

IN THE HIGH COURT  
REPUBLIC OF THE MARSHALL ISLANDS

TRANSCRIPT OF Hearing Case Number 2017-001 RMI vs  
Alee Phillip In High Court Courtroom B

Before Honorable Colin R. Winchester, Republic of the Marshall  
Islands  
January 15, 16, & 19, 2018

**APPEARANCE(S):**

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Office of the Attorney General  
Majuro Marshall Is.

For Defendant: Russell Kun  
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#### **FOR DEFENDANT(S)**

#### **REBUTTAL WITNESS**

1       **Court:** Thank you, you may be seated. Good morning  
2 everyone, today is January 15, 9 o'clock in the morning. We  
3 are back on the record with RMI vs Alee Phillip, Mr. Taafaki  
4 and Mr. Laidren are here on behalf of the Republic, Mr. Kun  
5 is here with Mr. Phillip. Mr. Kun presuming to the status  
6 conference we had a few minutes ago it's my understanding  
7 that Mr. Phillip's mother has been aware with these  
8 proceedings?

Mr. Kun: Yes, your Honor.

10 Court: She has on several occasions been late for  
11 proceedings is it okay if we begin without her?

**Mr. Kun:** Yes, your Honor that's not a problem.

12           Court: Mr. Phillip for your information we have been  
13 made aware that you are not feeling well this morning?  
14           Counsel and I had discussed that there is one witness who  
15 has an airplane ticket back to the mainland this evening. So,  
16 it's our intend to have that one witness testify today.  
17           That's all we will do today so I can have a lot time to rest  
18 for tomorrow. Counsel are you ready to proceed?

**Counsels:** Yes, your Honor.

**Court:** Mr. Taafaki are any of your witness's be going to be carrying any firearms?

**Mr. Taafaki:** I don't know your honor.

22           **Court:** I just want to make sure and to make  
23 arrangements with the bailiffs. You may call your first  
24 witness.

Mr. Taafaki: The prosecution will call Ms. Laura Adams

**OATH ADMINISTERED**

Lara Adams

**Questioned by:** Mr. Taafaki

**Q:** Please state and spell your name for the court.

A: My name is Lara Adams, L-A-R-A A-D-A-M-S.

**Q:** And Lara where are you currently employed?

**A:** I'm currently employed as a forensic examiner in DNA case for (Indiscernible).

Q: And

**A:** Sorry, I was pausing excuse me. At the FBI laboratory and that's in Quantico Virginia.

**Q:** And how long have you worked for the FBI? As a forensic examiner.

**A:** I have been an examiner at the FBI for almost eight years.

**Q:** And what are your job responsibilities as a forensic examiner?

**A:** As a forensic examiner I manage a case within the laboratory. I decide which items of evidence to work in the laboratory, and what type of testing will perform. And supervise a team of biologist that perform the laboratory testing. And I will then interpret all of the results and for conclusions and write a report and testify when necessary.

**Q:** Thank you, which kind of training that you over see while working at the FBI laboratory?

A: My training at the FBI laboratory lasted approximately three years. And during that time I was first trained in another type of DNA analysis, and later trained in the type of DNA that we're talking about today, as well as serology the study of bodily fluids. Sorry too much? My training at the FBI approximately three years. The first part

1 of my training was for a different type DNA analysis and that  
2 lasted about two years. And then an additional year for the  
3 type of DNA we're talking about today as well as serological  
4 analysis, the study of bodily fluids. My training included  
5 reviewing literature in the fields in DNA and Serology, also  
6 taken written examinations, oral board examinations with the  
7 panel of experts, and competency exams in all of the areas  
8 that the FBI has make deemed to make qualified as an  
9 examiner, and lastly I also interpreted results for case  
10 work, and road reports while in training under the  
supervision of a qualified examiner.

11 Q: What is your back ground, your educational back  
12 ground?

13 A: I have a Bachelor of Science in marine biology from  
14 Stockton University. I also have a master degree in marine  
15 biology from the University of Charleston in the focus on  
genetic.

16 Q: You have previous employment of experience involving  
17 DNA analysis?

18 A: Yes, for ten years prior to working at the FBI. I  
19 worked for the national ocean service, as well as the  
20 national marine fishery service, and there I used the same  
21 types of DNA analysis that I use at the FBI. For those  
22 positions the DNA analysis was the (Indiscernible) for  
conservation of protected marine species.

23 Clerk: Sorry can you please repeat that?

24 A: Yes, those DNA analysis were here for conservation of  
25 protected marine species and marine analysis.

26 Q: Any teaching experience?

27 A: Yes, I was fact. Oh, sorry.

28 Clerk: Sorry can you repeat that council?

1       **Q:** Any teaching experience?

2       **A:** Yes, I was adjunct faculty at Trident technical  
3 college and the University of Charleston both in Charleston  
4 South Carolina and they are taught introductory biology, and  
molecular biology laboratory methods.

5       **Q:** Have you ever signed any papers regarding DNA  
6 analysis?

7       **A:** Yes, I've published two articles in per review  
8 journals and that's when research is submitted to a  
9 publication and panel of experts determines if it's worthy of  
10 publication. And both publications use the same type of DNA  
analysis that we'll talk about in this case.

12       **Q:** Okay, Laura how do you stay current in the field of  
DNA analysis

14       **Clerk:** Sorry what was that?

15       **Q:** How do you stay current how do you keep up with the  
DNA analysis?

16       **A:** I stay current by attending lectures or seminars who  
17 is focuses on DNA analysis. And by reading published papers  
18 on DNA analysis in forensic.

19       **Q:** So how do you know official results of that?

20       **A:** We know our resource are reliable because of many,  
many reasons that fall under quality assurance. We test all  
21 of our methods that we use in the lab. The process called  
validation testing where we determined all of the conditions  
required to get a reliable result. And any limitation of  
24 those procedures.

25       **Clerk:** Sorry what was that?

26       **A:** Limitation anything that can affect the procedures  
for liability. We also have controls during our lab work, we  
27 have negative controls process with each sample those are

1    tubes with no DNA added, and process alongside the sample to  
2    monitor for possible introduction and contamination. We also  
3    have positive controls those are tubes with DNA of known  
4    type.

5            Clerk: DNA of what?

6            A: A known DNA profile process alongside each sample to  
7    ensure our process is working correctly. And the last thing  
8    I'll mention is we also have a lot of measures to protect the  
9    samples in the laboratory. Before we open an item of evidence  
10   we clean surfaces with bleach and any instruments with  
11   bleach. We would process that item and reseal before cleaning  
12   again before touching another item. So, we process one item  
13   of evidence at a time. We also wear gloves, face masks,  
14   goggles, and laboratory coats. And change gloves between each  
15   items of evidence and those are just our some many, many  
16   policy assurance procedures.

17           Q: Thank you, are there any standard in the current  
18   system unity in the forensic DNA analysis? Yeah, are there  
19   any standards in DNA forensic analysis?

20           A: Yes, we are required to follow the quality assurance  
21   standards for forensic DNA testing laboratories. And it  
22   outlines everything from requirements of our qualifications  
23   to qualifications of our facilities, our controls, and even  
24   how my testimony is reviewed. And we are audited to those  
25   standard every year, as well as audited for accreditation  
26   status by internationally recognizing accrediting agency.  
27   Where others come into the laboratory to determine that we  
28   are following those standards. And I should mention the  
   accreditation auditing is every five years.

29           Q: Thank you Laura, I will ask you a few more  
30   questions. What is forensic serology as you stated earlier?

1       A: Forensic serology it is identification or  
2 characterization bodily fluids. Such as blood, semen, saliva,  
3 and other bodily fluids.

4       Q: And what type of serology test you guys perform at  
5 the FBI laboratory?

6       A: At the FBI we perform testing for the possible  
7 presence of blood, and testing for the possible presence of  
8 semen.

9       Clerk: Sorry, is there another word for semen?

10      A: No.

11      Court: So, you want me to describe what semen is?

12      Clerk: Yeah, can you please explain it.

13      Court: It is the discharge from a male penis in the  
14 course of sexual action. You know what it is?

15      Clerk: Yeah.

16      Court: Is there a way to say that in Marshallese?

17      Lara: Male reproductive fluid.

18      Q: Lara, how do you perform test by blood?

19      A: We have two different types of tests per blood. The  
20 first is called presumptive test, a positive result indicates  
21 the possible presence of blood. To perform this test we take  
22 a moisten cotton swab and we would swab an area a staining we  
23 would add chemicals to a swap and see if there's a color  
24 change. Color change into bright pink indicates the possible  
25 presence of blood. The other test is a confirmatory test a  
26 positive result with a confirmatory test confirms the  
27 identification of blood.

28      Q: It's the same test right?

29      A: No, different. So, the test is performed by taking a  
30 cutting with a blade or scissors of a material.

31      Clerk: Sorry can you repeat that?

1       **A:** Yes, the test is performed by taking a small cutting  
2 of material that was stained, or scraping with a razor blade  
3 of the stain, and we put that on a microscope slide a very  
4 thin piece of glass. We add chemicals and look for chemical  
5 reactions with blood that forms red crystals if a specific  
shape.

6       **Clerk:** Sorry, can you repeat that?

7       **A:** We look for a chemical reaction that occurs with  
8 blood to form. That form red crystals of a specific, size,  
9 color and shape that we would see thru a microscope. And  
10 presents of these crystals confirms the identification of  
11 blood on that item.

12      **Q:** How do you perform test for semen?

13      **A:** Again for semen we have both presumptive and  
14 confirmatory test. Presumptive testing is similar to blood  
15 presumptive testing. We swab an area of possible staining  
16 with a moisten cotton swap add chemicals to the swab, a color  
17 change indicates the possible presence of semen. The  
18 confirmatory testing is performed by looking under a  
19 microscope for presence of sperm cells. A sperm cell of  
20 correct size and shape and staining pattern confirms to get  
done (Indiscernible).

21      **Q:** Could you give a description of a DNA, Lara?

22      **A:** Yes. DNA stands for Deoxyribonucleic Acid. It is the  
23 generic material found in our bodies. It's found in all of  
24 the cells of our body skin cells, hair cells, blood cells,  
25 bone cells, all of our tissues have the same DNA message.  
26 It's like a genetic blue print it gives instructions to how  
27 to make us human and how to make us different from everybody  
else. The only exception is identical twins they share the  
same DNA.

**Q:** Where does the DNA come from?

**A:** Your DNA is inherited from your parents. Half of your DNA comes from your mother and half comes from your father. It's a unique combination of DNA that you inherit from your parents that makes you different from everybody else with the exception that I mentioned about identical twins. Your DNA remains the same thru out your life time and it's the same no matter where we obtain it from blood, hair, nails, skin, or other tissues as well.

**Q:** What are the areas in DNA do have for forensic analysis?

A: We looked at 24 different locations on our DNA. 21 of them is STRs that stands for Short Tandem Repeat they're areas of our DNA that have the message repeated over and over and to say a portion of the DNA message is repeated over and over. The number of repeats can differ between individuals, when we look at oops for example if I inherit ten repeats from my mother and fifteen repeats from my father at one of those 21 locations my type is a 1015 at that location. And our DNA profile is just a listing of the number of repeats from our parents at all 21 locations. The other three locations help us to determine if there's male or female DNA present. So in our testing we compare a DNA profile of listing of those repeats of evidence to a DNA profile from a known individual, a victim or a suspect in a case.

**Clerk:** Sorry can you repeat that?

A: Yes, so in DNA testing a victim we compare our DNA profile or listing of repeat numbers for items of evidence and compare to a DNA profile from a known individual to see if they're the same or if they're different.

**Q:** How do you perform forensic DNA analysis?

1       **A:** There are five main steps to DNA analysis the first  
2 step is collection.

3       **Clerk:** Sorry what was that?

4       **A:** The first step is called collection that were we  
5 take swabbing of an area we expect we may have DNA or a very  
6 small cutting of a stained area for example and we replace  
7 that into a tube. We have separate tubes for each collection  
8 for each item, the second step of DNA analysis is called  
9 extraction and that's where we add chemicals to the tubes to  
10 break open the cells to release the DNA from the cells and  
11 also separate the DNA from all the rest of the cell contents  
12 so we end up with purified DNA in a tube. The third step is  
13 called quantitation and that's how we determine how much DNA  
14 we recovered from the evidence. The fourth step out of the  
15 five is amplification that's where we make millions or  
16 billions of copies of those 21 locations it's like a  
17 molecular copy machine, and we do that simply so we can  
18 detect it with our instruments. The last step is called  
19 separation that where we take all of that copied repeats that  
20 we target those 21 locations and separating them according to  
size and location so that we can determine an individual's  
profile.

21       **Q:** What are first worst outcome you said before for STR  
22 analysis?

23       **A:** When we compare a DNA profile from a sample piece of  
evidence to a DNA profile from an individual if they're  
24 different we can exclude that person as a contributor to the  
25 DNA. If they're the same it's an inclusion and we calculate a  
26 statistic, a number to give meaning to the inclusion it gives  
27 the weight of that match or how much the match means. The  
28 third and final outcome that could happen is called

1 inconclusive that means there is not enough information to  
2 determine if that individual is included or excluded.

3 Q: Thank you, please explain to the court if the  
4 statistic if you calculate the weight of the number if the  
5 STR match in a case?

6 A: Yes, the statistic is called a likelihood ratio. It  
7 expresses how much more likely the DNA profile is from the  
8 evidence if the DNA came from the person were comparing  
9 versus or as suppose to the DNA coming from another unknown  
10 individual. So a likelihood ratio of say one thousand that  
11 means it's one thousand times more likely to obtain that DNA  
12 profile if the DNA was from the person we were comparing  
versus if it had come from another unknown person.

13 Q: Could you give the court an example of likelihood  
ratio?

14 A: Yes, if you think about a pair of dice to play a  
game you take one six side dice, one side is one, one side  
two, three, four, five, and six. If I ask you with one roll  
of the dice, what is more likely to roll an even number or to  
roll a five? Everyone knows it's more likely to roll an even  
number because it could be a two, four, or a six, but to roll  
a five only one of the six possible outcome.

20 Court: Mr. Kun you alright? Do you need a break?

21 Mr. Kun: I'm alright.

22 A: We can calculate how much more likely it is to roll  
an even number over a five it's three times more likely an  
even number than to roll a five and we could do this with  
DNA. Knowing the DNA profile the outcome how much more likely  
is it for us to see that outcome taking it into account that  
types better or shared the person that we are comparing and  
how common or rare those types are in the population. I'm

1 remembering the first part that I answered. How much more  
2 likely is it to see those types they came from the person  
3 adventures versus they came from someone else.

4 Q: So how do you calculate the values of for likelihood  
ratio?

5 A: That calculation takes into account, how many of  
6 those types are shared at those 21 locations?

7 Clerk: Sorry, can you repeat that?

8 A: Yes, the calculation considers how many of those  
9 types are shared at the 21 locations and how common or rare  
10 those types are in various populations around the world, that  
11 is the simple answer.

12 Q: Okay, so did the lab check the evidence on this  
case?

13 A: Yes, before I answer that I should clarify that  
14 those things are considered in the calculation and there are  
15 many more things that go into that calculation as well.  
16 Including biological models for DNA behavior and the degree  
17 of matching between the profiles. And I'm happy to provide  
18 further explanation but that is the simplest answer.

19 Q: Lara did you get a summary of the result from  
20 testing of item number fifty?

21 A: Yes, and I apologize I did not answer your previous  
22 question. We did perform serological and DNA testing in this  
23 case with regard to item fifty.

24 Court: Sorry, is it five zero or one five?

25 Mr. Taafaki: Five zero, Your Honor.

26 A: Item fifty was a knife that knife was presently,  
27 positive with presence of blood. That indicates blood maybe  
28 present on that item. We took a sampling of a stain on the  
distal portion of the knife blade. That is a portion fortified

1 on the blade for this from the handle. The DNA profile from  
2 that swabbing was consistent with two individuals that is  
3 called a DNA mixture, where more than one person has left DNA  
4 behind. From that profile I can tell male DNA is present,  
5 when comparing that profile to Mr. Phillip a likelihood ratio  
6 value is two hundred and ten that provides limited support  
7 for inclusion of Mr. Phillip as a contributor to that DNA  
8 profile. That provides limited support for inclusion of Mr.  
9 Phillip as one of the contributors of the DNA for the  
10 profile. We also test, I should oh I'm sorry, first say that  
11 Ashley Marquez and Robert Marquez were both inconclusive with  
12 regard to comparison to that DNA profile. Your honor, and may  
I please refer to my report to refresh my memory.

13           **Court:** Yes, you may.

14           **A:** Thank you. We also tested another stain on the knife  
15 blade it was next to the handle on the knife. That profile  
16 did not have enough information to the term if male or female  
17 DNA was present. It was consistent with a profile from one  
18 individual both Ashley Marquez and Robert Marquez and Mr.  
19 Phillip were inconclusive with regards to comparison to this  
20 profile and lastly from the knife we swabbed the handle of  
21 the knife again that profile did not have enough information  
22 to determine if male or female DNA is present. When comparing  
this profile Ashley Marquez, Robert Marquez, and Mr. Phillip  
are all inconclusive to this profile.

23           **Q:** Lara what were the result of testing on item 45  
24 after swabbing Ashley Marquez?

25           **A:** Item 45 were vaginal swabs taking from Ashley  
26 Marquez blood was identified on item 45 swabs. Semen was also  
27 identified on item 45 swabs. With these swabs intimate, swabs  
28 we do a special type of extraction. It's called an extraction

1 when we get DNA out of a material and separated it from all  
2 of the other cell contents. With this type of extraction we  
3 separate sperm cell from other type of cells in two separate  
4 tubes, from the first tube with non-sperm cell other cells  
5 it's called the female fraction. We obtain a DNA profile that  
6 have female DNA it's consistent with one female individual  
7 this DNA profile was used as a profile for Ashley Marcus for  
8 comparison. The other two is called the male fraction it is  
9 in rich it has, if sperm cells are present there in that  
10 tube. The DNA profile unlike Ashley Marquez from this tube is  
11 consistent with a male individual with regards to comparison  
12 to Mr. Phillip the likelihood in ratio is four hundred and  
13 seventy septillion, that provides support identification of  
14 Mr. Phillip as the contributor to the DNA profile for the  
15 item 45 vaginal swab. I should explain that the verbal scale  
16 that we use for likelihood ratios has five categories.  
17 Earlier I mentioned limited support that is the lowest  
18 category of support, the next category is moderate support  
19 followed by strong support, followed by extremely strong  
20 support, and the highest category it is support for  
identification, and I could go over the numbers correspond to  
those if necessary.

21 Q: Thank you Lara, could you just go over the  
22 corresponding in numbers in relationship with the categories?  
23 And where the categories and numbers exact for Mr. Phillip?

24 A: Yes, those categories at the end of my report for  
25 reference they're offer to give contacts for the likelihood  
26 ratios. Limited support are likelihood ratios from 100 to  
27 999, moderate support include likelihood ratio from 1000 to  
28 9,999 or 1 less than 10,000, strong support includes  
likelihood ratio of 10,000 to 1 less than 1 million,

1 extremely strong support includes likelihood ratio from 1  
2 million to 1 less than 1 trillion, and support for  
3 identification are likelihood ratios that are 1 trillion or  
4 higher.

5 Q: And where does the results of the test what area the  
6 labels?

7 A: There were two likelihood ratios that I discuss  
8 today the first was limited support from item 59 and the  
9 second was for identification for the vaginal swabs item 45  
10 and those were regard to comparison to Mr. Phillip. I do need  
11 to mention to regards to item 45 were require to compare to  
12 everyone in the case. Robert Marquez was excluded as a  
13 possible contributor to the DNA from the item 45 vaginal  
14 swabs.

15 Q: Did you say that 470 septillion of ranks in the  
16 profile support?

17 A: Correct, that is the number that's larger than one  
18 trillion, one trillion has 12 zeros four hundred and seventy  
19 septillion has technically 25 zeros, septillion is 24 zeros  
20 but there's an extra zero with the four hundred seventy.

21 Q: So, it's for the highest level for identification?

22 A: Correct.

23 Q: Thank you very much Lara, No further question your  
24 honor.

25 Court: Do you have any questions to cross exam?

26 Mr. Kun: Yes, Your Honor I have a few question for  
27 clarification.

28 **CROSS EXAMINATION**

Lara Adam

Questioned by: Mr. Kun

1           **Q:** Ma'am, I'm just looking thru one of your report. I  
2 just want to clarify item 48 now this was a knife near  
3 Marquez body is that correct?

4           **A:** Yes.

5           **Q:** On page four on your report what did you mean by  
6 Phillip is excluded, excluded as a potential contributor to  
7 item 48.

8           **A:** Yes, item 48 was a knife from the residents. We  
9 tested item 48 for the presence of blood, blood was  
10 identified on item 48 we took swabbing on the stained area  
11 and that developed a DNA profile. The DNA profile from the  
12 swabbing from the blade contained male DNA. Your Honor, may I  
refresh my memory for the specific statistics?

13           **Court:** Yes, you may.

14           **A:** Thank you. Yes, and the profile is consistent with  
15 two individuals to regards to comparison to Robert Marquez  
16 who was support with identification for him as a contributor,  
17 when compare to Ashley Marquez there was extremely strong  
18 support of her inclusion of her as a contributor to that  
19 mixture. With regards to comparison to M. Phillip he was  
20 excluded as a possible contributor to the sampling of the  
21 blood stains. There are other areas we tested from that knife  
22 as well. Your Honor, there are many areas can I refresh my  
memory again, thank you.

23           **Court:** Yes, you may.

24           **A:** Yes, excuse me we also took a swabbing of the handle  
of that knife the item 48 knife.

25           **Q:** Is that Item 43?

26           **A:** Yes, yes. Each separate sampling of an item will be  
27 given an item number followed by parenthesis another number.  
28 And from that DNA profile from the swabbing of the handle the

1 profile had male and female DNA present. The profile is  
2 consistent with two individuals again with regards to Robert  
3 Marquez there was support for identification to include him  
4 as a possible contributor to that sampling. With regards to  
5 comparison to Ashley Marquez there was strong support for  
6 inclusion, with regarding to comparison with Mr. Phillip he  
7 was excluded as a possible contributor to that DNA profile.

8       **Q:** Did you also analyze a dress as for item 20?

9       **Clerk:** Sorry what was that counsel?

10      **Q:** Did you also analyze DNA analysis a dress as for  
item 20?

11      **A:** Correct. We, I tested that dress for the possible  
presence of semen no semen was detected on the item 20 dress.

12      **Q:** Ma'am what about item, items 39 okay start with item  
39 first knife from the floor. There was an exam for presence  
14 of blood is that right?

15      **A:** Correct.

16      **Q:** And the result was?

17      **A:** No blood was detected on item 39.

18      **Q:** Okay, now item 41 it's shorts from Phillip, is that  
correct?

20      **A:** That's correct.

21      **Q:** And was exam for the presence of blood is that  
right?

23      **A:** That's correct.

24      **Q:** And the result was?

25      **A:** No blood was detected on the shorts. Sorry I can't  
recall the item number without referring to my.

26      **Q:** Um 41. There is an item four what was that swabbing  
of nail clipping?

28      **Clerk:** Sorry counsel what was the last part?

1           **Q:** Can you explain what is item four which is a right  
2 hand finger clippings from Ashley Marcus?

3           **A:** Your Honor, may I refer to my notes?

4           **Court:** Yes, you may.

5           **A:** Thank you. Item four was right hand finger nail  
6 clipping from Ashley Marcus. In the laboratory I directed the  
7 biologist to do a swabbing of those finger nail clippings. To  
o look for any DNA that was not Ashley's.

8           **Q:** What about Phillip?

9           **A:** Are you asking if he, he had?

10          **Q:** If he was third play potential contributor in your  
11 results for item four?

12          **A:** Your Honor, may I refer to my report?

13          **Court:** Yes, you may.

14          **A:** Thank you. From item four we obtained DNA profile  
15 female DNA was present on that profile. The DNA unlike Ashley  
16 Marcus was consistent with one individual Robert Marquez is  
17 excluded as a potential contributor for that swabbing, Mr.  
Phillip is inconclusive with regard to that comparison.

18          **Q:** Thank you, Your Honor. I have nothing.

19          **Court:** Any Re-Direct Mr. Taafaki?

20          Mr. Taafaki: Yes, Your Honor. Just a few the items that  
21 my colleague address and pointed out, is it correct you did  
22 the test regarding blood as your evidence?

23          **A:** We did blood testing for the possible presence of  
24 blood for several of the items that we discussed and for  
other items we did not perform blood testing.

25          **Q:** Okay I will ask about items number 48, 43, 39, and  
26 20 is true you used, you test these items with blood?

27          **A:** Yes, with the exception of the item 4 the other  
28 items were tested for blood.

1           **Mr. Taafaki:** No further question Your Honor.

2           **Court:** Mr. Kun do have anything else?

3           **Mr. Kun:** Not from the defense Your Honor.

4           **Court:** It is my understanding that Ms. Adam gets on the  
5 plane this evening, is that correct?

6           **Ms. Adam:** Correct Your Honor, but if needed that can  
7 always be changed.

8           **Court:** So, I'm gonna try and excuse her approximately 4  
9 o'clock this afternoon so she could go the airport. If either  
10 of you need to anything you need to do it now we will  
11 reconvene just let me know. I will go ahead and call it a day  
12 give time for Mr. Phillip to recuperate and apparently allow  
13 Mr. Kun to recuperate. So, we will call it a day. Can you get  
this translated?

14           **Clerk:** Everything you just said?

15           **Court:** No let's start all over. We're gonna allow Ali  
16 and Mr. Kun recuperate this will be our only witness for  
17 today. Ms. Adam has a plane to catch this evening so if  
18 either counsel thinks they have any questions for her please  
19 let me know before three o'clock this afternoon. But if I  
20 don't hear from counsel I will excuse her at four o'clock and  
we will return tomorrow at 10 clock?

21           **Counsel:** Yes, Your Honor.

22           **Court:** Alright 10 o'clock tomorrow thank you very much.

23           **Court:** Please you may be seated. Good morning everyone  
24 we are back on record RMI vs Ali Phillip. Today is January 16  
25 it is approximately 10:15 in the morning. Mr. Kun how is your  
26 health?

27           **A:** Oh it's good.

28           **Court:** You sound better. How are you Mr. Phillip?

1           **A:** Okay.

2           **Court:** Good, it's good to hear. Alright are we ready  
3 for our next witness? Do we have anything we need to discuss  
4 before we proceed?

5           **Mr. Kun:** Nothing, Your Honor.

6           **Mr. Taafaki:** Nothing, Your Honor.

7           **Court:** I see that Ali Phillip's mother is not present.  
I notice yesterday she came in a little late, are we okay to  
8 start?

9           **Mr. Kun:** Yes, Your, Honor.

10          **Court:** Taafaki and Laidren if you could call next witness?

11          **Mr. Laidren:** Thank you, Your Honor. Your Honor the  
12 government would like to call special agent Brent Dana

13

14

15           **OATH ADMINISTERED**

16           **BRENT DANA**

17

18          **Questioned by:** Mr. Laidren

19

20          **Mr. Laidren:** Let me explain the procedure of question  
21 and answer. First I will ask you question you will give time  
22 for the clerk to translate my question before answering. You  
23 will give your answer in English and the translator will  
24 translate in Marshallese and I will ask you another question  
and so on.

25          **Q:** Can you state your full name for the record, please?

26          **A:** My name is Brent Dana.

27          **Q:** And what is your title?

1           **A:** I'm a special agent.

2           **Q:** Special agent where do you work?

3           **A:** I work for the Federal Bureau of Investigation,  
4 commonly known as the FBI and I'm assigned to the Honolulu  
5 Division Guam resident agency.

6           **Q:** What is your work with the FBI in Guam?

7           **A:** My primary investigating role is for counter  
8 terrorist and matters. Then I have special assignment for  
9 crisis negotiation team and evidence response team.

10          **Q:** And how long have you been working as a Special  
11 Agent for the FBI?

12          **A:** I have been a special agent for fifteen years.

13          **Q:** What kind of training have you received to collect  
14 evidence as a special agent?

15          **A:** I've received several courses for evidence  
16 collection thru out my 15 years. Beginning when I was hired  
17 at New Agents Training at Quantico Virginia. I received  
18 various trainings for approximately two and a half years.  
19 When I served on the evidence responds team in Tulsa,  
20 Oklahoma I was reassigned from Tulsa, Oklahoma to Vernal,  
21 Utah. In Vernal, Utah I worked violent crimes in Indian  
22 Country and I received training for Indian Country basic  
23 crimes scene investigation and training for advance violent  
24 crime and advance homicide. I was reassigned from the Vernal  
25 resident agency to the Guam resident agency and in Guam I  
26 became a member of the evidence respond team in February 2016  
27 and as part of being on that team I received to two of  
28 training in Virginia for evidence collection.

1           **Q:** And over the fifteen years as being with the FBI,  
2 how many times have you been involved collecting evidence for  
3 violent crimes?

1           A: I don't keep statistics on how many times I've  
2 helped other investigators with their cases, but in my own  
3 investigations that I've conducted and collected evidence I  
4 would estimate approximately fifteen to twenty violent crime,  
5 sexual assault, or assault.

6           Q: So special agent what do you look for as evidence in  
7 the crime scene?

8           A: When I enter a crime scene I look for evidence of  
9 the crime and who may have done the crime. When I'm looking  
10 evidence to identify a suspect I look for things such as some  
11 of the things I look for are DNA, hair, fiber, or finger  
prints.

12          Q: So when you collect the evidence?

13          A: When I find significant evidence I collect that  
evidence.

14          Q: So after you collect the evidence what do you with  
15 the evidence?

16          A: Once I collect the evidence I package it and I ship  
17 it to our FBI laboratory in Quantico for examination.

18          Q: And in this similar case RMI vs Ali Phillip how many  
19 items were collected?

20          A: In total we collected fifty items. We collected 33  
21 items from the crime scene which was comprise of the home and  
22 the field where the mattress was burned. We collected five  
23 evidence at the hospital and we received twelve other items  
24 of evidence that was collected by Marshall Islands Police  
Department.

25          Q: Special agent Dana what is it in your exhibit number  
26 34?

27          A: Exhibit number 34 is a copy of chain of custody for  
28 an item of evidence, the item of evidence is 1b8 and it

1 refers to a patent print that was lifted off the top of the  
2 freezer in the Marquez home.

3 Q: Can you please describe what is a patent print?

4 A: A patent print is a print that is left behind that  
5 is visible with a natural eye. I don't need powder or  
anything else to be able to see that print.

6 Q: Now I'm going to refer to it 1b8. And who collects  
7 the finger print?

8 A: I collected the print from the freezer.

9 Q: And how did you collect the print?

10 A: Wearing gloves I used a rubber lifter to collect the  
11 print.

12 Q: And special agent Dana please describe to the court  
13 what you use to collect the prints?

14 A: Wearing gloves I took the rubber lifter, the rubber  
15 lifter is a piece of rubber that is sticky on one side and  
16 not the other. There's a clear plastic protective sheet that  
17 covers the lifter until I'm ready to use it. When I identify  
18 the print in this case I remove the clear plastic and I  
19 gently place the sticky side of the rubber down onto the  
20 print. I smooth out the rubber and I make sure there's no air  
21 bubbles underneath it, then I carefully lift the rubber off  
22 the top of the freezer. Seen that the print if transferred to  
23 the top of the rubber I then place the clear plastic  
24 protector sheet back on top of that print. And that clear  
plastic protects the print so it doesn't get smudged or  
damaged.

25 Q: And is that the standard way of collecting a print?

26 A: It is one of the standard ways that we use to  
27 collect the print.

28 Q: And what factor do you think when you collect the

1 || evidence?

2 A: There's many factors that I consider when collecting  
3 a print. When I collect a print I consider the surface where  
4 the print is located, the environment that might be affecting  
5 the lift, and once I determine the best method for lifting  
6 the print of most importance is lifting the print and  
7 protecting it from damage, then I have to consider the fact  
8 trying to how to package it and ship it to our laboratory in  
Quantico.

9           **Q:** And in this case did you send the prints to the lab  
10          in Quantico for examination?

11       A: Yes, I sent the print that I removed from the top of  
12 the freezer to the laboratory in Quantico.

13           **Mr. Laiden:** Thank you, special agent Dana I have no  
14 further questions Your Honor.

Mr. Kun: Nothing from defense.

15 Court: Can I see counsel in my chambers?

16           Mr Taafaki: Your Honor, the prosecution would like to  
17 call FBI witness Nicole Cover.

18 Court: Is it C-o-v-e-r?

19 Mr. Taafaki: Yes, C-o-v-e-r.

**OATH ADMINISTERED**

Nicole Cover

23 || Questioned by: Mr. Taafaki

Q: For the record Nicole please state your name?

26 A: My name is Nicole Cover, first name spelled N-I-C-O-  
27 L-E last name spelled C-O-V-E-R.

Q: Nicole where are you employed?

1           **A:** I'm employed by the Federal Bureau of Investigation,  
2 commonly referred to as the FBI, which is a United States  
3 government agency.

4           **Q:** Where are you currently based?

5           **A:** I'm currently based at the FBI laboratory, which is  
6 located in Quantico, Virginia.

7           **Q:** And what's your title Nicole?

8           **A:** I'm a physical scientist forensic examiner in the  
latent printer operation unit at the FBI laboratory.

9           **Q:** What are your specific responsibilities?

10          **A:** My special duties including receiving, inventorying,  
11 processing and examining items of evidence for the presence  
12 for development of latent prints. I than compare these latent  
13 prints to prints of no individuals to other latent prints or  
14 I can search them against the FBI automated data base. I  
15 prepare a report base on my findings and I testify in court  
when I'm ask to do so.

16          **Q:** And how long have you been encosed, encaged with  
17 finger print work?

18          **A:** For about eight and a half years.

19          **Q:** Nicole, what's your education back ground?

20          **A:** I have a bachelor of science degree, and forensic  
21 and investigative science from West Virginia University,  
which is located in Morgantown West Virginia in the United  
22 States.

23          **Q:** And what training and experience do you have in the  
area with finger prints?

24          **A:** I've completed approximately eighteen months  
25 training program in the latent print unit at the FBI  
26 laboratory. This program included classroom lectures, written  
27 tests, oral boards, (Indiscernible) boards, and comparison

1 skills test along with case work which I conducted under the  
2 supervision of a mentor. During this program I received  
3 training in the principles of using friction ridge skin. I  
4 also received training in the proper handling, and processing  
5 of evidence and also proper recording and comparison of known  
prints and development of latent print. During this program I  
process hundreds of items of evidence and completed  
approximately a hundred thousand comparisons and at the end  
of this program I successfully passed the comprehensive  
qualification exam, which cover all aspects of that program.

10 Q: So what is the known finger print what do you mean  
11 about known?

12 A: Yes, before I explain what a known finger print is  
13 it is important to understand friction ridge skin is.  
Friction ridge skin is a specialized form of skin that is  
14 found on the palm or surface of your hand and the soles of  
your feet. It's made up of ridges that you can see on the  
15 surface, and then the (Indiscernible) which are the valleys  
that runs between those ridges. This friction ridge skin  
16 forms in an arrangement or in a pattern, a known finger print  
17 is the intentional reproduction of that friction ridge  
18 arrangement specifically from the end joint of an individual  
19 finger. It's taken often by coating the finger in a thin  
20 layer of black printer's ink and then rolling it from nail to  
nail on a contrasting background such as a standard finger  
21 print card. Known finger prints can also be taken digitally  
22 by placing the finger on a flatbed scanner and recording the  
arrangement digitally. Known prints can also be taken of not  
23 just the end joint of an individual's finger but also the  
24 full palm or the sole of the foot in a similar manner.

25 Q: Thank you Nicole what is a latent finger print?

1       **A:** A latent finger print is the chance reproduction of  
2 that friction ridge arrangement throughout the day as an  
3 individual is touching and handling an item the sweats, oil,  
4 grease or other substance that coats their hands can leave a  
5 reproduction of that friction ridge arrangement of those  
6 items. Latent prints are usually fragmentary and major  
7 meaning they don't often contain the entire finger or the  
8 entire palm and they often require a chemical process, or a  
9 powder, or a light source in order for them to be visualize.

10      **Q:** In your records can you explain to the court what  
11 process did you use for finger print analysis?

12      **A:** The methodology used to compare friction ridge  
13 prints is an acronym call ACE and it stands for Analysis  
Comparison Evaluation.

14      **Q:** And what do you in the analysis stage to start a  
15 stage?

16      **A:** In the analysis space I'm gather as much information  
17 as possible about the print in order to determine if it's  
18 useable. A print is usable if it contains efficient, quality  
19 and quantity of information that I could make an  
20 identification. In order to determine if it's usable I look  
21 at several factors that could affect the print when it's been  
22 left behind. So I'm looking at the type of surface that the  
23 print is left on, I'm looking at the type of substance that  
24 the print maybe left in, and any sort of chemical process  
25 that maybe use in order to develop that print. I'm also  
26 looking to see if there's any distortion or movement that was  
27 left behind when that print was deposited. In the analysis  
28 space I'm looking at three levels of information within that  
print in order to determine if it's usable. The first level  
of detail that I examine is the overall ridge low or pattern

1 type specifically for finger prints from the end joint of  
2 your finger there are three general pattern types. There's a  
3 loop where the ridges enter from one side rise, recurve, and  
4 exit out the same side from which they entered like a loop in  
5 a shoe lace. There is also a world type pattern were the  
6 ridges form a circular formation like a bullseye or a target.  
7 There's also an arch type pattern where the ridges enter from  
8 one side make a rise or a wave in the center exit out the  
9 opposite side from which they entered like the wave in the  
10 ocean. Once I look at first level detail I take a look a  
11 little bit closer and look a second level detail within the  
12 print. In second level detail I'm looking at the  
13 characteristics that are curve on those ridges. There are  
14 three ridge characteristics a ending ridge is a ridge that  
15 flows and ends, there's a dividing ridge is a ridge that  
16 flows and splits into two ridges, and there's also a dot  
17 which is a ridge that is wide as it is long like a period at  
18 the end of a sentence, the last level of detail I look at is  
19 a examining a print in a analysis is third level detail, and  
20 third level detail is the specific ridge edge shapes you may  
21 see in the print and also if there's presence of any pores on  
22 that print. I do a thorough analysis in the latent print and  
23 known print and then I can move on to the second set of ACE.

24           **Q:** And the second set is comparison?

25           **A:** Correct yes.

26           **Q:** And Nicole what do you do with the comparison phase  
27 of ACE?

28           **A:** In the comparison phase of ACE I place the latent  
print and known print side by side and I'm looking for  
similarities and differences between the two prints. I'm  
looking for the same type of characteristic, in the same

1 location, with the same direction, and with the same spacial  
2 relationship you use other characteristics. It's not just the  
3 characteristics that I'm looking at while conducting a  
4 comparison but also the continuous ridges that are curve at  
5 the end of characteristic.

6       **Q:** Thank you Nicole, and the final phase as you said is  
7 evaluation. And what do you do in evaluation?

8       **A:** In the evaluation phase I can come with one of three  
9 decisions. I can come with an identification decision, an  
10 identification decision use the latent print and known print  
11 originated from the same individual. I can come with an  
12 exclusion decision, an exclusion decision the latent print and  
13 known print did not originate from the same individual. And I  
14 can come into an inconclusive decision, inconclusive means  
15 that I am unable to determine if the latent print and known  
16 print did or did not originate from the same individual.

17       **Q:** Thank you, what quality assurance major do you have  
18 after comparison?

19       **A:** There are several quality assurance measures that  
20 occur in my unit to include their verification, blind  
21 verification, technical, and administrative review.  
22 Verification and blind verification, are when another  
23 qualified examiner perform their own independent analysis  
24 comparison and evaluation and come to their own comparison  
25 conclusion. The difference in verification that other  
26 examiner knows my conclusion and blind verification that  
27 other examiner does not know my conclusion. Then there is also  
technical and administrative review which there is a review  
over my paper work to make sure that I'm following my  
standard operating procedures.

28       **Q:** Thank you Nicole, could you explain the court what

1 the basic steps are in the use of finger print means by  
2 verification?

3           A: Friction ridge prints can be used as an  
4 (Indiscernible) identification because friction ridge skin is  
5 both persistence and unique. It's persistence meaning that is  
6 formed before birth during fetal development and that is  
7 persist thru out life until death and decomposition bind  
8 permanent scaring. It's also unique it's unique from  
9 individual to individual and from finger to finger and it's  
10 unique because both genetic and environmental factors  
11 influence the formation of friction ridge skin during fetal  
development.

12           Q: Thank you, Nicole can you tell the court what item 29  
is?

13           A: Yes, item 29 in this case is a latent print lift  
14 that was indicated that coming from on top of the freezer in  
15 room B.

16           Q: where did you first see this?

17           A: I first saw this latent print lift at the FBI  
18 laboratory in Quantico Virginia.

19           Q: What is the importance of this?

20           A: This latent print lift was indicated as coming from  
on top of the freezer in room B.

21           Q: Can you tell the court whether analyze item 29 for  
latent print?

22           A: Yes, I did examine it for the presence of any latent  
print that maybe on that lift.

23           Q: And what was the results on the examination?

24           A: I did talk to one latent palm print on the lift  
indicated as coming from on top of the freezer in room B.

25           Q: And what are the items 47 and 61?

1           A: Item 47 and 61 in this case where known finger  
2 prints and palm prints varying the name Alee Phillip.

3           Q: And what are the significant for 47 and 61?

4           A: Items 47 and 61 were submitted to the FBI laboratory  
5 for comparisons to any latent prints that I may develop in  
6 the case.

7           Q: Please tell the court whether you compared item 29  
8 with items 47 and 61?

9           A: Yes, I did conduct comparison between item 29 the  
10 latent print lift and items 47 and 61 the known print sparing  
11 Alee Phillip.

12          Q: And what were the result with the comparison?

13          A: The latent palm print that I detected on the lift as  
14 indicated coming from the top on the freezer in room B was  
15 identified to the right palm print on the known palm print  
16 card baring the name Alee Phillip.

17          Q: Please explain to the court that when you touch an  
18 item is it possible that you do not leave a latent print?

19          A: Yes, it is possible that if you touch or handle an  
20 item you may not leave a latent print behind. There several  
21 factors that can determine whether or not a print was left  
22 behind.

23          Q: In your experience for instant as finger print  
24 expert, how often that the latent print is not found in the  
25 suspected item?

26          A: That's not something I typically keep track of  
27 however it's not surprising if I don't detect a latent print  
28 on an item. Some items are more conducive to leaving behind a  
latent print. For example, very smooth items the chances of  
developing a print are greater than an item that is texture.  
It can also depend upon the amount of substance that is on

1 the individuals hand. Another factor that may affected is the  
2 type of environment that the item was expose to. For example,  
3 if an item was expose to extreme heat, or humidity, or rain,  
4 extreme cold those could all affect whether or not a print is  
left behind on that item.

5           **Q:** Okay, Nicole with this case the factors that you  
6 spoke about did it affect the print on the knives?

7           **A:** In this case I process four knives for the presence  
8 of latent print and did not detect any on those four and yes  
9 it may be possible that some of those factors could affect  
10 why latent prints were not left behind. I do remember in this  
11 case all four knives had a handle that were textured. That  
12 may have affected why I did not detect any latent prints on  
those knives.

13           **Q:** Can you explain to the court when you said textured  
14 handle, what does that mean?

15           **A:** If you think about a knife often the handles are  
16 textured because you want to have a good grip on the knife in  
17 order to conduct any cutting or slicing for food preparation  
18 so those handles are textured, similar to how the grips on a  
19 gun are textured because you want to have a good grip for  
shooting.

20           **Q:** So, textured handle doesn't interrupt the impression  
21 of a print?

22           **A:** It may if you think about a textured surface it's  
23 not smooth, so as your placing your hand on that textured  
24 surface that texture maybe breaking apart there's friction  
25 ridges as your touching the item. So, no prints could be left  
26 behind or prints that are left behind may not be usable  
27 because of that texture.

28           **Q:** So, when you say a person is excluded what does that

mean?

A: When an individual is excluded it means that from the latent print it means that they are not the individual that left behind the latent print.

**Q:** Thank you, no further questions.

## Cross Examination

**Questioned by:** Mr. Kun

**Court:** Any questions Mr. Kun?

Mr. Kun: Yes, Your Honor just a few questions for the witness.

**Q:** Madam, trying to wrap my head together with the language here in a simple language. What is the connection between DNA and finger prints?

**A:** Do you mean on a formation of friction ridge skin?

**Q:** No, is simple now what the connection DNA and finger print is it same thing or different thing?

**A:** DNA is different in terms of forensic evidence than latent prints. However, DNA which is your genetics make up does affect with your friction ridge arrangement will look like, which is part of the reason why every friction ridge skin unique.

**Q:** So, what does it mean does it mean that if a person excluded as a contributor in a certain object, does that mean on a DNA report? If a person is excluded as a contributor to the item does that mean his also excluded his finger prints is also excluded?

**A:** I am not a trained DNA examiner so I can't speak on

1 the DNA in the connection of exclusion. However, in the terms  
2 of latent print if an individual is excluded from an item it  
3 just means oh, excluded from a print excuse me, it just means  
4 they did not leave that print behind, it does not necessary  
5 mean that they did not touch that item.

6       **Q:** Ma'am in reference to item 29 of your tests you  
7 indicated that my clients finger prints was found on top of  
8 the freezer, is that right?

9       **A:** In regards on item 29 the latent print lift from the  
10 top of the freezer I identified the right palm print on the  
11 finger print card baring the name of Alee Phillip.

12       **Q:** Is that on top of the freezer?

13       **A:** I wasn't present when the lift was taken however the  
14 documentation I have which was written on the lift indicated  
15 it was from on top of the freezer.

16       **Q:** And you testified that you examined four knives?

17       **A:** Yes, in this case it was four.

18       **Q:** These four knives were sent to you from where?

19       **A:** These four knives were sent to me along with the  
20 rest of the evidence from special agent Brent Dana.

21       **Q:** Was there a knife with blood stain on it?

22       **A:** I do recall one knife with blood on the blade, yes.

23       **Q:** Did you conduct test on those on that knife?

24       **A:** Your Honor, may I reference my notes?

25       **Court:** Yes, you may.

26       **Q:** I think that's item 20 ah 48.

27       **A:** Yes, I did conduct examination on item 48.

28       **Q:** Did you find any finger prints on it, handle?

29       **A:** No, I did not detect any usable latent prints.

30       **Q:** So, as you testified on any of those four knives is  
31 that right? You testified that there was no finger print on

1 any of those four knives you tested.

2 A: Yes, that's correct.

3 Mr. Kun: Nothing further from the defense, thank you.

4 Court: Ms. Cover, I have one question. Agent Dana  
5 testified about a patent print that was taken from on top of  
6 the freezer, which he described it was visible to his eye and  
7 that is why he took the lift. You testified about a latent  
print are they one of the same?

8 A: They are one of the same. At the laboratory we do  
9 not a distinction in the latent print unit between patent and  
10 latent. I do understand what patent means, in the latent  
11 print discipline latent typically means that you do not need  
12 a chemical process or powder in order to see that print,  
13 which is visible with the naked eye. However, for the  
14 purposes with my examination and in my unit they are still  
15 referred to as latent print. And they are referred to as  
16 latent print because they are chance on in intentional prints  
17 that are left behind. As of suppose to a known recording of  
18 friction ridge skin which is the intentional reproduction of  
that friction range arrangement.

19 Court: Thank you.

20 Ms. Cover: Your welcome.

21 Court: Counsel are there any re-direct questions based  
22 on my questions?

23 Mr. Taafaki: Your Honor, prosecution understands that  
the testimony by the witness Nicole the difference between  
24 patent and latent. Patent is visible to the naked eye, and it  
does not need use of powder and chemical to have the  
25 visibilities. But according to justification instead of  
26 (Indiscernible) in the FBI labs comes to Nicole every single  
27 patent count is (Indiscernible).

1           **Court:** It's not extremely a long question.

2           **Mr. Taafaki:** I apologize. Witness Nicole please explain  
3 (Indiscernible) refer to the term patent?

4           **Mr. Kun:** Objection Your Honor, his supposed to re-  
5 direct not make a statement.

6           **Court:** Is this a question or an explanation? Because I  
7 understand what you are trying to tell me you can just  
8 testify to that. Is there a question here somewhere?

9           **Mr. Taafaki:** I have a question.

10          **Court:** Okay go ahead.

11          **Mr. Taafaki:** I was trying to respond to your.

12          **Court:** You don't get to respond you're not the witness.

13          **Q:** If you can respond to our (Indiscernible) called by  
14 Mr. Russell Kun. In respect to item 48 where is  
15 (Indiscernible) created in the dialog that there was this  
16 repeating actions.

17          **Mr. Kun:** Objection Your Honor, is that a re-direct or  
18 his still making a statement? He should re-direct the  
19 witness.

20          **Court:** You are coming to a question?

21          **Mr. Taafaki:** Yes, I'm getting for the witness if the  
22 counsel don't interfere. Nicole when you said that you did  
23 not have detectible you did not intact usable evidence it's  
24 not an extreme actual excursion of the presence of evidence.  
25 It is just that you did not have anything usable.

26          **A:** That's correct it did not detect any usable latent  
27 print on that item the knife item 48, however that does not  
28 mean an individual did not touch that item.

29          **Q:** No further questions, Thank you.

30          **Court:** Mr. Kun do you have any questions?

31          **Mr. Kun:** No, Your Honor.

1           **Court:** Your excuse, thank you. Counsel your next  
2 witness. Are you officially resting?

3           **Mr. Taafaki:** Half of mine are (Indiscernible) but  
4 prosecution like to submit a request to call (Indiscernible)  
statement to the case.

5           **Court:** You are resting your evidence?

6           **Mr. Taakfai:** Yes, Your Honor.

7           **Court:** Mr. Kun all is in your care earlier than I expect.

8           **Mr. Kun:** Yes. Your Honor since the prosecution has  
9 officially rested their case the allege juvenile offender  
10 Mr. Alee Phillip most caught to Rule 29a of the Marshall  
11 Islands criminal procedure rules. To answer his charge for  
12 acquittal on all the allege charges against him for reasons  
13 that the evidence is insufficient substantial conviction.

14           **Court:** Mr. Kun, do you want to argue the motion or admit a  
statement?

15           **Mr. Kun:** Sorry, I didn't quit catch that?

16           **Court:** You want to argue the motion or submit the base  
17 on what you presented?

18           **Mr. Kun:** If the court wishes for me to argue in detail  
I will but right now I'm just submitting, moving, moving rule  
19 29 as it is now, since prosecution has rested their case.

20           **Court:** Any response to the new motion prosecution?

21           **Mr. Taafaki:** Your Honor, there is no ground to the  
22 motion. We are going to this, this is the final part of the  
23 trial. We had the full part when we took witnesses from  
24 Laura, and when we testified Nicole here and tremendously  
25 strong for the prosecutors evidence that correspondence with  
it. The prosecutor as you know Your Honor, every piece of  
26 evidence that was presented by each of the witnesses from  
27 Laura almost every piece, first count and repeated elements

1 of confession by the juvenile. Yesterday Your Honor, we heard  
2 a testimony from the FBI witness specialist on DNA testing  
3 analysis and he shared with the court the result of the  
4 examination pointing to the fact that four hundred and  
5 seventy septillion of the count according to the ratings that  
6 was found presence in Ashley and these are in presence  
7 contributed to juvenile offender. She couldn't find that it  
8 was the highest, the strongest possible level in patent  
9 process. This morning Your Honor we heard from Nicole Cover  
10 she made confirmation to the fact that the finger print  
11 patent that was taken by Brent analysis in the FBI in  
12 Quantico, Virginia compared extremely with the mount of  
13 finger print taken from the juvenile. There is there for Your  
14 Honor there is no bases to who by my learner colleague about  
15 the application of Rule 29a. Your Honor, the prosecution  
16 intends to lay this out in closing remarks at the time. Both  
17 evidence Your Honor was presented by Lara yesterday and today  
18 Nicole, and Brent earlier to that also confirmed. So, that  
19 the evidence and sequence of seeking profession by the  
20 juvenile offender. This is a serious case Your Honor for the  
21 Republic I'm glad it has come to an end. And take the course  
22 Your Honor to make sure that every detail is sorted out and  
23 explained enough. It has brought three FBI key witnesses from  
24 aboard and I think that the proposal by defense counsel is  
25 not prompt and timing. I urge the court go on with the  
26 course, thank you.

27       **Mr. Kun:** Your Honor, it seems the prosecution has taken  
28 advantage of opposing or move, first move in detail. I think  
the defense is also should be allowed to submit in detail.  
Your Honor, form the word go when this case started the trial  
began. Part one, the prosecution brought in their witnesses

1 as they mentioned from Laura. None of those witnesses Your  
2 Honor pointed their finger at my client as the culprit as the  
3 perpetrator. Not even to the break in of the store and  
4 prosecution is saying that those are creditable witnesses,  
5 absolutely nothing! All that the prosecution is thanking on  
6 is my young clients assume confession before the detectives  
7 during toleration. It's their case that has no base Your  
8 Honor. And now part two of this trial, the prosecution has  
9 brought in three FBI agents. Again their evidence shows that  
10 does not implicate my client as the perpetrator especially  
11 the murder weapon, the knife. The DNA examiner Ms. Lara Adams  
12 testified that yes male DNA was presents and further is  
13 excluded as a contributor that is item 48 c. There is no  
14 evidence! And prosecution is still thriving on that there is  
15 evidence, based on the four hundred and ten likelihood ratio?  
16 This is a limited support! In the DNA equivalent anything  
17 beyond a thousand is then that is we have more argument on  
18 support there. And then they called in special agent from  
19 FBI, Brent Dana. All the evidence that was presented from the  
20 witness was his qualification and what he does, collecting  
21 evidence, but for counting terrorist measures. Not one in his  
22 testimony he said, you did it! He collected over fifty  
23 evidence and additional nail clips also and never once in his  
24 testimony did he say yes that's the perpetrator. This why  
25 Your Honor defense never even to bother to cross examine him  
26 , then prosecution called in Nicole Cover forensic examiner.  
27 Prosecution only talked about item 29 and item 27 finger  
28 prints on top of freezer, which was testified by the examiner  
and matched my client's prints. Fine that's on top of the  
freezer, Your Honor! Not on the opening lid and there's  
nothing even a trace of blood on it. And the knife! Ms. Cover

1 testified that there not a finger print on the knife, on all  
2 four knives. Even though there were only two knives involve  
3 in this incident, why four I don't know and as she testified  
4 no finger prints detected. Your Honor, this is why defense is  
5 my client is moving in Rule 29a. Because the government case  
6 with the prosecution is totally basis. They have absolutely  
7 nothing! They should go out and look for the right guy they  
8 got the wrong guy here! They are just standing on a  
9 confession! Your Honor, if the court delays this case we will  
10 call our client to tell his side of the story. Your Honor,  
11 this is a waste of time for the court and even for me, for  
12 the defense should be acquitted and prosecution should not  
13 add anymore because they officially call they rest their  
14 case. This is defense argue, Your Honor.

15           **Court:** Thank you counsels. Travis I just received a  
16 call on my computer it says my battery is almost dead I'm  
17 plugged into this ups box here. Does it need to be turned off  
18 ? Or perhaps it's not working, can you come and take a look at  
19 it? Apparently I don't know how to use technology things.  
20 Alright, Rule 29a says after the government closes its  
21 evidence, after close all of the evidence the court on the  
22 defendant's motion must enter a judgment of acquittal of any  
23 offense for which the evidence is insufficient to sustain a  
24 conviction. Mr. Phillip is charge with four criminal offenses  
25 they are Murder, Sexual Assault, Manslaughter, and Burglar. I  
26 am trying to dismiss count three manslaughter, however I'm  
27 going to leave that charge pending and consider the motion as  
28 to count three again at the conclusion of all the evidence.  
At this point there is insufficient evidence to support the  
charge in manslaughter, but the defense may put on evidence  
that would convince me that manslaughter is the more

1 appropriate charge and murder is inappropriate. And to  
2 preserve that option for the defense I will not rule on count  
3 three at this time. As for count one Murder, count two Sexual  
4 Assault, and count four Burglary. I do not find that there is  
insufficient evidence to sustain a conviction.

5           **Clerk:** Can you please repeat that Your Honor?

6           **Court:** Yes, it's backwards. I will not dismiss those  
7 three charges at this time. As I stated I will reserve my  
8 decision on count three. The rule is that I must find  
9 insufficient evidence in sustain a conviction. There is some  
10 evidence to sustain convictions on one, two, four but just so  
11 we are clear I am not finding that the evidence is  
12 sufficient, so I don't want to pre determine my decision,  
does that make sense?

13           **Mr. Kun:** Yeah.

14           **Court:** The rule is kind of backwards. Okay, so for now  
15 at least the motion is denied. Now, Mr. Kun the decision will  
16 be yours whether or not to put on the stand I would like to  
17 give you an hour to decide on that decision.

18           **Mr. Kun:** Your Honor, can the court give us the whole  
19 afternoon, by tomorrow to respond because I need to sit down  
20 with my young client here to discuss whether he really wants to  
21 testify and tell his side of his story. Because if we could also  
resume tomorrow at 10 o'clock and give him more time to rest and  
22 get ready if he's gonna testify. And Your Honor it won't take  
23 all day he will be our only witness if he decides to testify.

24           **Court:** I'm not gonna hold you to that if you decide you  
25 want to call on any witnesses you may do so. I think your  
26 request is to spend the afternoon with your client and it's a  
27 very good idea. Mr. Phillip as I indicated to you very early  
28 on in these proceedings. You are not required to testify you

1 may testify if you wish to do so but no one can make you do  
2 it. Your decision to testify or not might be the most  
3 important decision you'll make in this entire trial. So, I'm  
4 going to give you and Mr. Kun appropriate time to reach the  
5 correct decision. We will need you again 10 o'clock tomorrow  
6 morning and see what your decision is. Anything further today  
counsel?

7           **Mr. Taafaki:** Nothing further, Your Honor.

8           **Mr. Kun:** Nothing further.

9           **Court:** All right courts in recess until tomorrow  
10 morning at 10am.

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1           **Court:** Good morning everyone we're back on the record in  
2 RMI versus Alee Phillip. It is January 19, approximitly ten  
3 minutes after eleven o'clock in the morning. Two days ago, while  
4 we were having a recording problem, we had a discussion off the  
5 record. At that time Mr. Kun informed us that Mr. Phillip had  
6 decided not to testify. And Mr. Kun intended to call no other  
7 witnesses. Is that still your intend?

8           **Mr. Kun:** Yes, Your Honor.

9           **Court:** Alright then I will officially indicate on the  
10 record that the defense had listed.

11          **Mr. Kun:** Yes, Your Honor.

12          **Court:** And we have set this date and time for closing  
13 arguments. And it's either Mr. Taafaki or Mr. Laiden. Or both of  
14 you. Alright, we'll hear first of all from the prosecution, then  
15 we'll hear from Mr. Kun and then the prosecution will have the  
16 final word. You may proceed. Let me indicate for the record that  
17 Mr. Phillip is present. The mother has not yet arrived. She has  
18 a habit of being several minutes late. And I assume Mr. Kun we  
19 can presume in her absence is that correct?

20          **Mr. Kun:** That's correct Your Honor.

21          **Court:** Mr. Taafaki you may proceed.

22          **Mr. Taafaki:** Your Honor ah sorry, before I proceed on,  
23 Meuton and I found Ashley and Robert's ah, Ashley's mother and  
24 Robert's wife down on the ground level and was wondering whether  
25 she could sit in.

1       **Court:** I think under our rules, a representative of the  
2 victim is in title to be here, do you have a problem with that?  
3 I'm not sure exactly.

4       **Mr. Kun:** Yes, I think we have a problem with that but  
5 anyway this is a close session so it should be remained closed.

6       **Mr. Taafaki:** I'm wondering Your Honor, I'm not sure whether  
7 it's close to the public and to closest relatives like the  
8 mother of little Ashley and wife of Robert.

9       **Court:** Mr. Kun?

10      **Mr. Kun:** Your Honor, what concerns me is that Alee's mother  
11 did raise her fear of the deceased's wife and her family. Which  
12 is why she has moved away from where she used to stay with the  
13 son in Delap and even left her work in Delap, where she's  
14 working in Delap. And currently staying at a family's place in  
15 Mosquito Town or Demon Town or somewhere. And now that the  
16 deceased's wife is downstairs, I won't be surprise if my  
17 client's mother decides to just do a detour to avoid this. I  
18 think Your Honor we just do this closing argument and that's  
19 it... wrap up.

20      **Court:** Okay I'm gonna take a five minutes' recess and I'll  
21 go look up the rules.

22

23                   **(FIVE MINUTES RECESS)**

24

25

1           **Court:** We're back on the record after taking about a five  
2 minutes' recess to look at the rules of juvenile procedure. I  
3 will read for you the first sentence of rule 6A. Hearings shall  
4 be held informally in closed session with only those present  
5 concern with the case which may include any victim or victims of  
6 the alleged delinquency and such other persons that the Court  
7 may admit for special cause. I find that the wife of Robert and  
8 the mother of Ashley stands in the place of the victim also that  
9 she may attend this hearing for a special cause under the rule.  
10 Counsel when you go out to invite her in, I would like her to  
11 sit over here by the bailiff and please inform her that I will  
12 not tolerate any impersonal burst that she may sit and watch.  
13 She's to sit silently and respectfully. Alright we are now ready  
14 to proceed with the closing arguments. Mr. Taafaki.

15           **Mr. Taafaki:** Your Honor on the Government's opening  
16 statement on this case, the prosecution stated that we shouldn't  
17 state to argue to test the creditability and truthfulness of the  
18 statement or confession of the juvenile sentence. And it will be  
19 of substantial amount of corroborates evidence that link every  
20 element of this procession to the crime or actions he  
21 committed... or he admitted to have say that. So, the time the  
22 prosecution consolidated position Your Honor it has no basis to  
23 rely on for the common results of the forensic test of material  
24 collected from the crime scene or the Majuro Hospital was  
25 provided by the RMI funeral division of investigation. The

1 prosecution Your Honor now has three main areas published to  
2 argue this case. The confession statement of the juvenile  
3 offender, the testimony of the witnesses including police  
4 officers, the results of the determination by the FBI forensic  
5 experts and the staff. Or relevant documents Your Honor of the  
6 trainings and testimonies statements of these areas are now on  
7 record. Significant of corroborating evidence Your Honor is the  
8 Court is only to aware if they will give support and strength  
9 that puts a creditability of evidence in confess statements or  
10 other corroborating sets. That even if the juvenile offender did  
11 attempt the interaction or denied that his statement is false,  
12 that the facts and information provided independently by the  
13 witnesses will not alter with the interaction. Your Honor  
14 illustrate vividly the testimonies of witnesses supported by  
15 Phillip's crime scene by directly corroborated step by step in  
16 its accurate position to every elements or counts contain in the  
17 confession of the juvenile offender. It showed Your Honor that  
18 testimony of the witnesses is a mirror effect of the confession.  
19 That the time that the juvenile offender made his statements to  
20 the police, he had no knowledge of what the testimonies of the  
21 witnesses would contain. The witnesses had known knowledge of  
22 whether or not the juvenile offender will confess or what is  
23 confession would look like. Thus, even if the juvenile offender  
24 denied he was in Robert's bedroom the night of the tragic murder  
25 of Robert and Ashley and the brutal sexual assault of Ashley, he

1 cannot deny that there is proof produce by FBI witness...  
2 testify of FBI witness Lara Adams. Namely that only... not only  
3 was his DNA positively found in Ashley's vagina but that it  
4 ranked at four hundred seventy septillions. The highest and  
5 strongest possible course found for identification. It is proof  
6 Your Honor the fact that the juvenile offender was in the  
7 bedroom that night and two, that he sexually assaulted Ashley.  
8 This prosecution contempt is in vital contribution that  
9 corroborating evidence mates to a case of this nature. Your  
10 Honor the juvenile offender was elegantly charge with six  
11 counts. **Count 1. Murder in the First Degree, Count 2. Sexual**  
**Assault in the First Degree, Count 3. Manslaughter, Count 4.**  
**12 Burglary, Count 5. Aggravated Assault and Count 6. Criminal**  
**Trespass.** The Court dismissed the last two counts. In the case  
15 of Count 1. Your Honor, Murder in the First Degree, the juvenile  
16 offender admitted to the killing of Robert Marquez and his  
17 three-year-old daughter Ashley Marquez. And he described in the  
18 clears of language Your Honor how he committed this gruesome  
19 crime. There is briefly Your Honor having scale Robert's walls  
20 to the ceiling level then slipped himself through a hole in the  
21 wall, crawled across the ceiling of the house, lowered himself  
22 on top of the freezer, took a look at Robert's bedroom and  
23 coolly walked across to the store part of the house. Took items  
24 which he describes what their names were. He left the house  
25 through a side door, took these items to his place in the woods.

1 He returned to Robert's house Your Honor through the same door  
2 he left the house. Picked up a number of knives some with the  
3 brownish handle on the nearby table. Entered Robert's bedroom,  
4 slashed Robert's throat and very coolly turned Robert's body  
5 upside down. If the juvenile offender were to deny these facts  
6 in his statement of confession, how would he have explained to  
7 the Court of that? That he defended testimonies by Jeffery Basin  
8 and Murphy Mubbun (Exhibit 1) reflected exactly as the juvenile  
9 offense described what took place. Jeffery's testimony Your  
10 Honor stated that the only door that was left open was the door  
11 that Alee said he opened. That Robert's neck had been slashed  
12 with a knife and they are found in Exhibit 22 to 27 exactly as  
13 Phillip described. This Your Honor, prosecution contempt cannot  
14 be near coincidence that the brownish or reddish handle knife he  
15 described in his statement of confession (Exhibits 37, 38 and  
16 39). And release near the blood was found on the bed beside the  
17 dead body of Robert Marquez. That Phillip's statement of  
18 confession that he turned Robert's body to face down.  
19 Corroborated Your Honor to the exact greedy in what Jeffery and  
20 Murphy's testimonies. They found Robert's body facing down.  
21 Murphy testified that he himself turned Robert's face up. This  
22 cannot be near coincidence Your Honor. Dr. Marybeth testified  
23 that Robert's neck was savaged from side to side. That the sharp  
24 blade has been used to slash Robert's neck. That it was excluded  
25 with great force using the sharp knife. And Dr. Marybeth

1 confirmed that the person committed the act did not have to be  
2 very strong. That the sharp knife was all that was necessary.  
3 Your Honor it should be observed that the juvenile offender did  
4 not say he used a screw driver or any other weapon to kill  
5 Robert. But that he stabbed Robert in the stomach. Corroborating  
6 evidence providing by independent evidence match exactly what  
7 the juvenile offender stated in his own perception. There is not  
8 a single inconsistency in his statement that the testimonies of  
9 the juvenile offender. In the case of Ashley Your Honor, the  
10 juvenile offender failed to admit its new statement of  
11 confession that having killed Robert, he killed Ashley. He  
12 explained that he first slashed her throat then taped her hands  
13 and mouth. And its shown in the consistent matter Exhibit 31 to  
14 Exhibit 35. They are exactly as Phillip described. If Phillip  
15 was to denied this by changing the story, how would he have  
16 explained to the Court that Exhibits 31 and 35 shows exactly as  
17 he described in his confession. Slashed throat, taped hands and  
18 mouth. Your Honor prosecution contempt this is not near  
19 coincident. Phillip's statements of confession admitted that he  
20 dragged across the floor Ashley's lifeless body from the bedroom  
21 to freezer. He then dumped her body in the freezer. If Phillip  
22 was to deny this part of his confession, how was he to explain  
23 to the Court of Murphy's statement Exhibit 1. He described how  
24 he searched for Ashley; he followed the trail of blood on the  
25 floor leaving from Robert's bedroom straight to the freezer. And

found Ashley's body in there exactly as Phillip described. Even if he denied all of that, that he was near the freezer. How would the juvenile offender Phillip explain to the Court that the FBI examiner Nicole Colbert's testimony on January the 16<sup>th</sup>, she confirmed that the results of latent prints, single prints tested from item 29 lifted from the power of the freezer in Robert's house matched exactly the results of test of note prints collected from Phillip's arms and finger prints. Dr. Marybeth's medical report, exhibit 8, in her testimony confirmed that Ashley's neck was slashed and several vital organs, blood vessels, breathing pipe and parts of the vessels. Doctor testified that the lacerated wound was caused by a strong application of a strong sharp blade. Even if Phillip were to deny that he wasn't in Robert's bedroom that same night, how was he to explain to the Court that in her testimony on January the 15 2018, FBI examiner Lara Adams and DNA analysis expert confirmed that the item 50 tested in FBI lab in Virginia, found the testing of blood found in the blade of one of the knives excluded Robert and Ashley but showed limited support for identification amount 210 of Phillip's DNA. Lara Adams explained Your Honor; limited support is not an exclusion it is an inclusion however slight. Your Honor, Bradbury versus State of Maryland (2331964) made a relevant reference of this particular state of petition. It states that the Court of appeal noted that the trial in Court did not make a credential error by stating

1 that only a slight evidence was necessary. Since under the  
2 circumstances they were self-proof. And only slight evidence of  
3 the fact was efficient to support the charge respective of  
4 whether it used to confess or admitted. Significant of item 50  
5 Your Honor, if there however slight or limited support for  
6 identification it is efficient to proof or to show that Phillip  
7 was in the bedroom the night of the brutal murder of Robert and  
8 Ashley. Prosecution contempt therefore Your Honor that  
9 testimonials and supporting evidence show the juvenile offender  
10 Alee Phillip did intentionally or knowingly under circumstances  
11 manifesting abstain indifference the value of human life cause  
12 the death of Robert Marquez and his three-year-old daughter  
13 Ashley Marquez. **Count 2. Sexual Assault in the First Degree.**  
14 Testimonial provided by Lieutenant Joe Jack of MALGov (Exhibit  
15 6A) stated that the juvenile admitted to remove in Ashley's  
16 dress by cutting it from the back (Exhibit 2 1). Testimony  
17 provided by Matthew Jaik, the last person to see Ashley alive on  
18 the night of Saturday June 24, the person who dressed Ashley in  
19 to bed, indicated that Ashley was wearing a green bedtime dress.  
20 Matthew's statement Your Honor, ties strongly to the confession  
21 statement and supported by the testimony of Lieutenant Joy Jack  
22 that he took off the dress from cutting it from the back.  
23 Statement confession of juvenile offender Your Honor described  
24 Alee's first killed Ashley by slashing her throat then tying her  
25 hands and mouth. It made no sense Your Honor to the prosecution

why the person would first kill Ashley that taped her hands and mouth. Why tape her hands and mouth when she was already dead? Even if the juvenile offender Your Honor was to deny about his cutting the dress from the back, how would he come to explain the fact that Ashley's green dress was found in the bedroom with the back slit. Prosecution contempt Your Honor that the actual frequent statement by Phillip was this. First, he taped Ashley's hands and mouth, then cut off the dress, then sexually assaulted her, then killed her and dragged her naked body to the freezer. The dress must have come off first before he killed her otherwise the dress, as shown in Exhibit 52 would have been soaked in blood. Dr. Ivy Claire testified (Exhibit 9) that the parts immediately leading to Ashley's vagina has been subjected to forceful friction. That such condition was unusual for a three-year-old. She testified that he protests opening her vagina had been lacerated and that it had been bleeding. The behind was torn in several parts. As the professor concluded she had no doubt whatsoever that there had been a forceful entry invasion by something like (INDISCERNIBLE). She testified that strangling injuries only cause bruises around her thighs. The object that to be upright it's (INDISCERNIBLE). The fact that Matthew Jaik was the last person to see Ashley alive stated that Ashley was very playful and was running around with another friend from the neighborhood. Never once did she complain about a severe pain in her vagina area. Testimony rules out the

1 possibility that Ashley might have fallen to a sharp upright  
2 object that night or before that. Your Honor prosecution  
3 contempt that the elaborate steps taken by the juvenile offender  
4 taped Ashley's hands, her mouth, cut off her dress, and not  
5 taping her legs showed he was preparing to sexually assault her.  
6 But even Your Honor, even if juvenile offender Phillip did deny  
7 he sexually assaulted Ashley, how was he to explain to the Court  
8 the facts that FBI examiner Lara Adam's testimony on January  
9 16, 2018 confirmed that item 45, the swap statement from Ashley  
10 and tested by FBI Laborce and compared and tested with Phillip's  
11 note swap showed the presence of Phillip's DNA in Ashley's  
12 vagina that the results then were compared in accordance to DNA  
13 standard racial rams at 470 septillions. The strongest support  
14 in highest level of identification in the FBI racial ORF.  
15 Prosecution contempt Your Honor that juvenile offender Phillip  
16 did knowingly subject in person three-year old Ashley Marquez to  
17 an act of sexual penetration by strong compulsion. **Count 3.**  
18 **Manslaughter.** Your Honor section 201 sub section 3 of RMI  
19 criminal code, states two conditions under in which defense of  
20 manslaughter is applied. A. When it is committed recklessly or  
21 B. When it's committed under the influence of extreme mental or  
22 emotional disturbance. Your Honor there is not a single brief of  
23 evidence to show the juvenile offender Phillip was under the  
24 influence of extreme mental emotional disturbance at the time of  
25 the incident. There is no evidence that he was under any mind

altering or controlling substances. Defense counsel, my learner colleague, did not produce any evidence of that effect during the trial. Prosecution contempt Your Honor that the killing of Robert and Ashley is supported by the criminal intense elements of recklessness. The juvenile offender was aware of the (INDISCERNIBLE) but acted anyway. He did so with complete disregard of the fact that his actions will cause the death of a man or a daughter. His reckless state of mind Your Honor, his manifest is so clear when he killed Robert and Ashley. He slashed Robert's throat and turned his body over the bed. Now why would a person be having killed another person turned the body of the death person upside down? Prosecution Your Honor contempt that he probably wanted to check Robert's back pocket for his wallet. That's how much he has respect; juvenile offender Phillip has for the value of human life. And he taped Ashley's hands and mouth and he cut off the dress and sexually assaulted her. Even dragged her naked body to the freezer and simply dumped her body in there among other frozen meats. He had no respect to nor (INDISCERNIBLE) whatsoever the value of human life. Your Honor prosecution contempt that the juvenile offender recklessly caused the death of another human being, Robert and his daughter Ashley. I'm almost done Your Honor and I thank the Court for being patient. Last count Your Honor, **Count 4.**

**Burglary.** Your Honor the juvenile offender did it twice the

1 offense of burglary. First admitting response to his mother in  
2 the police car on July 2, 2017.

3       **Court:** Counsel, regarding the statement of the juvenile on  
4 the police car, I have already ruled that although it was not  
5 constitutionally inadmissible that I would strike all references  
6 to that in the trial unless (INDISCERNIBLE) to the second.

7       **Mr. Taafaki:** Okay, thank you. The second admission by the  
8 juvenile offender occurred when he was interviewed by Royal  
9 Ceaser on July 3, 2017 the presence of the defendant's mother.  
10 That occasion Your Honor the juvenile offender described how  
11 between 3 AM and 4 AM on Saturday night and Sunday morning under  
12 Exhibit 26 he stated the walls of Robert's house, he slid into a  
13 hole on the wall, crawl across the ceiling, lowered himself on  
14 top of the freezer he then went into the connection store and  
15 stole USA menthol ciggarets, grizzly tobacco, vodka bottles and  
16 cash. He then went out through the side door of the house, hid  
17 the items at the place where he was staying. Independent  
18 testimony by Matthew Jaik (Exhibit 4) the cashier working for  
19 Robert's store and the last person that locked up the store on  
20 Saturday evening, supported the credibility and the truthfulness  
21 of Phillip's confession. Matthew Jaik recounted the exact items  
22 by names and the amount of money described by the juvenile  
23 offender Phillip in his confession to the police. If Phillip,  
24 the juvenile offender was to deny this information Your Honor,  
25 how was he to explain to the Court that the exact items he

1 admitted to have stolen were independently accounts for by  
2 Matthew Jaik who had known for knowledge that the juvenile  
3 Phillip had stated so in his confession. Independent testimony  
4 by witness Kiton confirmed that he, Kiton found the exact items,  
5 some had already been burned under the cover of plywoods at the  
6 place the juvenile offender explained on his confession  
7 statement. Even if the juvenile offender Your Honor did deny the  
8 he had taken these items to his place, how was he to explain to  
9 the Court that Kiton found the exact items in Phillip's place.  
10 Now that's not another coincidence Your Honor. Your Honor  
11 prosecution had carefully studied juvenile offender's statement  
12 confession that he carefully quoted every element of the  
13 confession to his independent testimony and accounts of the  
14 witnesses. It found credible consistency and support with the  
15 truthfulness and credibility of Phillip's confession statement.  
16 Corroboration give support lends credibility verifies the  
17 truthfulness of confession. Testimonial of the witnesses'  
18 confident support verifies every element in Phillip's  
19 confession. Finally, Your Honor with the permission of this  
20 Court, prosecution arrange for the FBI witnesses to testify in  
21 this case using the results of the examination and test of the  
22 evidence collected. The results confirmed that the juvenile  
23 offender Phillip was in the bedroom and confirmed that Phillip  
24 sexually assaulted Ashley. It confirms that Phillip's own DNA,  
25 was included in the blood sample on one of the knives. It

1 confirmed that the presence of juvenile offender's finger prints  
2 was on the freezer. The strength of the corroboration of  
3 Phillip's statement Your Honor, by the testimonial reinforced by  
4 testimonies were direct testing results and analysis by the FBI  
5 examiners. Please note down Your Honor that the prosecution as  
6 proven its case beyond reasonable doubt. Thank you, Your Honor.

7       **Court:** Travis how are you doing? Can you keep going or do  
8 you need a break?

9       **Clerk:** We go.

10      **Court:** Mr. Kun do you want to proceed now or do you want  
11 lunch and come back?

12      **Mr. Kun:** I want to proceed now Your Honor. Your Honor,  
13 defense closing will be quick. As the prosecution have stated  
14 that from the commencement of this case our young client Alee  
15 Phillip was charged with six alleged offenses. Of **Count 1.**

16 **Murder, Count 2. First Degree Sexual Assault, Count 3.**

17 **Manslaughter, Count 4. Burglary, Count 5.**

18 **Aggravated Assault, and Count 6. Robbery.** And after the  
19 preliminary hearing, the Court didn't find good cause for **Count**  
20 **5. Aggravated Assault and Count 6. Robbery** and dismissed them.

21 And each of these remaining four alleged offenses of murder,  
22 first degree sexual assault, manslaughter and burglary consist  
23 of elements. And the prosecution must proof each and every  
24 element beyond reasonable doubts during the trial to obtain a  
25 conviction otherwise, the Court must dismiss, acquit. Your Honor,

1 based on the evidence presented before this Court during the  
2 trial, the prosecution has seriously failed to proof beyond a  
3 reasonable doubt that our young client Alee Phillip is guilty  
4 for all these alleged offenses charged against him. For **Count 1.**  
5 **Murder**, the prosecution has failed to proof beyond reasonable  
6 doubts of the elements that Alee did intentionally or knowingly  
7 under circumstances manifesting extreme indifferences to the  
8 value of human life and cause the death of another human.  
9 Because there was simply no evidence shown from any of the  
10 prosecution witnesses including the FBI witnesses that Alee was  
11 the perpratrator who has alleged in the criminal information  
12 used a sharp steel knife measuring 14-15 inches long and slit  
13 the throats of Robert Marquez and his baby daughter Ashley.  
14 Except for Alee's assume confession obtain by detective Royal  
15 Ceaser. To proof beyond a reasonable doubt prosecution must show  
16 where these murder weapon fifteen-inch-long knife allegedly use  
17 by our young client to murder Robert and his baby. Where is this  
18 knife? I didn't see it on the prosecution's desk or even  
19 presented before the... by the witnesses on the witness stand.  
20 And what knife is the prosecution talking about? I don't see it  
21 presented on the desk or even presented by any witnesses on the  
22 stand. To show beyond reasonable doubts prosecution must show  
23 that my young client's finger prints are on the knife. And none  
24 of this evidence is before the Court. And nor were they offered  
25 before the Court during the trial. Absolutely nothing. There is  
!

1 no reasonable doubt: As for **Count 2. Sexual Assault**, the  
2 prosecution has failed to proof beyond a reasonable doubt of the  
3 element that Alee did knowingly subject another person to an act  
4 of sexual penetration because there was no evidence shown from  
5 any of the prosecution witnesses including FBI witnesses that  
6 Alee was the perpetrator who has alleged in the criminal  
7 information tape baby Ashley's mouth and hands with a gray duct  
8 tape and then sexually assaulted her by penetrating her vagina  
9 and slit her throat with a knife. And then dragged her lifeless  
10 body across the floor and then dumped her in the freezer. This  
11 allegation was not even mentioned in Alee's assume confession.  
12 Where is the evidence that there was sexual penetration? Doctor  
13 Lapides had testified that the FBI took it. Where are the  
14 forensic results from the FBI? I don't see it on the table of  
15 the prosecution or nor was it ever testified on the stand. Where  
16 is this gray duct tape used to tie up the baby's mouth and  
17 hands? Surely it will show my client's finger print on it. I  
18 don't see it in front of the prosecution's table or was it  
19 presented by any or before any witnesses on the stand. These are  
20 needed evidence to be use as against my client in order to get  
21 reasonable doubts. Where is this green dress prosecution is  
22 arguing about? The last I saw it was in a photograph and wasn't  
23 ever presented by the forensics expert for ID DNA. Your Honor  
24 there is no reasonable doubts to sexual assault. And as for  
25 **Count 3. Manslaughter** Your Honor, Defense have argued that

1 prosecution has failed to proof beyond a reasonable doubt to the  
2 elements of murder. Therefore, there is no evidence to proof  
3 manslaughter also. And for count 2 burglary... count 4 sorry.  
4 The prosecution has also failed to proof beyond a reasonable  
5 doubt of the element that Alee did enter into a building with  
6 the intend to commit a crime. Because there was no evidence  
7 shown from any of the prosecution's witnesses that they had  
8 mentioned in their arguments. Nobody saw anything. Nobody saw  
9 Alee enter in to Robert's house and remove goods from the store.  
10 This allegation was only obtained from Alee's assume confession.  
11 Not even results from FBI showed that Alee did enter into  
12 Robert's house and went to the store and grab those things and  
13 took off. There are no reasonable doubts. Your Honor without  
14 going in to details over the testimonies of... from the three  
15 FBI agents, because defense submits that all their testimonies  
16 were hearsay and assuming facts not in evidence. And not even a  
17 page of all this slew of documents on forensic examination and  
18 reports so filed in the Court by the prosecution were offered  
19 into exhibits... ah to be exhibits and into evidence to  
20 establish any chain of custody during the trial. All we had was  
21 testimonies of three agents and nothing offered to support their  
22 testimony. Your Honor this is the first time ever in my over  
23 eighteen years of law practice where the prosecution calls in a  
24 witness to testify and does not back it up with any evidence.  
25 What we heard on that stand was just stories. There's nothing to

back up their stories. There's no DNA results report presented into evidence. No finger prints report. Nothing. Your Honor the prosecution I've just now backing on the assumed confession of Alee as obtain by the detectives especially Royal Ceaser to be convicted for committing these devious crimes. But Your Honor confessing is one thing and backing it out with proven part evidence is another. And there was no hard evidence admitted during the trial except for photographs to establish beyond a reasonable doubt during the trial. And all the prosecution presented in their closing arguments is only allegations and circumstantial. This is not proofing; establishing beyond reasonable doubt Your Honor. Your Honor the prosecution, as we open defense stated that the prosecution had seriously failed to proof their case beyond a reasonable doubt to convict our young client Alee Phillip of these offenses. And the court Your Honor cannot convict base on what is not in evidence. And the only avenue that the court must take is to acquit our client on all these four counts because there is no beyond reasonable doubt.

Thank you, Your Honor.

**Court:** Mr. Taafaki, rebuttal?

**Mr. Taafaki:** Thank you, Your Honor. Shows us that Alee's counsel was not present before the trial. We prosecution stated in the beginning that the confession was there and then all he needs to do is to provide us a quote to corroborate evidence to the testimony of the witnesses and we have discovered that the

court presently heard the preliminary and initial part of this trial. The incredible, Your Honor the incredible consistency between every elements of the confession by the juvenile came out of his mouth and recorded every bit of that mic was reinforced supported with extreme exactness of the testimonies of independent witnesses. He had no idea what he was saying to Royal Ceaser an actual no idea. But in the statements stated that he answered did truthfully recognized brown or red handles then he slashed Robert's throat every bit of that to an inch is corroborated by eye witnesses who found the body and then he found out in the US Court cases the support may not be overly sufficient only little slightly. When Alee said that he cut Ashley's throat and taped her hands and mouth, the two witnesses who found Ashley's body in the fridge found her mouth and her hands taped with duct tape and dumped in the freezer exactly, exactly as he would describe. And that's precisely the function of corrobority evidence.

**Mr. Kun:** Objection Your Honor. I think I should intervene here. I must. I think prosecution needs to know there is no long corroboration in sexual assaults. That's my objection. Stop using corroboration.

**Court:** Counsel, alright I've heard your objection. Can you translate what we need to get? Your response to the objection?

**Mr. Taafaki:** Your Honor I was coming to Lara Adam's confirmation of the analysis or results of the test. Which is a

confirmation You Honor through scientific analysis of Alee Phillip's DNA in Ashley's vagina.

**Court:** Up to you Mr. Kun, what's the specific basis of the objection.

**Mr. Kun:** Your Honor, my only objection is how the prosecution is always using the word corrobority and now they're going into the alleged offense of sexual assaults in this case and start using the word corroboration. That's my only objection. Nothing more.

**Court:** Thank you, the objection is noted and um it does have some basis but it appears prosecution has moved on.

**Mr. Taafaki:** Thank you, Your Honor. If I may... I don't know if it should be captured but I'm using corroboration respect to the killing of Ashley. The accused juvenile offender given itemized kinds of items or modities that he took from Robert's house. In her own independent testimony, Matthew Jaik named and aware of what Phillip had stated to the police the exact items that was stolen. The accused stated that he went and hid these items in his place. The owner of that place in his testimony stated that the exact items that were in there, he discovered and he reported them to the police. If one of the knives Your Honor, one of the knives was found with Phillip's blood on the blade. He can only proof one thing Your Honor that Phillip was in that room and that he was handling the knife. Phillips stated... the juvenile offender stated that... he

confesses to the dress that he cut and the dress was there in the room, cut exactly as he described in his words.

**Court:** Counsel, where is that in the compression.

**Mr. Taafaki:** Not in the compression in the statement. The testimony of Joy Jack and Merilynn.

**Court:** Is this the statement that now the alleged made after the confession?

**Mr. Taafaki:** No, in the confession's sir.

**Court:** So, can you find it for me? You don't have your files here.

**Mr. Taafaki:** In the testimony of Marilyn and the testimony of Jack, their statement. Exhibits ah

**Court:** Yes, if you could give me an exhibit. Got Joy Jack as 6A. It doesn't say anything about the dress in 6A.

**Mr. Taafaki:** I think it was a testimony in here when he was testifying in the chair at the stand Your Honor.

**Court:** So that your understanding is that Joy Jack testified that Alee admitted to cutting the dress and removing it?

**Mr. Taafaki:** Yes, Your Honor.

**Court:** Well I'd take your word but I honestly don't recall that and I will be looking at it. Well go ahead.

**Mr. Taafaki:** The prosecution Your Honor in response to my colleague counsel is that the sheer consistency of what the statement of the description of Alee's confession and the

support credibility, the truthfulness that is given... has been given by eye witnesses totally had known of what the confession obtained. Your Honor yes, the counsel both the juvenile offender Your Honor, rejected the ah... count 2 respect to sexual assault as prosecution stating that prosecution is not being able to count 50 FBI results confirm the highest degree of our support for identification on Phillip. Prosecution contempt Your Honor, I cannot find anything more conclusive than that. Thank you, Your Honor.

**Court:** Let me just clarify one thing about the dress. I did not recall Alee confessing to cutting the dress and moving it. And I do not recall seeing anything to that epitome of the written statements. I have found my notes regarding the testimony of sergeant Marilynn Peter.

**Mr. Kun:** Your Honor I do recall during the preliminary hearing that one of the... yes, I'm talking about the green dress. One said... they mention about a green dress and the other didn't mention.

**Court:** In that trial, sergeant Peters said that detective Royal asked Alee about the dress and Alee said he cut it in the back and remove it. But also, at trial detective Royal said that he never asked that question. Now that's just for clarification I think that's an accurate statement of the evidence. Okay, thank you counsel. If this were a jury trial, we would now send the jury out to discuss this evidence for several hours or days.

And because this is a bench trial however I had the benefit of thinking about the evidence since we began the trial back in November. So, I will not need several hours to announce my decision. I would however like to review a few things and I would prefer to announce my ruling this afternoon. Is three o'clock okay? We're going to take a lunch break and we'll come back at three o'clock and I will announce my decision at that time. I might as well tell you now I'm going to dismiss count 3 manslaughter. Manslaughter is a crime if the death of a human being is caused in a reckless manner or if the death of a human being is caused while the actors under extreme mental or emotional disturbance. Neither the prosecution nor the defense have introduced any one of these. That would cause me to conclude beyond a reasonable doubt that manslaughter is not in this case. I think is all or nothing, its either murder or this guy didn't do it. So, count 3 is dismissed. And I'll talk about counts 1,2 and 4 when we return at three o'clock. Thank you.

**Court:** We are back on the record on RMI vs. Alee Phillip case number 2017-001. Today is January 19, 2018 and it's 3:10 in the afternoon. Mr. Phillip's mother is once again not present and I know for the record she was not present at all during the closing arguments. Mr. Kun are you okay if we proceed without her?

**Mr. Kun:** Yes, Your Honor.

**Court:** This case was tried over several days beginning November 20<sup>th</sup> of 2017. Continuing two days earlier this week. Those days were January 15th and 16th. On January 17<sup>th</sup> the defense determines not to put on the defense case. And we scheduled for oral arguments for this morning. Excuse me the closing arguments for this morning. Those closing arguments last approximately two hours and we are now here for the verdict in this matter. As I indicated at the conclusion of the closing arguments, I dismissed **Count 3. Manslaughter**. And as indicated by counsel earlier today, the 2 counts 5 and 6 were dismissed at the conclusion of the preliminary hearing. So as of this morning Mr. Phillip remains charged with 3 counts. Count 1 is murder in the first degree. Count 2 is sexual assault in the first degree and Count 4 is burglary. All three of those counts are felonies. The Republic has elected to base its case significantly on the confession of Alee Phillip. And it's so eloquently pointed out by Mr. Taafaki this morning the evidence that they introduced was evidence to corroborate that confession. Mr. Kun counter by saying that the actual evidence needed to corroborate the confession had not been introduced in the trial. Rather than producing the actual knife in this courtroom the Republic elected to rely on testimony about the knife and photographs of the knife that were introduced in November. The saying it's true for the items that were allegedly destroyed in the fire.

However, those actual items were presented in the courtroom back in November. As were several of the items that were taken from the store. Much has been said about the palm print on the top of the freezer and once again the Republic, rather than producing the palm print as relied on testimony about the palm print. And rather than producing the swabs taken from Ashley's vagina the Republic as relied on testimony about those swabs and the evidence that they allegedly contain. As eloquently and precisely noted by Mr. Kun, that's a huge risk. But the evidence is complete and I have made my decision based on the evidence presented even though I to recognize there are some failures in the presentation of the evidence. Early on Mr. Phillip through counsel opted to have this trial conducted as though he were an adult which in fact requires me to find beyond a reasonable doubt that the offenses had been committed. Shall I rephrase that one?

**Clerk:** Yes, please.

**Court:** Sorry about that. Lets... let me start that over. Under the juvenile rules of procedure, the government's burden approves it's all fair weight of the evidence. I don't know exactly what fair weight of the evidence is but I do know that it is significantly less than proof beyond a reasonable doubt. Very early on, Mr. Phillip and his counsel asked me to use the beyond the reasonable doubt standard. And I approved that request. Counsel today have appropriately argued that the

government must proof its case beyond reasonable doubt. There is no doubt that Robert Marquez and Ashley Marquez were brutally and intentialy murdered as they slept... or at least as Robert slept. There is no doubt in my mind that Ashley was sexually assaulted either before or after her death. And there is no doubt that someone committed a burglary on this residence on the night in question. These tragic events did not happen by accident. Someone did these things to a few people. So, the only question is, is there sufficient evidence, is there evidence beyond a reasonable doubt for me to conclude that Alee Phillip is that person? And although I personally would have preferred the government to plug some of the holes left in this case. I have said this by beyond a reasonable doubt that Alee Phillip is in fact the person who committed these offenses. And therefore, I find you Mr. Phillip guilty of murder in the first degree. I find you guilty of sexual assault in the first degree. And I find you guilty of burglary. Let me rephrase that. Guilty is not the appropriate term for me to use and I apologize. I find beyond a reasonable doubt that you committed each of these three offenses. And that the government has proofed its case beyond a reasonable doubt. Because these are juvenile proceedings, we don't use the words guilt and innocence. And so, Mr. Phillip I find that you are a delinquent child. Mr. Kun, at some point we're going to have to have a disposition hearing which could be

a sentence in the hearing that include talking about an adult, when would you like to do that disposition hearing?

**Mr. Kun:** We need to prepare sentencing recommendation and

**Court:** I'll be quite honest with you, give them the serious nature of these offenses, I'm not sure that anyone could convince me that probation will be appropriate but I'm certainly willing to try out. And you're invited to try but you may change my mind and I just... that will be a very difficult decision for me to make.

**Mr. Kun:** I mean, is there other ways to prepare for sentencing other than servicing recommendation?

**Court:** I can't say, but please know that you're going to have to argue like you've never argued before. Okay?

**Mr. Kun:** I'll leave it to the court.

**Court:** Let's do this, we'll recess and counsel will come in to my chamber and we'll pick a date for disposition. In the meantime, Mr. Phillip will be returned to the custody of the police. At least for the present he is to continue to be out separately from the adult population. And counsel and I will select the date for disposition and will notify Robert's wife. Mr. Taafaki if she's interested in making a statement at that disposition hearing, I welcome her to do so. And Mr. Kun of course if you have any people that want to make statements you can invite them as well. Including Alee if he wishes to do so. Thank you, Court's in recess.

CERTIFICATION

We, Ronna Helkena, and Kristen Kaminaga, Assistant Clerk of Courts , Republic of the Marshall Islands, hereby certify that the forgoing pages numbering 1 to 46 and 1-28 contains a true and accurate transcript of the Hearing of RMI vs Alee Phillip Juvenile Case No. 2017-001 transcribed by us to the best of our ability:

CERTIFIED ON the 3 of May 2019.

BY:



Ronna Helkena

Assistant Clerk of Courts

Republic of Marshall Islands



Kristen Kaminaga

Assistant Clerk of Courts

Republic of Marshall Islands