

Russell Kun, Esq.
Office of the Public Defender
Majuro, RMI 96960
Tel. 625-3217 / 4992
Fax. 625-4991
Email : rkun2405@gmail.com

FILED

APR 06 2018

ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

ALEE PHILLIP)	S/C Criminal Case No. 2018- <u>003</u>
Plaintiff / Appellant Juvenile)	Juvenile Criminal Case No. 2017- <u>001</u>
)	
)	
)	<u>OPENING BRIEF</u>
-v-)	PURSUANT TO RULE 28(b)
)	OF THE MARSHALL ISLANDS
)	RULES OF THE SUPREME COURT
)	
REPUBLIC OF THE MARSHALL)	
ISLANDS)	
Defendant / Appellee)	
_____)	

COMES NOW, the Appellant Juvenile, a Delinquent Child, by and through his Counsel from the Office of the Public Defender, is filing an Opening Brief, pursuant to Rule 28(b) of the Supreme Court Rules of Proceedings.

1. That, this Juvenile criminal case was appealed from the Adjudication and Disposition Orders so imposed respectively by the High Court of the Republic of the Marshall Islands (“Trial Court”) on January 22, 2018, and February 2, 2018, and of which was timely appealed on March 2, 2018.
Copies of these Orders are attached with the Notice of Appeal.
2. That, on July 27, 2017, the Appellant Juvenile, who was 15 years of age at the time, was charged by the Republic, by and through the Office of the Attorney General (the Prosecution), with six alleged offences of Count-1: First Degree Murder, in violation of 31 MIRC 210.2(1)(a); and Count-2: First Degree Sexual Assault, in violation of 31 MIRC 213.3(1)(a); and Count-3: Manslaughter, in violation of 31 MIRC 210.3(1)(a); and Count-4: Burglary, in violation of 31 MIRC 221.1(1); and Count-5: Aggravated Assault, in violation of 31 MIRC 221.3; and Count-6: Robbery, in violation of 31 MIRC 222.1(1)(a).
3. That, although the Trial Court granted the Appellant Juvenile all the rights and due processes that he would receive as if he was an Adult charged with a criminal offence, especially the liberty to be presumed innocent until proven guilty beyond a reasonable doubt, the Appellant Juvenile was treated as a Juvenile case and closed to the Public.
4. That, a Bench Trial was scheduled and commenced from November 20-22, 2017, and later on January 15-16, 2018, and Closing Arguments were held on January 19, 2018.

5. That, at its Adjudication on January 22, 2018, the Trial Court found, beyond a reasonable doubt, that the Appellant Juvenile committed the offences of Murder; First Degree Sexual Assault; and Burglary, and also found the Appellant Juvenile is a Delinquent Child.
6. The Appellant Juvenile appeals that the Trial Court erred in entering its guilty verdict based on his assumed confession obtained from Police Detectives.
7. The Appellant Juvenile appeals that his assumed confession was challenged to be suppressed for reasons that the interrogation was conducted without any legal representation to assist him and was coerced by the Police Detectives to admit he killed Mr. Marquez and his baby girl, Ashley. A copy of the **Motion to Suppress** (Defendant's **Exhibit-1**) with **Supporting Memorandum** and **Affidavit** are attached.
8. But the Appellant Juvenile's motion to suppress his assumed confession was denied by the Trial Court. A copy of the **Order** (Defendant's **Exhibit-3**) is attached.
9. And one of the grounds of this appeal by the Appellant Juvenile against the guilty verdict handed down by the Trial Court was because the verdict was unreasonable and cannot be supported having regard to the whole of the evidence actually offered and admitted before the Trial Court during the Trial.
10. That, during the Trial, the Prosecution offered a slew of **photographs** as exhibits into evidence taken by Police Detectives at the crime scene, including photographs of **two knives** alleged to be the murder weapons (As Defendant's **Exhibits-3** and **4**), a **gray duct tape** used to tape up the baby's mouth and

hands (As Defendant's Exhibit-5), some alleged stolen goods from Mr. Marquez's store (As Defendant's Exhibit-6), and a Gynecologist's report alleging there was sexual penetration involved (As Defendant's Exhibit-7). However, not one of these exhibits were established or offered into evidence during the Trial to show that the Appellant Juvenile was the perpetrator of these offences.

11. And the most vital was that, the Prosecution failed to establish a proper Chain of Custody at Trial through any of their witnesses who had custody of their most important exhibits (including the two knives alleged to be the murder weapons), from the time of their discovery or connection with the case to the time to be presented as evidence at Trial. Because here was no real evidence offered into evidence by the Prosecution throughout the Trial.
Attaching the two Chain of Custody forms (As Defendant's Exhibit-8 and 9).
12. The Appellant Juvenile appeals that during the Trial, the Prosecution had failed to prove that the Appellant Juvenile did commit Murder. Because there were no real evidence actually offered and admitted into evidence from any of the Prosecution witnesses, including the FBI witnesses. There were no real evidence actually offered and admitted by the Prosecution to establish that the Appellant Juvenile was the perpetrator to Murder, and failed to show the Appellant Juvenile's fingerprints to be detected on the two knives (Exhibits-3 and 4) or his fingerprints to be detected on the gray duct tape (Exhibit-5), to prove beyond a reasonable doubt the element of Murder that the Appellant Juvenile "did intentionally or knowingly under circumstances manifesting

extreme indifference to the value of human and caused the death of another human life..” and mostly, the Prosecution failed to establish a proper **Chain of Custody (Exhibit-8 and 9)** established or offered into evidence during the Trial.

The Appellant Juvenile appeals that, the Trial Court was erred to find that the Appellant Juvenile committed the offense of Murder, simply because the evidence presented was not clear to show reasonable doubt, and that the Trial Court based its guilty verdict on the Appellant Juvenile’s assumed confession.

13. The Appellant Juvenile appeals that during the Trial, the Prosecution had failed to prove that the Appellant Juvenile did commit **First Degree Sexual Assault**, but only a report from a Gynecologist at the Majuro Hospital alleging that there was sexual penetration (**Exhibit-7**). But there were no real evidence actually admitted from any of the Prosecution witnesses, including the FBI witnesses, in testifying during the Trial that the Appellant Juvenile was the perpetrator. Simply because there were no clear **forensic** evidence of any deoxyribonucleic acid (**DNA**) or **semen** results offered and admitted into evidence by the Prosecution during the Trial to detect and establish that the Appellant Juvenile was the perpetrator and to prove beyond a reasonable doubt that the Appellant Juvenile “did knowingly subject another person to an act of sexual peneration..” and mostly, the Prosecution failed to establish any proper **Chain of Custody (Exhibit-8 and 9)** into evidence during the Trial. The Appellant Juvenile appeals that, the Trial Court was erred to find that the Appellant Juvenile committed the offense of First Degree Sexual Assault,

simply because there was no Chain of Custody established and no forensic or DNA results was ever offered into evidence to show reasonable doubt.

14. The Appellant Juvenile appeals that during the Trial, the Prosecution had failed to prove that the Appellant Juvenile did commit **Burglary**. Because there was not one eye witness from any of the Prosecution witnesses, including the FBI witnesses, to point out and identify that the Appellant Juvenile was the perpetrator and to prove beyond a reasonable doubt that the Appellant Juvenile "did enter into a building with the intent to commit a crime.." by stealing from Mr. Marquez's store (**Exhibit-6**).

The Appellant Juvenile appeals that, the Trial Court was erred to find that the Appellant Juvenile committed the offense of Burglary, simply because there was no eye witness presented to show reasonable doubt, but the Trial Court based its guilty verdict on the Appellant Juvenile's assumed confession.

15. That, at its Disposition hearing on February 2, 2018, after the Trial Court duly reviewed, considered and weighed the circumstances before it, so Ordered that;- on Count-1: Murder, a first degree felony, the Appellant Juvenile is sentenced to 25 years imprisonment with 0 years suspended and no fine imposed; and on Count-2: Sexual Assault in the First Degree, a first degree felony, the Appellant Juvenile is sentenced to 25 years imprisonment with 0 years suspended and no fine imposed; and on Count-4: Burglary, a second degree felony, the Appellant Juvenile is sentenced to 10 years imprisonment with 0 years suspended and no fine imposed.

The imprisonment terms for Counts-1 and 2 are to run consecutively to each other, while Count-4 will run concurrently with Counts-1 and 2.

16. That, the Appellant Juvenile is appealing the imprisonment sentence imposed by the Trial Court of 25 years imprisonment sentence to serve with 0 years suspended for both, Murder and First Degree Sexual Assault, to run consecutively to each other and thus amounting to 50 years imprisonment sentence to serve with 0 years suspended did not serve the best interest of the Appellant Juvenile, especially after finding that the Appellant Juvenile is a Delinquent Child.
17. That, the Appellant Juvenile is now 16 years of age and a citizen of the RMI, and a first-time offender without any prior criminal records, especially felonies, filed in any RMI Courts.
18. And that, this imprisonment sentence is not only equivalent to a life sentence but also equivalent to a sentence punishable by death, and in violation of Section 6(1) of Article II of the RMI Constitution, especially when the life span for most men in the Marshall Islands is between 40-50 years of age.
19. That, this imprisonment sentence imposed by the Trial Court was not only harsh and excessive, but it was a cruel and unusual punishment, and in violation of Section 6(3) of Article II of the RMI Constitution.
20. That, with this imprisonment sentence to serve 50 years with 0 years suspended, the Appellant Juvenile will be 66 years old when released, and has literally closed the door on any second chance in life or rehabilitation is cruel and unusual.

21. That, this imprisonment sentence to serve 50 years with 0 years suspended, is unprecedented in all Murder convictions before the RMI High Court, because a Trial Court has never handed down a term of life imprisonment sentence, even for Adults. And the highest term of imprisonment imposed by a Trial Court for Murder on an Adult was 25 years imprisonment and 20 years to serve (with credit for time served in remand) in *RMI-v-Kabot* (Criminal Case No. 2016-004).

But in this appeal, the Appellant Juvenile is appealing over this unprecedented imprisonment sentence imposed against him by the Trial Court.

22. That since 2005, the US Supreme Court rulings had banned the use of capital punishment for Juveniles, mandatory life without parole sentences or limited life without parole sentences to Homicide Offenders, and applied the decision retroactively. And following the 2012 U.S. Supreme Court ruling in *Miller-v-Alabama*, 132 S. Ct. 2455, it emphasized that Judges are required to consider the unique circumstances of each Juvenile Defendant in determining an individual sentence, and banning mandatory sentences of life without parole for all Juveniles. And in *Montgomery-v-Louisiana*, a 2016 decision, ensured that its decision applied retroactively and ruled that for Juveniles, a mandatory life sentence without the possibility of parole was unconstitutional.

23. But during the Disposition and Sentencing, it seemed that the Trial Court may have overlooked that the Appellant Juvenile had been treated as a Juvenile throughout the proceedings and declared a Delinquent Child, because it failed considering the unique circumstances of the Appellant Juvenile, even though

it was recommended that, the law required the Trial Court to adopt the provisions of the Juvenile Procedure Act (26 MIRC, Ch.3) and the Rules of proceedings for Juvenile Delinquency Proceedings. But the Trial Court ruled that both the Act and Rules were outdated, and went ahead and sentenced the Appellant Juvenile as an Adult.

24. And the Appellant Juvenile appeals that his imprisonment sentence so imposed by the Trial Court to serve 50 years with 0 years suspended was unconstitutional and in violation of Section 6 of Article II of the RMI Constitution.
25. And by this appeal, the Appellant Juvenile seek an Order from this Appellate Court to quash the Orders so entered by the Trial Court and direct a verdict of **Acquittal.**

That, this criminal case is appealed from the Adjudication and Disposition Orders imposed respectively by the Trial Court on January 22, 2018, and February 2, 2018.

Proof of service of this Notice of Appeal on all adverse Parties as prescribed by the SCRP is attached.

So filed this April 6, 2018.



Russell Kun, Esq.

Counsel for Appellant Juvenile

CERTIFICATE OF SERVICE

OPENING BRIEF ON APPEAL

S/C Criminal Case No. 2018-003

I hereby certify that, upon filing at the High Court Registry, I have served via electronic mail, copies of the Appellant Juvenile's **Opening Brief on Appeal**, to the Republic as the Appellee, through the Prosecutor, Falai Taafaki, Esq., at the Office of the Attorney General.

Served on this April 6, 2018.

Komol Tata,


.....

Office of the Public Defender

Russell Kun, Esq.
 Office of the Public Defender
 PO Box 88, Majuro Atoll, MH 96960
 Tel: 625-3217 Fax: 625-4991
 Email: rkun2405@gmail.com

FILED
 SEP 20 2017
[Signature]
 ASST. CLERK OF COURTS
 REPUBLIC OF THE MARSHALL ISLANDS

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

Juvenile Case No. 2017-001

Republic of the Marshall Islands)
)
)
 -v-)
)
)
)
)
)
)
)
 ALEE PHILLIP)
 (Alleged Juvenile Offender))
 _____)

**JUVENILE OFFENDER’S MOTION
 TO SUPPRESS CONFESSION; and
 SUPPORTING MEMORANDUM; and
 SUPPORTING AFFIDAVIT; and
 CERTIFICATE OF SERVICE**

Comes Now the Alleged Juvenile Offender, ALEE PHILLIP, by and through his Defense Counsel from the Office of the Public Defender, and moves this Honorable Court prior to adjudication to **Suppress** the Alleged Juvenile Offender’s **Confession** and **Statement** obtained by Law Enforcement Officers on Monday, July 3, 2017, around 11AM, at the Laura Police Sub-Station, was made in violation of the Alleged Juvenile Offender’s Constitutional Rights.

This Motion is based upon the Brief Facts, Case Laws and Points of Argument, as set out in the attached Supporting Memorandum and Affidavit.



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

Juvenile Case No. 2017-001

Republic of the Marshall Islands)
)
)
-v-)
)
ALEE PHILLIP)
(Alleged Juvenile Offender))
_____)

MEMORANDUM IN SUPPORT

Introduction

1. That, this Memorandum is in support to the Alleged Juvenile Offender’s Motion requesting this Honorable Court prior to adjudication to **Suppress** from **Evidence** in the Trial in the instant case of any **Confession** and **Statement** made by the Alleged Juvenile Offender to Law Enforcement Officers namely, Det. Royal Ceaser and Sgt. Marilyn Peter from the National Police (Laura Police Sub-Station), and Det. Joy Jack (MALGovt. Police), in violation of the Constitution of the Republic of the Marshall Islands.

It is demanded under **Article II, Section 4(8)** of the Constitution that, *“No person shall be subjected to coercive interrogation nor may any involuntary confession or involuntary guilty plea, or any confession extracted from someone who has not been informed of his rights to silence and legal assistance and of the fact that what he says may be used against him, be used to support a criminal information.”*

2. This Memorandum sets forth a brief statement of the facts relied upon and applicable case laws and points of argument, and states as follows:

Brief Facts

3. That, on Monday, July 3, 2017, at around 9AM, the Alleged Juvenile Offender, who is only fifteen (15) years of age, was **handcuffed** and transported in a (MalGovt.) Police vehicle with his mother, **Kathleen Binad**, to the Laura National Police Sub-Station, as attested in Kathleen's attached **Supporting Affidavit** (paragraph-7).

4. That, the interrogation was conducted from 11AM only in the presence of the Alleged Juvenile Offender's mother, and without the presence of any legal representation to give advice or a lawyer from the Office of the Public Defender to give assistance to the Alleged Juvenile Offender. An Audio Recording of this interrogation was **not** set up by Detective Ceaser and his fellow Law Enforcement Officers.

5. That, after the interrogation at the Laura National Police Sub-Station, the Alleged Juvenile Offender was taken back to the National Police HQ in Uliga and had been kept under Police custody from July 3 through to July 27 (a total of over 24 days) without calling any legal representation to advice or a lawyer from the Office of the Public Defender to assist the Alleged Juvenile Offender in detail of the nature and cause of the accusation against him.

6. Then, on Thursday, July 27, 2017, the Government filed its Criminal Information against the Alleged Juvenile Offender for Murder; First Degree Sexual Assault; Manslaughter; and Burglary; and also Aggravated Assault and Robbery, of which were dismissed for the purpose of a Preliminary Hearing.

Points of Argument

7. The Alleged Juvenile Offender in this matter, who is only fifteen (15) years of age, has the same Constitutional Rights accorded to an Adult under Article II, Section 4 for due process.
8. It is argued that, the Alleged Juvenile Offender's Constitutional Rights and his Miranda Warnings were seriously coerced and trampled on by Detective Ceaser and his fellow Law Enforcement Officers in obtaining the Alleged Juvenile Offender's assumed Confession under extreme duress during the Interrogation.
9. This interrogation was secretly conducted only in the presence of the Alleged Juvenile Offender's mother, Kathleen Binad, who was already intimidated being in the presence of Detectives and Police Officers, and of who had no knowledge about the legal system and was incompetent to assist and give advice to her Son in making decisions to waive his Miranda rights because she didn't understand the procedures of Miranda rights or warnings and just agreed to anything what Detective Ceaser told her to say or do. Please see Kathleen's Supporting Affidavit (paragraph-11).
10. This interrogation was conducted secretly by Detectives because they never endeavored to call any legal representation present to give advice and or a lawyer from the Office of the Public Defender to provide assistance to the Alleged Juvenile Offender prior and during being questioned.
11. It is unfortunate that an Audio Recording of this Interrogation was not set up by the Detectives to be listened to by the Parties and see if they were careful in reading the Miranda rights and warnings to the Alleged Juvenile Offender and his mother, as they implied at the Preliminary hearing or if it showed that they lied under oath and deliberately minimized the importance of the Alleged Juvenile Offender's Miranda rights and warnings during the interrogation.

12. It is also argued that, prior to reading the Miranda rights and warnings to the Alleged Juvenile Offender, the Detectives should have taken more care and given more concern on the Alleged Juvenile Offender's **age, upbringing, intelligence and education** (who never completed 4th Grade) of whether he really understood his Miranda rights and consequences of the warnings if waived.

13. The U.S. Supreme Court demonstrated this concern in in *Fare v. Michael C.*, 442 U.S. 707 (1979), and held that, "*the appropriate test to determine the validity of the juvenile's waiver of their right is to consider the juvenile's **age, experience, intelligence and their capacity to understand Miranda warnings and the consequences of waiving those rights.***" (Emphasis in bold).

14. It is furthered argued that, because of this neglect by the Detectives to assure that the admission was voluntary, in the sense, not only that it was not coerced or suggested, but also that it's not the product of ignorance of rights, the Alleged Juvenile Offender endured extreme duress during the interrogation and was confused and didn't understand the incriminating confession he made against himself, just because he was tired and hungry and worn out with the Detectives forcing and pinning and suggesting to him to confess that he killed Robert and his baby, even when he kept on saying "No it wasn't me".

Please see Kathleen's **Supporting Affidavit** (paragraph-13).

15. The Court reiterated this concern in other pre-Miranda cases. In *Haley v. Ohio*, 332 U.S. 596 (1948), the Court suppressed the confession of a fifteen year old, stating, "*he cannot be judged by the more exacting standards of maturity. Because **anything that leaves a man cold and unimpressed can overawe and overwhelm a lad in his early teens.***" *Id.* At 599. And in *Gallegos v. Colorado*, 370 U.S. 49 (1962), the Court suppressed a fourteen year old child's confession noting that **the Juvenile would not**

have a way to comprehend the consequences of his confession without being advised of his rights and he could not be fairly compared to an Adult. (*Emphasis in bold*).

16. Studies have also shown the degree to which Juveniles comprehend the significance of Miranda warnings and the consequences of waiving them. The most extensive research in this area is by Thomas Grisso, *Juveniles' Capacities to Waive Miranda Rights: An Empirical Analysis*, 68 Cal. L. Rev. 1134 (1980), who concluded that, *most Juveniles do not sufficiently comprehend Miranda to knowingly and intelligently waive their rights*. And also found that, Juveniles under age 15 had very poor comprehension of the meaning of Miranda rights and the vast majority of them misunderstood at least one of the warnings.

17. Generally speaking, in this case at hand, it was more likely to find that the Alleged Juvenile Offender (who never completed 4th Grade) is an illiterate and seriously could not and did not knowingly, intelligently and voluntarily waive his Miranda rights. And due to his intellectual disability coupled with his minor age, it is clear that the Alleged Juvenile Offender lacked the sufficient knowledge and ability to understand his Constitutional rights and the consequences of waiving them, even with his mother present, of who also had no knowledge of the legal system. Please see Kathleen's Supporting Affidavit (paragraph-17).

18. Further to that, the Alleged Juvenile Offender had been kept under Police Custody from after his interrogation on July 3 through to July 27 (a total of over 24 days) without calling any legal representation or the Office of the Public Defender to assist and advice the Alleged Juvenile Offender in detail of the nature and cause of the accusation against him. This is another violation of the Alleged Juvenile Offender's Constitutional rights.

Although the Prosecution labeled the Alleged Juvenile Offender's custody as "under Police Protection and Safety" from the Deceased's family and the public.

Order Sought

19. Wherefore, for these foregoing reasons stated in this Motion, the Alleged Juvenile Offender requests this Honorable Court for the **Suppression** of his **Confession** made to Detective Ceaser and his fellow Law Enforcement Officers and his **Statement** written by Detective Ceaser.

This request is made on the grounds that, the **Interrogation** commanded by Detective Ceaser and his fellow Law Enforcement Officers at the Laura National Police Sub-Station was coercive and conducted in violation of the Alleged Juvenile Offender's Constitutional rights pursuant to **Article II, Section 4(8)**, and that the waiving of his **Miranda** rights and warnings were **not** made knowingly, intelligently and voluntarily by the Alleged Juvenile Offender.

And also, this coercive **Interrogation** was conducted without the presence of any Legal Counsel to assist and give advice to the Alleged Juvenile Offender of his rights to remain silent because whatever he says may be used against him in a Court of Law.

Respectfully filed and submitted on this September 20, 2017.


.....

Russell Kun, Esq.

Counsel for the Alleged Juvenile Offender

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

Juvenile Case No. 2017-001

Republic of the Marshall Islands)
)
)
-v-)
)
ALEE PHILLIP)
(Alleged Juvenile Offender))
_____)

SUPPORTING AFFIDAVIT

I, **KATHLEEN BINAD**, after having been sworn, depose and say as follows:

1. That, I am the named person in this affidavit and mother of the Alleged Juvenile Offender, **ALEE PHILLIP**.

2. That, on Sunday, July 2, 2017, at around 6PM, the Police (MalGov) stopped by at my workplace, Lin Store, in Delap, and the Police Officers in the car asked if I was the mother of Alee, and I said yes. So they asked if I could go with them to look my Son. And I later found out their names as, Detective Joy Jack and Detective Johnny Johnson from MalGov. Police.

3. We found my Son around the SDA school in Delap, and they drove us to the National Police Station in Uliga. And on the way, the Police asked my Son about a break-in and burglary at Robert's Store in Laura. My Son said it was him who broke into at Robert's Store and stole the stuff but it wasn't him who killed the people there. Because my Son was in Laura the time he heard about the murder incident.

4. I was confused and asked my Son what? What are they talking about?

5. Then Det. Jack asked me why you didn't know and you didn't hear about what happened at Laura? Then Det. Jack told me to stop talking until we get to the National Police Station, but I kept on asking my Son of why he broke into the store and steal those things? My Son never answered as Det. Jack told me again to stop talking.

6. We arrived at the National Police Station in Uliga and I was left standing at the entrance door of the Police Station while the MalGov. Detectives took my Son into one of the rooms. Nobody told me anything, and the Detectives came out and took me back to my workplace in Delap, and they told me that they will pick me up the next day to accompany my Son to go to Laura.

7. Then, on Monday, July 3, 2017, at around 9AM, my Son and I were transported by the Police (MalGov) to the National Police Sub-Station in Laura. And as I got into the Police vehicle, I was startled and felt sad to see my Son **handcuffed**, but I only thought it was normal for any person to be handcuffed by the Police after they confessed to stealing.

8. I asked my Son if he was hungry and he said yes, and asked the Police to stop at Bingo Store in Rairok to buy food for my Son, but the Detectives didn't want to unlock the handcuffs so my Son can eat, and told me that my Son can eat when we get to Laura. But by the time we arrived in Laura my Son didn't want to eat because he was upset, and was still in handcuffs.

9. At the National Police Sub-Station in Laura, the Detectives escorted me and my Son to a room to meet with Detective Royal Ceaser (National Police) and a female Police Officer, and the handcuffs on my Son were taken off when seated for the Interrogation.

10. In the Interrogation room, Det. Ceaser advised me and my Son that he was going to read a document called **Miranda Rights** to us, and showed us the document.

11. I was already intimidated being in the presence of Detectives and Police Officers because it's my first time and I didn't understand any procedures about Police Interrogation and didn't know the legal system or anything about Miranda rights to assist my Son, and just agreed to anything what Det. Ceaser told me to say or do.

12. During the Interrogation, my Son admitted to stealing the goods from Robert's store, and that was it because he got what he was after, cigarettes and vodka.

13. Then Det. Ceaser asked my Son if he saw anybody around Robert's house before he broke into the store, and my Son said yes he saw 3 guys (men) passed outside Robert's store. But then Det. Ceaser and the others started forcing and pinning on my Son to say and admit that he went back the second time to murder Robert and his baby, but my Son kept on saying "No it wasn't me". This forcing tactics and finger pointing at my Son went on for a while until my Son was tired and said "Yes I did it".

14. I was very confused and very emotional of how Det. Ceaser and the others kept on pinning and forcing my Son to admit and say that he murdered Robert and his baby, and I just burst out and cried. I just couldn't believe that my Son would be able to do such hideous acts, maybe stealing, but not killing people. I know my Son.

15. After Det. Ceaser and the others forced and made my Son confess to the murder of Robert and his baby, Det. Ceaser told my Son to write his name and for me to sign on the line without explaining the consequences if I signed, and I just signed without asking questions.

16. My Son's Counsel asked me of why I agreed for my Son to waive his Miranda rights and warnings, and I said it's because I didn't understand and was never advised by Det. Ceaser of any warnings and the consequences if waived, and I didn't know what I was supposed to say or do to assist my Son during the Interrogation.

17. My Son's Counsel then walked me through the Miranda rights and warnings paragraph by paragraph as read and explained to me by Det. Ceaser, and I responded as follows:

Para.1 - It's true that Det. Ceaser read the statement but I didn't know we were supposed to say something.

Para.2 - I didn't understand what Det. Ceaser read.

Para.3 - I didn't understand what Det. Ceaser read.

Para.4 - From (A) through to (G), Det. Ceaser read the statement to us but he was in a rush that he didn't even stop to explain to us about any warnings or consequences of waiving and never asked me if I had any questions.

For (H) and (I), Det. Ceaser never read the statements to my Son or even explain what they were, but only wrote "Yes" and told my Son to write his name.

As for the **Waiver**, Det. Ceaser never read the statements to my Son or even explain what they were or the consequences of signing, but only wrote "Yes" and told my Son to write his name.

18. That, the above are true and correct and if necessary, I am willing to testify in Court and in support of my Son, the Alleged Juvenile Offender in this case.

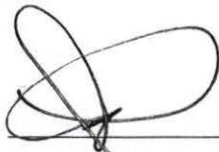
Respectfully filed and submitted on this September 19, 2017.



Ms. Kathleen Binad

Affiant

Sworn and subscribed before me this September 19th, 2017.

A handwritten signature consisting of several overlapping loops and a horizontal stroke at the end.

Notary Public

IN THE HIGH COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

FILED

DEC 18 2017

Stacy
ASST. CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS

REPUBLIC OF THE MARSHALL ISLANDS, Plaintiff, v. ALEE PHILLIP, Alleged Juvenile Offender.	JUVENILE CASE NO. 2017-001 ORDER DENYING MOTION TO SUPPRESS
--	---

Falai Taafaki, counsel for the Republic
Russell Kun, counsel for alleged juvenile offender

On November 6, 2017, this matter came before the Court for hearing on the alleged juvenile offender's (AJO's) motion to suppress statements he made to police officers at the MIPD substation in Laura on July 3, 2017. The Republic was represented by Assistant Attorney General Falai Taafaki. AJO was present and was represented by counsel Russell Kun. AJO's mother was also present.

On November 8, I issued a preliminary order denying the motion. In that order, I stated that I would issue a more detailed order containing findings of fact and legal analysis. This is that more detailed order.



SOURCES OF EVIDENCE

Neither party called witnesses at the hearing. Rather, they relied on the testimony of police officers provided at AJO's preliminary hearing, and on written statements, declarations and affidavits. I have relied on those same sources in finding the facts and reaching my decision.

FINDINGS OF FACT

1. During the early morning hours of June 25, 2017, someone entered the store and home of Robert Marquez ("Robert") in Laura. Robert's throat was slit while he slept. He bled out and died. Robert's minor daughter Ashley was killed in a similar manner. Her body was then placed inside a freezer in an adjoining room. Before or after the killings, cartons of cigarettes, bottles of vodka, containers of chewing tobacco, and cash were taken from Robert's store.

2. In late June and early July, AJO was 15 years and 8 months old. AJO had completed third grade, but had dropped out of school prior to completion of fourth grade.

3. In late June and early July, AJO was staying in a house near Robert's store and home. AJO had also worked for Robert.

4. On July 2, police officers were notified that AJO had been seen burning items near the house where he had been permitted to stay. A partially melted plastic vodka bottle and several partially burned chewing tobacco containers were found in the remains of the fire.

5. Police officers were also notified that cartons of cigarettes and containers of chewing tobacco had been found near or inside the house where AJO had been permitted to stay.

6. Detectives Joy Jack and Johnny Johnson traveled to Delap in search of AJO. They enlisted the aid of AJO's mother, who located AJO outside a store near the SDA school.

7. At Johnson's request, AJO got into the police car. AJO's mother was already in the car.

8. As they traveled to MIPD headquarters in Uliga, AJO's mother began to ask AJO questions. AJO did not respond. Jack then asked AJO where he got the cigarettes, vodka and chewing tobacco. AJO responded that he took the items from Robert's store.¹ AJO's mother then began to ask more questions to AJO. Jack instructed her to not ask additional questions, but she continued.

9. When the group arrived at MIPD headquarters in Uliga, AJO was handed over to Lieutenant Carney Terry. No interrogation occurred, and AJO spent the night at MIPD headquarters.

10. The following morning, Jack and Johnson transported AJO and his mother to the MIPD substation in Laura. AJO was handcuffed during the trip. When the group arrived in Laura, AJO was offered food; he declined. The handcuffs were removed after AJO was inside the MIPD substation in Laura.

11. The following persons were present for the interview at the MIPD substation in Laura: AJO, AJO's mother, Detective Royal Ceaser, Sergeant Marilyn Peter, Jack and Johnson.

¹ Jack's question was not preceded by a Miranda warning. Jack states that before he asked the question, he asked AJO's mother if he could ask the question, and that AJO's mother consented. AJO has not moved for suppression of his answer, and consequently, I neither determine that the answer was obtained in violation of AJO's constitutional rights nor that it must be suppressed. However, exercising an abundance of caution, all trial references to the answer are stricken and the answer shall be disregarded by the trier of fact at trial.

12. In the Marshallese language, Ceaser read and reviewed the Miranda rights form to AJO and his mother. Ceaser read and reviewed the form line by line, and the advisement of rights took approximately 30 to 45 minutes.

13. When asked if he wanted a lawyer, AJO answered, "No." Ceaser wrote AJO's response on the form and had AJO sign his name next to the answer.

14. When asked if he was willing to discuss the offenses under investigation, AJO answered, "Yes." Ceaser wrote AJO's response on the form and had AJO sign his name next to the answer.

15. When asked if he understood each and every one of his rights as explained, AJO answered, "Yes." Ceaser wrote AJO's response on the form and had AJO sign his name next to the answer.

16. When asked if, keeping those rights in mind, he wished to talk with officers, AJO answered, "Yes." Ceaser wrote AJO's response on the form and had AJO sign his name next to the answer.

17. AJO and his mother both signed the Miranda rights form at the end of the form.

18. Ceaser then conducted the interview in the Marshallese language. During the interview, AJO admitted that he gained access to Robert's store through a hole near the roof, that he took cartons of cigarettes, containers of chewing tobacco and bottles of vodka, that he left the store by exiting through a door, that he took the stolen items to the house where he was staying, and that he returned to and entered the store through the same door that he had previously exited.

19. Ceaser asked AJO three times if he killed Robert. AJO did not respond to the first two inquiries. In response to the third inquiry, AJO admitted to killing Robert.

20. AJO's mother then experienced an extreme emotional episode. The interview was suspended for 45 to 60 minutes so that she could regain her composure.

21. When the interview resumed, AJO provided details as to how the killings of Robert and Ashley occurred.

22. Neither the advisement of rights nor the interview was recorded.²

23. The advisement of rights began at approximately 11:00 a.m. The interview ended at approximately 4:00 p.m.

24. Although AJO has not previously been adjudged a delinquent, he has had a few minor interactions with police officers involving thefts and the use of alcohol.

ANALYSIS

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the U.S. Supreme Court held that when a person is subjected to custodial interrogation, certain procedural safeguards must be employed to protect the person's constitutional privilege against self-incrimination.³ Those safeguards include: (1) a warning that the person has a right to remain silent; (2) a warning that anything the person says can be used against him in court; and (3) a warning that the person has the right to

² AJO's counsel calls the failure to record the interview "unfortunate." It is far worse than that. In any high stakes investigation, especially one involving a relatively uneducated juvenile, the failure to record the advisement of rights and interview borders on incompetence. While some will perhaps criticize the officers, the agencies that employ them are far more culpable for apparently having failed to adopt policies requiring recordings and for apparently having failed to provide the necessary training and equipment.

³ In the RMI, the privilege against self-incrimination is found in Article II, Section 4(7), Constitution of the Republic of the Marshall Islands.

the presence of an attorney, and that if he cannot afford an attorney, one will be appointed for him prior to any questioning if he so desires. Nowadays, these warnings are commonly referred to as “Miranda warnings” or “Miranda rights.”

In the RMI, Miranda rights are constitutionally canonized. Article II, Section 4(8) states, “No person shall be subjected to coercive interrogation, nor may any involuntary confession ... or any confession extracted from someone who has not been informed of his rights to silence and legal assistance and of the fact that what he says may be used against him, be used to support a criminal conviction.”

There is no doubt that AJO was subjected to a custodial interrogation at the MIPD substation in Laura on July 3, 2017. There is no doubt that Ceaser reviewed the Miranda rights form with AJO and his mother prior to that interrogation. And there is no doubt that AJO responded that he did not want a lawyer, responded that he was willing to discuss the offenses being investigated, responded that he understood his Miranda rights, and responded that he wished to speak with the officers.

There are only two questions remaining. First, did AJO knowingly and intelligently waive his Miranda rights? And second, was the interrogation coercive? On both issues, the Republic bears the burden of proof, but only by a preponderance of the evidence. *Colorado v. Connelly*, 479 U.S. 157, 168 (1986).⁴

⁴ I have found no RMI Supreme Court opinions that address the privilege against self-incrimination. 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, Sections 4(7) and 4(8).

The “preponderance of the evidence” standard is lower than evidentiary standards “clear and convincing evidence” and “proof beyond a reasonable doubt.” As I am legally obligated to do, I base my findings of fact and decision on the preponderance of the evidence. If I were required to base my findings of fact and decision on either of the higher noted standards, my findings of fact and decision might well be different.

**DID AJO KNOWINGLY AND INTELLIGENTLY
WAIVE HIS MIRANDA PROTECTIONS?**

After a person has been informed of his Miranda rights, he may “knowingly and intelligently waive [those] rights and agree to answer questions or make a statement.” *Miranda* at 479.

In order to determine whether a juvenile has knowingly and intelligently waived his Miranda rights, courts look to the “totality of the circumstances” surrounding the interrogation. “The totality approach permits—indeed, it mandates—inquiry into all the circumstances surrounding the interrogation. This includes evaluation of the juvenile's age, experience, education, background, and intelligence, and into whether he has the capacity to understand the warnings given him, the nature of his Fifth Amendment rights, and the consequences of waiving those rights.” *Fare v. Michael C.*, 442 U.S. 707, 725 (1979).

At the time of the interview, AJO was a nearly 16-year-old male who at times had lived on his own. He had at times held employment, including working for Robert. Although his formal education ended during the fourth grade, there is no evidence that his intelligence level is less than the average 16-year-old Marshallese male. AJO had had prior minor interactions with the police. His answers to Ceaser’s questions during the advisement of rights indicate his capacity to understand the Miranda warnings, the nature of his privilege against self-

incrimination, and the consequences of waiving his Miranda protections. Finally, his mother, who is a high school graduate with some, albeit limited, post-high-school education, was present during the advisement of rights and the interview. She did not express concerns at the time; to the contrary, she agreed with and encouraged AJO's waiver and disclosures.

I therefore conclude, based on the totality of the circumstances, that AJO knowingly and intelligently waived his Miranda protections.

WAS THE INTERVIEW COERCIVE?

Coercive interrogations are also determined by the totality of the circumstances. Factors that contribute to a finding of coercive investigation include such things as threats, physical abuse, psychological intimidation, deceptive interrogation tactics, excessively lengthy interrogations, deprivation of food or sleep, etc. The test is whether the interrogation methods employed by the police are so coercive that they "overbear [the suspect's] will to resist and bring about confessions not fairly self-determined." *Rogers v. Richmond*, 365 U.S. 534, 544 (1961).

All of the officers who were present at the interview either stated or testified that the interview was not coercive, that no threats were made, that there was no physical abuse, that there was no psychological intimidation, and that there were no deceptive interrogation tactics.

The length of the interview was not excessive. Subtracting the time taken to advise AJO of his Miranda rights and the time allowed for AJO's mother to regain her composure, the interview itself lasted approximately 3.5 hours. Interviews well beyond five hours have been routinely determined not to be excessively lengthy.

AJO had not been deprived of sleep or food. He had been allowed to sleep overnight at MIPD headquarters in Uliga, and had been offered the opportunity to eat upon his arrival at the MIPD substation in Laura.

Ceaser three times asked AJO about the killing of Robert. Persistent questioning, unaccompanied by threats or other coercive means, does not amount to coercion.

I conclude, based on the totality of the circumstances, that the police officers did not overbear AJO's will to resist and did not bring about a confession that was not fairly self-determined by AJO himself.

NOTE CONCERNING AJO'S MOTHER'S AFFIDAVIT

In her affidavit dated September 19, 2017, AJO's mother claims that Ceaser forced AJO to confess to murder, forced AJO to sign the two-page written statement (Exhibit 5), failed to explain to or warn AJO and mother of the consequences of waiving AJO's Miranda rights, read the Miranda form "in a rush" without stopping to explain the consequences, and wrote AJO's answers to the questions referenced in Findings of Fact 13 through 16 and directed AJO to sign his name by those answers without explaining the rights being waived.

Mother's statements are contrary to the statements and testimony of every police officer who was present. After extensive consideration, I conclude that mother's statements are the result of the fully understandable love and protective interest that a mother should exhibit toward her child, but are nevertheless, not credible.

ORDER

AJO's motion to suppress the statements he made to police officers at the MIPD Laura Substation on July 3, 2017, is denied.

DATED this 18th day of December, 2017.

BY THE COURT:



COLIN R. WINCHESTER
Associate Justice

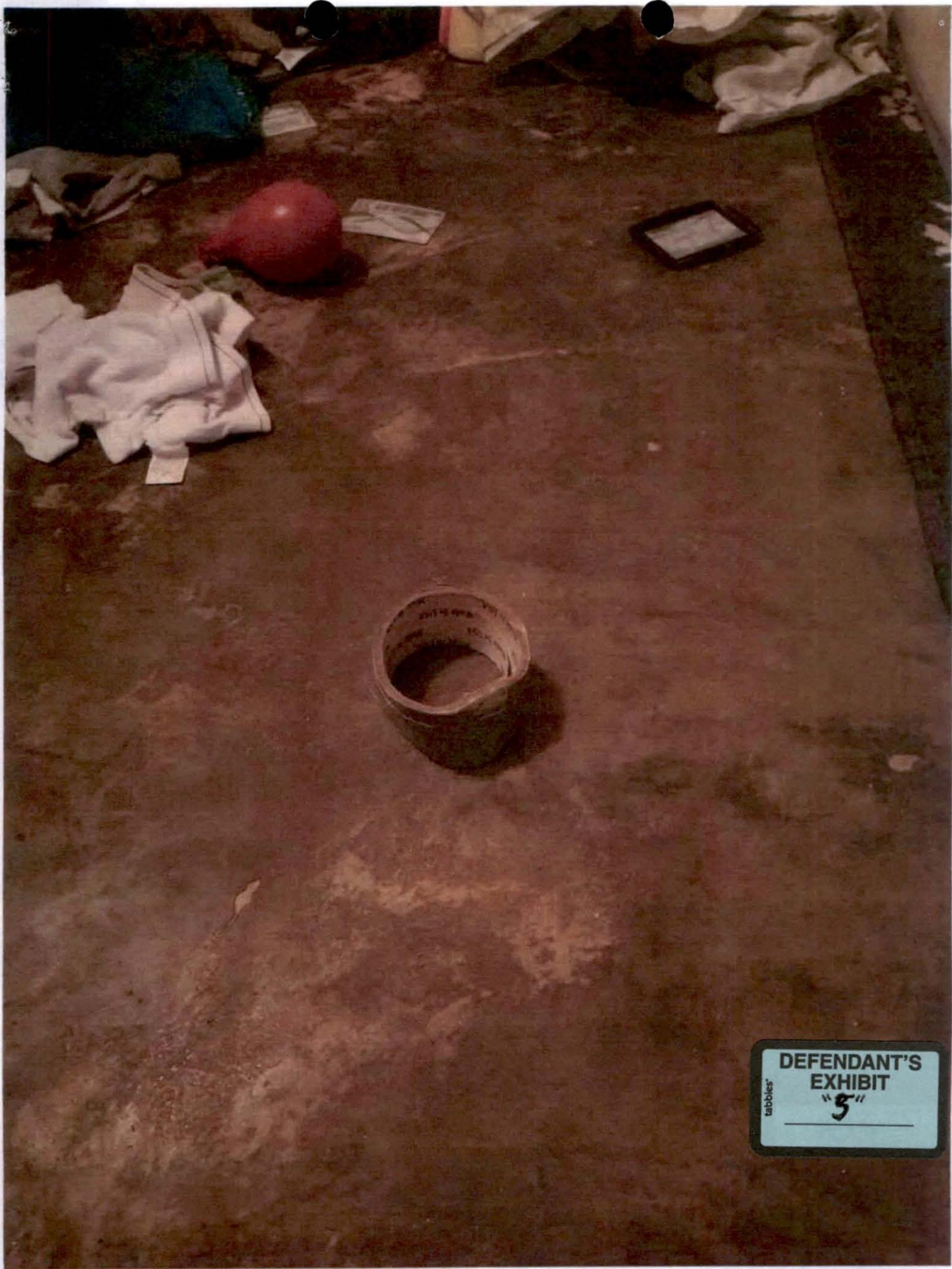


tabbles®
**DEFENDANT'S
EXHIBIT**
"3"

Other knife?
Taken where? CD
Used as what?



tabbles®
DEFENDANT'S
EXHIBIT
"4"



tabbles®
DEFENDANT'S
EXHIBIT
"5"

Monday July 3, 2017 - 4:40pm



tabbies®
**DEFENDANT'S
EXHIBIT**
"6"



Republic of the Marshall Islands
MINISTRY OF HEALTH
P.O. Box 16 Majuro, Marshall Islands 96960
Phone: (692) 625-5660/5661/3355/3399
Email: k.briand123@yahoo.com; mallynnlang@gmail.com



MEDICAL REPORT

Patient's Name: **ASHLEY MARQUEZ**

Age: **3 years old**

Upon examination, the dead body of the 3 year-old girl has been in the morgue for 3 days.

GENITAL EXAMINATION:

The labia majora was grossly normal in appearance. No bruises or lacerations noted.

The labia minora appears erythematous. No bruises or lacerations noted.

The urethral opening appears erythematous. *(red skin)*

There was an approximately 3 cm laceration at the introitus (6 o'clock position) with dry blood at the margins of the laceration.

The hymen showed several tears with erythematous margins.

The vaginal vault was apparently exposed upon separation of the labia.

ASSESSMENT:

To consider sexual assault with signs of penetration.

*Vaginal swab was taken. (results pending) *— taken by FBI.*

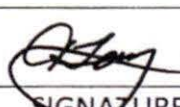
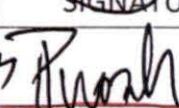
Prepared by:

[Signature]
Dr. Ivy Claire Lapidez
Obstetrician-Gynecologist
Majuro Hospital

ORIGINAL



CHAIN OF CUSTODY

DATE/TIME		CONFISCATING OFFICER(S)			DIVISION	
07/14/17		LT. CARNEY TERRY			CID, MIPD	
OWNER/SUSPECT		GENDER	AGE	ADDRESS		PHONE
ALEX PHILLIP		M	15			N/A
NO.	ITEM(S) DESCRIPTION			QTY	REMARKS	
1	SWABS sample (Ashley Marquez)			4	Mr. Lity	
2	SWAB sample (Alex Phillip)			1	Det. Carney	
3	FINGERPRINTS (Alex Phillip)			4	Det. Carney	
4	SPORT BLUE PANT / violet white strip with red stain			1		
5	Red (HANDLE) 13" KNIFE / BLOOD STAIN			1		
6	YELLOW (HANDLE) KNIFE			2		
7	GRAY TUG TAPE			1		
ITEM(S) CONFISCATED FROM (SCENE)				REASONS FOR CONFISCATION (OFFENSE)		
				HOMICIDE		
FIRST CHAIN OF CUSTODY						
RELEASING OFFICER (PRINT)	DATE/TIME	SIGNATURE		REMARKS		
LT. CARNEY TERRY	07/14/17			Release To FBI FOR LAB ANALYSIS GUAM		
RECEIVING OFFICER (PRINT)	DATE/TIME	SIGNATURE		REMARKS		
FBI AGENT PETER	07/14/17 5:50 PM					
SECOND CHAIN OF CUSTODY						
RELEASING OFFICER (PRINT)	DATE/TIME	SIGNATURE		REMARKS		
RECEIVING OFFICER (PRINT)	DATE/TIME	SIGNATURE		REMARKS		
THIRD CHAIN OF CUSTODY						
RELEASING OFFICER (PRINT)	DATE/TIME	SIGNATURE		REMARKS		
RECEIVING OFFICER (PRINT)	DATE/TIME	SIGNATURE		REMARKS		



Marshall Islands Police Department

Chain of Custody
Evidence

Date/Time of Recovery		Case No.	Arresting/Investigating Officer(s)	
10/30/17		207-55	LT. CARNEY TERRY	
Owner's Name		Sex	Age	Address
Alee Phillip		M	16	MAJURO, RMI
No.	Item(s) Description		Qty	Remarks
1	HAIR CONTAINED IN ENVELOP		20	
2	PUBIC HAIR " " ENVELOP		22	
3	2 SET OF ALEE PHILLIP FINGERPRINTS			
4	ALEE PHILLIP'S 1 PAIR SLIPPER COLOR GREEN			
Item(s) Confiscated From (Location)			Reason(s) for Confiscating (offense)	
COLLECTED FROM ALEE PHILLIP			SAMPLES FOR LAB ANALYSIS (FBI)	
First Chain of Custody				
Releasing Officer		Date/Time	Signature	Remarks
LT. CARNEY TERRY		10/30/17 11AM	<i>[Signature]</i>	TRANSFER TO FBI
Received by		Rank/Title	Signature	Remarks
FBI SA BRENT AGDONNET		DANA SPECIAL AGENT FBI	<i>[Signature]</i>	RECEIVED 11/03/2017 1:05 PM.
Second Chain of Custody				
Releasing Officer		Date/Time	Signature	Remarks
Received by		Rank/Title	Signature	Remarks



CERTIFICATE OF SERVICE

OPENING BRIEF ON APPEAL

S/C Criminal Case No. 2018-003

I hereby certify that, upon filing at the High Court Registry, I have served via electronic mail, copies of the Appellant Juvenile's **Opening Brief on Appeal**, to the Republic as the Appellee, through the Prosecutor, Falai Taafaki, Esq., at the Office of the Attorney General.

Served on this April 6, 2018.

Komol Tata,


.....

Office of the Public Defender