness when he stated "[s]o, I think Manny's testimony [that the vehicle did not break down after the repairs] was obviously the most credible." Tr. 1057. Because a timely objection was made, Tr. 1057, we review the statement for harmless error. *Xiao*, 2013 MP 12 ¶ 16.

¶ 53 Improper vouching occurs when "the prosecutor places the prestige of the government behind a witness by expressing his or her personal belief in the veracity of the witness[.]" *Shoiter*, 2007 MP 20 ¶ 20 (quoting *United States v. Hermanek*, 289 F.3d 1076, 1098 (9th Cir. 2002)). We have previously held that a prosecutor cannot attest to a witness's credibility. *Camacho*, 2002 MP 6 ¶ 85. Vouching for a witness's credibility when their credibility is crucial may require reversal. *Id*. ¶ 87. Otherwise, we look to the factors outlined in *Commonwealth v. Camacho* to determine whether vouching would result in reversal:

> [1] the form of vouching; [2] how much the vouching implies that the prosecutor has extra-record knowledge of or the capacity to monitor the witness's trustfulness; [3] any inference that the court is monitoring the witness's veracity; [4] the degree of personal opinion asserted; [5] the timing of the vouching; [6] the extent to

[14] After the prosecutor made the "brother-in-law" statements, Ogumoro's counsel stated "[a]nd yes, Herman Manglona is the brother-in-law of Mr. Ogumoro, the deputy but that in itself is not a crime." Tr. 1081.

> which the witness's credibility was attacked, [7] the specificity and timing of a curative instruction, [and 8] the importance of the witness's testimony and the vouching to the case overall.

Id. ¶ 87 (citing *United States v. Necoechea*, 986 F.2d 1273, 1278 (9th Cir. 1993)).

¶ 54 Here, the Prosecutor vouched for the witness when he explicitly stated he believed Vitug's testimony was the most credible, thereby placing the prestige of the government behind the witness. Considering evidence of the vehicle's various sale prices and other testimony, we do not find Vitug's credibility to be crucial such that vouching requires reversal. We now look to the *Camacho* factors. First, there was no indication that extra-record information existed to support the statement. The statement also did not imply the court was monitoring the veracity of the testimony. It was made during closing arguments and the court later instructed the jury that such arguments were not evidence. The degree of personal opinion asserted was also minimal; the statement was made once, after which an objection was lodged and sustained. Further, although no curative instruction was given, as discussed above, there was ample evidence to support the conviction. As it is unlikely the error affected the outcome of the trial, the vouching was therefore harmless.

iv. Vehicle Safety Inspections

¶ 55 Next, we review whether the prosecutor committed misconduct when he presented evidence of the vehicle's safety inspections. To show the vehicle was operable, the Commonwealth elicited testimony from Gil Anonuevo ("Anonuevo"), manager of SJ Corporation ("SJ"). SJ had issued safety certifications for the vehicle in both December 2012 and July 2013. Exhibits purporting to document these safety inspections were initially admitted into evidence. *See supra* ¶ 21. Anonuevo testified inspections involve tests on brakes, lights, and operation in drive and reverse. During cross-examination, he admitted SJ would occasionally provide documentation for vehicles it never inspected. As a result, the court inquired whether the prosecutor sought to use the exhibits as evidence. In response, the prosecutor informed the court that it may strike the exhibits from the record, which it did. Ogumoro contends the prosecutor recklessly elicited perjured testimony and presented fraudulent exhibits. Because Ogumoro objected to both the testimony and exhibits, Tr. 715–31, we review the conduct for harmless error. *Xiao*, 2013 MP 12 ¶ 16.

¶ 56 The use of perjured testimony or evidence known to the government to be fraudulent to obtain a conviction is unconstitutional. *Napue v. Illinois*, 360 U.S. 264, 269 (1959) (stating "a conviction obtained through use of false evidence, known to be such by representatives of the State, must fall under the Fourteenth Amendment"). It is also a denial of due process under the Fourteenth Amendment to fail to correct perjured testimony, though it may be unsolicited and known to the government, to obtain a conviction. *See Alcorta v. Texas*, 355 U.S. 28, 31–32 (1957). Under NMI Rule of Evidence 803(6) ("Rule 803(6)"), "[r]ecords of a regularly conducted activity [r]egularly [c]onducted [a]ctivity" are one of the exceptions to the rule against the admissibility of hearsay evidence. NMI R. EVID. 803(6). For the exception to be applicable, several conditions must be satisfied, including that "neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness." NMI R. EVID. 803(6), 803(6)(E).

¶ 57 Here, the record does not show that the prosecutor knowingly elicited perjured testimony or presented fraudulent exhibits. Rather, the record shows the prosecutor sought to use evidence of the inspections to show the vehicle's value based on the safety inspections of the vehicle evidenced by the safety inspection certificates. Anonuevo testified that it was SJ's practice to "regularly conduct" certain testing activities during any vehicle safety inspections, such as tests on brakes, lights, and operation in drive and reverse. He did not testify that he had personal knowledge that SJ inspected the vehicle in question. However, he also admitted that SJ had issued some vehicle safety inspection certificates without conducting the testing activities. Therefore, the evidence lacked the requisite trustworthiness under Rule 803(6)(E) to be admitted as an exception to the hearsay rule. There is nothing in the record to indicate that the prosecutor introduced the exhibits knowing in advance that the inspection certificate was issued without inspection of the vehicles. We conclude that the prosecution did not act with reckless disregard for the likelihood that the exhibits were not trustworthy. This is further evidenced by the fact that the prosecution voluntarily withdrew the exhibits when their probative value was discredited. Again, the jury was instructed to consider only validly admitted evidence. Therefore, this was harmless error.

¶ 58 Although the prosecutor committed prosecutorial misconduct by referring to facts outside the record and vouching for a witness, it is unlikely that any one of these errors affected the trial's outcome. The court did not err in denying Ogumoro's motion for a mistrial based on our analysis of these same claims of prosecutorial misconduct. Vacatur of the theft by deception conviction is therefore not warranted.

F. Cumulative Error

¶ 59 Ogumoro argues there were significant errors at trial that, cumulatively, affected the verdict and his right to a fair trial. We review cumulative error claims de novo. *Cepeda*, 2014 MP 12 ¶ 37. Under the cumulative error doctrine, reversal is required if it is more probable than not that, taken together, trial errors materially affected the verdict. *Id*. (citing *Commonwealth v. Cepeda*, 2009 MP 15 ¶ 46). In cumulative error analysis, we consider "all errors and instances of prosecutorial misconduct, including errors preserved for appeal and plain errors." *Cepeda*, 2009 MP 15 ¶ 46 (citing *Camacho*, 2002 MP 6 ¶ 121).

¶ 60 Trial errors were made, but they were harmless. These errors include witness vouching and references to extra-record evidence. However, as we stated in *Commonwealth v. Lucas*, "no litigant is assured of a perfect trial, but only a fair one." 2003 MP 9 ¶ 13 n.10. Having reviewed the record, we find the trial was fair. The Commonwealth presented sufficiently convincing evidence that remained in the record even after discredited evidence was struck. This includes, at a minimum, the $2,500 repair invoice and the $700 sale. We do not find it more probable than not that the trial errors materially affected the verdict. Reversal under the cumulative error doctrine is not warranted.

V. CONCLUSION

¶ 61 For the foregoing reasons, Ogumoro's conviction for theft by deception is AFFIRMED. We REVERSE the conviction of misconduct in public office because it is time-barred by the statute of limitations. We REMAND this matter for resentencing consistent with this opinion.

SO ORDERED this 30th day of April, 2020.

/s/
JOHN A. MANGLOÑA
Associate Justice

/s/
WESLEY M. BOGDAN
Justice Pro Tempore

/s/
TIMOTHY H. BELLAS
Justice Pro Tempore

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