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IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS, Plaintiff, v. ANTOLOK ANTOLOK, Defendant.	CRIMINAL CASE NO. 2017-020 ORDER GRANTING REPUBLIC'S MOTION TO USE HEARSAY AT PRELIMINARY HEARING
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Cutty Wase, counsel for the Republic
Russell Kun, counsel for defendant

On January 31, 2018, the Republic filed a motion seeking either to exclude the public and the defendant from the courtroom during the victim's preliminary hearing testimony, or in the alternative, allowing the victim's preliminary hearing testimony to be introduced through other witnesses. Counsel and the Court discussed the motion in chambers on February 5. At the beginning of the preliminary hearing on February 6, counsel addressed the motion on the record. Mr. Wase argued in favor of the motion. Mr. Kun argued in opposition to the motion.

ISSUE

Does the constitutional right to confront witnesses apply to preliminary hearings?

DISCUSSION

Article II, Section 4(4) of the Constitution of the Republic of the Marshall Island states in pertinent part, “In all criminal prosecutions, the accused shall ... be confronted with the witnesses against him” This constitutional protection is generally referred to as the “confrontation clause.”

Mr. Kun argues that the confrontation clause extends to preliminary hearings. Mr. Wase argues that the confrontation clause is limited to trials.

The RMI Rules of Evidence, which generally exclude hearsay testimony, do not apply to preliminary hearings in criminal cases. See Rule 1101(c)(2). Rule 1102 does not, however, resolve the *constitutional* concerns.

Appellate courts in the United States¹ have repeatedly held that the admission of hearsay testimony in preliminary hearings does not violation the defendant’s constitutional right to confront witnesses, because the confrontation clause is a *trial* right that does not extend to preliminary hearings. *Peterson v. California*, 604 F.3d 1166, 1169 (9th Cir. 2010); *Whitman v. Superior Court*, 820 P.2d 262, 269-71 (Cal. 1991); *United States v. Andrus*, 775 F.2d 825, 836 (7th Cir.1985); *United States v. Harris*, 458 F.2d 670, 677–78 (5th Cir.1972).

I conclude, as did the appellate courts in the above-cited cases, that the admission of the victim’s testimony through the testimony of other witnesses *at the preliminary hearing* does not violate the defendant’s constitutional right to confront witnesses.

¹

Neither counsel nor I have found any RMI Supreme Court opinions that address the issue raised here. Pursuant to Article I, Section 3(1) of the Constitution of the Republic of the Marshall Islands, I therefore turn to appellate decisions from U.S. courts to aid my interpretation and application of Article II, Section 4(4).

BASED ON THE FOREGOING, IT IS HEREBY ORDERED AS FOLLOWS:

1. At the preliminary hearing, the Republic may introduce the victim's out-of-court statements through the testimony of witnesses to whom those statements were made.

DATED this 6th day of February, 2018.

BY THE COURT:



COLIN R. WINCHESTER
Associate Justice