

IN THE HIGH COURT
REPUBLIC OF THE MARSHALL ISLANDS

Republic of the Marshall Islands)	Criminal Case No. 2017-020
Plaintiff)	
)	
v.)	
)	
)	
<u>Antolok Antolok</u>)	
Defendant)	

TRANSCRIPT OF THE TRIAL, CONVICTION AND SENTENCE
HEARINGS OF RMI v. ANTOLOK ANTOLOK

September 18 to 21, 2018 & October 23, 2018. Before High Court Associate Justice Colin Winchester.

APPEARANCES:

For Plaintiff:

Mr. Cutty Wase
Assistant Attorney General
Majuro, Marshall Islands

For Defendant:

Mr. Russel Kun
Chief Public Defender
Majuro, Marshall Islands

KAIBOKE TOBINWA ISEIA
ASSISTANT CLERK OF COURTS
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Court: Thank you, you may be seated. Good morning, this is the High Court Republic of the Marshall Islands case number 2017-020, Republic of the Marshall Islands vs Antolok Antolok. We are here for a bench trial begins today. Mr. Wase is present for the Republic, Mr. Antolok is here, and is represented by counsel Russel Kun from the Public Defender's office. Today is September 18 and it is a few minutes after ten o'clock in the morning. Mr. Wase any reason we should not proceed?

Mr. Wase: No reason, Your Honor.

Court: Mr. Kun?

Mr. Kun: We're ready.

Court: ?

Mr. Wase: Yes, Your Honor. Just recently the counsel for Republic, I myself have been inform throughout the preparation that several witnesses will be needed to add to the government list. Witnesses that is what I like to bring to the attention of the court.

Court: Okay, go ahead.

Mr. Wase: That's all Your Honor. Your Honor, that's all from the Republic in regards to preliminary matter to bring to the attention.

Court: So, Mr. Wase you filed a witness list on August 29 that has seven names on it, correct?

Mr. Wase: That's correct, Your Honor.

Court: Who are these proposed new witnesses?

Mr. Wase: And I would like to add three more, Your Honor? Four actually Your Honor. The first one is the older sister of the victim.

Court: Her name?

Mr. Wase: Telima Hesa.

Court: Telima Hesa?

Mr. Wase: T-e-l-i-m-a Hesa.

Court: She is the older sister. And?

Mr. Wase: The next one is the oldest sister.

Court: And her name?

Mr. Wase: Your Honor, she's outside I need to get her name. If that's....

Court: ...Alright, who's the third one?

Mr. Wase: Her husband. The same person it's her husband.

Court: So, the husband of the victim's oldest sister?

Mr. Wase: That's correct, Your Honor. And he's also outside and I will provide the name later?

Court: Okay and the fourth one?

Mr. Wase: The fourth one is the cousin of the victim. She is also outside and I will provide the name.

Court: Let's take five minutes and you can get the names for us.

Mr. Wase: Okay.

Court: Okay, number two the victim's oldest sister.

Mr. Wase: Oldest sister. Yes, Your Honor. Her name is Artena, A-r-t-e-n-a Hesa.

Court: And her husband?

Mr. Wase: Her husband is Laston Jinna, L-a-s-t-o-n last name is Jinna, J-i-n-n-a.

Court: Okay, and the cousin?

Mr. Wase: The cousin is Selina Hesa, S-e-l-i. Selima S-e-l-i-m-a.

Court: S-e-l-i-m-a?

Mr. Wase: Yes, Your Honor. And Your Honor, I'm no longer going to call staff nurse Bewit John and staff nurse Stacey Anmontha.

Court: Counsel, let me ask either one of you. Did I set a deadline for the filing and the amended witness list? Cause I'm not seeing any in the court file.

Mr. Kun: I think the deadline was just only for the pre arrangement.

Court: Mr. Kun what do say about this lodging to add these witnesses? And strike to...

Mr. Kun: ...Your Honor, I have prepared my defense on government witnesses list based on the affidavit in support by the detective. I don't know what's the relevant of these extra four witnesses who are all in the same house. This is all family that will be no doubt ganging up on my client. One can imagine what their stories are have been cooked up from their mother to, against my client. They are not eye witnesses Your Honor they are just wasting the courts time. That's our only concern.

Court: Mr. Wase, what do you expect Telima to testify to? What do you she's gonna say?

Mr. Wase: Your Honor, Telima is the person who took the photograph using the Ipad. And she will be the person to authenticate the photographs. The photos that were taking out of her ipad that shows the mark on her neck and her breast. That is the intension of the Republic.

Court: She won't be testifying to any other than foundation for the Republic is that correct?

Mr. Wase: That is correct, Your Honor.

Court: And Artena Hesa the oldest sister?

Mr. Wase: Yes, Your Honor, on the reported incident the day of the commission of the offence September 24. Upon arrival from Arno, she was sent a that was a few hours before the incident took place. It was about four or five o'clock in the afternoon after the mother discovered the marks on her breast and neck the father sent her to the defendant's house to

summon him as requested by the father. And there she saw him near the same where the incident took place Lajunan's house. And she also together with her husband that's why I would....

Court: So, two and three, right?

Mr. Wase: Yes, they went together and as they requested him to go as instructed by the father, he said something. And she witness as well as heard something that relevant to the guilt from the mouth of the defendant as he responded.

Court: You inform Mr. Kun prior to today about the expected testimony or what this statement is?

Mr. Wase: No, Your Honor.

Court: Number four Selina Hesa? What will she say? What do you expect her to say?

Mr. Wase: Selima Hesa, she remembers the exact time after the incident when Tilber left the crime scene and went home she met her at the place and she knows the exact time she met her and she's the first person that Tilber informed of what happened and showed her the marks on her body.

Court: Mr. Kun I am trying to allow Telima to lay the foundation for the photographs I assume you have no objection to that.

Mr. Kun: No objection.

Court: I am concern about the other three only because their identity has expected testimony have not been previously disclose to you.

Mr. Kun: Yes, Your Honor, even in fact that we had that short meeting in the court room on the witness saying that we have the same witness Mrs. Neway or Ms. Neway they didn't even inform me of these extra witnesses.

Court: Alright here is my decision. I'm going to allow Telima to testify to the foundation of the photo. I am going to make no decision at this time regarding Artena, Laston,

and Selima and I will make the decision, well let's just see how it goes. Alright, Mr. Wase I'm afraid to ask, but anything else?

Mr. Wase: That's all Your Honor.

Court: Okay. Mr. Kun any pre-trial matters?

Mr. Kun: No

Court: Mr. Wase do you want to make an opening statement?

Mr. Wase: Yes, Your Honor.

Court: Alright go ahead. Do me a favor though leave out anything you might say about what those three witnesses are gonna testify to.

Court: I don't want to hear it unless I hear anything, Okay.

Mr. Wase: Yes, Your Honor, thank you. Your Honor, this case is about sexual assault of a mentally defective 19 years old girl. By a man she considered, once considered Your Honor, by a man whom she once considered a father, like a father. And highly trusted by her parents, because he's the father of her best friend. He knew of her mental disabilities; her parents trust and he took advantage of those. He committed a craziest and ugly crime against Tilber Hesa, by subjecting her to an act of sexual penetration by strong compulsion. Threaten her, pulled her, and dragged her forcefully into a house and while inside the house, he covered her mouth with his very strong hand, pull off her dress, take off her underwear, showed his penis, and then he penetrated his penis into her vagina, while biting her neck and breasts leaving scar on her breast and neck. Your Honor, that particular event took place on September 24, 2017 between the hour of 10am and 12pm at Utidrikan village.

Court: Counsel are you saying 12pm are you referring to noon or midnight?

Mr. Wase: Noon, Your Honor.

Court: Go ahead.

Mr. Wase: And he didn't only sexually assault her just once, twice, but four times altogether including that reported incident. Your Honor, the man responsible for this ugly crime is known here is the defendant, Mr. Antolok Antolok, and the victim in this case is Tilber and he knows this girl who doesn't know, who doesn't understand what happened to her why she was doing it, why it happens to her. She has no other option but she will take the stand, Your Honor and she promise to do her best today. Just briefly Your Honor the burden of proof is of course is on the Republic understanding being proof all the elements of offense beyond a reasonable doubt. Now, Your Honor a bit about the witnesses that we will be hearing from. The Republic will call six witnesses Your Honor. The first witness is doctor Nena. He is the psychiatrist who did Tilber assessment, including a mental status examination of the victim in this case Tilber Hesa. He will share with us his findings on Tilber's mental status, ability to testify, credibility as a witness, and whether she can consent to a sexual act. The second witness would be Detective Sergeant Anthen Clarence, who collected and who will give exhibits today. The third witness is the victim Tilber Hesa, who will tell us what she experienced on the day, and tell us more about the incident Your Honor. Lewis Zagious is the fourth witness, who saw Tilber and Antolok inside Lajunan's house on September 24th, she will tell her story. The fifth witness is the Victims mother, Lyla Hesa, who saw the kiss marks on Tilbers neck, breast, and who instructed Telima to take the pictures on her ipad. That is the witness list of the governments witness list your honor.

Court:

Mr. Wase: Yes, Your Honor, Telima.

Court: And then of course, seven, eight, and nine if I allow them, correct?

Mr. Wase: It is correct Your Honor.

Court: Okay, go ahead.

Mr. Wase: Without further a due your honor, the republic is ready to call its first witness, Dr. Nena

Court: Mr. Kun you going to make an opening statement at this point or you just wait until later?

Mr. Kun: Yeah, I'll just uh, defense will just make a quick brief opening in response to the prosecution. Your Honor, defense will show during this trial that no sexual assault occurred or nothing happened as alleged on that Sunday morning from ten am to mid-day of September 24, 2017 as alleged by the prosecution, because at that time of morning your honor our client Antolok was passed out from high alcohol intoxication at Junans abandoned house, which is right next to his house. And besides, what person in their right mind or even twisted mind would threaten a young woman, especially in broad daylight at in Utidrikan village which is a village that never sleeps. Especially at ten am in the morning, from ten am in the morning imagine how many people would be watching my client pulling and dragging a young woman, and forcing her mouth, and pulling up her dress, taking her into an abandon house, pulling up her dress and pulling down the wet. And showing his penis to the young woman, and then penetrating his penis into her vagina and biting her neck at the same time. These allegations Your Honor are all unreal and made up. And we will prove it. Especially when this alleged incident was alleged to have occurred on September 24 and then reported by Tilbers mother nearly two months later on November 6. If as the prosecution argued, they already took photographs, call the other sister, why didn't they report it straight to the police? That's why we say these allegations just don't add up, thank you.

Court: All right go-ahead Mr. Wase

Mr. Wase: The Republic would like to call up Dr. Nena.

(OATH ADMINISTERED BY CLERK)

DR. HOLDAN NENA

Mr. Wase: Your Honor, during the second preliminary hearing, the court accepted Nena as an expert witness, can I continue on my ...

Mr. Kun: ...Your Honor, this is a trial and he should start all over again and introduce Mr. Nena.

Court: You'll have to go through it again Mr. Wase
Called as a witness and Testified as follows on:

DIRECT EXAMINATION

By Mr. Wase:

Q: Good morning Doctor Nena,

A: Good Morning.

Q: I would like to remind you again to speak loud and clear so everyone can hear you and also give time for the clerk to translate before you speak, is that okay.

A: Alright.

Q: Please tell us your name?

A: My name is Holden.

Q: Mr. Holden do you work?

A: Yes, I do.

Q: Where?

A: Ministry of Health.

Q: In which department?

A: Department of Human Services.

Q: And what is your profession?

A: I am a physician specialized in psychiatrist.

Q: Dr Nena. Let's talk about your qualification, could you please tell the court about your education background?

A: I attended Fiji school of Medicine, from 2000 to 2006, returned for post graduate in psychiatry from 2015, practiced in FSM 10 years and 1 year in Marshalls.

Q: Are you specialized in any area?

A: A psychiatrist, I specialized in mental health.

Q: How long have you, has this been your specialty.

A: Three years I believe.

Q: Dr, what type of training if any, have you received to prepared you to the work in that area.

A: I did clinical for twelve months in Fiji, for psychiatry, General Psychiatry...

Q: Have you worked specifically with sexual assault cases?

A: Not before this one.

Q: And how many cases have you handled involved mentally defected person or victims?

A: Cases, can you clarify cases, in general or cases that are brought to legal system?

Q: Cases that are brought to court?

A: I have been involved in four cases.

Q: Have you testified before the court?

A: Yes sir.

Q: And how many times?

A: I have come in a few times, a number of times, for four different clients...

Q: ...and where was that

A: Here.

Q: And did you render any professional opinion in court? Did you give any professional opinion in those cases?

A: Yes, I have.

Q: Your Honor, I have no further questions with regard to Dr. Nena's qualification and if no question Your Honor, I move for him as expert witness based on his qualifications.

Court: Mr. Kun any questions.

CROSS EXAMINATION

By Mr. Kun:

Q: Yes, just one question Your Honor, Doctor, did you just say this is your first case dealing with mentally defective woman, in a sexual assault case?

A: Sexual assault yes.

Q: So, this is your first case ever?

A: Yes.

Court: And your response to the motion?

Mr. Kun: Your Honor, the doctor, it true he's a qualified Psychologist, Psychiatrist?

Dr. Nena: I don't like being called Psychologist!

Mr. Kun: Sorry Doctor. Since this is his first case of this kind, I don't think the doctor has done enough hours to be testifying as an expert.

Court: I'd like to accept Dr. Nena as an expert on human psychiatry, since he's appeared in my court several times. Including few or more times appearing this particular case. Although I will not accept him as an expert on sexual assault itself, I will accept him as an expert in the field of mentally defective individuals, and recognized that some of those individuals may in fact be alleged victims of sexual assault. So, I will allow doctor Nena to express his opinions regarding mental abilities of this particular alleged victim, but I will not allow him to testify or express his opinion to whether or not sexual assault occurred in this case. You may proceed.

RE EXAMINATION

By Mr. Wase

Q: Dr Nena, thank you. Now what was your part in preparation of this case?

A: I was requested by AG'S office to do a psychiatric evaluation of the victim.

Q: When a psychiatric evaluation is requested, what does it cover when you provide the response?

A: It involves a psychiatric interview, which is information collection, mental status examination, and evaluation.

Q: Who was the person you assessed Dr. Nena?

A: It was miss Tilber Hesa.

Q: And how many meetings you had with Ms. Tilber Hesa?

A: I believe I have documented three evaluations.

Q: And when was the first meeting you had with her?

A: January 11

Q: And where was this meeting take place?

A: At the human services office.

Q: Who were present during the meeting?

A: Myself, police officer, Tilber, her elder sister, and my head nurse.

Q: Doctor, what was the purpose of this meeting?

A: The AG's office requested for psychiatric evaluation but they were for a few specific questions that they hoped that we would answer for them.

Q: And what are these questions doctor?

A: I'm trying to find it. We were specifically asked if we could answer certain questions, one the mental age of Tilber, two level of mental retardation, three ability to consent to sexual acts, and last, four incompetency as a witness ability to testify.

Q: Okay, now doc, could you please explain to court how you went about the assessment? How did you go about the assessment?

Dr. Nena: After several hours of observing the patient, interviewing the patient, interviewing her family members, repeated mental status examination, and a review of patient's

general medical chart history, all information collected together are used for the assessment and final diagnosis.

Q: Doctor could you explain how did you come up, how did get the mental age of the victim?

A: First we have to make a confirmation of mental retardation by collecting enough evidence both aspects of components of mental retardation, sub normal IQ level, and also sub normal social interaction or adaptation. After diagnosing mental retardation, there is another need there to classify all the four levels of mental retardation, from mild, moderate, severe, and profound based on all the information collected on the level of understanding and social adaptation or behavior of the person. Now with all the information we had, we were able to diagnose with confirmation of mental retardation and classify as severe mental retardation. Now that classification of mild, moderation, severe, and profound directs you on the mental age of that person. If I say severe mental retardation, the brain, the mental age is four, that means regardless of how old the person is, the brain development stops at a level of four-year old's developing brain. That's how I came with the...

Q: ...Now doc, what does it mean with regards to memory.

A: Like I set foot on the summary I provided earlier, reliability of memory recall on mental retard is sometimes difficult to rely on. They don't go in details, beside the fact that severe mental retardation, they don't have numbers and general details of general description, but they will tell you the bad point experiences, happy parts, sad parts, scary parts, just like a four year old, that is all they will tell you.

Q: Doc, what about ability to understand her surrounding, for example, sexual act.

A: Severe mental retardation may develop ability to speak the language capability, but making decision and independent activities they don't develop. For life they need

supervision, assistance by others. They don't make decisions on major areas, like surgery, travel, marriage.

Q: Doctor, Tilber Hesa, the person assessed, that you did your assessment on, based on your professional opinion, is she capable of being a witness in court?

A: My opinion, she may be able to do that, but I was concerned about my diagnosis of her mental age, putting her here may actually be more traumatizing to her.

Q: Thank you doctor, and what type of questions should be used to help that kind of person if were to testify in court?

A: More of general descriptive question or information that will be described in the state of a quantitative numbers of actual info of same numbers or times, you won't get those from severe mental, you may get data, names or numbers from mild or moderate, but not severe, they can only tell you the part of the day or something nice or not nice. They have general descriptions of things or differentiation of things.

Q: And what does that mean to her credibility?

A: If you ask her question that will require specific numbers or the time of day or that time of answer with quantification, anybody with severe mental retardation, you will never get.

Q: Doctor, are people with that category are they capable of telling lies?

A: Anybody is capable of telling lies.

Q: Can you tell if that kind of person is telling lies?

A: There are certain techniques and tools to assess, this one common use is getting the story by different people at different times, each time when things change around, it tells the story is not the same story anymore, it's not reliable, but when different people ask the same story at different times and it comes up the same, it's hard to say it's made up.

Mr. Wase: Thank you doctor, no further question your honor.

Court: Gentlemen well take five-minute break...

CROSS RE EXAMINATION

By MR. KUN:

Mr. Kun: I won't take long, five minutes...

Q: Doctor, so at the interview, Tilber knew about her surrounding right?

A: I had to explain where we were.

Q: And she knew you were a doctor?

A: Yes.

Q: With her mental ability, is it possible that miss Tilber could blame anyone, if she is influenced by her mother or older siblings, is that correct?

A: I'm sorry could you repeat the question?

Q: With her mental ability, is it possible Tilber can be easily blame anyone if she's influenced by say, her parents or her older siblings?

A: It is possible.

Q: One more question, since you examined Tilber, did you prescribe her any medication for her mental illness?

A: I did not.

Q: Don't you need to put her on a prescription to help with her mental ability?

A: Mental retardation, sometimes we treat them when they have behaviors which are aggressive or risk for other people, but cognition general knowledge there is no treatment for mental retardation other than support and counseling.

Mr. Kun: Understood Doctor, thank you, Your Honor five minutes. No more questions.

Court: Any word counsel

Mr. Wase: I'll be quick your honor, just two questions.

RE EXAMINATION

By: Mr. Wase:

Q: Dr, in the case of Tilber, how long can her memory, that particular type of person in that category, how long can her memory last?

A: That's a very big question. It actually depends on what type of memory because there are many different rooms that take care of different memories, and as time goes by some memories are deleted, but significant events stay very long with people, even mental retards. Very special happy times or very sad memories live with them for very long time.

Q: Doctor you said earlier that if a person of that type is making up a story, the story will change, will be different from next time she tells. And you did several interviews after the first interview?

A: Yes, we did.

Q: And she never changed her story?

A: That's correct.

Q: No further questions you honor.

Court: Mr. Kun anything else?

Mr. Kun: Not from the defense Your Honor.

Court: Thank you Doctor you may sit down. Well take a ten-minute break and come back at eleven thirty.

Mr. Wase: Your Honor, I would call detective Clarence to the stance.

(OATH ADMINISTERED BY CLERK)

ANTHAN CLARENCE

Mr. Wase: I'm going to proceed your honor.

Called as a witness and testified as follows on:

DIRECT EXAMINATION

By: Mr. Wase:

Q: Good morning detective, I would like to remind you to speak loud and clear so the clerk can hear you. Please for the record, state your full name?

A: My name is Anthan Clarence.

Q: Mr. Clarence where do you work?

A: At the national police.

Q: What is your position at the national police?

A: I work as a detective.

Q: What is your title?

A: Sargent.

Q: In which department of the MIPD are you working?

A: CID.

Q: How long have you been a detective in the criminal division?

A: 12 years...

Q: And in those twelve years, how many criminal cases you've investigate

A: Ten plus.

Q: And how many of those ten plus cases involve sexual assault?

A: Six...

Q: Detective where were you on September 24, 2017, between eleven and twelve, Um ten am and twelve pm noon?

A: I was at work.

Q: Do you recall anything un usual happening on that date?

A: Yes.

Q: Please tell the court what happened on that day?

A: On that day, the complaint came to the police station, and on that day, there was an incident happened at Junan resident.

Q: Detective, who's the alleged suspect in the incident?

A: Antolok.

Q: And what did Antolok do?

A: He threatened Tilber and took her into Junans house and sexually assaulted her.

Q: Detective who reported this incident?

A: Tilber and the mother, they came into the station and report the incident.

Q: And when did they report the incident?

A: November 6 of 2017.

Q: Detective who investigated this case?

A: Me.

Q: Who else worked on this case?

A: Linder and Connie.

Q: And detective during the course of the investigation, what evidence did you obtain?

A: Photos of the suspect, the place of the incident and the photo of the victim.

Q: And what else other than the photograph?

A: Took statements.

Q: And whose statements did you obtain?

A: Statement from the victim, her mother, and one of the witnesses.

Q: When did you take the victim's mother statement?

A: On November six I took Tilbers statement, and on the seventh, I took the mothers and the witness.

Q: And where was Tilbers statement taken?

A: Inside the CID office.

Q: What about Tilbers mother, Lyla's statement?

A: Inside her house at Utidrikan.

Q: What about Louwe Zagious statement?

A: It was raining that time so I took her statement inside the CID's car.

Q: Where was the car?

A: The vehicle is now of no use and is at supply at the moment.

Q: Detective my question is, where was the car parked when you took the statement?

A: Beside Junans house.

Q: Detective, let's talk a little bit about Louwe Zagious's statement, who wrote the statement?

A: Me.

Q: What did you do after you wrote the statement?

A: I gave it to her for her to read and then if she understands it then sign it.

Q: And did she sign it?

A: Yes.

Mr. Wase: Now detective you mentioned earlier that you collected photo graph, of Lajunans house, where the alleged incident took place, of the victim, and the defendant. Your honor may I approach the witness with government exhibit number four.

Court: You may

Q: Detective, do you recognize that exhibit?

A: Yes.

Q: Why do you recognize that exhibit?

A: I took this photo, this is the photo of the victim.

Q: And where was the photo taken?

A: Inside the CID office.

Mr. Wase: Your Honor, I would now like to approach the witness with government exhibits number ten, eleven, twelve, and thirteen. Okay let's go through the exhibits one by one. Please have a look at exhibit number ten.

Q: What is that exhibit detective?

A: Photo of Junan's house facing the road, in front of Junans house.

Q: And how is the photo relevant to the case, how is it important?

A: This is where the suspect sexually assaulted the victim.

Q: Detective who took that photograph?

A: Me.

Q: When did you take that photograph?

A: I took the photo back in September but I don't know the exact date.

Q: How did you know about that house?

A: The victim's mother told me about this house, I took this photo in November.

Q: Who else was present when you took the photo, other than the victim's mother?

A: The victim.

Mr. Wase: Your Honor, I move to admit it to evidence government exhibit number ten.

Court: Counsel?

Mr. Kun: Your Honor, the defense objection would be that the alleged incident took place on September 24th, and this photograph was taken on November 7th. And even the detective, he's confused in his testimony by saying he took those photographs in September, and then changing his testimony to November, so I don't see it relevance.

Court: Exhibit number ten is received over the objection of counsel, with the exclamation appears taken on November seventh and would there for be a photograph showing what the house would look like in November seventh and not in September.

Mr. Wase: Okay. Now detective let's move on to government exhibit number eleven, please raise it up so I can see.

Q: Detective please, what is the exhibit?

A: It is a photo of the side of Junans house

Q: Which side of Junans house?

A: Left side

Q: Is it Rita side or Delap side?

A: Rita.

Q: And how is that photo relevance to this case?

A: It shows the door that the suspect took in the victim.

Q: And detective how did you come to know the relevance of that photo?

A: The victim took me and showed me.

Q: And who took that photograph?

A: Me

Q: When was the photograph taken?

A: November 7th.

Mr. Wase: Your Honor I move to submit it into evidence, government exhibit number eleven.

Mr. Kun: Your Honor, objection is the same, and if I may add on government exhibit number ten, was taken on November seventh at 4pm, whereas government exhibit number eleven was taken on the same day an hour before that.

Court: Exhibit number eleven is received, same objection, same explanation, it was a picture of the house it was taken on November seventh and not on September.

Mr. Wase: Detective please take a look at government exhibit number twelve

Q: What is that exhibit?

A: It's a photo of inside Junans house.

Q: And how is that relevance to the case?

A: This is the room that he sexually assaulted the girl.

Q: And how did you know that?

A: The victim showed me.

Q: Who took that photograph?

A: Me.

Q: When?

A: On November seventh.

Mr. Wase: Your honor I move to admit to evidence government exhibit number twelve.

Mr. Kun: Your honor the defense will have the same objection as the other two.

Court: Same objection same ruling, exhibit will be received.

Mr. Wase: Detective please have a look at government exhibit number thirteen.

Q: What is that exhibit detective?

A: The room inside the house that they were at.

Q: How did you know about it?

A: The victim showed it to me.

Q: Who took that photograph?

A: Me

Q: When?

A: On November seventh.

Mr. Wase: Your Honor move to admit into evidence government exhibit thirteen

Court: Any objection?

Mr. Kun: Same objection Your Honor, I don't see a room here and this is just a floor, it's not a photograph of a room as stated.

Court: Detective is this the floor inside the room that is in the picture number twelve?

Detective: Yes.

Court: So, if I'm looking at photo twelve, I go inside the green room and then I see the floor, is that right?

Detective: Yes.

Court: Thirteen received, same objection same ruling.

Mr. Wase: Your Honor, I am going to approach the witness with exhibit number fourteen.

Q: What is that exhibit detective?

A: Photo of the suspect.

Q: And who's the suspect?

A: Antolok Antolok

Q: When was the photo taken?

A: November eight.

Q: Who took that photograph detective?

A: Me.

Q: And is that the same suspect that was reported for allegedly committing a sexual assault on September twenty four?

A: Yes.

Mr.: Wase: Your honor I move to admit government exhibit number fourteen.

Court: Detective where was this photo taken?

Detective: Inside the CID office.

Court: Russel.

Mr. Kun: Your Honor defense have the same objection

Mr. Wase:

Q: Detective based on the complaint that you received about the sexual assault that took place on September twenty four, is the defendant present in court today?

A: Yes.

Q: Could you please point to where he's sitting?

Q: Sorry detective what color of shirt he's wearing?

A: Black and white.

Court: Let me ask this detective, is the defendant the one closest to the door or the farthest from the door?

Detective: Closest to the door.

Mr. Wase: No further question your honor.

Court: Mr. Kun.

(CROSS EXAMINATION)

By Mr. Kun:

Q: Detective, so it's your testimony that on September 24, you received a complaint about a sexual assault against Antolok, is that right?

A: No, on the sixth of November.

Q: But you testified as September 24?

A: I was mistaken.

Q: So, the alleged incident took place, occurred on September 24th yes?

A: Yes.

Q: And a complaint was made on November sixth yes?

A: Correct.

Mr. Kun: Okay, nothing else your honor.

Court: Redirect based on that?

Mr. Wase: No redirect Your Honor.

Court: Thank you detective you may step down. I think it's probably time to take a rest break, is 2 o'clock okay?

Both sides: Yes sir.

Court: Were back on the record, continuing our trial, RMI vs Antolok Antolok, Mr. Cutty are you ready to bring your next witness?

Mr. Wase: Your Honor, Republic calls victim Tilber to the stands.

Court: Before we bring her in let's discuss, we want to bring a chair down where you think it's more comfortable or you just want to put her up there and treat her as anyone else?

Mr. Wase: Yes, your honor I'll let her sit like anyone else upstairs.

Court: Upstairs? Okay, lets clear the court room of anyone else and it looks clear, let's bring her in please.

(VICTIM SWEARS IN BY CLERK)

TILBER HESA

Called as a witness and testifies as follows on:

DIRECT EXAMINATION

By Mr. Wase:

Mr. Wase: Good after noon Tilber.

Tilber: Hello.

Q: How are you?

A: Good.

Q: Tilber thank you for coming, I would like to remind you to speak loud like you just did, and very clearly so every one hears you is that okay?

A: Okay.

Q: For the record what's your name?

A: My name is Tilber?

Q: Where do you sleep?

A: Utidrikan.

Q: Where do you go to school?

A: I go to high school.

Q: What grade?

A: N/A

Q: Tilber, what's mommy's name?

A: Lala.

Q: Tilber, who is Patricia?

A: My friend.

Q: Where is your friend Patricia now?

A: Delap.

Q: Where did you meet Patricia? Your friend.

A: At my town my neighborhood.

Q: Where was Patricia sleeping at that time?

A: Utidrikan.

Q: How close are you and Patricia?

Q: How often do you meet Patricia?

A: Everyday.

Q: Where do you guys usually meet?

A: At her house.

Q: Tilber, let's talk about what happened on September 24, 2017. At about between 10 in the morning and twelve in the afternoon could you please tell the court what happened?

Q: Tilber are you okay? Do you want to continue?

Q: What happened at Lajunans house Tilber?

A: Inside the house.

Q: Yes, what happened inside the house?

A: Took off my clothes.

Q: Who took off your clothes?

A: Antolok.

Q: What did Antolok do after he took off your clothes?

Q: What did Antolok do after he took off your clothes?

A: Kiss mark.

Q: Tilber how did Antolok take off your clothes?

A: He threatened me.

Q: How did he threatened you Tilber?

Q: What did Antolok tell you?

Q: Tilber, do you understand my question?

Q: Tilber, what did Antolok tell you?

Mr. Wase: Okay Tilber well come back.

Q: What time did Antolok take you inside the house?

A: Eleven.

Q: Where did Antolok find you Tilber?

A: At the road, beside the road.

Q: Tilber after Antolok take off your clothes, what did he do? Tilber?

Q: Do you understand my question?

Q: Do you understand my question?

Q: What did Antolok do after he took off your clothes?

A: He showed his penis.

Q: And, Tilber what happened after he showed his penis to you?

Q: Tilber do you understand my question? After he showed his penis what did he do? You understand by question? Tilber what did Antolok do after he showed his penis?

Q: Tilber do you want to answer my question>

Q: Kay, what did he do with his penis?

Q: Tilber you ready? You ready to answer my question?

Q: Tilber do you want to take a break?

Mr. Wase: Your Honor can we have a break? I think she can't take it

Court: Yes.

Q: Now Tilber now let's talk about the kiss mark, where on your body did Antolok make the kiss mark?

Q: Tilber, could you please name the part of your body, where on your body?

Q: Tilber did he make kiss mark on your neck?

Q: And where else?

Court: She refers it was located in the chest area

Q: Tilber how did Antolok make the kiss mark on your body?

A: With his mouth.

Q: And did you like that?

Court: The question was, did you like it?

Q: Tilber, did you like what he was doing to you?

Q: Is that a yes or no?

A: No.

Mr. Wase: Your Honor, I'm going to approach the witness with government exhibit number five.

Mr. Kun: That's not even admitted yet.

Court: Do you want to do that?

Q: Tilber, you stated earlier that after Antolok finished with you and you met Louwe, you went home, what did you do when you arrived at home?

A: Louwe told me to get out of the house.

Q: My question Tilber after you left the house and you went home, what did you do when you arrived at home?

Q: Do you understand my question?

Q: When you arrived at home what did you do?

A: Shower.

Q: Why did you take shower?

A: Because of the kiss marks.

Q: Tilber who did you talk to about what happened to you at Lajunan's house?

Q: Do you remember?

Q: Who did you talk to after you arrived at your place after Antolok did to you?

A: Nima.

Q: And what did Nima do after she heard the story from you?

A: She used nails (referring to kiss mark)

Q: Who did Nima talk to about what you told her?

A: Telima.

Q: What did Telima do?

A: Took photos of me.

Q: Where did Telima take the photo?

A: Ipad.

Q: Where did Telima take the photo with the ipad?

Q: Tilber what did Telima take using the ipad?

A: Photos.

Q: Who was with Telima when she took the photos?

A: Mom and Telima.

Q: Where were you guys, where were you, mom and Telima?

A: Inside the house.

Mr. Wase: Your Honor, no further question.

Mr. Kun: I have a few questions for Tilber.

CROSS EXAMINATION

By Mr. Kun:

Q: Tilber, Ketricia is you friend, right? And Ketricia is Antolok's daughter, right?

And I just heard this name here, who is Louwe?

A: She sleeps at the town.

Q: Tell me Tilber, is it true that when you went inside Junan's house, Antolok was asleep right?

Q: And is it true that Ketricia and Louwe saw you going inside Lajunan's house?

Mr.: Wase: Objection Your Honor, compound question, there were two questions.

Mr. Kun: Okay I'll stop there, I think the prosecution is trying to get me off of my track.

Q: Tilber, is it true that Ketricia and Louwe say you going inside Lajunan's house?

Q: Is it true that Ketricia and Louwe say you going inside Lajunan's house?

A: Yes.

Q: And Louwe ran over into Lajunan's house and told you to get out?

A: No.

Q: Louwe didn't tell you to get out of the house?

A: She told me to get out.

Q: And you had clothes on?

Q: Now tell me Tilber, did people in your family tell you to lie about Antolok?

Q: Did people in your family tell you to blame Antolok?

Q: Tilber did the lawyer here tell you to blame Antolok?

Mr. Wase: I will object Your Honor, she's not responding

Court: If she's not responding, that's not a proper objection.

Mr. Wase: Judge, the mother is saying something...

Court: ...To the witness?

Mr.: Wase: ...To me.

Court: What is she saying?

Mr. Wase: She's saying the lawyer is confusing the girl, she's a special head student.

Court: She may be confused

Mr.: Kun: Did that lawyer tell you to blame Antolok?

Court: Counsel lets have you walk over and put your hands on the shoulder and say did this man tell you to lie?

Q: This this lawyer here tells you to lie and blame Antolok?

Q: Tilber you don't want to answer that question?

A: I said no.

Q: Tilber, what you're saying is all made up, is that correct?

Q: Let me clarify this question, is it true when you went into Junan's house, Antolok was asleep?

Court: Again, no response.

Mr. Kun: I think that's enough, she's not responding to any of my question

RE DIRECT EXAMINATION

By: Mr. Wase:

Q: Tilber, you okay?

A: Okay.

Q: Tilber, you don't tell lie, right?

Q: Tilber you story is true right?

Q: Yes or no?

Q: Tilber you story is true right?

Q: Yes or no?

Q: Tilber you story is very good right?

Q: Tilber, do you like what Antolok did to you?

Q: Where is Antolok? Can you point to where he's sitting?

Q: Antolok is no good?

Mr. Wase: No further question your honor.

Court: Thank you Tilber, you may sit down. Okay, for the record, let me just make a statement. During Tilber's testimony, there were times she nodded and showed her answered, or as Marshallese do, with their eye brows, and those small answers were not verbal, but we know the answers. And even though she kept on looking at the clerk and signaling to him, the clerk showed the signals to the lawyers and the judges. And for the record, there were times Tilber didn't answer or show her answer to the lawyers.

Court: Next witness

Mr. Wase: Your Honor, I call Louwe Zagious to the stand

(WITNESS SWEARS IN BY CLERK)

LOUWE ZAGIOUS

Called as a witness and testified as follows on:

DIRECT EXAMINATION

By Mr. Wase:

Q: Good afternoon Louwe. I will ask you some question and please speak loud and clear so the clerk and Your Honor can hear you.

Q: Please state your full name for the record?

A: My name is Louwe Zagious.

Q: How old are you Louwe?

A: 37

Q: Where do you currently live?

A: Delap.

Q: Where did you live before that?

A: Utdrikan and then I moved to Delap.

Q: Do you go to school?

A: No.

Q: What do you do now?

A: I work.

Q: Where do you work?

A: PPF.

Q: During your time in Utdrikan, who were your friends there?

A: Makrita and them.

Q: And who in particular in Makrita's family?

A: Antolok's family.

Q: Who in Antoloks family was your friend?

A: Makrita.

Q: How close are you to Makrita?

A: She's a friend.

Q: How often do you meet Makrita?

A: Very often.

Q: Where do you normally meet her?

A: We were friends when we used to work for Chucki.

Q: Louwe, who's house is next to Makrita's house in Utdrikan?

A: My house.

Q: Who else live close to Makrita's house?

A: Junan.

Q: Louwe thank you, let's talk about what happened on September 24 between 10am and 12 pm, can you tell the court what happened?

A: The daughter of Makrita came and told me to go and check who's inside the house, and I went and I saw the daughter of Tommy inside the house she was standing, her name is Tilber.

Q: What was the demeanor of Ketricia when she told you that?

A: She came and she was patting me on the shoulder like this and said can you go and check who's inside the house, I went to the house and I opened the door slowly and I could see Tilber inside the house and I told her what she was doing and I told her to get out of the house

Q: Let's talk about the look on Ketricia's when she told you that, what was the look?

A: Circular and big.

Q: My question is, what was the look on her face?

A: She just told me to go see who was inside the house.

Q: And how did you feel, what was your reaction when she told you that?

Q: What came to your mind after Ketricia told you to go check who's was inside the house?

A: She told me to check inside the house and I went, and I opened the door, I saw Tilber.

Q: What did you tell Tilber?

A: I told her to come out.

Mr. Kun: Sorry Your Honor, what house are we referring to here?

Court: Very good question, we never identified the house because we were busy talking about who's inside.

Q: Louwe, who's house did Ketricia tell you to go and check?

A: Lajunans.

Q: So, what did you tell, when you opened the door and you saw Tilber, why did you tell her to go out from the house?

A: I don't want to involve myself in this.

Q: Who else did you see inside the house?

A: Nobody

Q: Where was Antolok?

A: I could not see because I didn't really peek inside the house.

Q: Louwe, what was the reaction of Tilber when you opened the door?

A: She was standing.

Q: What was the look on her face?

A: She was just standing.

CROSS EXAMINATION

By Mr. Kun:

Q: Let me just go through your statements to the police. Ketricia told you that Tilber was in Junan's house, is that correct?

A: Yes.

Q: I'm just going through your statement, and you saw Tilber in the house?

A: Yes.

Q: Then you told her what was she doing and to get out?

A: And then Tilber went outside and you looked inside?

Q: And you saw Antolok inside the room where he sexually assaulted Tilber inside?

A: No.

Q: Let me ask this again, did you see Antolok having sex with Tilber inside Junan's house?

A: No.

Q: Why did Ketrica tell you to check who's inside Lajunan's house when it wasn't their house?

A: I don't know she just told me to go check who was inside the house and when I open it, it was her.

Q: Who?

A: Tilber.

Q: When you told Tilber to get out, did she have any clothes on?

A: Yes.

Q: Did you notice any kiss mark around her neck?

A: I didn't see any.

Q: What kind of clothe was she wearing?

A: Black mumu.

Q: What color was her mumu?

A: Black.

Q: Black and any other color?

A: Flower.

Q: What color was the flower?

A: Different colors, but it was black.

Q: Okay colorful flowers, Now Louwe, you testified that you know Markarita well?

A: Yes.

Q: Do you know Tilber well also?

A: Yes.

Q: In what way did you know her well?

A: Long time ago.

Q: But she's a bit young, and you're older?

A: She's young and I'm older.

Q: So, you say she hangs around you ladies is that right?

A: Yes.

Q: At about, 10-11am in the morning, are there a lot of people walking around on the road?

A: Yes, there it.

Q: Utidrikan, any people moving around from 10 am and 11 am.

A: Usually I work at those time at PPF.

Q: That time you went to Junans house and tell Tilber to get out, were there any people walking around?

A: Yes.

Q: This is Junan's house, where is your house?

A: Junan, Antolok, and my house.

Q: This is facing ocean side or lagoon side?

A: They're on the ocean side, facing the ocean.

Q: Where are the people in Junan's house.

A: Tommy told them to vacay the house.

Q: Who's Tommy?

A: Tommy, the husband of Lala.

Q: You mean Tilber's father, why you mean he's the alab?

A: Yes.

Q: So, you're saying tommy kicked out those people from the house?

A: Yes.

Q: Antolok used to live next to Junan's house correct?

A: Yes.

Q: Is it true that Antolok and his family were also kicked out by his Tommy?

A: Yes.

Q: Is it because of what Antolok alleged to have done or is it because of something else?

A: I was at my house when there was a trouble.

Q: Louwe one last question here. You testified that you are currently residing in Delap, right?

A: Yes.

Q: And when this alleged incident happened you were living in Utdrikan?

A: Yes

Q: Did Tommy also kick you out of Utdrikan?

A: Yes.

Q: Why, because of Tilber?

A: In regards to land contribution, Tommy was asking my father for land contribution and he and my father talked, and my father told him that it was just the month before that he came and collected for land contribution and he's unable to make contribution at the moment because he's financially struggling, so Tommy just left my father was calling him and he walked away from my father, my father went to town but then Tommy came back and told us to gather our things.

Q: So, you're staying in Delap?

A: Yes, but I'm not done talking. Tommy gave us three days to stay there and on the third day, he came and knock on our house, my dad was sleeping. He told us to get ready so we can move out, so my dad went over to look for the Irooj of the land, and he came back from talking with the Irooj.

Q: Alright Louwe, it's your testimony in the case that Antolok never sexually assaulted Tilber.

A: He did nothing.

Q: Nothing happened?

A: Nothing happened.

Mr.Kun: I have nothing further your honor.

RE DIRECT EXAMINATION

By Mr.: Wase:

Mr. Wase: Louwe, I am really really sorry to hear what happened to your family.

Your honor, I am going to give her government exhibit number ten.

Q: Do you recognize that document?

A: Yes

Q: Is it the story you gave to the detective?

A: Yes, and also, it's on the other document.

Q: Yes or no?

A: Yes.

Q: And you sign the statement? Yes or no?

A: I gave the statements and the detective was transcribing it.

Q: Louwe that's your signature on your paper, right?

A: Where?

Q: On the bottom of the.

A: Not me.

Q: That's not your signature?

A: No, when was this?

Q: You met a detective, right? And he gave you a paper?

A: This was on the tenth?

Q: Louwe I asked if you met a detective and you said yes and he gave you...

A: Inside the car.

Q: So that's your paper, Louwe yes? Or No?

A: Yes.

Mr. Wase: Thank you Louwe.

Q: When he gave you, you read the paper right?

A: He did not give the paper to me, he took it.

Q: But after he write he gave it to you?

A: At that time, he did not give me the paper.

Q: Louwe that's your paper, right?

A: Yes.

Q: Thank you Louwe, Louwe you now live in Delap?

A: Yes.

Q: With you dad and all your family?

A: Yes.

Q: You moved from Utdrikan?

A: Yes.

Q: Because Tilber's dad sent you and your family away?

A: Yes.

Q: And you are not happy?

A: Yes.

Q: You mad at Tilber?

A: I hate her.

Q: You mad at her dad?

A: All of them.

Q: Because of what the father did to you?

A: Yes.

Q: And you will hate her forever?

A: Yes.

Mr. Wase: No more further questions Your Honor.

RE CROSS EXAMINATION

By Mr. Kun:

Mr. Kun: Louwe just one question.

Q: It's still your testimony that Antolok did not sexual assault Tilber at Junan's house, is that right?

Mr. Wase: Objection Your Honor, this is fake. It's fake, it's not clear.

Court: Objection overruled.

Q: Louwe, it is still your testimony that Antolok did not sexually assault Tilber at Lajunans house, is that correct?

A: No because when I went there, Tilber was standing inside.

Q: With her clothes on?

A: Yes.

Q: And so, you just told her to get out?

A: Yes.

Q: She didn't look like she'd been struggling?

A: Yes.

Q: Which means your testimony means nothing happened?

A: Yes.

Court: Mr. Wase, what's next?

Mr. Wase: Your Honor, can we have a quick five-minute recess?

Court: Okay let's take five minutes, ten minutes recess, come back at twenty after.

Court: You may be seated.

Court: Mr. Wase.

Mr. Wase: Yes, Your Honor, looking at the clock, we have another thirty or so minutes so I have talked to my colleagues, and we agreed if we could come back tomorrow, with your permission Your Honor.

Court: Counsel?

Mr. Kun: No objection your honor, at 10am.

Mr. Wase: Yes.

Mr. Kun: Because he and Abby have proceeded that there's another case tomorrow,
at maybe nine

Court: Okay, who will be here tomorrow, the mother?

Mr. Wase: Yes, the mother and the other daughter.

Court: I'll use the half hour and decide if she can be a witness and let you know
tomorrow in the morning.

Court: Thank you, you may be seated. Good morning everyone, we're back day
two 10 o'clock. The Republic of the Marshall Islands versus Antolok. It is September 19th, and
yesterday I promised the two of you that I would rule on Mr. Wase's motion to allow additional
witnesses to testify. I based my decision on rule 403 the rule of evidence, and also on a personal
experience that I had many many years ago. As you know, I was once doing criminal defense
court. Later I was a prosecutor, but I once represented a man who was charged with sexual
abuse of children. And we were having a multi-day jury trial. It turns out that this woman came
to the jury trial and she sat back in the audience and watched the proceedings. And then that
night, she went to the prosecutor and said "I have some information that will help to prove that
man guilty". So, the next morning the prosecutor move to amended the witness list to put this
woman name on the witness list. And as the defense attorney, I objected and said it was not fair.
The judge ruled in favor of the prosecution. And he allowed the woman to testify. I remember
thinking at the time that the judge has it wrong. And to this day, I still believe the judge is
wrong. Rule 403 says even evidence that is relevant may be excluded. It is positive value to
substantially outweighed by the danger of unfair prejudice. I find that attempting to call new
witnesses which have never been disclosed does create a danger of unfair prejudice, and that the

danger of unfair prejudice does substantially outweigh the important value of the testimony. So, I am going to be denying the government's motion, as to witness number two, three, and four, In the government's case, if after the defense present any defense, it appears that those witnesses may be rebuttal witnesses, I will likely allow them to testify in the government's rebuttals. And as I ruled yesterday, I will allow Telima Hesa to testify to provide the foundation of the photographs. I'll just need a couple of notes and then we'll proceed. Alright Mr. Wase, anything else before we begin today?

Mr. Wase: No, Your Honor

Court: Mr. Kun?

Mr. Kun: Not from the defense sir.

Court: Next witness?

Mr. Wase: Your Honor, Republic calling to the stand, the mother of the victim, Lyla Hesa.

(WITNESS SWEAR IN BY CLERK)

LYLA HESA

Called as a witness and testified as follows on:

DIRECT EXAMINATION

By Mr. Wase:

Q: Good morning Lyla,

A: Morning

Q: How are you this morning

A: Good.

Q: Lyla, I would like to remind you again, to speak loudly as you answer and give time for the clerk to translate

A: Okay

Q: For the record Lyla, please state your full name?

A: Lyla Hesa.

Q: Where do you live?

A: Utidrikan.

Q: How long have you lived in Utidrikan?

A: For a long time, my kids, some of them are in the 30's and I'm in my 50's I think that's a long time.

Q: Do you work?

A: No.

Q: How many children do you have?

A: Six, three boys three girls.

Q: Of all the children, who is the special one?

A: The youngest Tilber.

Q: Why is she special to you?

A: She's slow and she has a disability.

Q: And what does that mean to you as a mother?

A: What could I say?

Q: Lyla let's talk about Tilber, what year was she born?

A: She was born on October two, 1998.

Q: And where was she born?

A: Here in Majuro.

Q: Currently where does she go to school?

A: She goes to high school, Marshall Islands.

Q: Let's talk about Tilber infancy while she was a baby, what happened to Tilber, Lyla?

A: When she was born, she had a fever and red face, she was placed in the um, the other side of the body was not moving and the doctor said she would have a stroke.

Q: And how did you feel when you heard that from the doctor.

A: When she cried when she was little, the other side of the body would move and the other would not, and the doctor recommended to go to Hawaii when she was three months so they could put some support on her left side. My dad told me not to go to Hawaii when she needed medical attention to put the support in her arm but he was going to put Marshallese massage in her arms.

Q: What happened when your father put local medicine?

A: She's okay but she has little trouble in her sides, when she goes to school, she would be tired on her arm.

Q: Lyla, can you talk about her early child hood, what are your memories about Tilber, please tell us?

A: When Tilber grew up, she could not talk, and she had problems with hearing. It took her time to be able to talk.

Q: Anything else?

A: When she grew up?

Q: In her early child hood, school age?

A: She could recognize the faces of her friends or other children but for her to say their names, she can't talk.

Q: What were the problems you experienced about her outside the house.

A: She got hit by vehicle twice because when the vehicles are approaching, she just ran she don't know what to do.

Q: What about inside the house? What were the inappropriate thing that she would do inside the house?

A: When were in the house as family, we gather, and when were late in giving her towel, she would walk naked in front of everybody.

Q: Is it still happening today?

A: She's still do that, but not very often than before because were telling her that that's not appropriate.

Q: Thank you Lyla, what does Tilber do after school?

A: She comes back home and play.

Q: Who are Tilber's friend in the village, your village, the neighbor?

A: Selima, and the other girls near the house.

Q: What about before, let's say last year 2017?

A: The daughter of Antolok.

Q: What's Antolok's daughter's name?

A: Patricia

Q: And where do they usually meet? Tilber meet Ketricia?

A: At her house.

Q: How close are they?

A: This is Marie's resident, that's where we're at, and Junan's house is right here, and Antolok is here.

Q: Lyla, how close relationship between Tilber and Ketricia, how close are they?

A: When they first came in to the neighborhood, my daughter would go with their daughter, sometimes I go and I look for Tilber, "Tilber come back home" and Antolok would say, "why are you taking her she's playing little bit".

Q: How often do they meet, Tilber and Ketricia?

A: After they moved into the village, Tilber would go there regularly, we go and take her from the house but then she would go.

Q: Lyla, let's talk about what happened on September 24, 2017? Could you please tell court what happened on that day?

A: Okay it was on September 24, 2017, it was 7 am. We went to buy groceries, and then came back home, it was 7 o'clock, and then I knock, try to wake up everybody to go to church, but then when I look the opposite direction, I could see Antolok he was trying to wake up Tilber, he was throwing rock at Tilber trying to wake her up, and then I told him, "Why are you doing that?", he said, "why is she sleeping?, woman should not sleep that long". I forgot to say he was drunk.

Q: And Lyla, what was your thinking when Antolok was throwing the gravel at Tilber?

A: I have no bad thought about it, I just thought he's trying to wake her up because it's daylight and I asked him to leave and he left.

Q: And what did Antolok say?

A: He said, it is noon but she's still sleeping, and then I tell him to go and he left.

Q: What was he wearing that morning? What was Antolok wearing that morning?

A: I just told him to go but I didn't look at what he was wearing.

Q: Lyla, how often the defendant visits your house?

A: He used to come visit regularly, and I said what are you doing and he said he's visiting his alab, "I'm not coming to visit you, I'm coming here to visit my alab".

Q: What was the relationship he had with the alab?

A: None, he's just going there as a respect to his alab, visiting his alab.

Q: And what do they normally do when he visits the alab?

A: Talk stories, drinking coffee.

Q: What else happened later that day, could you please tell the court?

A: When the incident happened to Tilber?

Q: Yes, let's talk about that, please tell the court what happened, what you saw?

A: The kiss marks on Tilber?

Q: Please tell us what you saw, tell us your story?

A: I couldn't recall the exact time, but it was sometimes after church. We were driving and the kids at the village were running to our car, and they said for us to look at Tilber. We came out of the car and I saw Tilber standing on the gravel of that house, and I took her inside to the bathroom so I could look at her kiss mark, and "I told her who did those to you?" And she said "Antolok".

Q: Now Lyla, as a mother of Tilber, who gave birth and has been with her since? How can you tell if your daughter Tilber is telling you a lie? How can you tell?

A: When Tilber would tell me a lie, she would smile, but when she is telling the truth, she would tell it and she would cry.

Q: Did you believe what Tilber told you?

A: Yes.

Q: What happened after that? What happened after Tilber told you about the kiss mark?

A: We looked for Antolok but we could not find her?

Q: Before that, what did you do about the kiss mark?

A: Could you please repeat your question.

Q: Before you went to look for Antolok, after Tilber told you about the kiss mark, what did you do about the kiss mark?

A: We went to look for Antolok.

Q: No before that?

A: The father sent the kids to go to look for Antolok, but he refused to come.

Q: My question Lyla is, Tilber told you she was crying when she tells you the story.

Mr. Kun: Objection Your Honor, that's insane.

Court: Actually, its assumed, not yet an evidence. We don't know that she was crying. We know the mother believed her, so the objection is sustained.

Q: Lyla, let's go back to where you met Tilber inside the bathroom, what did Tilber tell you?

Mr. Kun: Objection, that's hearsay.

Court: Is there an exception to the here stay rule?

Mr. Wase: Yes sir.

Court: Do you know which one it is? It here says, but I will find that it is in present sense impression which is an exception to the clerk.

Q: What happened in the bathroom where you and Tilber were inside?

A: She showed me her kiss mark.

Q: What about the kiss mark?

A: She said Antolok did those kiss marks to her.

Q: What was Tilber's demeanor when she told you that?

A: She cried telling me that Antolok did those.

Q: How do you know she was crying?

A: I asked her who did those do you, she said, Antolok tears would fall from her eyes.

Q: Now after that where did you take Tilber to?

A: I took her to one of my daughters so she would take photos of those as evidence.

Q: And who's that daughter of yours?

A: Telima.

Q: Where did Telima take those photos?

A: With the ipad, she was taking shot of the neck, chest area.

Q: Where was the photo taken?

A: Inside the living room and bathroom.

Q: What did you saw on the body of Tilber?

A: Kiss mark.

Q: Where did you find the kiss marks?

A: Around here and her breast.

Q: Where were you when you daughter was taking the photos?

A: I was there, I took Tilber to her and told her to take photos.

Q: Lyla, what happened at around 4 o'clock at that same day?

A: The father sends the daughter and the husband.

Mr. Kun: Who was the father and the daughter? What is that mean, the father and the daughter and the husband? Who's the father?

Court: You can answer, who's she talking about?

A: My husband sent our daughter and her husband to go look for Antolok, but Antolok didn't come. He said he would come but he did not.

Q: Lyla what's your husband's name?

A: Tommy.

Q: What about your daughter's name?

A: Artena and the husband is Nakwol, the other name is Laston.

Q: Now let's move on to the next day Lyla. September 25, the next day after the incident happened.

Mr. Kun: Objection Your Honor, there is no day in the criminal charges against my client, it's only on the 24th of September, not 25th

Court: What's your question?

Mr. Wase: Your Honor, my question is, she witnessed something relevant the next day I would like to tell her, on September 25th.

Q: what happened? Please tell us.

A: We went over to Antolok's house to go look for Antolok but he was not there, we took the ipad with us and showed it to Antoloks father in law so he would see both of the kiss marks on Tilber's body.

Q: Lyla when you say we, who are you referring to?

A: Me, Artena, Telima, Tilber, Beyolani, the wife of my son who passed earlier this year.

Q: When you arrived, who was at home?

A: The children, and the children would say that the old lady is in there, and we could also see the old man, and also Antolok's wife's youngest sister, she was there.

Q: Where was Antolok's wife at that time?

A: She was not there.

Q: Did you know where she was?

A: The old man said that his daughter, Antoloks wife was in Kiribati at that time and when she would return he would tell her about the incident, and he also mentioned to me that in Kiribati tradition and costume, when incident like that happened, they would tell Antolok to move out, kicking him out of the house.

Q: Now you were at the house, what did you tell the old man about the photograph?

A: I told him Antolok did those.

Q: Thank you Lyla. Now, who filed the criminal complain?

A: Me.

Q: When did you file it?

A: I don't recall, but it was later.

Q: Why did you file it really late?

A: The reason I filed this late is, the first reason I was sick, the second one my son is in the police force and I didn't want to file it because I was afraid that if he finds out about the incident he would make trouble and he would lose his job and also my father, he's the kind that when this kind of incident happened to his family he would not just stay, he will go in and make trouble.

Q: You did the right thing. Now, how well do you know the defendant in this case Lyla?

A: I know him very well; he's staying at the same village I'm at.

Q: Is that same Antolok that you know present in this court today?

A: Yes, he's here.

Q: Could you please point to where he's sitting?

A: He's sitting next to the old man.

Mr. Kun: To the what?

Court: The old man

Q: What color of the shirt Antolok's wearing now?

A: Black, white.

Mr. Wase: Your Honor I made a record reflex.

Court: You may reflect as she as identified the defendant sitting next to the old man.

Q: Lyla, who is Timi?

A: Child of Junan.

Q: Have you been to Junan's house?

A: Yes, inside out side, I been there.

Mr. Wase: Your Honor, may I approach the witness?...

Court: ...You may...

Mr. Wase: ...with government exhibit number ten, eleven, twelve, and thirteen. It's for identification purposes.

Q: Do you recognize exhibit number 10?

A: Yes.

Q: Who's house is that?

A: Junan, Timi and Junan.

Q: Now have a look at the next photograph. Do you recognize that exhibit?

A: Yes.

Mr. Wase: That's exhibit number 11 Your Honor.

Q: Where is that? Please tell us, who's house is that?

A: Junans

Q: Is that the same house that is appearing in the previous photos, exhibit number ten?

A: Same house yes.

Q: And which side of the house is that?

A: The house is facing the road, and this side on number eleven is facing Rita side.

Mr. Wase: Now move on to the next.

Q: Could you please tell the court where is that?

Mr. Wase: Now move on to the photo.

Q: Please tell us where is that?

A: Junan's house.

Q: How do you know it's Junans house?

A: This is the inside of Junan's house.

Mr. Wase: Okay thank you. Now, those photos show the house, inside and outside.

Q: Does it still appear the way it was when you visited as it shows in the photo?

A: We have demolished it

Mr. Wase: Thank you. Your Honor ill retrieve those photos. You stated earlier about photograph's taken by your daughter. Your Honor I am approaching the witness.

Mr. Kun: Your Honor, I am going to object these photographs

Court: Are these the photographs taken by the witness?

Mr. Wase: Yes. Your Honor, no further question.

Mr. Kun: Just a few questions for the witness Your Honor.

CROSS EXAMINATION

By Mr. Kun:

Q: Mam, your husband Tommy is the alab for the land Antolok used to stay?

A: Yes, he's the alab.

Q: Is he the alab of all of Utdrikan?

A: Yes.

Q: You testified that on September 24, that 7am, you saw Antolok throwing rock at your house is that right?

A: I could see the rocks, and when I turned like this, I saw him. And I told him what is your problem? Just leave, and he just left.

Q: Do you think that any person on Utdrikan would be that stupid to throw rocks at the alab's house and try to wake up girls?

A: I know he did that, there's no one that do that, only he did and I told him why, he said woman should not sleep for that long, and I said what is your problem just leave, and he left.

Q: But you also testified that he regularly visits your house to go and see your husband and pay his respect to his alab right?

A: Yes.

Q: So, you're saying Antolok is that stupid and doesn't have thick skin to just go and see these Alab while probably works at probably calling girls from the alab's house?

A: Yes, he's that stupid he came and throw rocks at my house.

Mr. Kun: Okay, Antolok's is probably stupid okay.

Q: Then also you testified that after you came back from church, you saw Tilber run to the bathroom, is that right?

A: We were driving that day, we came to check one of our daughters was coming in from Arno, and we came to check her at MIMRA, we were driving back and forth and when we were going back home, the kids would come running following our car, shouting Tilber has kiss mark, and the dad told me to go check, to go see Tilber, Tilber was standing outside the house.

Q: So, you're saying Tilber didn't go to church with you?

A: She didn't.

Q: Why, I thought she was special to you?

A: If she does not want to come, we don't force her. If she does not want to do this, we don't force her.

Q: Is that how you teach children now days? If they don't want to go to church don't do?

A: Only Tilber because when we go to church, she would not sit still. She would want to go to the bathroom, want to drink.

Q: So, you just let her be and go to church?

A: I did not go to church, but that was on Sunday. I woke the people in the house to go to church, but me and husband we did not go to church.

Q: You also testified that you took Tilber to the bathroom and check the kiss marks correct?

A: Yes.

Q: But you had Tilber testify that after coming back from, after leaving Junan's house, she went and have a shower by herself?

A: Tilber said what?

Q: She testified that after leaving Junan's house, she went home and have a shower by herself?

A: Yes, when we came back home, she just came out of the shower, she was rinsing her hair outside.

Q: But I thought you said you never went to church?

A: Tilber likes to shower, she would shower now, one hour from now shower, when she's sweating, she likes to shower.

Q: But you testified you took Tilber to the bathroom?

A: After we came back, I took her from outside of the house to the bathroom so I could see the kiss mark on her body.

Q: After discovering the kiss mark, did you take Tilber to the hospital to have test on those kiss marks?

A: I did not, she said she had pain here and Antolok did it to her.

Q: Explain, you just testify she's special to you, why didn't you take her to the hospital as a responsible mother?

A: She was feeling fine, so I had no intention of taking her there. She said she has pain here but she was feeling fine.

Q: Now tell me, you said why your husband kicked out Antolok and his family out of their house, because of Tilber? Or what happened to Tilber?

A: My husband told the old man there at Antolok's place to kick him out only him and not to bring him back. If he's back with them, they will all be kicked out.

Q: So, you're saying now that Antolok's father in law is living in Utdrikan?

A: There is no house there now.

Q: What do you mean can you explain?

A: We demolished it.

Q: Didn't Antolok pay for that house, to your husband?

A: Antolok said the money was the father in laws.

Q: So, they paid your husband money for the house and you still kicked them out?

A: Because they are listening or obeying the instruction from the alab there, like against.

Q: The prosecution showed you the picture of Junan's house. Where is Junan and his family now?

A: They are not there now, same problem with Antolok's family, but were here in regards to Tilber's case and not for the alab and the problems of the village.

Q: Oh no, this is part of the alab's problem too, why did the Junan and them got kicked out from the house?

A: Same, they were against the alab.

Q: What about Louwe Zagious and her family?

A: Likewise, they would not do what the alab tell them to do.

Q: Like to give him money?

A: Everything!

Q: How many families has your husband kicked out as alab, now lately?

A: Why is that relevant, we are here to talk about Tilber and her kiss marks.

Q: Well were talking about it now, this is a cross examination and I can ask you anything I want to. Unless he objects but he's not objection, so I am asking how many families has your husband kicked out as alab?

Mr. Wase: Your Honor I object.

Court: What's the basis of your object?

Mr. Wase: Irrelevant your honor.

Court: Why is this relevant?

Mr. Kun: Well, Your Honor, the prosecution has been showing pictures of Junan's house and now she also testified why they kicked out my client and their family from their house and I am trying to establish all their motives here of their plan on how to kick out people from their house.

Court: On that basis, I believe it may be relevant, your motive.

Q: Okay one more question, is that you and your husband cooked up and made up this story about your own daughter against my client Antolok so that you can kick him out and his family?

A: No, the incident happened and I what I think is the incident happened.

Q: So that you can demolish that house and rent it out to people with more money? Is that right?

A: Can you repeat?

Q: Just like the other families that you have kicked out from your land so that you can demolish their houses and rent it to people with more money.

A: If they do not listen to the alab or my husband is telling them to do, he would kick them out and demolish their house so they would not come back.

Q: And the motive behind all this is money, correct?

A: They are not listening to the alab, they're against.

Q: Because motive behind it is money?

A: Everything.

Mr. Kun: There you go, thank you Your Honor, nothing more.

Court: Mr. Wase.

REDIRECT EXAMINATION

By Mr. Wase:

Q: Lyla, how long has your husband been the alab now?

Mr. Kun: Objection Your Honor, I thought he objected to my line of question now he's asking the same.

Court: I overrule, I sustained your objection so I am going to hold on to his.

A: The older sister died back in 2016 but maybe from that time. I am just giving you an estimate of the date but I can go back and check.

Q: When you say, let's go back to when Antolok throw the rock. When you say rocks, it's this big?

A: Little.

Q: So, he did it?

A: Maybe he did that earlier but I don't know about...

Court: Counsel, I am aware of the culture of throwing pebbles people's houses to wake up girls.

Q: You stated that Antolok respected your husband because he's the alab?

A: I asked him what he's doing here, he said "oh I'm coming to see my alab."

Q: Yet that night that he was summoned he didn't come? Right?

A: He said ill come. They went to look for him to come, maybe they will come to testify to what Antolok say to them.

Court: We can't have it. I can't hear what he said to them.

Q: Lyla, yes or no?

A: He didn't.

Q: You said it earlier, Antolok was the only one kicked out from the house by the Alab.

A: He told the people at the house to kick Antolok out, and if the people inside the house would bring him back, he would kick them out also.

Q: Did they follow the instruction by the alab?

A: For him not to come back to the house?

Q: Yes?

A: They did listen to him, but we heard there was one time we were experiencing strong winds and there were damages to the house and they said he came to repair the house and maybe he left.

Q: Now let's talk about Junan's house. His house was demolished right?

A: When?

Q: Where is Junan's house now?

A: There is no house there now, Junans and Antoloks no house there now.

Q: Who kicked out Junan's family?

A: My husband.

Q: Who was the alab that time?

A: My husband.

Q: Lyla, why do you want to push this case. Why did you want to file it?

A: I want him to be in jail.

Q: What if the person who commit the crime was not Antolok it was someone else, would you have filed this case?

A: Yes, cause they're doing things to my daughter.

Mr. Wase: No further question.

RE CROSS EXAMINATION

By Mr. Kun:

Q: Mam, would you confirm that you did not take Tilber to the hospital to have test on those kiss marks, correct.

A: I didn't

Q: Don't you think that if you could have taken her for test, they could have shown that whoever saliva or teeth mark is on your daughter's neck?

A: The hospital doesn't check kiss mark. I haven't heard of that, only the states but here I don't know.

Mr. Kun. Your honor I have no further question, thank you mam.

Court: Thank you Lyla, you may now be excused. Next witness? Well take ten minutes recess.

Court: Are you ready?

Mr. Wase: Your Honor they are not ready yet. If I can ask court, I can go if they are ready.

Court: We are going to start and we are going to take a break when they are going to get him.

Mr. Wase: Republic will call the sister of the victim., Telima to the stand.

(WITNESS SWEARS IN BY CLERK)

TELIMA HESA

Called as a witness and testified as follows on:

DIRECT EXAMINATION

By Mr. Wase:

Q: Good afternoon Telima, how are you?

A: Okay.

Q: Telima I would like to remind you again to speak loud and clear so everyone can hear you including Your Honor, and please give time for the clerk to translate before you answer.

A: Okay

Q: Please for the record, state your full name?

A: Telima Hesa.

Q: How old are you Telima?

A: 21.

Q: And where do you currently live?

A: Utdrikan.

Q: Telima do you work?

A: No.

Q: What do you do for a living?

A: I am looking after my daughter.

Q: I want to talk to you about what happened on September 24, 2017, did you witness anything happened on that day?

A: Yes.

Q: Could you please tell court what you saw on that day?

A: I saw the kiss marks on Tilber's neck.

Q: How did you find us about the kiss mark?

A: Selima told me.

Mr. Kun: She's Telima?

A: Yes.

Q: Where exactly did you find the kiss mark?

A: On the neck and the breasts.

Q: Could you please describe the kiss marks?

A: Red, purplish.

Q: What did you do after you saw the kiss mark?

A: I took photos.

Q: What did you use to take the photos?

A: Ipad.

Q: Where did you take the photos?

A: Bathroom and the living room.

Q: Why did you take the photos?

A: My mom brought her so I could take the photo.

Q: Your Honor, I am going to approach the witness with government exhibit number 5,6,7?

Court: Okay.

Q: Telima I'm giving you exhibit number 5,6,7. Please have a look at exhibit number 5. Do you recognize that photo?

A: Yes.

Q: Is that the photo you took?

A: Yes.

Q: Of the breast?

A: Yes.

Q: Where exactly in the house you took that photo of the breast?

A: Bathroom.

Q: When did you take that photo Telima?

A: September 24

Mr. Wase: Your Honor I move into admit it into evidence, government exhibit number 5.

Mr. Kun: The defense will only object that the prosecution has yet to establish the authentication of those photographs and the showing to rule 901.

Court: What is your specific

Mr. Kun: The photograph fails to show any, overseas picture of a pair of breasts without face, and now we know she took the photo does it show the time, it mentions the date but no time. Not only that, the photograph is inflammatory and unfair prejudice under rule 403. That's all.

Court: Counsel why don't you ask the witness approximately what time she took those photographs and who's breasts those are?

Q: Telima, first of all whose' breasts are showing on those photographs. Exhibit number 5?

A: Tilber

Q: What time those photos were taken, approximately.

A: After 12 and 1.

Court: I'm gong to allow plaintiffs exhibit number 5 based on that additional information specifically overruling your objection based on inflammatory photographs. Please proceed.

Q: Telima, move on to the next exhibit please, exhibit number 6, please take a look at it and tell us what you recognize about it?

A: Yes.

Q: Who's the person shown in the photograph?

A: Tilber.

Q: And where is that photograph taken? Inside the house or exactly?

A: The living room.

Q: And Telima, why did you take that photo exactly as she's shown? What was the purpose of you taking that photo?

A: Evidence.

Q: What time approximately was that photo taken?

A: Same time between 12 and 1.

Mr. Kun: Same objection you honor.

Court: Same decision, proceed.

Q: Now Telima, please move on to the last photograph, exhibit number 7. Do you recognize that exhibit Telima?

A: Yes.

Q: Why do you recognize it?

A: Because I took that photo.

Q: Where exactly was the photo taken?

A: In the living room.

Q: Who was present when you take the photo?

A: My mom.

Q: Did your mom present during your time when you took the first two photos?

A: Yes.

Q: Telima, what time exact approximately that photo taken?

A: 12 and 1.

Court: Your objection.

Mr. Kun: Same objection, and it says here the photograph was taken on September 25, 4.30pm.

Court: I have that same question counsel; I want you to explain the date's and time indicated on this particular photograph. Can you see it?

Mr. Wase: Your Honor,

Court: I don't like that so I don't know if the ipad put it there or it was put there some other way. Counsel apparently you and I have different versions of the photograph.

Mr. Kun: It's still the same photograph

Court: It appears to be the same date and time. I cannot explain that

Mr. Kun: It has date and time, September 25th, 4pm. Then over here too your honor, below September 25th, its shows 2.56pm. Now I don't understand, that's why were objection these photographs have been tampered with.

Mr. Wase: Your Honor, if I can explain. The first exhibit that was submitted, it was taken by the detective who investigated this case, who using his own camera taking show of the ipad showing the exhibits.

Court: But he didn't do that until November sometime, when it was reported right?

Mr. Wase: Yes, that's correct your honor. If I recall that correctly, the Republic was requested by this court to provide, return the ipad and print it out, the actual photo from the ipad.

Court: I did order you to do that.

Mr. Wase: Yes, your honor, and I did submit motion, not motion but provide later as requested the original the actual printed out from the ipad, which is why we have it in this form today.

Court: Do you know when you did that?

Mr. Wase: Your Honor if I may, on April 4th 2018 filed. That's the file date. Sorry on march, apology, on March 29th 2018 is the file date of government continuing duty to disclose.

Court: So, counsel, who printed out these versions of 5, 6, and from the ipad. Or how were they obtained?

Mr. Wase: Before it was returned the ipad because ...

Court: Because it was kept at the police originally and I said get it back.

Mr. Wase: Yes, and detective Carney and Detective Anthen, according to Anthen, they both printed out from the ipad.

Court: So, these ones that you talked about today, and I have copy of the file, were filed on March 29 are the ones that they printed from the ipad. The ones were originally submitted to the court when this case was filed were the pictures of the ipad?

Mr. Wase: Yes sir, the picture of the ipad.

Court: I am going to change my mind on the admissions of the ipad when Carnie or Anthen fill in that gap for us. You can ask her about them but I am not going to receive them as evidence. Cross examination Mr. Kun? No, your honor. Alright Mr. Wase who's the next witness?

Mr. Wase: That's the last witness Your Honor.

Court: Except one of the police officers who's coming back, who long do you think it's gonna take you to one of them here?

Mr. Wase: He should be downstairs if I may go check him?

REDIRECT EXAMINATION

By Mr. Wase:

Court: Sir, you're still under oath.

Mr. Wase: Your Honor, I am going to approach him with government exhibit number 5, 6, and 7.

Q: Detective please take a look at exhibit number 5. Did you recognize that exhibit detective?

A: Yes.

Q: Could you please tell court how you obtained that exhibit?

A: The lieutenant Connie Terri, download this from the ipad that belonged to the family.

Q: And what did he do after he download it?

A: He took a photo of it.

Q: What do you mean by downloading detective?

A: From the ipad he took photo of the photo on the ipad and then extract that from the camera to the computer and printed out.

Q: Is that the photo printed out from the Camera?

A: Yes.

Q: Not from the ipad?

A: He took a photo with his cell phone, and then from his cell phone to the computer and then printed out.

Mr. Wase: Your Honor I move to admit it into evidence exhibit number 5.

Mr. Kun: Your Honor defense object that the detective is not the person who was involve in processing the photographs it was detective Connie Terri, so it should be Connie Terri how he downloaded those photos.

Court: Is detective Terri available?

Mr. Wase: Detective Terri is off island Your Honor, he's coming in this week. Still in Palau, attending workshop Your Honor.

Mr. Kun: Your Honor if I ask the detective, "did you have anything to do with the photograph and he say no", so what's the point of him sitting there?

Court: I think his testimony is probably correct as regards to the original files, but given the quality of the second set of photographs, I am not sure that he is correct about that, don't know how to agree with you.

Mr. Wase: That's correct Your Honor.

Court: Ask him if he was present when Terri did this?

Q: Detective, were you present when Connie worked out the exhibit?

A: Yes.

Q: You were present? And detective do you know how to operate a computer?

A: Little.

Q: Your Honor I would rather we hear from detective Connie but he's not here, he's normally the one working with camera and furnish photograph.

Court: What's the news on your wedding?

Mr. Wase: Cancel your honor.

Court: Taking a five-minute break. For the record, we are talking about the admission of three photographs which have been marked as plaintiffs exhibits 5,6, and 7. Evidence rule 901 requires that before an exhibit can be admitted, it must be authenticated or identified. And an exhibit is authenticated or identified when the court is satisfied that the evidence presented, that the exhibit, its opponent says it is. In this case, the opponent is the government. And the government says these are photograph of Tilber, that were taken by Telima on September 24, 2017. Telima has testified that these are in fact photographs she took on her ipad. We know from prior hearings and my prior court order that the police seized the ipad and were holding it as evidence. And that I ordered them to print out the photographs and return the ipad to the victim's family. After that date, March 29 of this year, Mr. Wase filed clearer versions of the three photographs and based on the testimony of detective Anthen Clarence, it appears that detective Connie Terri is the person who printed them from the ipad. It

does not appear to me that the current 5,6, and 7 are photographs of the ipad's screen, as testified by detective Clarence. I do believe that the original versions of the three photographs were simply pictures of the screen of the ipad. I am not sure what the technological term is but you can actually see the way the lines that appear when you look at a computer screen or a television screen. So, it appears to me that the current version of the photographs has actual prints from the ipad itself, perhaps from the ipad, to a computer and then to a printer. It is unfortunate that detective Connie Terri is not here to tell us the process that he used. However, based on the evidence that I have received, I do find that these three photographs are photograph of Tilber on September 24, by Telima. For evidentiary decision such as this the standard is simply the ponderance of the evidence. It is not with beyond reasonable doubt. And I find by the ponderance of the evidence that these are the pictures of Tilber on September 24. And I will there for, receive them exhibits 5,6, and 7 are received. Counsel?

Mr. Kun: I think that Your Honor defense is submitting that there is something missing if exhibits 5,6, and 7 are to be admitted, and that is the ipad that took those photographs has no been offered into evidence.

Court: Would you expect counsel, whenever we receive a photograph to get the camera or the cellphone that took the photograph offered into evidence.

Mr. Kun: The prosecution's evidence is laughing in a lot of ways especially the person who processed the photographs from the ipad, and the photographs were tampered with, just submitting our argument.

Court: Thank you for pointing that out, your objection is clear, I understand your objection and is placed on the records of events

Court: What's next Mr. Wase?

Mr. Wase: No further question Your Honor for the witness.

Court: Any further witnesses? Counsel you have any cross examinations for the detective?

Mr. Kun: No further questions.

Court: Alright any further witnesses?

Mr. Wase: No further witnesses until we have rebuttal Your Honor.

Court: Okay so, prosecution rests its case

Mr. Wase: Yes, your honor.

Court: Mr. Kun?

Mr. Kun: Since the prosecution has rest the case, defense is moving a motion for a judgement of acquittal pursuant to the Marshall Islands criminal procedure rule 298, that after the close of all the evidence, the court and the defendant, we moving for the court to answer motion judgment of acquittal of accounts 2,4,6,8,10,12. That's it Your Honor.

Court: You don't need arguments I get it, what's your response.

Court: Motion granted, 2, 4, 6, 8, 10, 12 are dismissed.

Mr. Kun: Your Honor, defense wishes to presents its case by calling defendant Antolok, and I been told two other witnesses if we can bring them tomorrow morning because his step daughter is still in school and needs to ask for permission, but Antolok is ready.

Court: Mr. Antolok, before you take the stand, let me tell you something, I'm sure Mr. Kun has already discussed this with you but I want to make sure. At trial, it's the government's responsibility to prove the case beyond a reasonable doubt. You just saw that the six of the charges were dismissed because they failed to prove them. There are six charges remaining. You do not have to testify; you do not have to prove anything. If you choose, you can call other witnesses or no witness at all. Those have to give to you by the constitution. You can testify if you choose to testify. No one can make you to do it, not even me. Do you understand?

Mr. Kun: Your Honor in that case, you've broadened that advise to him compared to how I did it. Can we wait until 3.30 for him to give me instruction, if he want to talk?

Court: Well be back at 3.30.

Court: We have taken a brief recess so that Mr. Kun could speak with his client about whether or not his client wishes to testify. Mr. Kun what's the decision.

Mr. Kun: Thank you Your Honor, I took instruction from our client with the assistant of Ms. Ackley for translation. We went through again what Your Honor was telling him before we took a break, especially that to testify or not is his right. And my client gave instructions and insist that he wants to testify. Therefor, defense calls Mr. Antolok Antolok to the stance.

(OATH ADMINISTERED BY CLERK)

ANTOLOK ANTOLOK

Called as a witness and testified on the following:

DIRECT EXAMINATION

By Mr. Kun:

Q: Antolok, can you state your full name for the record?

A: Antolok Antolok.

Q: How old are you?

A: 37

Q: Where do you currently live?

A: Delap.

Q: Where were you residing around September 24, 2017?

A: Utidrikan.

Q: Are you employed?

A: I did at Tinghong.

Q: What's a Tinghong?

A: At the loin plant.

Q: Are you a fisherman or a manager?

A: I work with Neil; we were looking for employees or fishermen for his ship.

Q: Neil Milne?

A: Neil Milne.

Q: Antolok, do you know why you're in court today?

A: Yes.

Q: Are you aware of the complaints against you?

A: Yes.

Q: Do you recall on what happened on September 24, last year? Tell us what happened?

A: They're blaming me or alleging I did something.

Q: What happened on September 24, on a Sunday what happened on a Sunday?

A: I don't know I was drunk; I went home and I passed out.

Q: You went home or you went somewhere?

A: My house is close to Junan's house so I went inside Junan's and passed out.

Q: Junan's house is abandoned?

A: Yes.

Q: And why Junan's house? Why not your house?

A: I was afraid of my father of my wife because he was there, and because I was drunk, I didn't want to go straight, I was gonna stay at Junan until I sober and I was gonna go home.

Q: Around what time was that when you went to Junan's house and went to sleep?

A: 10.

Q: In the morning?

A: Yes

Q: Around what time did you wake up?

A: Around 1 or 2 I woke up so I could go eat.

Q: How did you wake up?

A: My daughter knew I was there so she called me to go eat.

Q: The name of your daughter is?

A: Ketricia.

Q: You heard Mrs. Lala Hesa testify that she saw you throwing rocks at their window to wake up the girls at 7am in the morning, what you say?

A: Lie.

Q: And you also heard Tilber testify that at about 11am on September 24, you found her on the road and you grabbed her and took her to Junan's house, what you say to that?

A: Lie

Q: You also heard that Tilber testified that you took her into Junans house, took off her dress, pulled down her panties, showed her your penis, and then penetrated into her vagina, what do you say to that?

A: I was very drunk I passed out, that's a lie.

Q: When you woke up Antolok, was Tilber around where you were? Around where you woke up?

A: I did not see her no.

Q: Why is Tilber's mother making all these accusations, and allegations against you that you sexually assaulted her youngest daughter?

A: They had plans to kicked us out because the place that Junan's house is at, is a small space so they needed more space that's why they wanted to kick us out so they could have more space.

Q: How can Tilber's parents kick you and your family out from that house?

A: They alleged that Tilber came to the house, and they don't want me at the village no more, they want me out of the town.

Q: And what authority does Tilber's father has to kick you out of the house?

A: He's the alab

Q: When were you kicked out of your house in Utdrikan? What date, do you remember?

A: I moved in December, me and my wife we went and stayed in one-dollar apartments.

Q: And your father in law?

A: He stayed.

Q: He stayed where?

A: Utdrikan.

Q: And then what happened after that?

A: After two weeks past, they came to us and we asked why, they were late in submitting the contribution, they were supposed to give it in the morning but it in the evening and they kicked them out.

Q: They kicked out your father in law after collecting the money?

A: They took the contribution in the evening, and the alab, they were mad they said it is late, they were supposed to bring it in the morning.

Q: The house where you stayed in Utdrikan, who paid for that house?

A: The father in law send that money from Kiribati, and I paid the alab, and he assured us that no one would bother us at that house.

Q: How much more money did you pay to the alab?

A: I paid the alab 3000, contributions were 25 dollars a month, also the contribution for their kemmems.

Q: Who's birthday kemmem?

A: The alab.

Q: So, what about your house at Utdrikan? Who's living there?

A: Our house, Junan's and the other house, and they have also kicked out several families before us.

Q: So only the foundation is standing?

A: Yes.

Q: Antolok, does Tilber go to your house regularly, every day?

A: When the Kiribati guys came to the house, that's when she comes, she has some kind of thing for those guys, a crush or something.

Q: What favor are these guys, teenage guys?

A: Teenage.

Q: Does she get along well with your daughter?

A: My daughter, she's the kind that like to stay home. She does not want to socialize. Tilber only comes when as said earlier, when the Kiribati boys or guys comes to the house.

Q: You also heard that Lyla testified that you regularly visit their house to visit her husband, which is the alab.

A: Lies. I only visited when I pay the contribution.

Q: And now you also hear that Lyla testified that about September 24th at about 4pm, her husband sends her son in law and the other daughter to summon for you but you refused to go and see him, what is it?

A: Lies.

Q: And you also heard Lyla testified the next day of September 25th, they went over to your house and showed your father in law the photographs of Tilber with those kiss marks on the neck, showed it to him, what you say to that?

A: I did not witness that, I worked and went straight home.

Q: Did your father in law went over to see him?

A: He didn't.

Q: Just one more question Antolok, who are you now staying with in Delap?

A: The people we're staying with at the moment, we have double relationship. Our father in law is related to the them, to the alab as the cousin. But I am related to the alab children because their father is my uncle.

Q: And who is the alab there now?

A: The alab there is the cousin of our father in law, her name is Mata.

Q: Tareo?

A: Hmm hmm.

Mr. Kun: I know her, too many land cases. Thank you, Your Honor, I have nothing further.

Court: Counsel?

CROSS EXAMINATION

By Mr. Wase:

Q: Your name is Antolok Antolok?

A: Yes.

Q: You're 30 years old?

A: 37.

Q: On September 24, 2017 you lived in Utdrikan?

A: Correct.

Q: And at 7am, you're still walking around? On that September 24th. At 7 am in the morning you're still awake?

A: Me and the other guys at the village we were on the lagoon side, we were drinking at Teruru, broad daylight.

Q: You were drinking since the night before?

A: The morning on Sunday I drank and then 10 I went and slept.

Q: You started drinking on Saturday night until Sunday morning?

A: I stated drinking, I went there and start drinking.

Q: So, you just started drinking that early morning of Sunday 24th?

A: Hmm.

Q: You were so drunk that you went to bed at 10am?

A: We were drinking liquor and I'm kind of weak drinking liquor I get drunk fast.

Q: Of course. And you were really drunk?

A: Yes, I was drunk I went and sleep.

Q: Who were you drinking with?

A: The boys from the town.

Q: Could you please tell us the names?

A: Rick he went to the states.

Q: Sorry Your Honor, Mr. Antolok, what's Ricks last name?

A: I don't know the last name.

Q: Who else?

A: Avin, he was drinking slowly but we were drinking there.

Q: Sorry what counter?

A: Teruru's take out.

Q: Avin is the name, right?

A: Yes, he was drinking inside the house but we were outside.

Q: Avin know you were there right?

A: Yes.

Q: What's Avins last name?

A: I don't know.

Q: Who else were drinking with you?

A: We were contributed to buy liquor I was drunk that I only know that Avin and Rick they were there. There were other guys drinking. Some of them I don't know them.

Q: Antolok after you drink you went straight home?

A: I went and talk to the girls and went inside and sleep.

Q: And you went home at 10am?

A: It was not noon, still in the morning I went in and sleep.

Q: Antolok, on that morning, you were wearing red shirt? Is that correct?

A: I was wearing green t-shirt.

Q: Now on the 7am that morning you went to Tilber's house?

A: I didn't.

Q: You met Tilber's mom at her house?

A: No.

Q: Antolok you were so drunk that you went to sleep at 10 inside Lajunans house correct?

A: I was drunk I went inside laydown, sleep and passed out.

Q: You was so drunk that you woke up at 11am?

A: The reason I woke up was my daughter woke me up telling me to go and eat. I didn't wake up at 11am but around 2pm.

Q: Antolok where did you go after you woke up?

A: Home and eat.

Q: Around 4pm of that evening, you met Nakwol and his wife, the oldest daughter of Lyla.

A: After I finished eat, I came outside I stayed outside, lie down and sleep until the other day and then I went to work.

Q: You didn't meet Lyla's oldest daughter that evening?

A: If they need me, Tommy would have come from his house and look for me.

Q: Is it true that you met Lyla's daughter that evening?

A: No, I was outside our house I was laying there beside the coconut tree I was there until the next day and I went to work.

Q: Is it true you were lying on a plywood bed?

A: I brought in a blanket, sheet and pillow and stay in it.

Q: So, you were sleeping on a bed, on a plywood that afternoon?

A: Yes plywood. Put it on the pebble and sleep outside.

Q: It was next to Lajunan's house?

A: My house is where you're at. Junan's house is close to the police man. Very close you can just call, hey come.

Q: Antolok you were wearing a red shirt still that evening, is that correct?

A: The girls know what shirt I was wearing, color green. The girls know, Louwe and Ketricia.

Q: Now Antolok, is it true that the alab kicked you out first from the house because of what happened?

A: Yes, he told me to move out of the house but I didn't know the reason why he kicked me out.

Q: You were the only one kicked out?

A: Me and my wife, they told us not to stay there.

Q: The alab says only you to move out from the house?

A: He told us to leave, and we moved to one dollar.

Q: Now Antolok, several days after, you stated earlier the whole family were kicked from the house by the alab.

A: Yes.

Q: On January around 21, 2018, the family were renting in long Island at Arirang apartments? Is that correct?

A: Yes, when we left here, we went and spent two or three week there. We moved out from here and moved there.

Q: Antolok, only few weeks you were kicked out again, is that correct, isn't that true?

A: Correct.

Q: You were kicked out by the owner of the apartment? Is that correct? Antolok you were kicked out by the Alab isn't that true? The owner of Ariran moved the family, is that true?

A: I moved before, they moved after but I went before them. I didn't see them move.

Q: Antolok you did not know because you were the first one to kicked out?

A: Yes, because drunk at that time.

Q: Because your father in law was not happy with you, isn't that true?

A: I was drunk and I was at the lagoon side but they alleged that I went through inside the window.

Q: Antolok on January 21, 2018, your wife was in Kiribati is that true?

A: Yes.

Q: So, you were free man, on that day you were drinking, January 21?

A: Yes, me and the other guy and the boys there drinking at the store there.

Q: And you were really drunk that night of January 21?

A: Yes, I passed out near the road.

Mr. Kun: Objection Your Honor, what's this got to do with September 24?

Court: Good question.

Mr. Wase: Antolok your father in law was not happy with you because you did something to his granddaughter?

Mr. Kun: Objection Your Honor

Court: Why did you think this would be in this?

Mr. Wase: Yes, Your Honor, this goes towards the credibility as well as the character of the witness.

Court: I assume what your trying to do is talk about the same incident that we already considered on the motion to revoke the release is that correct?

Mr. Wase: That's correct.

Mr. Kun: Your Honor if that's the reason, the ground support to try and prove his character, defense never showed any character evidence during direct. We never opened the door; he's trying to force himself into the door.

Court: Here's the rule, the rule of 413 in a criminal case in which the defendant is accused of sexual assault, which he is, evidence of specific instances of sentence commissioned of another offence or offences of sexual assault is listed, and maybe considered for sparing on

any matter to which is relevant. However, the government must provide a notice that they're going to ask these kinds of questions at least 15 days before the trial. So, for you to talk about this stuff, at least 15 days you had to contact Mr. Kun in writing or oral and say Mr. Kun, I'm going to ask these questions. If you didn't do that, you can't ask these questions. So, did you give that notice at least 15 days?

Mr. Wase: No, Your Honor, however it's part of this case file.

Court: If it's part of the case file, I am not going to allow.

Mr. Wase: Okay.

Q: Antolok, you highly respect Tommy the alab, the father of Tilber.

A: Yes, because he's the alab of where I used to stay.

Q: If the alab summons you you will visit him upon his request.

A: When he needs me, he used to come to my house.

Q: Antolok is it true you did not respond to the alabs summon because you were scared, is that true?

A: As I stated before, when Tommy needs me, he comes and look for me at my house.

Q: Okay, go back to September 24, you wife was not on island.

A: Yes, she was not here.

Q: She was in Kiribati also?

A: Hmm, yes.

Mr. Wase: No further question Your Honor.

Court: Any re direct Mr. Kun?

REDIRECT EXAMINATION

By Mr. Kun:

Q: Antolok, that time you passed out at Junans house, what color t-shirt were you wearing?

A: Green.

Q: Pants?

A: I don't recall.

Q: Long pants? Jeans?

A: Short pants.

Mr. Kun: No more questions Your Honor.

Court: Thank you, you may step down. Counsel, you said you have other witness's tomorrow morning, is that still your plan?

Mr. Kun: Yes, Your Honor, but if they don't turn up, that means it's okay we will just rest our case and move to closing, but the witnesses are his father in law and his step daughter, Ketricia as listed.

Court: So, no more witnesses today? We will reconvene at 10 O'clock with your witnesses or make the decision not to. Mr. Wase, you should be prepared to proceed with your rebuttal case if you decide to do that, as early as 10 o'clock in the event that they don't call witnesses. So be prepared for ten as well. Anything for today? Recess.

Court: Good morning everyone, today is September 20, 10 o'clock in the morning this is day three of the trial, the Republic of the Marshall Islands versus Antolok Antolok. Mr. Antolok testified yesterday afternoon again we may be expecting some more defense witnesses at this time. Mr. Kun?

Mr. Kun: Your Honor, I received information that the two witnesses will not be coming in to testify, because I was told by my client that the prosecutor went to his father in laws place, who's a witness and spoke to him about the case and told my witness, his father in law, that my client has been lying in court. My client was not at home, he was with friends at Ace

One Stop getting online but his step daughter over heard everything. His step daughter Ketricia over heard, or saw the prosecutor going over to their place and spoke to the grandfather, my client's father in law. So, my client said okay let's go this morning, but his father in law is now intimidated by the whole thing. Especially when a lawyer from an attorney general's office, who wouldn't be intimidated? There for Your Honor, I will leave this matter in the hands of this court to see what is discreet.

Court: Mr. Wase what you have to say?

Mr. Wase: Yes, Your Honor. That is correct and it's not why I went there. Yesterday, when I was given the opportunity to provide a rebuttal, I was told that he would not be coming here. He would not be a witness because of a recent incident that happened this last week and that's when I approached the father. I did not mention any case, I was honestly doing it so that it won't honestly conduct myself so that he doesn't know why I was there.

Court: Let me ask you some questions, what time did you go?

Mr. Wase: I arrived there between 5 to 6.

Court: Was there anyone else with you?

Mr. Wase: My assistant colleague attorney Laidren. Dropped me off, he did not join me Your Honor. Anthen Clarence, as well was also in the vehicle, also knew my intention to visit.

Court: Was anyone else in the vehicle?

Mr. Wase: No one Your Honor.

Court: So, the three of you go back there and those two dropped you out and they did not get out.

Mr. Wase: That's right Your Honor.

Court: Did they wait for you or did they leave?

Mr. Wase: They left.

Court: And who did you go to see?

Mr. Wase: I went to the neighbor and look around. First, I met a boy, I said, is Antolok Living in this house? The boy I was surprise to hear also, Antolok is outlawing outside, he's not staying here. I know his name because I live there also. I asked him, which one is Antolok's house, and he pointed to the house, which I approached. I met the son, Antolok's brother in law, who was standing outside the door and I said is your father home. I said, may I speak with him and he said, yes please let me ask him. When he saw me, he was happy, he said please come I want to talk to you.

Court: Is it the father in law?

Mr. Wase: That's correct Your Honor. And he said, are you here for Antolok? I said yes. No more sleep here, that guy this one. I don't like him. My wife my daughter not here, he goes around not like a husband I don't like him I send him away. I said, let me explain you first. I know that Antolok wants you to be his witness. He wants your daughter to be also his witness. And your granddaughter. And I'm not here to stop you. I'm not here to stop your daughter and you granddaughter from doing. It's not why I am here. I repeated that Your Honor because I want you to be clear. But the reason I am here is because I heard that Antolok is no longer with you. He said, yes that's correct. I don't like him to be here anymore. And that's when he told me Your Honor, many things. I asked him, did Antolok talked to you that you will be his witness? He said never, he never come to me he never talks to me. He never tells me about the case. I don't know, no no no, no nothing. And I asked him, the reason why I am here, is because an old lady who's your neighbor who happens to be a relative of my client, informed them that you sent Antolok away because he attempted to commit to you same daughter second time is that correct? And I asked him, is this one happened recently this last week? And he said, no it's the same incident. The same incident that took place in long island and we had the case. That's not true. The reason I sent him away is because he is not acting as a father. My daughter is away, he

drinks a lot he doesn't come home and I also hear around the neighbor who people don't like him here because he peeps around. Your Honor, there were more things I could share and I told him that I am not going to stop him from being a witness, but what ever he decided its up to him, but that's not why, I did not go there to stop him, just wanted to confirm that.

Court: Counsel what is the father in laws name?

Mr. Wase: His name is the same...

Court: Is he the grandfather that came and testified. Mr. Muller?

Mr. Wase: That's correct Your Honor.

Court: Walter...

Mr. Wase: Walter...

Court: Did you tell Walter or anyone else that Mr. Antolok was lying in this court room?

Mr. Wase: Lie? I am not sure Your Honor, I never recall talking about court. Like I said I was just there to confirm and that's it. That's why I'm there and I'm going to leave. And I left as I stated and I told him, I did not go there for anything. I was there just to confirm whether what I heard was true.

Court: About the alleged incident a couple of weeks ago?

Mr. Wase: And I said okay, that's why I'm here. Its really up to you if you want to go to court or not.

Court: Well Mr. Wase, if nothing else you may have heard a very valuable lesson last night. A very valuable lesson that you've learned and that is as a prosecutor you don't talk to witnesses unless you have someone with you. Whether that is someone like Mr. Laidren or someone like detective Clarence. It's best if you have someone to accompany you, because you have someone who can verify your story. If someone accuses you of tampering with the witness,

that's a serious charge. Unfortunately, you do not have a colleague or a police officer who can verify what you just told us. You may be seated.

Court: Mr. Walter is he working now?

Antolok: He's working but I don't know if he's at work but my daughter told me he's not going to come.

Court: Mr. Kun, I'm going to let you choose, Ill sent my bailiff out to get Walter and bring him. It won't be your fault it will be my fault. If you like me to do that, I will do that I will take a recess until they bring him back here.

Mr. Kun: There's Walter and then there's my client's step daughter who told him about she overheard.

Court: I'll do the same for her. Ill have the bailiff go get them all if you would like.

Mr. Kun: Anything but Your Honor, fact of the matter is, prosecutor was still busy yesterday after having six counts being dismissed. When desperately, he starts talking to my witnesses. And he didn't even have the courtesy to even give defense counsel a call. A prosecutor should learn more lesson that this, other than a slap on the wrist. It should be a lesson to every attorney admitted attorney in the RMI when you talk to the other party without the present of opposing counsel, they should go before the ethics committee. And prosecutor is saying he didn't talk about the case. He did talk about the case. He just admitted that yes, he was there and he advised Walter it is up to you if you want to go and testify. And telling Your Honor, that he needs more accusations or allegations against my client. Your Honor, over 13 years of practice over here, I have never encountered anything like this. This is strong grounds for this trial. Other wise Your Honor, prosecutor has other options. 1 with draw, 2 accept a miss trial, or 3 be referred to the ethics committee, because if he's let go this time, he will keep on doing it again and again and then the other prosecutors will follow suit. The locals here are very

simple people. When the lawyers approach them, everyone's intimidated. Even senators are intimidated by lawyers here. Imagine a simple old man, who wouldn't say no I don't want to see you. Your Honor, we move to dismiss.

Court: Mr. Kun is that a motion to miss trial?

Mr. Kun: Yes, Your Honor.

Court: Before I take it as a miss trial, I will have to see that the prosecutor did a miss conduct. And I am certain I also have to conclude that miss conduct caused some sort of significant detriment to the trial. The allegations raised by Mr. Kun certainly will result in a miss trial. But I am certain I will need to hear from Mr. Muller. Here is the problem we have, if I sent the bailiff to get Mr. Muller to find him where ever he is and bring him here, I am going to require him to be swore to tell the truth, and to tell us all about his encounter with Mr. Wase. During that process, I will probably hear things I should not hear. About other allegation of sexual offenses by the defendant. I suppose as a Judge, I am supposed to set those kinds of things aside and not have them influence my decision on this case. And maybe I can do that, but regardless of my decision under guilt of innocence, one of you will not believe that I discarded some stuff. There is nothing wrong in my opinion with an attorney prosecutor who speaks to a potential witness. It is clearly not okay for an attorney to speak to a represented party, but witnesses are not parties. As I've already said, it's always better for the attorney to interview witnesses with someone else present. Mr. Kun, I have two choices, I can either accept Mr. Wase's version of events, or I can bring in Mr. Muller and hear his version of events. If I accept what Mr. Wase said so far, and do not hear from Mr. Muller and the daughter. I will do nothing more than let Mr. Wase go with a warning that he came close to crossing the line. If Mr. Muller or his daughter presents a different version of the events, based on that version, if I find it significant interferes with the trial process we are currently experiencing, I could grant the

motion for mistrial. If I do that, I believe I would have to refer Mr. Wase to the ethics committee.
What's your preference?

Mr. Kun: Yes, Your Honor, I'm just seeking instructions from my client and asking whether he want the father in law and the daughter here, he said yes.

Court: We are going to take a recess. I've instructed my bailiff to go find the daughter her name's Ketricia. Is she likely at home or somewhere else?

Antolok: Marshall Islands High School.

Court: And to find and bring back Mr. Walter Muller. We'll be in recess until they get here. When it takes more than an hour it means they got other things they need to do.

Mr. Wase: When Mr. Muller, I would ask that if he restricted not for the defense to talk to him or anything. I'm worried that they might influence him. I also want him to be here to tell his story.

Court: That's exactly the concern that Mr. Kun has about what you have, I am not going to order Mr. Kun not to talk to the witness.

Mr. Kun: That's my witness.

Court: Yea, that's his witness he can talk to him. Alright, thank you bailiff well see you when you get here.

Court: We are back on the record and the case of Republic of the Marshall Islands against Antolok Antolok. It is 11.45, we took a recess earlier this morning. I've instructed my bailiff to find Mr. Muller and his granddaughter Ketricia because I have questions for both of them. I am told that Mr. Muller came to court to take care some of other business and I assumed the bailiffs are still looking for him and Ketricia.

OATH ADMINISTERED BY CLERK

(WALTER MULLER)

Called as a witness and testifies as follows on:

DIRECT EXAMINATION

By the Court:

Q: Mr. Muller, last night Mr. Wase came and visit you at your house. Correct? Let me have you come up and first of all let me say I am very sorry to bring you from your job, but this is very important to us, I'm very sorry. Come up please.

Q: Are you okay in English? Or do you want Kiribati translation?

A: English.

Q: Okay Mr. Muller I am going to ask you few questions. Travis will translate my question in to Marshallese you can answer in English and then he will translate your answer and I'm going to ask you some more questions. Okay?

Q: Tell me last night did the prosecutor come to your house?

A: He did your Honor.

Q: Did he make an appointment or did he just show up?

A: He just show up and talked with me.

Q: Was anyone else with him?

A: He was just by himself.

Q: Did you meet with him inside the house?

A: No, it was supposed to be I told him to go outside and I went and talked outside the house.

Q: When you spoke with the prosecutor was there anyone else nearby?

A: No one.

Q: As best as you can remember sir, please tell us what he said and what you said.

A: Your Honor, he just talks about an incident that happened. Antolok has been charge for, in response I talk with prosecutor I said I don't know anything, not even small evidence that I can give, nothing at all.

Q: Did you know that Mr. Antolok wanted you to come be a witness in his trial?

A: I don't know, I don't have any idea me coming to court and say something for him.

Q: Did you speak with the prosecutor voluntarily, or did he threaten you in any way?

A: No, he just spoke to me about what I know about the incident as I said early in response, I said sorry I don't know anything about what Antolok is involved.

Q: Did he tell you not to come to court to testify today? Did he tell you to stay away?

A: I tell him there's no reason for me to come to court because I don't have anything to say.

Q: Did he tell you to stay away from court? Did he say to you, do not come?

A: Yes, maybe because I talked to him about not knowing about the incident. It looks for

Q: Let me ask you again. Did Mr. Wase tell you do not come to court/

A: He didn't say that

Q: But you thought could not come because have anything to say?

A: Yes, because Your Honor, I told him its not mistake for me to go to court because I don't know anything about the incident and that's why I really don't want to come here.

Q: Did Mr. Wase tell you that Mr. Antolok had been telling lies in court?

A: About what Your Honor?

Q: Mr. Antolok testified yesterday, he sat here and he gave testimony. Did Mr. Wase tell you that Mr. Antolok had lied to the court, he told things that were not true.

A: I was not here Your Honor; I was at the office at 8 and I can't say something about that.

Q: Let me try again, when Mr. Wase talked to you, did he say Mr. Muller, he lied in court. Did he tell you that?

A: No

Court: Counsel anything else you'd like me to ask him?

Mr. Kun: Yes, just to clarify so they did discuss about this case, right?

Court: Did the two of you talk about Mr. Antolok's case?

Mr. Muller: Yes.

Court: Anything you would like me to ask him?

Mr. Wase: Yes, your honor, I think I stated clearly, maybe he didn't understand my question. Can you ask did I discuss reason incident, the purpose of why did i...

Court: ...Why you went there?

Mr. Wase: Yes.

Mr. Muller: He explained that the reason he just come. He wants me to talk about what I know about the incident.

Court: Anything else?

Mr. Wase: I think that's pretty much

Court: Mr. Kun anything else?

Mr. Kun: No, I already advised my client even though those names are listed as witnesses including my clients wife I know she's off island, and I told my client, if they turn up, they turn up, that's what I even said yesterday, they don't turn up then defense rest, but in fact this incident happened that prosecution went in

Mr. Wase: Your Honor, may I have another one? Why he doesn't want to be involved.

Court: He doesn't know about the incident.

Mr. Wase: Where is Antolok staying now?

Court: Where is Antoloks staying now? Not important to me. Okay Mr. Kun, let me ask you this. Do you want the bailiffs to keep looking for Ketricia at the high school and bring her here?

Mr. Kun: No need Your Honor I've heard enough from Mr. Muller.

Court: Okay I think I have too. Mr. Muller thank you very much, again sorry for making you come on a very short notice, but you are free to go. Is he finishing down stairs? With what ever he was doing down there.

Mr. Kun: He's paying a fine sir.

Court: He's paying a fine? Did you pay the fine? You're free to go back to work.

Mr. Muller: Thank you Your Honor.

Court: Travis, do you have a way to get a hold of the bailiffs and tell them to stop looking? Well take five minutes while Travis tries to find our bailiffs. I'm just gonna wait. Okay, Mr. Muller has been excused, it's now 11.55, I can't think I know what you're gonna Mr. Kun but do you have any other witnesses?

Mr. Kun: Your Honor, that it's the defense case and defense rest.

Court: Defense rest at 11.55 this morning, Mr. Wase do you have your rebuttal witnesses here, are they ready to go?

Mr. Wase: Yes, Your Honor.

Court: Are they here? How long do you think they will take?

Mr. Wase: About 5 to 10 minutes each.

Court: How many of them?

Mr. Wase: There is, one, two, four witnesses.

Court: four of them?

Mr. Wase: Yes. One is the owner of the Chinese store Teruru in Utdrikan. Second one is Louwe, I already call her she's coming back, and then I will have the older sister with the husband.

Court: They're the two that you said went to visit him? (Antolok) Mr. Kun I'll give you the preference do you wish to do them now assuming they will take about 45 minutes? Or do you want to do them starting at 2 o'clock.

Mr. Kun: We've wasted about nearly an hour so might as well call them in now, I can see Louwe sitting out there.

Court: You good to go off your lunch?

Mr. Wase: Yes sir.

Court: Alright let's call them.

Mr. Wase: Your Honor, I call to the stand the owner of the store Teruru, Xinze.

Court: Do we need a Chinese interpreter?

Mr. Wase: He's fined Your Honor; he speaks in English.

Mr. Kun: No, he's not, he's not fine, he needs a Chinese translator unless Your Honor can understand broken English.

Court: Well let's give it a shot. Let's see how well I can understand him and how well I think he's understanding the questions. Let's try, can we bring in the Chinese store owner please? If it doesn't work, I'm going to put him at the end of your list and were going to bring him back if we could find someone. We want to make sure he's understanding and saying the things he wants to say.

Mr. Wase: In that case Your Honor, he's not here, I'll move on to the second one, he will be coming on his way so I call Louwe.

Court: Good morning Louwe,

Louwe: Good morning.

Court: Please have a seat. You are still under oath to tell the truth.

Ms. Louwe: Yes.

Called in as a rebuttal witness and testified as follows on:

DIRECT EXAMINATION

By Mr. Wase:

Mr. Wase: Louwe thank you for coming this afternoon.

Q: Louwe on September 24, 2017, you saw, around between 10am to 12 noon. You saw Tilber inside Lajunan's house?

Mr. Kun: Objection Your Honor, this is not a rebuttal question. I've got my notes here, same question.

Court: It is, will you need this question?

Mr. Wase: Yes, Your Honor.

Court: Okay go ahead.

Q: Louwe yesterday, Antolok said that on the 24th you saw him wearing a green shirt.

Mr. Kun: Objection Your Honor, Antolok did not say that in his testimony that Louwe saw him wearing green t shirt.

Court: Could you translate that, the question of the objection. And let's say I don't remember Antolok saying that Louwe saw him in a green shirt, do you recall him saying that?

Mr. Wase: Yes, Your Honor I did. When I asked, he was wearing red shirt he said I was wearing green ask Louwe and Ketricia, they know. That's what he said.

Court: Okay, ask what color shirt he was wearing.

Q: Louwe, what color shirt?

A: Green.

Q: How do you know?

A: He gave the t shirt to the wife on that day.

Q: On the 24th of September 2017?

A: Yes.

Q: Louwe, let me put it to you that yesterday Antolok said his wife was not on island on September 24, she was in Kiribati. What do you say to that?

A: She was on island on that time, she hasn't gone to Kiribati.

Q: So that was on Another day, not September 24th?

A: We went to work at Chucky store.

Mr. Wase: No further question Your Honor.

Court: I got one. Louwe, was Antolok's wife on island on September 24th?

Louwe: Yes.

Mr. Kun: Let me ask you this one, this way. That day you saw Tilber in Junans house and you told her to get out, was Margarita on island?

Louwe: She's on island.

Mr. Kun: According to you that she's on island?

Court: Let me ask you a question counsel is Margarita the wife's name?

Mr. Kun: Yes.

Court: Anything else?

Q: Louwe when was the time you met Mr. Antolok? Last time, before this year the trial this week?

A: That time I saw them, they were trying to cause trouble with him. Tommy and them they were trying to take him so they could go put him in jail.

Q: Louwe, did you meet Antolok this week?

A: I've moved to Delap.

Q: You met Antolok on Monday right?

A: Yes, I saw him on Monday.

Q: He came to your house?

A: He came to see my dad.

Q: You saw him?

A: Yes.

Q: Did you say hi?

A: No.

Q: He talked to your dad?

A: Yes.

Mr. Wase: Okay thank you Louwe, no further questions Your Honor.

Court: Mr. Kun?

Mr. Kun: Nothing Your Honor.

Court: Thank you Louwe, you're free to go. Thank you for coming back.

Clerk: She said she does not have any fair money.

Mr. Kun: Yes, Your Honor, because she was dragged in here by the police,

Mr. Wase: Yes, Your Honor, I will call XinXie

(OATH ADMINISTERED BY THE CLERK)

OWNER OF TERURU STORE

Called in as a rebuttal witness as followed on

DIRECT EXAMINATION

By Mr. Wase:

Mr. Kun: Excuse me Your Honor, is he a Christian does he believe in god?

Court: Let me ask you this, how you're English?

Xinxie: Small

Court: Small English?

Xinxie: Yea.

Court: How long have you lived here?

Xinxie: 10 years.

Court: And you speak what, Chinese?

Xinxie: Yea.

Court: And English?

Xinxie: Yea.

Court: And Marshallese?

Xinxie: "Jidrik"

Court: A little bit?

Xinxie: Hm.

Court: Are you a Christian? Do you believe in god? Do you know why you're here today?

Xinxie: Lawyer yesterday looking for me.

Court: Let me ask you this, if we ask you questions in English, would you understand the questions? Or do you want me to get a Chinese translator for you?

Xinxie: It's okay.

Court: It's okay? Okay.

Mr. Kun: It's okay what? Chinese translator or no?

Court: No Chinese translator.

Mr. Kun: No Chinese translator?

Xinxie: Yea.

Court: Well try, well see where we go.

Xinxie: Yea, try try.

Court: Let's try this again, do you promise to tell the truth? Will you tell the truth today? Don't tell lie? Okay?

Xinxie: Okay.

Court: First I need the spelling of his name.

Clerk: Your Honor its Xin first name and the last name is Xie.

Court: Okay go ahead.

Q: Thank you Xinxie. Xinxie, your store sell alcohol on Sunday?

A: No.

Q: Stop sell when? Saturday night? Friday night?

A: Not it's after 10 o'clock stop sell.

Q: Saturday night 10?

A: Yes, and then also on Sunday.

Q: And your store where?

A: Utdrikan.

Q: Yesterday my friend here said he was on September 24, 2017 he was at your store with friends buy drinking alcohol?

A: Yes.

Q: Your store open Sunday?

A: Sunday, yea only open the window.

Q: Window open, counter close counter?

A: Yea.

Q: My friend here said one-man name work inside your store work name Alvin, he drinks with Alvin inside store. Do you have worker named Alvin? AVIN?

A: Only the ladies catch on the store, no more men.

Q: No boy works there?

A: Yea, only the women.

Mr. Wase: No further question Your Honor.

Court: Mr. Kun?

CROSS EXAMINATION

By Mr. Kun:

Q: Mr. Xinxie, On Sunday, September 24, 2017, who work in the small store when you close the big warehouse?

A: The lady.

Q: And the small store? And the lady Chinese lady or Marshallese lady?

A: Marshallese lady.

Q: But on Sunday, your store the big ware house and the head quarter, open again on Sunday 1pm right?

A: Yea in the morning.

Q: No, 1pm after noon time you open? On Sunday?

A: Sunday we open the window.

Q: The main store only open after lunch? Because Sunday morning 5 o'clock, 6 o'clock you always send my order to the airport yes?

A: Hm Hm.

Court: To the airport?

Mr. Kun: Yea airport, air freight goods, frozen goods on air freight to Nauru.

Court: Not for Christmas consumption?

Mr. Kun: Of course not, it's for my business in Nauru.

Court: Anything else?

Q: You run the store now in Utdrikan?

A: Yes.

Q: Who's the Alab?

A: I don't know, but I lean the store from Teruru brother there,

Q: But not from the land owner?

A: hmm.

Q: But your head quarter big business is Delap?

Court: Thank you very much, you may go. Okay Mr. Wase?

Mr. Wase: Your Honor I call...

Court: Artena Hesa?

Mr. Wase: Laston her husband.,

Court: Laston Jina.

(OATH ADMINISTERED BY CLERK)

LASTON JINA

Called in as a rebuttal witness and testified as follows on:

DIRECT EXAMINATION

By Mr. Wase:

Q: Good after noon Laston. Please speak loud and clear when you answer.

A: Okay.

Q: Please state your full name.

A: Laston Jina.

Q: Laston how old are you?

A: 26

Q: Do you work?

A: Yes.

Q: Where do you live?

A: Utdrikan.

Q: Do you have a family.

A: Yes.

Q: What's your wife's name?

A: Artena Hesa.

Q: Mr. Laston Jina, I'm going to talk to you about what happened on September 24th,

2017. First of all, where were you on that morning of September?

A: I was still in Arno

Q: Where was your wife?

A: Both of us.

Q: What was the purpose of you staying in Arno that time?

A: Death in the family.

Q: Now skip that afternoon to the evening around 4 o'clock same day 24th September

2017, where were you then?

A: On that Sunday?

Q: Yes.

A: We just got here and we came thru the Wharf at the mayor's resident we just

came from Arno that time.

Q: Where is the mayor wharf?

A: At his resident lagoon side, south of the Bing store.

Q: That's in Utdrikan?

A: Yes.

Q: So, what happened after you got here, where did you go after the wharf?

A: Went to the house.

Q: Did you hear anything unusual when you arrived home?

A: What was it?

Mr. Kun: Objection

Court: Next Question:

Q: What happened when you got home?

A: When we got to the house, my wife was showing me the marks on Tilber.

Q: What were the marks?

A: Kiss mark.

Q: What color were the kiss marks?

A: Red.

Q: What happened after that later that evening?

A: The father told us to go look for Antolok.

Q: Whose father?

A: The wife.

Q: Who went?

A: Me and my wife.

Q: Where did you go?

A: Antolok's house.

Q: What happened when you arrived at Antolok's house?

A: When we were there, we called him and he was answering from the house.

Q: Why did you call, why didn't you just go and knock and check?

A: There is a dog at their resident.

Q: Who called out?

A: My wife.

Q: How did the wife call? What did the wife say?

A: Is Antolok there?

Q: What was his response?

A: I'm here.

Q: What happened after that?

A: He said what do you want? Tilber was the one who bothered me when I was sleeping and Artena's response was did she bother you or did you sexually assault Tilber?

Q: And what else? What did Antolok say?

A: Why are they looking for her, what is the reason for them to look for her because this is not her first time, she has already lost her virginity.

Q: What did you do after that?

A: The wife said that her father needed to see him.

Q: Mr. Laston what was Antolok doing there? Where exactly was he coming out from?

A: He was lying outside of his house on a bed.

Q: And do you recall what he was wearing?

A: I think he was wearing a red t-shirt.

Q: Other than the red shirt being red, what else can you tell about the shirt?

A: Yellow design, but I was dark I cannot see what the design was, but it was yellow.

Q: How could you tell he was wearing he was wearing red?

A: There's a solar street light near the house so I can see.

Q: What was Antolok sleeping on? As you stated earlier?

A: Plywood type of bed.

Q: What was Antolok's response before you left?

A: He said he was going to come.

Q: Did he ever showed up?

A: No.

Mr. Wase: No further question Your Honor.

Court: Mr. Kun?

Mr. Kun: Yes, Your Honor, I have some questions.

CROSS EXAMINATION

By Mr. Kun:

Q: You testified that on September 24th which is Sunday, that morning you were still in Arno.

A: Yes.

Q: What time was that?

A: We went there on Thursday and we came back in the afternoon from Arno and we were here around 4.

Q: You testified that, that Sunday morning you were still on Arno, what time was that?

A: I was still there.

Q: You were still there, and then you say you testified you arrived on Majuro that evening at the Arno Mayors place, Bernard Chong gum. And what time was that?

A: 4.

Q: And then you went home? Yes?

A: Yes.

Q: And then 7pm, your father in law Tommy told you and your wife to go look for Antolok, correct?

A: Correct.

Q: Did you know that your mother in law Lyla, testified that your father in law at 4pm, your father in law sent you and your wife to go look for Antolok?

A: It was 7pm.

Q: That means your mother in law was wrong with the time. You testified that Antolok made some comments about Tilber?

A: Yes.

Q: Antolok made some comments about sexually assaulting Tilber?

A: No but he said, what is the reason? This is not her first time; she has lost her virginity.

Q: So, you really think a person is that stupid to even say something of that sort, that your sister in law is not a virgin?

A: I don't know.

Mr. Kun: Thank you Sir, no more questions.

REDIRECT EXAMINATION

By Mr. Wase:

Q: Mr. Laston, how long it takes for a boat to leave, to come from Arno to here?

A: We came on a small boat; it took quite some time.

Q: From your experience, normally how long it takes?

A: 1 or 2 hours if the boat is fast.

Q: When Antolok told you that Tilber already lost her virginity, what was your reaction?

A: I was surprised.

Q: What came to your mind?

A: I didn't believe.

Q: Why not?

A: She had mental disability.

Q: You stated that you recognize Antolok, what was his demeanor that day?

A: He was drunk.

Q: Is that where Tilber stay most of the time?

A: Yes.

Q: Who normally go take her from that house?

A: Me and my wife.

Q: Has anyone ever stopped you from taking her from house.

A: Antolok said she's playing, let her play.

Mr. Wase: No further question.

Mr. Kun: Your Honor I have just one or two questions.

RE CROSS EXAMINATION

By Mr. Kun:

Q: Sir, did your mother in law and father in law tell you to say all these things in court?

A: No.

Q: Did the prosecutor tell you to testify like this in court.

Mr. Wase: Objection Your Honor, testify how?

Court: Objection over ruled. Did you get your answer?

Mr. Kun: no,

Q: Did the prosecutor tell you to or guide you to testify like this in court today?

A: No.

Mr. Kun: Nothing further your Honor.

Court: Thank you sir, you may step down. One more?

Mr. Wase: Yes, Your Honor, the wife.

Court: Antenna?

Mr. Wase: Antenna.

(OATH ADMINISTERED BY THE CLERK)

ARTENNA HESA

Called in as a rebuttal witness and testified on:

DIRECT EXAMINATION

By Mr. Wase:

Q: Thank you Artena, please state your full name for the record.

A: Artena Hesa.

Q: How old are you?

A: 27.

Q: Where do you work?

A: High school.

Q: Artena how long have you been living in Utdrikan?

A: From when I was an infant or a baby.

Q: So, you would know everyone in the town?

A: I know them every well.

Q: Artena, I would like to take you back to September 24, 2017. In that morning of that September 24, please tell the court where were you that morning?

A: Arno.

Q: Why were you in Arno?

A: I was at a funeral

Q: Who died, if I may ask?

A: The husband of my father's younger sister.

Q: Now let's move forward. What about 4 o'clock on September 24, 2017 that evening, afternoon. Where were you?

A: I was on my way?

Q: Where did you arrive?

A: Bernard.

Q: Where is Bernard's place, or wharf?

A: At Utdrikan.

Q: Where did go after you arrived at Bernard's place?

A: Home.

Q: What happened at the house when you arrived?

A: I went to the house they were there, Tilber was lying down.

Q: What happened what happened to her?

A: I asked my mom and she told me to go look.

Mr. Kun: Objection.

Court: Yes

Q: What did you do after when you arrived at home? You stated that you saw Tilber, what was Tilber doing?

A: Sleeping.

Q: What did you do immediately?

A: I lift the sheet up and I could see those things.

Q: What did you saw, please tell us?

A: Kiss mark.

Q: Could you please describe those kiss marks?

A: They were here.

Q: Where else?

A: Here.

Q: What color were the kiss marks.

A: Red, almost purple.

Court: For the record, the witness indicated the neck and the chest.

Q: So, what happened later on that evening?

A: My father sends us, me and my husband to go look for Antolok.

Q: What did you do after your dad told you to go look for Antolok?

A: We went.

Q: Where did you go?

A: At his house, but we didn't go straight to his house because we were afraid of the dog so we stand on the road and call out.

Q: Who called?

A: My husband.

Q: What did your husband say?

A: He called Antolok saying that their father needed to see him.

Q: Who responded?

A: He did, he responded.

Q: Where was he responding from?

A: Near the trees beside his house.

Q: What was he doing there?

A: Lying down, he was sleeping.

Q: What was he sleeping on?

A: Plywood bed.

Q: So, when Antolok responds what did he say?

A: He just told me to look at my sister because she was the one bothering him when he was sleeping.

Q: And what did you say?

A: She bothered you or did you assault her?

Q: What was his response?

A: What is the reason of being mad about my sister because she had already lost her virginity.

Q: What was your reaction?

A: I said I'm mad because she's special.

Q: Artna, what was Antolok wearing that time?

A: Red t-shirt.

Q: What else do you remember other than the shirt being colored red?

A: Yellow writing on his t-shirt.

Q: What was his demeanor? What was Antolok's demeanor that time?

A: I recognize his face I know him.

Q: What was the look on his face?

A: He was drunk and he looked just like that.

Q: Artna, is that where Tilber spends most of her time every day? Antolok's house?

A: Yes.

Q: Did you ever bother to go look for her?

A: Every time.

Q: Has anyone stopped you from doing that?

A: Him.

Q: Who?

A: Antolok.

Q: Why?

A: He said to let her play with the daughter.

Q: Does Tilber have any black mumu, guam, do you know that?

A: No, she... were sharing guam, she's wearing from me.

Q: So, she's wearing your guam?

A: Yes.

Q: Do you have any black guam?

A: No.

Q: You stated earlier that you know a lot of people from the village?

A: Yes.

Q: Do you know Rick?

A: There's no Rick there in the village.

Q: Do you know Avin?

A: No Avin.

Court: Mr. Kun?

CROSS EXAMINATION

By Mr. Kun:

Q: Mam, your testimony that on September 24 in the morning, you were on Arno.

A: Yes.

Q: And you arrived on Majuro 4pm on the same day?

A: Yes.

Q: And what time did your father sent you to look for Antolok?

A: 7 in the evening.

Q: Did you know that your mother testified that your father sent you and your husband at 4pm, to look for Antolok?

A: Who?

Q: Your mother testified that at 4pm your father sent you and your husband to look for Antolok.

A: We just came from Arno at that time.

Q: So, your mother is wrong is that right?

A: We we're here at 4.

Q: So, your mother is wrong? Because your mother and your father made up all this story for you to tell in court today, correct?

A: No.

Q: You and your husband also sat down together and cooked up this whole story that this is how to testify in court correct?

A: No, we didn't do that.

Q: And the prosecutor sat down with you and this is your story to testify in court, right?

A: No.

Q: You testified that Antolok made comments about Tilber losing her virginity, correct?

A: Yes.

Q: Do you think a person is that stupid to actually make such stupid comments and insulting comments about a young girl?

Mr. Wase: Objection Your Honor. This is argumentative.

Court: Over ruled. She can answer that question.

Q: Mam, you testified that Antolok made comments about Tilber losing her virginity, correct?

A: Yes.

Q: Do you really think a person is that stupid to make those kinds of insulting comments about your sister right in your face?

A: Yes, he told me that.

Q: So, you think Antolok is that stupid?

A: He said that to me.

Q: So, you think Antolok is that stupid to even insult about a daughter of the alab?

A: Why did he do that to her? She mentally disabled and he's an old man.

Q: Do you think Antolok is that stupid to make such insulting comments about a daughter of an alab especially he's living on his land?

A: Yes, because he said that to me.

Q: Is it because you're just making this whole story up as told by your parents to testify like this?

A: No, he said that to me.

Q: And because the prosecutor assisted you to say that this is what you say?

A: No.

Mr. Kun: Nothing further Your Honor.

Court: Any redirect Mr. Wase?

Mr. Wase: Just one question Your Honor.

REDIRECT EXAMINATION

By Mr. Wase:

Q: Artena, why didn't you tell the police your story when it was reported by your mom.

Court: Could you please repeat that?

Q: Why did she waited till the last days and didn't report what her story to the police?

A: My statements?

Q: Your story, the story you're telling us.

A: They didn't ask, my mom just went and file the complaint.

Q: But you went with your mom right, on that day?

A: Yes.

Q: You were in the car?

A: Yes.

Q: Who was the detective that took you from the house?

A: We voluntarily went there.

Q: They did not ask you about your story?

A: No.

Q: How did I feel when you told me your story the last day? The day before the trial?

A: They were asking who went to look for Antolok.

Mr. Wase: No further question Your Honor.

RE CROSS EXAMINATION

By Mr. Kun:

Q: That's a very good question, why didn't you give your statement to the police when you went with your mother?

A: They did not ask me.

Q: Why didn't your husband give him his statements to the police?

A: He was not in the car.

Q: This incident took place on September 24th and then when did you go see the police with your mother?

A: I cannot recall.

Q: Did you go the next day?

A: I cannot recall.

Q: Did you go the week after that?

A: I'm telling you I cannot recall.

Q: But you remember your trip to Arno?

A: Yes.

Q: And you remembered exactly what time you arrived on Majuro?

A: Yes.

Q: And you testified that you went to see Antolok on 7pm?

A: Yes.

Q: But you can't remember when you went with your mother when she went and make a complaint on the police?

A: No.

Q: Was it in December?

A: No.

Q: Was it in October?

A: I don't know.

Q: So, let me tell you this because you're making up this story.

A: No.

Q: Why didn't you tell the – this case has been going on – why didn't you tell the prosecutor about your story? About your side of the story?

A: This case was filed when?

Q: I don't know?

A: I don't know.

Q: Exactly I don't know? Why didn't you give your statement to the prosecutor when this case started for you?

A: I don't know.

Q: Your name is not written in the witness list, just last minute. Why come now?

Mr. Wase: Objection Your Honor, I think my colleague knows why.

Mr. Kun: No, I don't know.

Mr. Wase: This is a rebuttal.

Court: Here is the problem Mr. Wase, In real life we call this open the can of worms, and you opened it and in the legal field we called it opening the door. Once the prosecutor opens the door, the defense attorney gets to charge through full speed. So, I am not thrilled about this line of questions but it's entitled to your talk. Go ahead Mr. Kun. The question was why did you just now come forward?

Q: Yes Mam, why do you just come now forward with this story you and you husband? Why now?

A: I'm mad about my sister and they just asked us.

Q: You testified that on September 24 that around 7pm you went to see Antolok and told him you were mad at him, right?

A: Yes.

Q: That was last year?

A: Please repeat?

Q: September 24th last year at 7pm you went to see Antolok and told him you were mad at him, right?

A: Hmm.

Q: That's what you testified you were mad at him?

A: I told him I was mad?

Q: Yes.

A: I didn't say.

Q: But you're still mad at Antolok?

A: Yes.

Q: And why didn't you tell when you went with your mother to the police, why didn't you tell them your own story – side of the story?

A: The detective told us to wait outside because they were working with Tilber.

Q: After they worked with Tilber why didn't you tell your side of the story?

Q: Mam, let me ask you this question, why did you just come forward now with this kind of story?

Q: Her response sir?

Court: What she says?

A: What are you saying?

Court: You want to repeat the question?

Q: Why did you just come forward now, in September 2018 nearly a year after the alleged incident happened, why just come now?

A: They were looking for witnesses and I had part, I was there.

Court: You did make your point, I get it.

Q: Why didn't you tell the prosecutor that you want to be one of the witnesses?

A: I don't know.

Q: Is it because your parents cooked up the story about my client and told you that this is what you and your husband will say in court?

A: No.

Q: And you told the prosecutor this is what we going to say and the prosecutor agree?

A: No.

Q: Just one more question. Do you still remember the dates you went with your mother to the police to file complaints?

A: No.

Q: Do you still remember the date you came from Arno?

A: Yes.

Q: What was the date?

A: 24th.

Q: 24th of what?

A: September.

Q: You don't remember the dates you went to make the complaint?

A: No.

Mr. Kun: Thank you, nothing further Your Honor.

Court: You may sit down, thank you very much. Anymore witnesses Mr. Wase?

Mr. Wase: I call Tilber Your Honor.

Court: You want to call Tilber again? For what purpose?

Mr. Wase: No, Your Honor it's alright.

Court: You can if it's for a rebuttal purpose you can.

Mr. Wase: I was thinking of one but it's not listed right here.

Court: Any rebuttal witness Mr. Kun?

Mr. Kun: No, Your Honor.

Court: Both parties have rested. It's quarter after one...

Mr. Kun: ...Your Honor can we do closing arguments tomorrow morning at 10 o'clock, so I can wrap my head around this, the closing arguments.

Court: I'll be right back ill need to check my schedule I'll see.

Mr. Kun: Oh no no, that's tomorrow.

Clerk: Your Honor my apologies, for tomorrow at ten o'clock its my hearing with Abby, another case. Maybe later on.

Court: You have anything tomorrow scheduled.

Mr. Kun: No actually it's all for this case.

Court: And you just 10 o'clock?

Clerk: Yes, Your Honor.

Court: I'll be right back...

Court: I've got a hearing on 10 o'clock and it shouldn't last more than an hour.

Okay well meet again at 2 o'clock tomorrow afternoon for closing arguments. By the way just for the record, it should be obvious but I officially deny the motion for miss trial. It should be obvious by the fact that we continued to call witnesses over here. Recess...

Court: Thank you, you may be seated. Welcome back, this is the closing arguments in Republic of the Marshall Islands vs Antolok Antolok. Case number 2017-020. In evidence portion of our trial concluded yesterday and counsel requested that they come back today for closing arguments. Today is September 21st and it's a few minutes after 2 o'clock in the afternoon. Mr. Wase is present, Mr. Antolok is present and represented by his counsel Mr. Kun. And if I remember correctly, Mr. Antolok's wife is in the audience...

Mr. Kun: ...Yes, Your Honor she just arrived this morning.

Court: Mr. Wase are you ready?

Mr. Wase: Yes, Your Honor.

Court: Mr. Kun are you ready?

Mr. Kun: Yes, Your Honor.

Court: Go ahead counsel.

Mr. Wase: Your Honor, this case is about the reality that sexual assault cases are private, they are committed in a place where it's hidden from the eyes of the public. Committed by the person known to the victim and in most cases Your Honor, close relative of the victim are the only witnesses. The defendants are drunk during the commission of the offense and they will tell lies repeatedly to change what really happened. If Tilber Hesa's testimony is the reality or

logical, then Your Honor find the defendant guilty. Your Honor we have come to the end of presentation of evidence, and as evidence during the past days, three threats or conclusion, became clear. One, how the defendant took full complete advantage of a helpless victim. The victim who's mentally defective. The victim Your Honor, as the court has witnessed, struggled throughout the hearing. Trying her best to present to the court to the best of her memory what had happened to her. Second Your Honor, the defendant who's a normal man, took full advantage of the victim's mental deficiency. The defendant himself as we have seen and heard Your Honor, has the tendency to seek sexual pleasure outside his marriage when ever his wife is not around. The tendency of the defendant himself prove to court of a man who's dishonest and untruthful. Your Honor, we have heard that he's a person who is not threat to the community but who lies throughout the proceedings. Your Honor, I will comment out to the facts of the case. On September 4, 2017 between the hours of 10 am and 12 pm noon, at Utdrikan village Majuro atoll, the defendant Antolok Antolok, a 37 years old male, and now a resident of Delap village, did knowingly subject another person or person who's mentally defected. By threatening her, pulled and dragged her forcefully into Lajunans house and while inside the house, covered her mouth with his strong hand, pulled off the victims dress, took off her underwear, then showed his penis to her, and then penetrated his penis into her vagina while kissing and biting her breasts and neck leaving marks on them. Now Your Honor, I would come to the law. Your Honor, section 213 of the criminal code defines what a mentally defected is, and as its clearly stated there. It's a person suffering from a disease, disorder or defect which renders the person incapable of appraising the nature of the person conduct. Further Your Honor, another point which I would like to raise. It's sections 213.8 of the criminal code Your Honor, provisions generally afflict able to this article. Your Honor, it states the following for prosecutions under this article sexual offenses, there is not requirements that the testimony of the victim be corroborated. The burden of proof Your Honor, as we all know it's on the republic and that

burden Your Honor, a prove has been met. Your Honor, the six remaining charges are, count 1 – sexual assault in the first degree, count 3 – in the second degree, count 5 – sexual assault in third degree, count 7 – sexual assault in the fourth, 9 - assault, and 11 – indecent exposure. Your Honor, for count 1 – government had proved that the person or perpetrator is in fact the defendant in this case Mr. Antolok. Your Honor we have heard from the victim herself who witnessed what actually happened. Before victim Tilber took the stand Your Honor, doctor Holden described what a person she is. Her mental size as well as her ability to testimony and what could she remember, her ability to testify in court Your Honor. Mr. Holden is an experience and he was admitted as an expert witness. And he’s an independent witness Your Honor. He also testified while under oath that Tilber could or highly possible she could traumatize. When Tilber took the stand Your Honor, we witnessed what doctor Holden meant. She did her very best and she told her story. With the help of her mother. She was able and identified and pointing to where the defendant Mr. Antolok was sitting Your Honor, as the person who committed sexual assault against her. Your Honor we heard from detective Anthen Clarence who also identified the defendant as Mr. Antolok. We heard from the mother who also identified the defendant as Mr. Antolok. In fact, Your Honor, all the witnesses knew Mr. Antolok, and as the person who committed the gravest and heinous crime against the victim Tilber Hesa. Your Honor, that’s clearly as identified that Mr. Antolok is the actual person and is the perpetrator in this case. Now Your Honor, did Antolok knowingly subject Tilber to another - to an act of sexual penetration by strong compulsion, or did the defendant Mr. Antolok knowingly subjects to sexual penetration Tilber Hesa who’s mentally defected. Yes, Your Honor, we proved those question. Tilber Hesa victim in this case Your Honor, told her story of what exactly happened. She testified that on September 24th at 11 am, the defendant took her from near the road. Your Honor he took her around the house, where his family could not see him. Behind the house the ocean side and come around to the door Rita side of the house. He

takes her through the door and inside the house, straight into the room. Your Honor, that's Lajunans house. While inside the room, he pulls up her dress, red guam dress. According to her, he took off my underwear, he showed me his penis, and he put it inside me. Your Honor, inside me, its mean inside her body. While she was lying on the floor Your Honor, he also threatened her, don't you move, I will hurt you it you leave. After he was finished with her Your Honor – apology Your Honor. While he was on top of her, he was kissing her around her neck and on her breasts, leaving marks on her neck and her breast. She testified Your Honor, she did not like it, but he keeps doing it. After the incident, after what had happened Your Honor, she met Louwe Zagios, and that Louwe opened the door and saw her standing inside the door of the room. Tilber also stated that Antolok was lying on the floor. Exactly on the floor where he sexually assaulted her. She showed to court Your Honor, where exactly her head was situated and where Antolok was lying. There were clearly both pictures she identified where the sexual assault actually took place. Your Honor, her story, part of story Your Honor, even was corroborated by the story of Louwe Zagios. Louwe who also took the oath, and was under oath Your Honor, and she's also as claimed by the defense her witness, testified that she saw the victim inside the house. However, Your Honor, Louwe changed her story slightly because of personal grudge against the family of Tilber. She changed that Tilber's guam was not red it was black. But how can we be sure of that Your Honor. Louwe herself on rebuttal when she came, she told that she was visited by the defendant on Monday Your Honor. The day before beginning the first day of the trial. She also stated on the stand that he spoke with the father. The father who also have personal grudge against the family. That Your Honor, inferred that they all change the story to help the defendant because they all have something in common, personal grudge. Your Honor, her story was also supported further by her mother Lyla Hesa. She's a loving mother Your Honor, she loves her child so much. She also has concerns as a mother towards the defendant. Just like any other mother here Your Honor, she cares about everyone. She didn't want to file

early, she thought about filing the case for so long because of her sickness, because she was worried, because her father has a tendency as a short temper and that her son who is at the police station could cause further trouble that could cause his life. Your Honor, she is a part of the story that really connects what happened before the incident. Early that morning Your Honor as she testified, she saw the defendant who was drunk and he was throwing gravels at her daughter Tilber, trying to wake her up in a silent manner that no one can see and hear. She was surprised to see Antolok but didn't think of any bad things because she trusts him because he's the person that took care of Tilber almost every day, and Tilber visits his daughter almost every day. Your Honor when she was asked whether she remembered what Atolok was wearing that early morning 7am, she could have lied and saying that he was wearing red, but she didn't she honestly said I don't know because that's what an honest person would do Your Honor. I don't know. Your Honor, I could have – if I had any intentions, could have make her to tell lies but it is not right Your Honor. Your Honor, she also shows the marks on Tilber's body. Lyla did the right thing that any mother could do, to take the picture, instruct her daughter, older daughter to take pictures of those marks. And she did report it and gave the pictures to the police. She also testified Your Honor, that she took the pictures over to the defendant's in law house. And showed to the father. Your Honor furthermore, Tilber's story was further corroborated by her older sister Telima. She testified to court under oath that she took these pictures with her ipad. Later on, about 11 to 1, between the time after the incident took place, she also described those marks that they were red and purples, or "Piolet" as she stated. And she confirmed the pictures that were shown here Your Honor are admitted are evidence. Your Honor the oldest sister and her husband also testified, took the oath and testified here. They told us of what they heard from Antolok, the defendant. When they were instructed by the father to visit Antolok to request to come over to the house to the father, when they found Antolok, the defendant, he was lying beside close to Lajunans house exactly as the defendant testified Your Honor. When informed

Antolok that the father needs to see him, he responded, why do you care she already lost her virginity. What does that mean Your Honor? It means that ofcourse he sexually assaulted her and he knew about her that's inferred that he put his penis inside her. He confirmed that he actually put his penis inside of her. Your Honor, both witnesses didn't change, there was no significant difference in the story. They were exact and logic as it should be. There may be a tiny detail that they could forget, but us human beings Your Honor, we cannot remember even the tiny details we human beings cannot remember because we have our weaknesses. But what we could remember are the events that are huge, that we experience by our feelings and thoughts that's constantly going on on our head, just like – Artena stated that she was in Arno because there was death of a relative. She remembers arriving here exactly at 4 o'clock that after noon. She remembers going to see her sister lying on the floor covering her head with sheets and she remembers seeing those marks. Your Honor, Tilber is very special to her. She knows that she's sharing her clothes with her. She also confirms that Tilber does not have guam dress and she was sharing with her and she doesnt have any black guam dress Your Honor. However, she has a red dress Your Honor, because that is the truth Your Honor. Her mom in addition Your Honor to her testimony. She talks about her special daughter, Tilber's past when she was a child, about her birth. And as she grows up until today. She knew her very well than anyone else. She also confirmed that her story was very true, because Your Honor, when asked how do you know she was telling a truth from a lie? Your Honor she said, when she tells the truth, tears will come down the face. Your Honor we saw Tilber on the stand, she was crying when she told the story. Because she remembers its human nature that she has to look back and she feels, feelings of truth Your Honor. Your Honor, the defendant himself confirmed part of the story but changed it so It doesn't make sense. But Your Honor, he was not successful, he didn't do it. How do we know that Your Honor? Because the defendant went on the stand, he said that he lied. He stated that he started drinking in the morning. And he was drinking over with some friends by the name

Rick, and Avin. And Avin was inside Teruru behind the counter, they were drinking and Teruru store was opened on Sunday that morning. And that he slept at 10 o'clock and woke up at 2 o'clock because his daughter came and woke him up to give him a lunch at 2 o'clock Your Honor. Luch? That doesn't make sense Your Honor. Lunch at 2 o'clock, and he's still very drunk and still can wake up? He lied he make up names. He lied that a man was working inside Teruru story. How do we know he lied Your Honor? Mr. Xinxie, the owner of the story. He took the stand and sworn in – sworn in before he took the stand. Also told us the truth Your Honor. The reality that he doesn't have a male employee, and by the name Avin. He discredits the claim by the defendant that the store is selling alcohol on Sundays. Your Honor, but that doesn't mean that Antolok wasn't there, he was there around that area. We do not dispute the fact that he was around that area. Yes, he's right he was there because that's where exactly where he took Tilber from. He walked her from the road all the way to Lajunan's house. That's the truth Your Honor. Yes, he's right. And that even makes the story clearer. What will the family lose? What is the motive – what will they lose? There is nothing they will lose if they lose this case. In other words, there is no motive of making up story against the defendant. There's nothing to lose, weather we lose, they won't lose anything. Meaning that they are not pushing or pursuing this case against Antolok. Meaning that they have no motive to tell lies to court. But what does Antolok - What is his motive? He doesn't want to be in jail Your Honor, so he will do everything to change the story. That's Your Honor, is the truth. Based on all of his reason Your Honor, we the republic request the court to find the defendant guilty of all counts of at charged. Thank you all.

Court: Thank you counsel.

Mr. Kun: Your Honor, defense will make this very brief. The prosecution's closing arguments did not establish anything at all. A load of burden of proof is on them, they did not proof every element beyond a reasonable doubt, that our client Antolok did unlawfully

committed alleged offenses in counts 1, 3, 5, 7, 9 and 11. Just the same as how the prosecution has failed to prove beyond reasonable doubt on counts 2,4,6,8,10 and 12. Which were dismissed by rule 29A. The prosecution's closing lacked substance. They failed to show any evidence or to back up, support the elements that they're trying to prove. It was like talking to the jury. They failed to present evidence, there is no medical report admitted on the kiss marks on Tilber's neck and breast area to show if the kiss marks came from our client's teeth's. There's not medical report admitted to show if Tilber's vagina has been forcefully penetrated by penis by strong compulsion. Tilber's underwear which she wore on September 24 around 10 am was not admitted into evidence to show any sign of sexual assault or semen. But only finger pointing at our client that he did it. Your Honor, even Tilber herself testified but she never went into details. She became mostly non responsive when asked on cross if her testimony was made up or coached by her parents. And she was also non responsive when I asked if her testimony was also coached by the prosecuting attorney. I remember her testifying that Antolok grabbed her on the main road at 11 am, in Utdrikan. She didn't go into detail how she was taken through houses into Junans house. Junan's house which is just 5 meters from my client's house. And there's people in my client's house. Even his step daughter knew that he went to Junan's house and sleep. That's why she told Louwe who testified that Ketricia patted her on her back and said hey can you go and tell that girl to get out of Junan's house because Antolok is sleeping inside. And as Louwe Zagios testified that yes, she went inside the house and saw Tilber inside Junan's house and told her to get out. And also confirmed that Tilber had clothes on and showed no sign of coming out of a struggle from forced sex. Because nothing happened as alleged and the detective went on the stand and just showed us photo graphs of houses, the left side, the front side and the back side. But he didn't present any evidence of how Tilber was grabbed from the main road and dragged into that house going to here and into that house, nothing. The rebuttal testimonies from the prosecution didn't even carry any weight. Prosecution called in Mr. Xin, of

course he'll say that I don't sell alcohol on Sundays, I closed the store. And confirmed that he opened his store on Sundays. And managed by Marshallese women. But the prosecution didn't call that Marshallese worker to use her as a rebuttal witness that my client brought alcohol from there at Sunday morning. Then the prosecution again in their rebuttal called Louwe, to testify the same questions asked at direct. And then they called Artena Hesa, who just decided to come forward at the 11th hour to testify against our client. She only remembered September 24th, and no other date. Although she accompanied her mother to the police to make the report, she couldn't remember that day. Not any other dates, only September 24th. Because as the prosecutor stated in his closing arguments, were human beings that's how because we tell the truth. Your Honor, the prosecution has failed in this case to prove every element beyond the reasonable doubts that our client committed sexual assault in the first degree. And they've also failed to prove every element beyond the reasonable doubt that our client committed sexual assault second degree. They failed to prove every element, Your Honor reasonable doubt that our client did commit sexual assault in the third degree. They also failed to prove every element beyond reasonable doubt that our client did commit sexual assault in fourth degree. And they've also failed to prove every element beyond reasonable doubt that our client did assault Tilber and did knowingly expose his penis to Tilber. And prosecution stated in the argument because our client had the tendency to commit these offenses. Well, You Honor, im sorry but tendency does not prove elements beyond the reasonable doubt. Defense called in Antolok to testify and he told his side of the story or what really happened on that Sunday morning. And Antoloks defense is a claim of actual innocence. He couldn't have committed this alleged sexual assault because he was fast asleep drunk at around those hours of 10am to noon. Until he was called by his daughter to wake up and have some lunch at about maybe 2pm. And Your Honor, people have lunch at 2pm. I had lunch yesterday at 2pm because of these rebuttal witnesses. There for Your Honor, my client also rebuts the prosecutions arguments that Tilber does not go to the

house every day. Your Honor, as we said, this is brief. The prosecution has seriously failed to establish and prove beyond a reasonable doubt and defense has cast a doubt on the prosecution's case that our client did commit any of these alleged offenses from counts 1,3,5,7,9 and 11, and our client should be acquitted from all these counts. Just the same as how counts 2,4,6,8, and 10 were dismissed by rule 29A, because there is no reasonable doubt. That's our closing Your Honor, thank you.

Court: Rebuttal?

Mr. Wase: No rebuttal.

Court: No rebuttal. Alright counsel, give me 10 – 15 minutes ill be back at quarter after three, well recess.

Court: Thank you, you may be seated. We are back on the record in the Republic of the Marshall Islands against Antolok case number 2017 – 020. It is September 21st 2018 at 3.20 in the afternoon. Counsels have completed their closing arguments. And I've taken few minutes to review some of my notes and consult one of the important statues. Mr. Antolok is charged with 6 offenses. They are accounts 1,3,5,7,9, and 11. Account 1 charge is sexual assault in the first degree. There are several ways a person can commit that offense. The government has taken two of those methods and turned it into one set of facts in the second criminal information. One way a person can commit the offense is to knowingly subject another person to an act of sexual penetration by strong compulsion. That is paragraph 1A - the other one is paragraph 1D, a person can commit the offense by knowingly subjection through sexual penetration on another person who is mentally defected. In the second amended criminal information under count one as I said, the government merges those two ideas into one count. As charged at the defendant, knowingly subjected another person who is mentally defected to an act of sexual penetration by strong compulsion. I'm going to separate those two methods out, one from the other. I do not find beyond the reasonable doubt that the defendant subjected Tilber

Hesa to an act of sexual penetration by strong compulsion. Strong compulsion requires either the use of a dangerous instrument, or physical force, or a threat that places the person in fear of injury. There is no evidence that a dangerous instrument was used. I am not convinced beyond reasonable doubt that Tilber is capable of being placed in fear by a threat, I don't think her mental ability, I have a doubt that her mental ability would allow her to placed in fear by a reasonable threat and it is a reasonable doubt. Even though there were some evidence of physical force by perhaps putting the hands over her mouth, I do not find that there is evidence of physical force beyond reasonable doubt. So, to the extent that count 1 was intended to charge the offense under 1A strong compulsion, I do not find the defendant guilty. Now let me address 1D which is also included in count 1. As I stated, the government has charged both methods, and I do find beyond the reasonable doubt that the defendant subjected Tilber to a sexual penetration and she is a person who is mentally defected. Let me repeat that because I left out an important word. I find beyond the reasonable doubt that the defendant knowingly subjected Tilber to sexual penetration and that she is a person who is mentally defected. But here is the next problem and it's a legal problem. A person can be found guilty of sexual assault in the first degree under paragraph 1D, and the person can also be found guilty of sexual assault in the second degree under paragraph 1B as in boy. And the language in the statue is exactly the same. Second degree sexual assault paragraph 1B says the person knowingly subjects to sexual penetration of another person who is mentally defected, it is exactly the same as the offense of the first degree under paragraph 1D. Under criminal constitution law, a person can be found guilty under two separate statues for doing exactly the same thing. The person is entitled to be convicted only under the lesser offense. So, I cannot find the defendant guilty of sexual assault in the first degree, account 1 is there for dismissed. Count 3 does charge sexual assault in the second degree, and as stated I find that the defendant Antolok Antolok, subjected Tilber Hesa to sexual penetration and that she is a person who is mentally defected. There is really no reason

for me to address count's 5,7,9, and 11. They are less or included offenses of charge number three. And as I stated under the constitution, a person can only be found guilty of one offense or one act. Accounts 5,7,9, and 11 are therefore dismissed. So, in summary, Mr Antolok is guilty of one offense and that is count 3 sexual assault in the second degree. Now Mr. Antolok until this moment, you have been innocent of these charges. Now that I have found you guilty, you are no longer innocent. But until this moment, I have based my decision solely on the information provided at the trial. Now that I have found you guilty, I am free to consider other information and during the course of these criminal proceedings as you know, there have been allegations of other sexual misconduct. They have not been proven but they cause me significant concern. In a moment I am going to schedule you sentence hearing a few weeks from now. And I will have you come back that time for sentence. But until then, I'm going to inquire you to report to the jail immediately with this officer. And you will be incarcerated in jail until sentencing, because sir I am convinced that when we are drunk you lose your sexual control. And that virtually any young women within your reach you think it's fair given. And I cannot in good conscience allow you to stay out of jail one minute or another. A threat to the community is far greater than the threat you will spend in jail prior sentencing. Counsel I'd like to have sentencings the week of October 22nd to 26th, or I can do it sooner if you'd like. Mr. Wase?

Mr. Wase: That's fine Your Honor.

Mr. Kun: ???

Court: 23rd 10 o'clock, if you wish to submit sentencing recommendations get it to me by the 19th. Mr. Antolok you will have the opportunity to appeal this decision once you are sentenced, so if you send it to me now you will have 30 days to do that, effective immediately until 10 o'clock on October 23rd you're in custody of this gentlemen here. Court dismissed.

Court: Thank you may be seated. Are you ready Ms. Tania? Good morning, this is the high court of the Republic of the Marshall Islands. Today is October 23rd, it is 5 minutes after 10. This is case number 2017-020, RMI vs Antolok Antolok. After trial, I found Mr. Antolok guilty of one count, that is count 3, sexual assault in the second degree. I ordered Mr. Antolok to go to jail pending sentencing hearing today, and I asked both attorneys to submit sentencing recommendations. The attorneys filed their sentencing recommendations and I have reviewed those. And so, we are prepared today for sentencing. Mr. Wase is here for the Republic. The defendant is present and is represented by Mr. Kun. Mr. Wase any reason we should not go forward today?

Mr. Wase: No reason Your Honor.

Court: Mr. Kun?

Mr. Kun: No, Your Honor, but just want to put it on record that the defense counsel received sentencing recommendations by the government on a Sunday afternoon while I was not home but I'm in the office. I received a call from my good friend the prosecutor, and I said why don't you send it upstairs?

Court: So, when did you actually get to see it Mr. Kun?

Mr. Kun: Sunday night, but it's all good I just wanted to...

Court: ...Mr. Wase is there a reason you didn't just email it to him?

Mr. Wase: Your Honor, when I got to the office – it's all my fault Your Honor, I apologize already to the counsel. It's really late and I could have emailed it, but when I finally realized I should have done it, our office was already closed, I was really busy, it's all my fault Your Honor and I apologize.

Mr. Kun: Your Honor I actually thought he was going to serve me at the...

Court: ...Okay just so you both know, I was attempting to send an email this morning at about 4 o'clock am but the power went off at lojkar, and so I thought maybe I would just walk down stairs, knock on Mr. Kun's door and have him do it for me but didn't.

Mr. Wase: Good Morning Your Honor and counsel, madam clerk. Your Honor, the republic is recommending a full ten years term. No suspension or probation Your Honor. Your Honor, we all have agreed that this is the first case of its kind here in the republic. And the victim here in this case is a special person who is mentally defected. And that's what make it very special and need very careful and through consideration of this court. Unfortunately, Your Honor, I've gone through the RMI cases as well but couldn't find a similar case of similar nature where it involves a mentally defective victim. Or any case that could help court in the submitting the fair sentencing for the defendant. There for I believe this case will be the first case and will be a precedence in this type of case Your Honor. So, Your Honor, our recommendation is based on the character, the factors are aggravating factors that Your Honor I will now share with this court. Your Honor, the defendant Antolok is currently incarcerated pending today's sentencing. So, he's not at work but prior to that as he stated during his testimony, he worked for an agent Mr. Neal for a fishing company located here in delap village. A job was to recruit Marshallese young boys and men when ever there is a need to offload fish from fishing vessels Your Honor. And when fishing vessels are on ships out in the sea, there is no job? The defendant would drive a taxi around town. So, Your Honor, we know the defendant did a part time job, didn't have a full-time job. Does the defendant have any dependence, people who rely on him? Your Honor it is not clear whether he had a wife before or any children, biological children, however we know for sure that he's with a young woman by the name Margarita Walter and Margarita has a daughter named Ketricia. What we also know is that, Antolok moved - the defendant moved in with the - Margarita and the family, not Margarita and the daughter moved in with Antolok. And obviously we can say that Antolok was eating the

food that they eat, staying in the house, and the wife was washing his clothes as normal Your Honor, as it should be. However, we cannot say that they were depending on him because the wife worked a cashier at a Chinese store. The father of the wife Margarita, Walter, works as a supervisor for the Micro seawall project that is coordinated under the ministry of utility infrastructure Your Honor, public works. And the brother works as a sailor or crew member of a fishing vessel here Your Honor. And what we have heard and known as of now, what we only know is that Antolok was a burden to the family Your Honor. He drinks and he cause trouble around. Does the defendant have any previous records or convictions? Your Honor we do not know of any prior criminal convictions, except a motion that was filed by the republic Your Honor, as we all know for replication. And the motion was to revoke his pretrial release for the act he committed, attempted sexual assault Your Honor against his daughter. And if I understood correctly, the order of conviction Your Honor, it was the basis for which Antolok has to be incarcerated until today. Your Honor, the nature of the crime, the defendant was charged with 12 offenses, 8 count of sexual assault ranging from 1st to 4th degree including simple assault and indecent exposure. Sexual assault is a very serious offense under the criminal code, 2011 of the Marshall Islands. And Your Honor, if we look at the past cases Your Honor, this is a serious crime because it involves a victim and a defendant who's known to the victim. Normally Your Honor, these cases rarely have eye witnesses and are done in a private place Your Honor. Your Honor the victim's testimony in court who could say was the only account that best describe seriousness of the crime committed against her. It's involved a psychiatric Your Honor, this case seriousness can be seen because it involves the expert witness of a testimony of a doctor. She had to go through a lot of assessments Your Honor, she had suffered enough but she had to go through all of this Your Honor. Your Honor, the defendant took full advantage and exploited a mentally defective girl just to satisfy his sexual pleasure Your Honor. Prior to doing that Your Honor, he first earned the trust of the family of the victim. And as we have heard throughout the

testimony of the republics witness, when the victim was summoned, he would use his daughter as excuse to keep her at their place. Throughout the trials and on the stand, the government's witnesses testified that the defendant would use his daughter as an excuse to keep the victim in their place. Your Honor, the defendant has the tendency to disrespect law as well as to tell lies. Throughout the course of this case, the defendant constantly violated courts order, and told lies during the trial. He violated the court's order by attempting to sexually assault his daughter. He was also ordered not to approached any government witnesses Your Honor. And we heard from Ms. Louwe who took the stand that he visited their house and she saw him. Your Honor, he intentionally lied to his counsel that his wife's, the father in law will be his witness during the trial, but in fact his father in law Mr. Walter, who gave testimony, say the otherwise. When in fact his wife was in Kiribati and Mr. Walter know nothing about the trial and that he was involved as a witness. The defendant deliberately lied to the court that be bough his alcoholic drinks from the main counter at Teruru store, when in fact, Teruru store as we heard from the owner, main counter closes on Sundays and do not sell alcohol on Sundays. He deliberately lied to court that the shirt he wore on September 24th 2017, the day he sexually assaulted the victim, was green t-shirt, when in fact it was red with printed words on it. Your Honor, the defendant is clearly someone who has no respect for the law, to court, to his wife, father in law, and to his step daughter. Finally, Your Honor, safety and security of the community, the defendant has tendency to seek sexual pleasure outside of his marriage whenever his wife is not around or off island and when he is drunk. This is why we have this case and the motion for revocation Your Honor. Because the defendant is a very dangerous sexual predator and the community will be safer and secure if the defendant will be kept behind bars. And Your Honor if I may read the purpose of sentencing as I have included there, is discourage offenders from ever committing sexual assaults of offense, discourage other residents in the RMI from committing sexual offenses, to confirm the commissions of these crimes are un acceptable in the RMI, to encourage

offender to change his behavior and to vindicate victims rights. Therefor Your Honor, the republic respectfully submits and recommend that the defendant be sentenced to full 10 years to be served without any suspension or probation. Thank you, Your Honor.

Court: Thank Your Mr. Wase”

Mr. Kun: Good morning Your Honor, Your Honor I think the prosecution forgot to mention that, out of the 12 offenses charged against my client eleven of those were dismissed, and the defendant was found guilty of one offense of second-degree sexual assault. That says it all about the prosecutions case. Your Honor in commenting – responding to some of the aggravated factors submitted by prosecution, like the first one, that Antolok does part time work. So? What’s so aggravated about that he’s working, compared to some of the locals who stay home and do absolutely nothing. There is no evidence offered before this court during the trial that Antolok is a burden to his wife’s family. And it’s true that there is no prior criminal record. Defendant also likes to respond to the prosecution saying the defendant lied to counsel about the witnesses. Your Honor, as counsel I’m the one who picked those witnessed. And we knew that the wife would be coming back when the trial starts. But unfortunately, she couldn’t make it because the flights were full from Tarawa. The defendant never lied to the court when he took the stand, he just told the court how it was. The prosecution also submitted that my client Antolok approached government witnesses. Prosecution approached my witness. To the extend that he influenced my client’s father in law not to take the stand because he’s scared. Prosecutions submission on aggravating factors against my client is just baseless. Your Honor, Antolok is a first time offended and he’s not a threat to the general public. He’s not a danger or harmful to his family. He’s wife still visit’s him while being incarcerated. Otherwise if he was a real danger, she wouldn’t be bothered going to see him and make sure he’s got clothes to wear like this now, even though he’s in jail. He has his differences with his father in law because his father in law doesn’t like people drinking alcohol around him. Otherwise, the prosecution

submission about my client's suspect order is mute in that case does not exist anymore. Your Honor, defense did find one other case in RMI vs Majer Yoshi Billy, of which defense counsel defended. Maybe true I did not involve a victim mentally defected, but defense use this case as an example because defendant was charged with sexual assault in first degree, he was alleged drunk and went to his step daughters room who was less than sixteen years of age and had sexual intercourse with her. And this is the reason as defense counsel we took the deal to plea guilty because everything was pointing at him. This case was already bigger than this case ahead because even though short of trial, it involved church groups who appeared at the initial appearance and even the plea hearing. And again, that's why defense counsel took the deal and both parties agreed to sexual assault in third degree. And Your Honor, there is no other cases I know of. And Your Honor, the defendant is sincerely apologetic as to what he may have been found guilty of sexual assault in second degree. And he's sincerely seeking the leniency of this court, and there fore Your Honor we humbly recommend for the defendant to sentenced to imprisonment in Majuro jail for 10 years and to serve 3 years and the balance to be suspended under condition that defendant while on suspended sentence does not even drink alcohol. Truly this will keep him busy and continue with his part time work. Rather than goof around like some of the locals I know. Your Honor, that's defense submission.

Court: Mr. Antolok, you are entitled to tell me anything you would like to know or make any recommendations. Would you like to do that?

Mr. Antolok: I would like to apologize but there is nothing I did, that's all.

Court: Thank you. Mr. Kun as I pointed out before your recommendation mistakenly understates the sentence in the case would you agree?

Mr. Kun: Sort of, three years is still over the third-degree sentence, third degree is 35 months.

Court: But isn't the sentence in the Billy case served five years? That's what I brought the file in so you can take a look at it.

Mr. Kun: Oh, five years here – oh because I didn't look at the conviction order because we agreed on – I didn't realize the judge didn't accept the other one and then made us for five years, sorry.

Court: Okay just to clarify, Mr. Kun and his recommendation refers to the Billy case. Where apparently counsel agree to recommend 35 months and the 23 of those months would be suspended. It appears to me that Judge Plasman rejected that joint recommendation and actually required Mr. Billy to serve five years.

Mr. Kun: That's correct.

Court: Okay. Alright as I indicated earlier, the defendant was convicted of one count. The other eleven counts were dismissed during or after trial. And we are here today on only count three which is sexual assault in the second degree. The maximum term of imprisonment for a second-degree felony is ten years. And the republic is recommending the defendant serve all ten years with no probation. And that's the fine for second degree felony is twenty thousand dollars. I am not going to impose a fine so were simply going to talk about the length of time the defendant should serve in jail. Here are the factors that I believe are aggravated factors. The victim was a defective individual with a mental capacity of a four-year-old child. The defendant was in a position of trust because the victim came to his home to play with his daughter. And the defendant knowing the victim's conditions to be very careful and in fact protective of the victim. Instead of protecting the victim from harm, the defendant in fact used the victim's disability to harm her and to satisfy his own sexual interests. The third aggravated factor is that the defendant had been drinking in the time of the offense. And that he voluntarily consumed the alcohol which probably contributed to his poor choices. There are also some medicating factors, first the defendant has no prior convictions and second that the

defendant held two part time jobs in attempted to at least earn some money to be financially responsible. The governments statue is section 7.01 of the criminal code. Paragraph one says I may suspend portion of the sentence and unless I determined that the imprisonment is necessary for the protection of the public. In determining whether imprisonment is necessary for the protection of the public, the statue requires me to examine three factors. First, I am required to consider the risks that the defendant will commit another offense if he is placed on probation. Second, I am required to consider whether there is treatment available in the jail that will help the defendant and third I am required to consider whether the inquisition of probation will depreciate the seriousness of the crime. Regarding the second factor, I have no reason to believe that the jail provides the services will help the defendant. Regarding the first factor, I do believe that if the defendant is on probation, he will commit additional sexual offenses. And regarding the third factor if I place the defendant on probation that will send a message that this is not a serious crime. So, I conclude that straight probation is not appropriate. And now is my responsibility to determine the amount of time that the defendant will spend in jail. I believe that the five-year sentence impose in the Billy case is a good starting point. But I am extremely concerned that the defendant took advantage of a mentally defective woman. The evidence shows that she had the mental capability of a four-year-old child. And I conclude that the defendant selected her because he believes he could control her and that she will not tell about the offense. That offends me very much. So, here is the order, Mr. Antolok, you are to serve ten years in the jail. I will suspend two of those years and also give you credit for the 33 days prior to today. After you have served eight years you will be on probation. During that time, you will obey the law, you are not to consume any alcohol beverages. While in jail you will obey the rules of the jail. You are not to leave the republic until the full ten years is up. If you wish, you may appeal this decision. You have thirty days from today's date to file this appeal. If you want

to appeal, the court will appoint an attorney to represent you. That's the order of the court, were
in recess.

CERTIFICATION

HIGH COURT)
REPUBLIC OF THE MARSHALL ISLANDS)
_____)

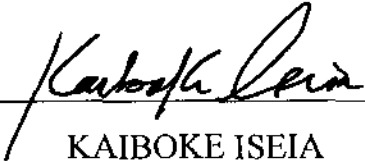
I, Kaiboke Iseia, Court Reporter/Assistant Clerk in the High Court, Republic of the Marshall Islands, hereby certify that:

The foregoing pages numbered 1 through 139 contain a full, true, and correct transcript of the proceedings, in the High Court, Republic of the Marshall Islands on September 18,19,20,21, and also on October 23, of 2018 before the Honorable Colin Winchester, Associate Justice, High Court, Republic of the Marshall Islands, in High Criminal Case No. 2017-020, Republic of the Marshall Islands v. Antolok Antolok, Defendant, recorded and transcribed by me to the best of my knowledge and ability from the High Court FTR machine in Courtroom B.

Dated this December 5th 2019, at Majuro, Republic of the Marshall Islands.

SIGNED & CERTIFIED

BY:



KAIBOKE ISEIA