IN THE
SUPREME COURT OF THE REPUBLIC OF PALAU
APPELLATE DIVISION

IVAN KELULAU TEWID,
Appellant,
v.

REPUBLIC OF PALAU,
Appellee.

Cite as: 2026 Palau 2
Criminal Appeal No. 25-001
Appeal from Criminal Case No. 24-038

Decided: February 13, 2026

Counsel for Appellant ..... Vameline Singeo, Esq.
Counsel for Appellee ..... Lavinia David, AAG

BEFORE: OLDIAIS NGIRAIKELAU, Chief Justice, presiding
FRED M. ISAACS, Associate Justice
DANIEL R. FOLEY, Associate Justice

Appeal from the Trial Division, the Honorable Honora Remengesau Rudimch, Associate Justice, presiding.

OPINION

PER CURIAM:

[¶ 1] This appeal involves a challenge to Appellant's conviction of Manslaughter, Abuse of a Family or Household Member, Assault in the Second Degree, and Duty to Report Wound or Death following a trial by jury. Appellant raises two issues on appeal: whether the Assault conviction should have merged into Manslaughter because both stem from a single act producing one death; and whether the admission of his prior convictions during trial unduly prejudiced the jury.

[¶ 2] For the reasons set forth below, we **VACATE** Tewid's conviction and sentence for Assault in the Second Degree and **AFFIRM** his conviction and

sentence of Manslaughter, Abuse of Family or Household Member, and Duty to Report Wound or Death.

BACKGROUND

[¶ 3] On May 31, 2024, Appellant Ivan Kelulau Tewid and Kedoi Meyar were involved in an altercation that resulted in Tewid stabbing Meyar. The stab wound in Meyar's left shoulder severed a major artery and led to significant blood loss. Meyar became unresponsive during her assessment at Belau National Hospital and was pronounced dead by the attending physician.

[¶ 4] On November 22, 2024, the jury convicted Appellant of one count of Manslaughter, one count of Abuse of a Family or Household Member, one count of the Lesser Included Offense for Assault in the First Degree—Assault in the Second Degree—and one count of Duty to Report Wound or Death.

[¶ 5] The trial court sentenced Appellant to fifteen (15) years imprisonment for Manslaughter, one (1) year imprisonment for Abuse of a Family or Household member, two (2) years imprisonment for Assault in the Second Degree, and one (1) year imprisonment for Duty to Report Wound or Death. The trial court ordered the sentences to run concurrently with credit for time served.

STANDARD OF REVIEW

[¶ 6] We review matters of law de novo, findings of fact for clear error, and exercises of discretion for abuse of that discretion. *Obechou Lineage v. Ngeruangel Lineage of Mochouang Clan*, 2024 Palau 2 ¶ 5. The merger of crimes is a determination of law, which we review de novo. *Remengesau v. ROP*, 18 ROP 113, 118 (2011). We also review the admission of evidence of prior convictions de novo as this is a question of law. *See Rengiil v. ROP*, 20 ROP 141, 143 (2013).

DISCUSSION

[¶ 7] Appellant presents two issues on appeal. The first is whether the Assault conviction should have merged into Manslaughter as a violation of the prohibition against Double Jeopardy. The second is whether the admission of his prior convictions of domestic violence unduly prejudiced the jury.

I. Doctrine of Merger under the Double Jeopardy Clause

[¶ 8] Appellee argues that the issue of merger has been waived as Appellant failed to raise it at trial, citing *Buck v. Republic of Palau*, 2018 Palau 27 (holding that an entrapment defense not presented to the jury is waived on appeal). Appellee further cites to ROP R. Crim. P. 12(b)(2) and 12(f) to support the contention that Appellant should have preserved his right to the defense of the merger doctrine, as the failure to do so constitutes a waiver.

[¶ 9] This Court has consistently held that we may address an issue not raised below "to prevent the denial of fundamental rights, especially in criminal cases where the life or liberty of an accused is at stake." *See e.g., Tell v. Rengiil*, 4 ROP Intrm. 224, 225-26 (1994). The merger doctrine is a constitutional protection for the individual rights of criminal defendants, and Appellant is entitled to raise it even if it was not preserved for appeal. To hold otherwise would be to deny Appellant a fundamental right in this criminal case—exactly what the Constitution seeks to protect. Therefore, Appellee's waiver arguments cannot succeed.

[¶ 10] Appellant argues that under the doctrine of merger, the trial court erred in imposing separate convictions for Manslaughter and Assault in the Second Degree. Appellant contends that once the victim dies, the bodily injury element of assault merges into the death element of manslaughter.

[¶ 11] Whatever the merits, we will not reach a constitutional question when the issue at hand can be disposed of by statute. *See Davidson v. Office of the Special Prosecutor*, 16 ROP 214, 218 (2009) (determining constitutional issues should be avoided if relief may be granted on other grounds). Pursuant to 17 P.N.C. § 108(a)(1), "[t]he defendant may not . . . be convicted of more than one offense if [o]ne offense is included in the other". Under 17 P.N.C. § 108(d):

> An offense is so included when: (1) It is established by proof of the same or less than all the facts required to establish the commission of the offense charged; or (2) It consists of an attempt to commit the offense charged or to commit an offense otherwise included therein; or (3) It differs from the offense charged only in the respect that a less serious injury or risk of injury to the same person, property, or public interest or a

> different state of mind indicating lesser degree of culpability suffices to establish its commission.

[¶ 12] Under 17 PNCA § 1303(a), a person commits the offense of Manslaughter if they (1) recklessly cause the death of another person; or (2) intentionally cause another person to commit suicide. Under 17 PNCA § 1402(a), a person commits Assault in the Second Degree if they (1) intentionally or knowingly cause substantial bodily injury to another; (2) recklessly cause serious or substantial bodily injury to another; (3) intentionally or knowingly cause bodily injury to a correctional worker; or (4) intentionally or knowingly cause bodily injury to another with a dangerous instrument. Where a statute contains elements in the alternative, a court considering a double jeopardy challenge "must construct from the alternative elements within the statute the particular formation that applies to the case at hand." *Gideon v. ROP*, 20 ROP 153, 165 (2013).

[¶ 13] On the facts in this case, Manslaughter and Assault in the Second Degree are a greater offense and a lesser included offense, respectively. The serious or substantial bodily injury element of assault in the second degree can be established by the same facts required to prove manslaughter. In other words, it is impossible to commit the Manslaughter offense without by the same conduct committing Assault in the Second Degree offense. Furthermore, serious or substantial bodily injury under Assault in the Second Degree is also the less serious injury of death under Manslaughter.

[¶ 14] We have previously held that the proper remedy for convictions on both the greater and lesser included offenses is to vacate the conviction and sentence of the lesser included offense. *Rengulbai v. ROP*, 2022 Palau 14 ¶ 34. Therefore, the conviction and sentence for Assault in the Second Degree should be vacated as a lesser included offense of Manslaughter under 17 P.N.C. § 108(a)(1).

II. Admission of Prior Convictions

[¶ 15] Appellant argues that the admission of his prior domestic violence convictions was unlawful, asserting that it unfairly prejudiced the jury. Under Rule 404(b) of the ROP Rules of Evidence:

> Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.

[¶ 16] Appellant contends that by introducing his prior domestic violence convictions to show intent and a pattern of abuse, Appellee essentially asked the jury to infer that because he had been guilty before, he was guilty once again. We agree that introducing prior convictions for propensity purposes is prohibited under ROP R. Evid. 404(b). However, Appellee raises two main reasons why Appellant's prior convictions were properly admitted.

[¶ 17] First, Appellee argues that Appellant waived his ability to object to the admission of evidence as he failed to object at trial and expressly acknowledged the prior convictions as being matters of public record. We agree. Pursuant to ROP R. Evid. 103(a)(1), "[e]rror may not be predicated upon a ruling which admits or excludes evidence unless a substantial right of the party is affected and … a timely objection or motion to strike appears of record, stating the specific grounds of objection". Appellant failed to object in a timely manner when his prior convictions were introduced into evidence and the right to appeal was not preserved.

[¶ 18] Second, Appellee argues that Appellant's prior convictions were admitted initially for impeachment and thereafter, for proper, non-propensity purposes. Under ROP R. Evid. 404(a)(1), "if evidence of a trait of character of the alleged victim of the crime is offered by an accused and admitted under Rule 404(a)(2), evidence of the same trait of character of the accused" is permitted. During Appellant's testimony, he testified that the victim had previously become violent, and that there were many instances where she would get angry and hit him. The evidence of Appellant's prior domestic violence can, therefore, be admitted to show the same violent tendencies alleged of the victim. Furthermore, Appellant's domestic violence convictions were introduced to impeach his credibility under ROP R. Evid. 609(a)(1), as he had made false statements about never having assaulted a partner.

[¶ 19] Appellant argues that the trial court failed to give an adequate limiting instruction that the prior conviction could not—and should not—be

used to infer bad character or propensity. However, under ROP R. Evid. 30(d), failure to object to the jury instructions "precludes appellate review". Appellant failed to timely object to the jury instructions and, therefore, cannot bring this up on appeal.

[¶ 20] Finally, any error in admitting the evidence was harmless. Appellant concedes in its Opening Brief that "the Republic had ample direct evidence of the stabbing and did not need to inflame the jury with an unrelated conviction." In *Scott v. ROP*, 10 ROP 92 (2003), we explained that although issues not raised during trial are normally waived, the Court may still review them under the plain error rule. Pursuant to ROP R. Crim. P. 52(b), an appellant must show that there was an "error or defect," that the error was "plain," and that the appellant's "substantial rights" were affected. *Id*. at 95. By way of contrast, harmless errors are those that do not affect the substantial rights of a party or prejudice a party's case. *Ngiraiwet v. Telungalk ra Emadaob*, 16 ROP 163, 165 (2009). The Court will not reverse a decision of the lower court due to an error where that error is harmless. *Ngetchedong Clan v. Haruo*, 19 ROP 139, 143 (2012).

[¶ 21] In light of the evidence in favor of the conviction, we find that the introduction of Appellant's prior convictions was admissible and any resultant error was harmless. Appellee's Response Brief lays down the overwhelming evidence proving Appellant's guilt, including the CCTV footage showing him tailing the victim and leaving the victim bleeding, as well as testimony from investigators and physicians. Accordingly, we will not reverse the decision of the lower court as the purported wrong neither affected the substantial rights of Appellant, nor unduly prejudiced his case.

CONCLUSION

[¶ 22] For the foregoing reasons, we **VACATE** Tewid's conviction and sentence for Assault in the Second Degree and **AFFIRM** his conviction and sentence of Manslaughter, Abuse of Family or Household Member, and Duty to Report Wound or Death.