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 REPUBLIC OF THE MARSHALL ISLANDS

**IN THE SUPREME COURT
 OF THE
 REPUBLIC OF THE MARSHALL ISLANDS**

ALEE PHILLIP)	Criminal Appeal No. 2018-003
Plaintiff / Appellant Juvenile)	
)	
)	<u>OPENING BRIEF</u>
-v-)	<u>Pursuant to Rule 28(b)</u>
)	<u>of the RMI Supreme Court</u>
)	<u>Rules of Procedure</u>
)	
REPUBLIC OF THE MARSHALL)	
ISLANDS)	
Defendant / Appellee)	
_____)	

COMES NOW, the Appellant Juvenile, **Alee Phillip**, by and through his Counsel of Record from the Office of the Public Defender, is filing its Opening Brief, pursuant to Rule 28(b) of the RMI Supreme Court Rules of Procedure (“the Rules”).

1. That, this criminal case was appealed by the Juvenile Appellant based on the **Adjudication** and **Disposition** Order so imposed respectively by the High Court (“**Trial Court**”) on January 19, 2018, and February 2, 2018, and of which was timely appealed on March 2, 2018.

Copies of both these Orders were attached with the Notice of Appeal.

2. That, on July 27, 2017, the Appellant Juvenile, who was 15 years of age at the time, was charged by the Republic, by and through the Office of the Attorney General (the Prosecution), with six alleged offences of, Count-1: **First Degree Murder**, in violation of 31 MIRC 210.2(1)(a); and Count-2: **First Degree Sexual Assault**, in violation of 31 MIRC 213.3(1)(a); and Count-3: **Manslaughter**, in violation of 31 MIRC 210.3(1)(a); and Count-4: **Burglary**, in violation of 31 MIRC 221.1(1); and Count-5: **Aggravated Assault**, in violation of 31 MIRC 221.3; and Count-6: **Robbery**, in violation of MIRC 222.1(1)(a).

3. That, at the Initial and Preliminary Hearings, although the Trial Court granted the Appellant Juvenile all the rights and due process that he would receive as if he was an Adult charged with a criminal offence, especially the liberty to be presumed innocent until proven guilty beyond a reasonable doubt, the Appellant Juvenile was treated as a Juvenile and his case was closed to the Public.

And after the Preliminary Hearing, the Trial Court couldn't find good cause for Count-5: **Aggravated Assault**, and Count-6: **Robbery**, and dismissed them.

4. That, a Bench Trial was scheduled and commenced from November 20-22, 2017, and continued later on January 15-16, 2018, and Closing Arguments were held on January 19, 2018.

5. That, at its **Adjudication** hearing on January 19, 2018, the Trial Court found, beyond a reasonable doubt, that the Appellant Juvenile committed the offences of **Murder; First Degree Sexual Assault; and Burglary**; and also found the Appellant Juvenile is a Delinquent Child.

But the Trial Court entered its guilty verdict so based on the Appellant Juvenile's assumed confession obtained from Police Detectives, of which this assumed confession was challenged for reasons that it was conducted secretly without any legal assistance, and that the Appellant Juvenile was coerced and forced by the Police Detectives to admit to the Double Murders.

6. And prior to entering its finding at the hearing, the Trial Court questioned if, there was evidence beyond a reasonable doubt to conclude that the Appellant Juvenile is that person who committed these crimes? And the Trial Court went on to state in its Order that, *“although I personally would have preferred the government to plug some of the holes left in this case.”* (Transcript, pg-27)

This statement by the Trial Court in its Order had cast a doubt on the Prosecution’s case and therefore, it was wrong for the Trial Court to hand down a guilty verdict and convict the Appellant Juvenile.

7. And at the **Disposition** hearing on February 2, 2018, the Trial Court duly reviewed, considered and weighed the circumstances before it, and went on to state in its Order that, *“And although all the evidences has not been clear...”* (Transcript, Line-10 and 11, pg-8)

Again this statement by the Trial Court in its Order had cast a doubt on the Prosecution’s case and therefore, the Trial Court was wrong to sentence the Appellant Juvenile to 50 years jail with 0 years suspended.

8. That, by reason of this appeal, the Appellant Juvenile is pointing out and appealing to both these Orders imposed by the Trial Court were incorrect and cannot be supported as having reasonable doubt on the evidence, and having regard to the Trial Court’s statement in its Orders, because the Defense had cast a lot of doubt in the Prosecution’s case.

9. That, during the trial, the Prosecution offered into evidence as exhibits were a slew of **photographs** taken at the crime scene by a Police Detective, including photographs of, **two knives** alleged to be the murder weapons, a **gray duct tape** used to tape up the baby’s mouth, some alleged **stolen goods**, the **Gynecologist report** alleging that there was sexual penetration involved, and the baby’s **torn dress** alleged to have semen on it.

10. However, other than the slew of **photographs** taken at the crime scene, not one of these proposed exhibits were offered into evidence by the Prosecution during the trial to establish that the Appellant Juvenile was the perpetrator of these offences.

11. And most vital problem during the trial was that, the Prosecution failed to establish a proper **Chain of Custody** through any or each of their witnesses (especially from the US Federal Investigation Bureau (FBI)) to testify of who had custody of their most important exhibits (that is, the **two knives** alleged to be the murder weapons) from the time the **two knives** were found to have initial connection with the Double Murders, and to the time to be offered or admitted as evidence during the trial.

Because other than the slew of photographs, there was no real evidence, especially the **two knives** alleged to be the murder weapons, were ever offered or admitted by the Prosecution at the trial to establish that the Appellant Juvenile's fingerprints were detected on the two knives.

12. As argued above, the Trial Court was erred to find that the Appellant Juvenile committed **Murder**, because throughout the trial, because there was no real evidence tendered by the Prosecution to prove beyond a reasonable doubt that, the Appellant Juvenile did commit Murder.

During the first part of the trial proceeding when it commenced from November 20-22, 2017, the Prosecution called the Detectives who interrogated the Appellant Juvenile without any legal assistance present and forced him to confess that he killed Marquez and his baby girl.

After concluding its Direct Examination, the Prosecution failed to offer and admit any real evidence but only **photographs**, for instance the **two knives**, to the Court from its witnesses.

The FBI witnesses who were called to testify at second part of the trial from January 15-19, 2018, testified that, the Appellant Juvenile's fingerprints were **not** detected on the **two knives** (items-43 and 39) in order to show and prove beyond a reasonable doubt that, the Appellant Juvenile did commit Murder.

Because on Cross Examination for clarification, FBI Agent Lara Adams confirmed in her testimony that item-48 (later corrected by the witness as item-43) was a knife near Marquez body. And the DNA profile from the swabbing from the blade contained male DNA. But Mr. Phillip, the Appellant Juvenile, was **excluded** as possible contributor to the sampling of the blood stains. (Transcript, pg-15)

Also on Cross Examination for clarification, FBI Agent Nicole Cover testified that she examined **four knives**, instead of **two knives**, and did **not** detect any usable latent prints or in other words, there was **no** finger prints on any of the **four knives** that she tested. (Transcript, pp-33-34)

By this insufficient evidence, the Prosecution had seriously failed to show and establish every element beyond reasonable doubt to **Murder**, that the Appellant Juvenile “*did intentionally or knowingly under circumstances manifesting extreme indifference to the value of human and caused the death of another human life..*” simply because all the evidence presented during the trial were not clear to show that the Appellant Juvenile was that person who, without a doubt, committed the double **Murder** of Robert Marquez and his baby girl, Ashley.

But the Trial Court had based its Guilty Verdict for **Murder** on the Appellant Juvenile’s assumed confession to the Detectives.

13. The Appellant Juvenile is pointing out and appealing that the Trial Court was erred to find the Appellant Juvenile guilty of **Sexual Assault in the First Degree**, because throughout the trial, there was no evidence whatsoever offered by the Prosecution and its witnesses to prove beyond a reasonable doubt that, the Appellant Juvenile did commit **Sexual Assault in the First Degree**.

During the first part of the trial proceeding, the Prosecution called Dr. Ivy Claire, Gynecologist, who testified as per her report alleging that the baby, Ashley, was sexually assaulted through the use of force, and that the baby girl’s **torn dress** was alleged by Dr. Ivy to have semen on it. But this piece of evidence was never offered or admitted into evidence by the Prosecution at trial, saying that the FBI took the baby girl’s **torn dress** for Lab tests at the FBI Lab in the US.

After concluding its Direct Examination, the Prosecution failed to offer and admit any real evidence, for instance the baby girl's **torn dress**, from its witnesses, including the FBI witnesses called to testify at trial, of who testified that, the Appellant Juvenile's semen were **not** detected on the baby girl's dress (item-20) in order to show and prove beyond a reasonable doubt that, the Appellant Juvenile did commit **Sexual Assault in the First Degree**.

Because on Cross Examination for clarification, FBI Agent Lara Adams testified that she analyzed a baby's **torn dress** (item-20) for any possible presence of semen, and answered that there was **no** semen was detected on the baby girl's **torn dress**.

(Transcript, pg-16)

Agent Adams was also asked if she examined a knife (item-39) for presence of blood and she answered yes she did, and answered **no** blood was detected on item-39.

By this insufficient evidence, the Prosecution had seriously failed to show and establish every element beyond reasonable doubt to **Sexual Assault in the First Degree**, that the Appellant Juvenile "*did knowingly subject another person to an act of sexual penetration..*" simply because all the evidence presented during the trial was not clear to show that the Appellant Juvenile was that person who, without a doubt, subjected the baby girl to an act of sexual penetration, through use of force.

But the Trial Court had based its Guilty Verdict for **Sexual Assault in the First Degree** on the Appellant Juvenile's assumed confession to the Detectives.

14. And the Appellant Juvenile is also pointing out and appealing that the Trial Court was erred to find the Appellant Juvenile guilty of **Burglary**, because throughout the trial, there was no evidence whatsoever offered by the Prosecution and its witnesses to prove beyond a reasonable doubt that, the Appellant Juvenile did commit **Burglary**.

During the first part of the trial proceeding when it commenced from November 20-22, 2017, the Prosecution called in witnesses: Mateo Jaik, Jeffrey Basin, Murphy Mubbun and Kiton Laibwuj, who are all from the neighborhood, but none of them saw or pointed at the Appellant Juvenile as the person who entered into the Marquez home.

Testimony by FBI Agent, Brent Dana, verified that he collected patent print from the top of the freezer in the Marquez home and showed the Appellant Juvenile's fingerprints (Transcript, pg-22) but this piece of evidence was never offered or admitted into evidence by the Prosecution at trial.

By this insufficient evidence, the Prosecution had seriously failed to show and establish every element beyond reasonable doubt to **Burglary**, that the Appellant Juvenile "*did enter into a building with the intent to commit a crime..*" simply because there were **no** eye witnesses presented at the trial to show reasonable doubt that they saw the Appellant Juvenile entered into the Marquez home.

But the Trial Court had based its Guilty Verdict for **Burglary** on the Appellant Juvenile's assumed confession to the Detectives.

15. That, at its Deposition hearing on February 2, 2018, after the Trial Court reviewed, considered and weighed the circumstances before it, found it proper and so Ordered that the Appellant Juvenile be sentenced to **50** years imprisonment with **0** years suspended, even after finding that the Appellant Juvenile is a Delinquent Child. And of which the Trial Court stated at the hearing that, "*I believe by the time he is 76 years old he will have lost the desire to rape and kill.*" (Transcript, pg-9). Even after stating that, "*And although all the evidences has not been clear...*" (Transcript, pg-8).

16. That, the Appellant Juvenile is also appealing over this unprecedented imprisonment sentence imposed by the Trial Court on two grounds:

- (1) Firstly, this imprisonment sentence is not only equivalent to a life sentence or a capital punishment, in violation of **Section 6(1)** of the Constitution, especially when the life span for most men in the Marshall Islands is between 40-50 years;
- (2) Secondly, this imprisonment sentence is not only harsh and excessive, but it was a cruel and unusual punishment, in violation of Section 6(3) of the Constitution.

This **50** years imprisonment sentence with **0** years suspended, the Appellant Juvenile will be **66** years old when released, and has literally closed the door on any second chance or rehabilitation in life.

17. As above stated, this imprisonment sentence of 50 years with 0 years suspended is unprecedented in all **Murder** convictions before the RMI High Court, because a Trial Court has never handed down a imprisonment sentence of over 25 years with 0 years suspended, even for Adults.

The highest term of imprisonment imposed by the RMI High Court for **Murder** (for an Adult) was 25 years imprisonment with 20 years to serve (with credit for time served) in *RMI -v- Kabot* (Criminal Case No.2016-004).

18. And it may be worth noting in this appeal that, the Appellant Juvenile was charged for one count of **Murder** for two people, Marquez and his baby girl, although the Prosecution could have filed two charges of **Murder**, of which would have justified the Trial Court's imprisonment sentence of 50 years with 0 years suspended to be served consecutively.

19. However, since 2005, the US Supreme Court rulings had banned the use of capital punishment for Juveniles. And following the 2012 US Supreme Court ruling in *Miller v. Alabama*, 132 S.Ct. 2455, it emphasized that Judges are required to consider the unique circumstances of each Juvenile Defendant in determining sentence, and banning mandatory sentences of life without parole for all Juveniles.

And in *Montgomery v. Louisiana*, a 2016 decision, ensured that its decision applied retroactively and ruled that for Juveniles, a mandatory life sentence without the possibility of parole was unconstitutional.

But during the Disposition and Sentencing, it seemed that the Trial Court had seriously overlooked that the Appellant Juvenile was a first-time offender and seriously failed to consider the unique circumstances, rights and interests of the Appellant Juvenile.

20. Therefore, the Appellant Juvenile appeals that his imprisonment sentence imposed by the Trial Court to serve 50 years with 0 years suspended was unconstitutional and in violation of Section 6 of the Constitution.

21. That, the Appellant Juvenile is currently incarcerated at the Majuro Jail, and by this appeal, the Appellant Juvenile is seeking an Order from this Appellate Court to **Quash** the Trial Court's Order of Adjudication entered on January 19, 2018, and the Sentence Order imposed on February 2, 2018, and direct a verdict of **Acquittal**.

Proof of service of the Appellant Juvenile's Appeal Brief on all adverse Parties as prescribed by the Rules is attached.

Submitted and filed this July 1, 2019.

With Highest Respect,

A handwritten signature in blue ink, appearing to read 'R. Kun', followed by the date '7/1/2019' written in a similar cursive style.


Russell Kun, Esq.

Counsel for the Appellant Juvenile

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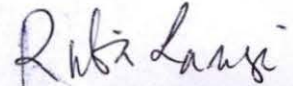
CERTIFICATE OF SERVICE

Alee Philip -v- RMI
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We, from the Office of the Public Defender, hereby certify that, upon filing at the Court, have duly served on the Prosecuting Attorney, Dr. Falai Taafaki, Esq., a true copy of the Appellant Juvenile's **Opening Brief** via email transmission on this July 1, 2019.

Komol tata,


Office of the Public Defender