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REPUBLIC OF THE MARSHALL ISLANDS

Attorney General
P.O. Box 890
Majuro
Republic of the Marshall Islands MH 96960
Phone: 692-625-3244/8245.
Mobile: 458-7328
Email: richardhicksonlawyer@gmail.com

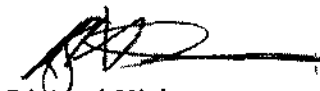
IN THE SUPREME COURT
OF THE
REPUBLIC OF THE MARSHALL ISLANDS

ANTOLOK ANTOLOK)	SCT CRIMINAL CASE NO.: 2018 - 011
(APPELLANT))	HIGH COURT CRIMINAL CASE NO. 2017 - 020
)	
V.)	APPELLEE'S ANSWER BRIEF TO
)	APPELLANT'S OPENING BRIEF
)	PURSUANT TO RULE 28 (b)
REPUBLIC OF THE MARSHALL)	
ISLANDS.)	
_____)	

Comes Now, the Republic of the Marshall Islands through the Office of the Attorney General to
move to provide a response to Appellants Opening Brief seeking this Honorable Court affirm
the High Court's Court orders of September 21, 2018 and October 23, 2018.

Dated this 29th of January 2020.

Respectfully submitted,



Richard Hickson
Attorney General

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I. TABLE OF AUTHORITIES.

- a. Statutes, Regulation and Rules:
 - i. Constitution of the Republic of the Marshall Islands
 - ii. Marshall Islands Criminal Code [31 MIRC Ch.1]
 - iii. Judiciary Act 27MIRC Ch.2
- b. Court Orders:
 - i. Order of Conviction entered September 21, 2018
 - ii. Order of Sentence entered October 23, 2018
- c. Case Law:
 - 1. Dribo v Bondrik, et al, 3 MILR 127, 134 (2010)
 - 2. Republic of the Marshall Islands v. Misaki Elanso 3 MILR 51; 53
 - 3. Republic of the Marshall Islands v. Thomas Kijner, Jr. 3 MILR 122; 124

II. STATEMENT OF JURISDICTION.

This Court has jurisdiction pursuant to Article VI, Section 2(2)(a) of the Constitution of the Republic of the Marshall Islands and 27 MIRC, Chapter 2 Section 207.

III. ISSUES ON APPEAL.

That the issues on appeal to the Supreme Court of the Republic of the Marshall Islands consist of two (2) decisions of the RMI High Court (Trial Court) as contained in the judgement and sentencing orders which were ordered on September 21, 2018, and October 23, 2018.

IV. RECORD ON APPEAL.

This constitutes the entire record and material pertaining to this case RMI v. Atolok Antolok including the selected audio recording transcript of witnesses. As well as all the Republic's exhibits.

V. STATEMENT OF REVIEW.

The appeal conviction should be dismissed and the sentence should be confirmed. Cases of this nature are heard to determine the “sufficiency of the evidence”. [**Republic of the Marshall Islands v. Thomas Kijner, Jr.** 3 MILR 122; 124

Findings of fact, are reviewed under the “clearly erroneous” standard. [**Dribo v Bondrik, et al**, 3 MILR 127, 134 (2010).]

Reviews of sentence use the “abuse of discretion” standard [**Republic of the Marshall Islands v. Misaki Elanso** 3 MILR 51; 53]

VI. ARGUMENT.

REPUBLIC OPENING BRIEF

ARGUMENT

Appeal Against Conviction

1. The Republic concurs with Appellants paragraph 1 and 2 of the appellants brief.
2. The Republic concurs with paragraph 3, to the extent that during the trial an oral motion was made for mistrial by Defense counsel (transcript p84-88). The motion was heard on the record and Mr. Walter Muller testified and was cross-examined (transcript p90-93). The court dismissed the motion, took no action against the Prosecutor and Mr Muller did not give evidence regarding the prosecution at the trial. It has no bearing on the conviction or sentence that are the subject of this appeal.
3. The Republic concurs with paragraph 4, so far as the dismissal of counts 1. The finding on the facts of counts 5, 7 9 and 11 were that they were proven beyond a reasonable doubt, however they were dismissed on Constitutional double jeopardy grounds as he was found guilty of the lesser offence in count 3, sexual assault in the second degree.
4. The Republic concurs with Paragraph 5.
5. The Republic agrees that this is an appeal of conviction and sentence but disagrees with balance of the paragraph. When the full evidence is reviewed in total is it substantial and easily meets "sufficiency" test described by this Court in **RMI v. Kijiner** *supra*.

The evidence of relevance is as follows:

- Dr Holden Nena substantiated the mental deficiency of the victim.
- Officer Clarence confirmed the report of the incident, interview of witnesses and photographs taken of the scene.
- Lyla Hesa confirms the identity of the accused, the victims early report of the incident, presence of the kiss mark, the time of the photos of the victim,
- Telima Hesa confirms the contemporaneous report of the sexual assault, the presence of the kiss marks and taking photo's of the victim with here ipad.

- Laston Jina recounts a statement against interest made by the accused in conversation the accused had with his wife on the evening of September 24, 2018 where he effectively referred to the victims virginity.
- Artene Hesa observed the kiss marks on the victim of 9.24.18, observed accused was drunk and recounts a statement against interest made by the accused in a conversation the accused had with her on the evening of September 24, 2018 where he effectively referred to the victims virginity.
- Tilber Hesa, the victim, gave evidence of the accused taking her to a house, taking his cloths off, showing her his penis and making kiss marks on her neck and breasts. In the statement on the record on page 31 of the transcript by the trial judge refers to her using a lot of non-verbal responses to question, which were not captured on transcript.

The totality of the evidence when taken as a whole support the findings of fact by the trial judge that the accused was guilty of sexual assault in the second degree. The evidence is convincing and the decision falls well short of the “clearly erroneous” standard in **Bondrik v Dribo** *supra*.

While it is difficult to assess what answers Tilba gave non-verbally, they were seen and noted by counsel and the trial court and form an important part of the evidence the trial Judge considered when making the guilty determination.(transcript p31)

6. As to paragraph 7, the Republic agrees that the evidence places the time of the offence between 10 and 12 on Sunday 24, 2017 however the evidence of Tilba is that whatever occurred happened inside a closed house, removing it from the vision of any potential witnesses.

In relation to the quoted criminal information, a criminal information is a guide to the accused of the Republic’s case against him. To establish guilt the Republic is required to prove, beyond a reasonable doubt the elements of the offence, which it has clearly done.

The submission is simply an opinion of counsel, not referring to any witness's particular testimony.

7. The Republic accepts paragraph 8 of appellants opening brief.
8. As to paragraph 9 the Republic points to the weight of the evidence summarized in paragraph 5 above and asserts the conviction should not be set aside as the evidence easily meets the sufficiency standard set in **RMI v. Kijiner** *supra*.

As to the absence of a medical report obtained as suggested by the Appellant, it does not correspond that failure to obtain and tender such report is fatal to the prosecution case. Other evidence admitted at trial was clearly accepted by the Judge in reaching his determination of guilt. Failure to provide the medical evidence suggested is not essential to prove the Republic's case and will not result in a conviction being set aside when there is sufficiently compelling evidence.

9. As to paragraph 10, the Republic asserts that a 40 day delay in reporting a case to law enforcement is neither unusual nor prejudicial to the Appellant. Such a period of time is unlikely to affect witnesses memory or cast doubt on the guilty verdict. In particular the ability of the victim, Tilber to remember is addressed by Dr Nema at page 15 of the transcript.

Appeal Against Sentence

10. As to paragraph 11 Appellant is asserting that absence of any previous conviction is grounds for appealing the sentence.

It is submitted that the accused absence of a previous conviction was considered by the court as a mediating factor

"There are also some mediating factors, first the defendant had no prior convictions ..." (transcript p 138).

As a result of this and other mediating factors Appellant was placed on probation for the final 2 years of his sentence.

The fact that Appellant is not a flight risk is a consideration relevant to bail but not relevant to sentencing.

The Appellant was found guilty of sexual assault in the second degree pursuant to section 212.3(1)(b) and as such liable under section 6.06 (2)(b) to a maximum of imprisonment of 10 years.

The trial judge correctly noted the following aggravating factors:

- Victim has a mental age of a 4 year old child
- Appellant was in a position of trust
- Appellant was voluntarily drunk at the time.
-

In addition, the Appealant chose to have a trial of these issue, while he should not receive additional punishment for this, he is not however entitled to any reduction of sentence for saving the victim and other witnesses the trauma of testifying and the Republic the use of significant resources.

These factors together indicate that the sentence of 10 years in Majuro jail , with 2 of those years being suspended is appropriate in the circumstances and should not be amended by this Court. It does not indicate an abuse of discretion as described in **RMI v Elanso** *supra*.

11. As to paragraph 12, it is submitted that this Court can not under section 266 of the Judiciary Act enter an acquittal as sought, it can only:

- “(a) affirm, modify, set aside or reverse the decision appealed from or reviewed;
- or (b) remand the case with directions for a new trial or for the entry of judgment.

or additionally in criminal cases can:

- “(a) set aside a conviction (but not a finding of not guilty);
- (b) commute or reduce (but not increase), or suspend the execution of, a sentence; or
- (c) if the defendant has appealed or requested a new trial, order a new trial.”

It is submitted however in the present case as the evidence is clearly sufficient to support the convictionⁱ and the conviction and the conviction or sentence was not clearly erroneousⁱⁱ or an abuse of discretion ⁱⁱⁱ

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'Richard Hickson', written over a horizontal line.

Richard Hickson
Attorney General

ⁱ Republic of the Marshall Islands v. Thomas Kijner, Jr. 3 MILR 122; 124

ⁱⁱ Dribo v Bondrik, et al. 3 MILR 127, 134 (2010)

ⁱⁱⁱ Republic of the Marshall Islands v. Misaki Elanso 3 MILR 51; 53

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P.O. Box 890
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Phone: 692-625-3244/8245.
Mobile: 458-7328
Email: richardhicksonlawyer@gmail.com

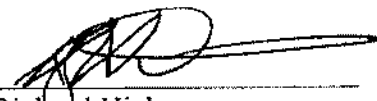
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CERTIFICATE OF SERVICE

I hereby certify that on this day 29th of January 2020, I caused a copy of the Appellee Answer Brief to be sent/transmitted to Russell Kun, Esq, Counsel for the Appellant.

Dated this 29th day of January 2020.


Richard Hickson
Attorney General.

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