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IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

ALEE PHILLIP	)	S/C Criminal Case No. 2018-003
Plaintiff / Appellant Juvenile	)	Juvenile Criminal Case No. 2017-001
	)	
	)	**REPLY BRIEF**
-v-	)	**PURSUANT TO RULE 28(d)**
	)	**OF THE MARSHALL ISLANDS**
	)	**RULES OF THE SUPREME COURT**
REPUBLIC OF THE MARSHALL	)	
ISLANDS	)	
Defendant / Appellee	)	
	)	

COMES NOW, the Appellant, a Delinquent Child, by and through his Counsel from the Office of the Public Defender, is filing a **REPLY** Brief, pursuant to **Rule 28(d)** of the Supreme Court Rules of Proceedings. And to notify the Clerk of the Supreme Court that the Appellee had failed to file its **Answer Brief**, pursuant to **Rule 28(c)**, on May 28, 2018.

1. That, on March 2, 2018, the Appellant filed its **Appeal Notice** from the Adjudication and Disposition Orders so imposed respectively by the High Court ("Trial Court") on January 22, 2018, and February 2, 2018.
2. That, on April 6, 2018, the Appellant timely filed its **Opening Brief**, pursuant to **Rule 28(b)**.
3. And the Appellee was given 40 days to file its **Answer Brief**, pursuant to **Rule 28(c)**, but on May 21, 2018, the Appellee requested for enlargement of time and was granted by the Court to file its **Answer Brief** on May 28, 2018.
4. The Parties were also directed to appear for a Pre-hearing Conference on June 20, 2018, at 12pm, to discuss Appellant's non-compliance of **Rules 10** and **11** in this Appeal.
5. But on May 28, 2018, the Appellee still failed to file its **Answer Brief** and instead on June 1, 2018, the Appellee moved to reschedule the Pre-hearing Conference on June 20, 2018, to allow the Appellee's Prosecuting Attorneys to travel and attend a workshop from June 12 to June 15, 2018, of which was granted by the Court and also ordered that the Pre-hearing Conference on June 20, 2018, was now cancelled and taken off-calendar.
6. The Appellant file its **Reply Brief**, pursuant to **Rule 28(d)**.
7. The Appellant reiterate in his Reply Brief that, one of the grounds of this appeal was 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.

8. 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 **Gynacologist'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 by the Prosecution during the Trial to show that the Appellant Juvenile was the perpetrator of these offences.

9. And the most vital was that, the Prosecution failed to establish a proper **Chain of Custody** (As Defendant's **Exhibit-8** and **9**) 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** of these **two knives** offered into evidence by the Prosecution throughout the Trial.

10. The Appellant appealed that during the Trial, the Prosecution had failed to prove that the Appellant did commit **Murder**. Because there were no real evidence actually offered and admitted by the Prosecution to establish that the Appellant was the perpetrator to Murder, and failed to show any **fingerprints**

to be detected on the two knives or any **fingerprints** to be detected on the gray duct tape to prove beyond a reasonable doubt the element of Murder that the Appellant "*did intentionally or knowingly under circumstances manifesting extreme indifference to the value of human and caused the death of another human life*.." The Appellant appealed that, the Trial Court was erred to find that the Appellant 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's assumed confession.

11. The Appellant appealed that during the Trial, the Prosecution had failed to prove that the Appellant did commit **First Degree Sexual Assault**, and only a report from a Gynacologist at the Majuro Hospital alleging that there was sexual penetration (**Exhibit-7**). But there were no real evidence and 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 was the perpetrator and to prove beyond a reasonable doubt that the Appellant "*did knowingly subject another person to an act of sexual peneration*.." The Appellant appealed that, the Trial Court was erred to find that the Appellant 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.

12. The Appellant appealed that during the Trial, the Prosecution had failed to prove that the Appellant 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 was the perpetrator and to prove beyond a reasonable doubt that the Appellant "*did enter into a building with the intent to commit a crime*.." by stealing from Mr. Marquez's store (**Exhibit-6**). And the Appellant appealed that, the Trial Court was erred to find that the Appellant 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's assumed confession.

13. The Appellant reiterate in his Reply Brief that, he appealed 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, especially after finding that the Appellant is a Delinquent Child.

14. That, the Appellant 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. This imprisonment sentence to serve 50 years with 0 years suspended, the Appellant will be 66 years old when released, and has literally closed the door for any second chance in life or rehabilitation is cruel and unusual.

15. 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.

16. 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.

17. 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 is appealing over this unprecedented imprisonment sentence imposed by the Trial Court.

18. The Appellant reiterate in his Reply Brief that, 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.

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

20. The Appellant seek an Order from this Appellate Court to quash the Orders so entered by the Trial Court, and because of the Appellee's failure to file its **Answer Brief**, pursuant to **Rule 28(c)**, for this Appellate Court to direct a verdict of **Acquittal**.

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

So filed this June 11, 2018.

6/11/2018

Russell Kun, Esq.

Counsel for Appellant Juvenile

CERTIFICATE OF SERVICE

REPLY 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's **REPLY Brief on Appeal**, to the Appellee, by and through the Prosecutor, Dr. Falai Taafaki, Esq.

Served on this June 11, 2018.

Komol Tata,

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Office of the Public Defender

FILED

JUN 11 2018

CLERK OF COURTS
REPUBLIC OF THE MARSHALL ISLANDS