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REPUBLIC OF THE MARSHALL ISLANDS

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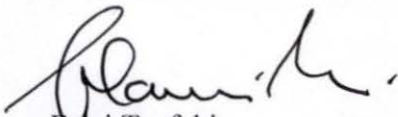
IN THE SUPREME COURT  
OF THE  
REPUBLIC OF THE MARSHALL ISLANDS

ALEE PHILLIP	)	SCT CRIMINAL CASE NO.: 2018 - 003
(APPELLANT)	)	JUVENILE CRIMINAL CASE NO. 2017 – 001
	)	
V.	)	APPELLEE’S ANSWER BRIEF TO APPELLANT
	)	JUVENILE OPENING BRIEF PURSUANT TO
	)	RULE 28 (b) OF THE RMI SUPREME COURT
REPUBLIC OF THE MARSHALL	)	
ISLANDS.	)	
_____	)	

Comes Now, the Office of the Attorney General and through Assistant Attorney General Falai Taafaki move to dismiss the Appellant Juvenile Opening Brief and to affirm the RMI Trial Court orders of January 27, 2018 and February 2, 2018.

Dated this 27<sup>th</sup> of May 2018.

Respectfully submitted,



Falai Taafaki  
Prosecuting Attorney

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**I. TABLE OF AUTHORITIES.**

a. Statutes, Regulation and Rules:

- i. Constitution of the Republic of the Marshall Islands
- ii. Marshall Islands Criminal Code [31 MIRC Ch.1]
- iii. Juvenile Procedure Act [26 MIRC Ch.3]

b. Court Orders:

- i. Court Order entered December 18, 2017
- ii. Court Order/Disposition entered February 5<sup>th</sup>, 2018

c. Case Law:

- i. *Colorado v. Connelly* 479 US 157 (1986);
- ii. *People v. Ray* 21 Cal. 4<sup>th</sup> 464 (1999);
- iii. *Haley v. Ohio* 332 US 596 (1948);
- iv. *Gideon v. Wainwright* 372 U.S 335 (1963);
- v. *Re Gault* 387 U.S 1 (1967);
- vi. *Muller v. Alabama*, 132 S.C 2455;
- vii. *RMI v. Kabot* (Criminal Case No. (2016 – 004)

d. Additional reference:

- i. Republic's October 04, 2017 Response to Opposition Motion to Deny Trying Juvenile as Adult;
- ii. Republic's October 20<sup>th</sup>, 2017 Response to Juvenile Offender Motion to Suppress Confession.

**II. STATEMENT OF JURISDICTION.**

This Court has jurisdiction pursuant to Article VI, Section 2(2) of the Constitution of the Republic of the Marshall Islands and 27 MIRC, Chapter 2 Section 207.

**III. ISSUES ON APPEAL.**

That the issues on appeal to the Supreme Court of the Republic of the Marshall Islands consist of two (2) decision of the RMI High Court (Trial Court) as contained in the adjudication and disposition orders which were filed respectfully on January 22<sup>nd</sup>, 2018 and February 5<sup>th</sup>, 2018.

**IV. RECORD ON APPEAL.**

This constitutes the entire record and material pertaining to this case RMI v. Aleo Phillip including the selected audio recording transcript of witnesses. As well as all the Republic's exhibits.

**V. STATEMENT OF REVIEW.**

Findings of fact, are reviewed under the "clearly erroneous" standard. [Dribo v Bondrik, et al, 3 MILR 127, 134 (2010).] Conclusion of law are reviewed under "de novo" standard. [Gushi Brothers Co. v. Kios, et al., 2 MILR 120, 125 (1998).] And mixed questions of fact and law, are reviewed under the "de novo" standard. [Samson, et al., v. Rongelap Atoll LDA, 1 MILR (Rev.)280, 284 (1992).]

**VI. ARGUMENT.**

REPUBLIC OPENING BRIEF  
ARGUMENT

1. The Republic concurs with appellant juvenile paragraph 1.
2. The Republic concurs but with stipulation that Appellant was 15 years and 6 months (Appendix ?) and that Counts 4, 5 and 6 were dismissed
3. The Trial Court, because of some sensitive issues relating to the case, the Trial Court closed the court to the public. In addition, there was considerable assertion from the



defense counsel requesting the court to close the court to the public, the Republic therefore contends that the counsel for the appellant juvenile cannot now raise this issue as a matter of appeal. (High Court audio recording)<sup>1</sup>

4. Republic concurs with Paragraph 4.
5. That Republic concurs.
6. Appellant Alee Phillip failed to explain what he meant by assumed confession. Further, Republic asserts that the Trial Judge did not enter the guilty verdict based on Alee Phillip's "assumed" confession alone. Court Order filed December 18, 2107 explained in the clearest of terms the "totality of the circumstances" upon which his decision against the Appellant's motion to suppress was based. Republic therefore concurs with the Trial Court Order Denying Motion to Suppress and all the pertinent reasons provided in the Order.
7. In Court Order filed December 18, 2017, the Trial judge was satisfied in light of the evidence provided by the police officers attending the interview and in consideration of the "totality of circumstances," that the manner in which the interview was conducted, and the interaction between the officers, the appellant and his mother, did not qualify to be considered as coercive. Citing *Fave*, the trial judge determined that the appellant failed to show in specific terms how the will of the appellant was overborne by the manner in which the interview was conducted. Additionally, both *Colorado v Connelly* 479 US 157 (1986) and *People v Ray* 21 Cal. 4<sup>th</sup> 464 (1999) held that the connection between the confession and coercive must be clearly established for confession to be considered as involuntary. There is no indication in the evidence given by Detective Royal Ceaser, Detective Lt Joy Jack and Sgt Marilynn that the appellant juvenile was subjected to any form of coercive tactics. Republic cited the case of *Haley v. Ohio* 332 US 596 (1948) which describe the extent of "extreme" and "substantial" police brutality as well as omitting to read the juvenile his Miranda Rights as example of "excessive coercive: and "unreasonable" force. The interview conducted by Detective Royal Ceaser nowhere near approached this level of coerciveness.

without any legal representation: Investigation was conducted without legal representative. See R's Answers to Counsel assertion of: without legal representation.

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<sup>1</sup> High Court audio recording, November 20, 2017 at 9:33:41 am – 9:38:41 am, FTR Media.

Prosecution counter argument: Appellant juvenile failed to substantiate any authorized case in support of this assertion. Trial judge ruled in Order Denying Motion to Suppress entered on December 18 2017. that both son and mother have consented to and indicated it so to the detective Ceaser that they would not need any legal representative. Republic concurs and support this ruling. In its Response to Opposition Motion to Deny Trying Juvenile as Adult, Republic cited the landmark decision in *Gideon v Wainwright* 372 U. S. 335 (1963) Supreme Court establishe that a counsel would be “ furnished in state felony courts. In *re Gault* 387 U.S. 1 (1967) Supreme Court established that children under the Fourteenth Amendment accused of crimes in a delinquency proceeding must be given must be given the same right as adults – one such right being the right to a counsel. However, such a requirement for a counsel is only in a delinquency proceeding or during the felony courts- not during a police interview- and it is made upon by the court.

Testimonies on audio recording of witnesses: Royal Ceaser<sup>2</sup>, Lt Joy Jack<sup>3</sup>, Sgt.

Marylynn<sup>4</sup>.

8. Agreed that the Trial Court denied Appellant Juvenile Motion to suppress the Appellant Juvenile’s confession. For reason provided in Court Order Denying Motion to Suppress, as well as its own arguments provided, Republic concurs with the Trial court decision
9. Republic contends that the Appellant had failed to substantiate in specific terms reasons why the verdict was unreasonable.
10. Real evidence with respect to the knives contained in defendant’s exhibits 3 and 4 were not admitted to court because they were collected as specimen for testing at the FBI labs, however, all the items referred to by appellant juvenile counsel including the two knives exhibits 3 and 4, defendant’s exhibits 5 were offered into evidence by way of photographs. A similar procedure was adopted in the case of good of items stolen from Robert’s store. Dr. Ivy Claire’s medical summary was admitted into evidence. It was from this medical summary that both prosecution and counsel examined the witness. (Court audio recording).<sup>5</sup>

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<sup>2</sup> High Court audio recording, November 22, 2017 at 2:38:31 am – 2:46:58 pm, FTR Media.

<sup>3</sup> High Court audio recording, November 21, 2017 at 10:38:54 am – 11:21:34 am, FTR Media.

<sup>4</sup> High Court audio recording, November 20, 2017 at 2:26:45 pm – 2:47:37 pm, FTR Media.

<sup>5</sup> High Court audio recording, November 20, 2017 at 10:38:41 am – 11:20:46 am, FTR Media.



11. Chain of custody: Republic questioned FBI witness Brent Dana over the chain of custody of all the items collected for testing or analysis at FBI labs, including all the items identified by appellant juvenile in paragraph 10,11, and 12. At the end of prosecution questions to Witness Brent Dana, trial judge asked counsel for cross examine. Counsel responded by saying he had no questions for the witness, and repeated this position even after the judge had asked him again (High Court audio recording)<sup>6</sup>. As he offered no objection, the appellant juvenile had, therefore, effectively waived his right to raise this question as ground for appeal. Republic respectfully request this court to deny the motion of appeal from the appellant juvenile.
12. Four knives were collected by FBI agents from within the small bedroom in which the murder and sexual assault were alleged to have occurred. Witness Brent testified to this. Counsel for Appellant juvenile declined or refused to question him or to raise any objections. These items were sent for testing at FBI laboratories. Photographic exhibits of these were entered into evidence during trial. FBI Witness Nicole Covers testified that the knives handles were soaked with blood as to make testing for fingerprints difficult. Court audio recording: In addition, the handles of the knives were of a texture that prevent the print impression to continuity uninterrupted. FBI Lara Adams testified that two of the blood specimens found on one of the knives matched that of the appellant juvenile, proving that Appellant juvenile was in the bedroom that night. Court audio recording: Additionally, evidence of appellant's fingerprint were found on the cover of the freezer into which the body of Ashley was dumped. The manner of the killing, the description of the knives, and appellant's contact with the freezer corroborated substantially with the confession of appellant as well as the testimonies of Jeffrey Basun<sup>7</sup> and Murphy<sup>8</sup> Muhubbun: (Court audio recording)
13. The testimony of Dr. Ivy Claire, provided a medical /professional assessment of her examination of Ashley Marquez. She confirmed medially that Ashley had been sexually assaulted through the use of physical force. The purpose of the testimony was not on whether the appellant juvenile. Court audio recording of Dr. Ivy Claire's testimony.

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<sup>6</sup> High Court audio recording, January 16, 2018 at 10:25:15 am – 10:41:02 am, FTR Media.

<sup>7</sup> High Court audio recording, November 22, 2017 at 10:59:21 am – 11:17:13 am, FTR Media.

<sup>8</sup> High Court audio recording, November 22, 2017 at 10:59:21 am – 11:17:13 am, FTR Media.

Witness Lara Adams of FBI testified that the results of the laboratory test of the DNA found in the semen swaps collected by FBI agent Brent dana from Ashley's vagina and the DNA collected from appellant's mouth swaps and hair resulted in an extremely high match of about 470 septillium, leaving no doubt that the appellant juvenile had sexually assaulted Ashley that night she was murdered. (Court audio recording of Lara Adams testimony.)<sup>9</sup>

14. Appellant confessed to scaling the wall, lowered himself down the hole in the ceiling of Robert's house, stole certain specific items from Robert's store, hid them at his place, returned to Robert's house and killed Robert and his daughter, Ashely. Independent evidence entered into evidence by witnesses: Mateo Jaik<sup>10</sup>, Jeffrey Basun<sup>11</sup>, Murphy<sup>12</sup> and Gideon<sup>13</sup> provide exact corroboration testimony that appellant juvenile committed burglary. (High Court audio recording)
15. Republic concurs with the Trial Court ruling on the Disposition hearing on February 2, 2018.
16. In asserting the best interest of the child, the appellant failed to substantiate a supporting authority. The Republic therefore concurs and support the trial court decision with respect to the imprisonment sentence of 25 years for count and count for murder and first degree sexual assault to run consecutively.
17. The appellant juvenile report now part of the court record show that the juvenile was frequently apprehended by local police on Wotje Atoll for burglary and theft. In May and June 2017 he was apprehended for drunk driving and driving as a minor without license but was released each time on the account of his age as a minor. (*Police Ticket No.9021, Case No. 2017 – 257 and Police Ticket 1428, Case No. 2017 – 0292*)
18. The Republic contends that the sentence is not equivalent to a life sentence nor should it equivalent to sentence punishable by death. The sentence applied for the three counts, murder, first degree sexual assault and burglary are prescribed by the RMI Criminal Code Section 606(8) for murder, Section 6.06(a), Section 6.06(b) for burglary. The sentence is

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<sup>9</sup> High Court audio recording, January 15, 2018 at 10:03:39 am – 11:19:05 am, FTR Media.

<sup>10</sup> High Court audio recording, November 22, 2017 at 10:30:16 am – 10:55:23 am, FTR Media.

<sup>11</sup> Ibid [1].

<sup>12</sup> Ibid [2].

<sup>13</sup> High Court audio recording, November 22, 2017, at 2:12:45 pm – 2:36:20 pm, FTR Media.



therefore not a violation of Section 6(1) of Article 2 of the RMI Constitution as asserted by the appellant.

19. The Republic concurs with the imprisonment sentence ordered by the trial court and the reasons the court provided in support of that sentence. The Republic contends that the factors including the very serious nature of the crime the cool manner in which it was committed the crucial need to address the Republic interest and safety must be taken into consideration. (Republic's Sentencing Recommendation on High Court audio recording)<sup>14</sup>
20. Testimonies relating to police report indicated that the juvenile had frequently been engaged in crimes which are often crimes of felonies nature including burglary, theft and repeated police apprehension, counseling have had no effect. It is a fact, and irrefutable public acknowledge that the Republic has anything remotely claim close to a state-sponsored program of treatment, training and rehabilitation. So the seriousness of the offense committed by the appellant, its heinous, therefore warrants in the best interest of the public the imprisonment term sentence ordered by the trial court in this case.
21. Republic contends that the imprisonment sentence of fifty (50) years is not for murder conviction alone as asserted by counsel for the appellant. It is the combination of three (3) sentences, murder, first degree sexual assault, and burglary. The *RMI v. Kabot (Criminal Case No. 2016 – 004)* was settled by plea agreement.
22. Republic contends that there is no mandatory sentence for murder in the first degree in the Republic of the Marshall Islands, only murder. (*Please see Trial Judge's footnote on page 2 of the Trial Court's December 18 2017 Order Denying Motion to Suppress*) Therefore, the cases of *Muller v. Alabama, 132 S.C 2455* and *Montgomery v. Louisiana* cited by the appellant counsel are irrelevant.
23. Section 305 of the Juvenile Procedure Act prescribes that the "*proceeding against a delinquent child may be brought in the High Court, or in the District Court or Community Court having jurisdictions over the place where the delinquency or any part of it occurred, EXCEPT that if the acts charged may legally constitute murder or rape of which the person is not conclusively presumed to be incapable by law, the proceedings shall be brought only to the High Court*". As the case legally constitute murder or rape

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<sup>14</sup> High Court audio recording, January 2, 2018 at 3:25:18 pm – 3:45:55 pm, FTR Media.

the trial judge correctly brought the proceedings to the High Court, it is indicative of the weight to which the law attaches to the severity and seriousness of the offences of murder and rape. The Republic therefore supports and concurs with the decision of the trial court in finding the provision of the Juvenile Procedure Act to address the seriousness of the case and to sentence the appellant juvenile as an adult.

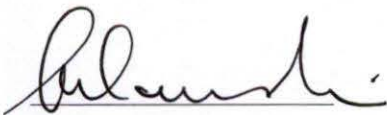
24. Republic contends that the imprisonment sentence of fifty (50) years is not for murder conviction alone as asserted by counsel for the appellant. The seriousness of the offense committed by the appellant, its heinous, therefore warrants in the best interest of the public the imprisonment term sentence ordered by the trial court in this case. The Republic also contends that the sentences imposed were the provisions of the RMI Criminal Code, Section 6.06. and therefore, the sentences are not unconstitutional and in violation of Section of 6 of Article 2 of the RMI Constitution.

25. That on the basis of the foregoing arguments the Republic respectfully request this court to affirm the conviction of the appellant and to find all the evidences offered in court including finger prints, DNA and all the testimonies provided by the witnesses to have established that the juvenile was the person who committed the crime as charged.

The Republic respectfully ask that this Supreme Court of the Republic of the Marshall Islands to affirm the decision of the Trial court on the court orders entered December 18, 2017 and February 5<sup>th</sup>, 2018.

Proof of service of this Appellee's Answer Brief on all parties as prescribed by the SCRP is attached.

Respectfully Submitted,



Falai R. Taafaki  
Prosecuting Attorney

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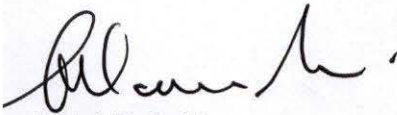
MAY 28 2018

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CERTIFICATE OF SERVICE

I hereby certify that on this day 28<sup>th</sup> of May 2018, I caused a copy of the Appellee Answer Brief to be sent/transmitted to Russell Kun, Esq, Counsel for the Appellant Juvenile.

Dated this 28<sup>th</sup> day of May 2018.



Falai Tafaaki  
Prosecuting Attorney.