IN THE SUPREME COURT

OF THE

REPUBLIC OF THE MARSHALL ISLANDS

THE REPUBLIC OF THE MARSHALL ISLANDS, Plaintiff-Appellee, v. A.P., Defendant-Appellant.	Supreme Court No. 2018-003 (High Court Case No. 2017-001) OPINION

BEFORE: CADRA, Chief Justice, SEABRIGHT,* and SEEBORG,** Associate Justices

PER CURIAM:

I. INTRODUCTION

A.P., a juvenile tried as an adult, was convicted by the High Court after a bench trial of the brutal murder of Robert Marquez ("Robert"), the sexual assault of Robert's three-year old daughter Ashley, and the burglary of the Marquez family store.[1]

* The Honorable J. Michael Seabright, Chief United States District Judge, District of Hawaii, sitting by designation of the Cabinet.

** The Honorable Richard Seeborg, United States District Judge, Northern District of California, sitting by designation of the Cabinet.

[1] A.P. was fifteen years old at the time of the underlying offenses. By agreement of the parties, the court provided A.P. with rights that he would receive if tried as an adult, but also recognized many of his rights as a minor. For example, the court offered A.P. a jury trial (which he waived) and applied a guilty beyond a reasonable doubt standard, yet also closed the public to the proceedings. We have not been asked to consider the propriety of this hybrid system and

(continued . . .)

A.P. now raises three points on appeal: (i) the High Court erred in denying a motion to suppress his confession because he did not knowingly and intelligently waive his *Miranda* rights[2] and his waiver of those rights and subsequent confession were coerced and thus involuntary; (ii) there was insufficient evidence for the High Court to find, beyond a reasonable doubt, that he murdered Robert, sexually assaulted Ashley, or engaged in the burglary of the Marquez store; and (iii) the High Court sentence of fifty years imprisonment amounts to a life sentence and is thus excessive and in violation of A.P.'s constitutional right under Article II, Section 6 of the RMI Constitution. For the reasons stated below, we find that the High Court did not err in denying the motion to suppress A.P.'s confession. Additionally, we find that there was sufficient evidence for the High Court to convict A.P. of the murder of Robert and for the burglary of the Marquez store, but that there was insufficient evidence to convict A.P. of the sexual assault of Ashley. Accordingly, we **REVERSE** the conviction for sexual assault, **AFFIRM** the convictions for murder and burglary, **VACATE** A.P.'s sentence, and **REMAND** to the High Court for sentencing anew consistent with this Opinion.[3]

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thus offer no opinion as to its merit. Given this background, we refer to A.P. by his initials. *See, e.g.*, Marshall Islands Rule of Civil Procedure 5.2(a).

[2] As set forth *infra*, the rights afforded by the United States Supreme Court in *Miranda v. Arizona*, 384 U.S. 436 (1966), are enshrined in the RMI Constitution and laws. *See* RMI Const. art. II, § 4(8); 32 MIRC § 120(2)(a)-(b). For the sake of brevity, we refer to these rights in the RMI as *Miranda* rights.

[3] Because we remand for resentencing, and because the High Court will be limited to sentence A.P. to no more than thirty-five years on remand, we do not reach A.P.'s argument that the fifty-year sentence was unconstitutional.

II. BACKGROUND

A. The Murders and A.P.'s Arrest and Interrogation

Robert lived with his three-year old daughter Ashley in Laura, Majuro, where he operated a store out of the home.

In the early morning hours of June 25, 2017, Robert and Ashley were brutally murdered in their home while sleeping. Both were killed in the same manner—their throats were slit. Ashley's dead body was raped and then placed inside a freezer in the residence. Cigarettes, vodka, grizzly, and cash were taken from the Marquez store. At the time of the murders, A.P. was an employee at the store and resided near the Marquez home.

On July 2, 2017, the Marshall Islands Police Department ("MIPD") learned that A.P. was burning the sort of items (a vodka bottle and grizzly) stolen from the Marquez store. MIPD Officers Joy Jack and Johnny Johnson then located A.P. and his mother, both of whom voluntarily agreed to accompany them to MIPD headquarters in Uliga. A.P. was not questioned when he arrived at the headquarters; instead, he spent the night there and was then moved to a substation in Laura the next morning, where he was interviewed by Detective Royal Ceaser. Sergeant Marilyn Peter, Officers Jack and Johnson, and A.P.'s mother were present for the interview.

Before beginning the interview, Detective Ceaser advised A.P. (with his mother present) of his *Miranda* rights in Marshallese. The advisement took approximately 30 to 45 minutes. The rights were read orally and presented in written form to A.P. in both Marshallese and English. Detective Ceaser asked A.P. if he wanted a lawyer. A.P. answered "No" on the form, and he signed his name by the answer. Detective Ceaser then asked if A.P. was willing to discuss the offenses under investigation, if he understood each and every one of his rights as

explained, and if, keeping those rights in mind, he would like to speak to law enforcement. A.P. answered "Yes" to each of the questions. Each response was documented on the form, and A.P. signed his name by each answer.

Detective Ceaser then conducted the interview in Marshallese, with A.P.'s mother present. During the interview, A.P. admitted that he entered the Marquez store through a hole near the roof; stole cartons of cigarettes, vodka, and grizzly; left the store by exiting through a door; returned to the Marquez store through the hole in the roof; and then killed Robert.[4]

Hearing these admissions, A.P.'s mother became very emotional and the interview was suspended for 45 to 60 minutes so that she could regain her composure. After the interview resumed, A.P. provided details as to how he killed both Robert and Ashley.

Neither the advisement of rights nor the interview was recorded. The advisement began at approximately 11:00 a.m., and the interview concluded at approximately 4:00 p.m.

On August 15, 2017, the RMI charged A.P. in an Amended Information with six offenses: 1) murder in the first degree[5]; 2) sexual assault in the first degree; 3) manslaughter;

[4] Detective Ceaser asked A.P. three times if he killed Robert—A.P. did not respond to the first two inquiries, but he admitted to killing Robert on the third.

[5] We recognize some confusion in the Criminal Code as to whether murder can be charged as murder in the first degree (which carries a life sentence) or simply murder (which carries a maximum sentence of twenty-five years). *See* 31 MIRC §§ 210.2 and 6.06(1) and (2). Although the Code states—in the Article setting forth maximum penalties for various offenses—that "[a] person who has been convicted of murder in the first degree shall be sentenced to a term of life imprisonment," 31 MIRC § 6.06(1), there is no corresponding offense of murder in the first degree in the Code's Article covering "Criminal Homicide." *See* 31 MIRC, art. 210. Thus, we conclude that even though A.P. was charged with murder in the first degree, the Code limits his maximum penalty for that offense to twenty-five years. *See* 31 MIRC §§ 210.2 and 6.06(2)(a).

4) burglary; 5) aggravated assault; and 6) robbery.[6]

On September 20, 2017, A.P. moved to suppress the statements and confessions he made during his July 3, 2017 interview. The High Court denied A.P.'s motion to suppress in a December 18, 2017 order.

The High Court first found that A.P. knowingly and intelligently waived his *Miranda* rights. Specifically, the High Court determined that A.P. was almost sixteen years old at the time of the confession; there was no evidence that his intelligence level was less than the average sixteen-year-old Marshallese male despite his education ending at a fourth-grade level; and A.P. had the capacity to understand the *Miranda* warnings, the nature of his privilege against self-incrimination, and the consequences of waiving his *Miranda* rights. A.P.'s mother, a high school graduate with some limited post-high-school education, was present during the advisement and interview. She did not express concerns at the time about A.P. waiving his *Miranda* rights. To the contrary, she agreed with waiving and encouraged A.P. to be forthcoming.

The High Court also found that the waiver and confession were voluntary. The High Court determined that the advisement of rights and subsequent interview were not coercive because no threats were made, there was no physical abuse, the interview itself lasted approximately 3.5 hours, A.P. was not deprived of sleep or food while he stayed overnight in MIPD headquarters, and he was offered the opportunity to eat.

Accordingly, in viewing the totality of the circumstances, the High Court found that A.P. knowingly and intelligently waived his *Miranda* rights and the waiver of those rights and his confession were voluntary. Thus, A.P.'s motion to suppress was denied.

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[6] The High Court dismissed the counts for aggravated assault and robbery after the preliminary hearing and dismissed the count for manslaughter at the conclusion of the trial.

B. Evidence Adduced at Trial

A bench trial was held on November 20, 21, and 22 of 2017 and January 15, 16, and 18 of 2018.

1. The Murder Scene

Jeffrey Basin and Murphy Mubbun discovered the bodies of Robert and Ashley on the morning of June 26, 2017. Upon entering Robert's bedroom, they observed his body lying face down on the bed. Mr. Mubbin turned the body over "to see where the blood was coming from." Following a trail of blood, he then discovered Ashley's naked body in the freezer.

MIPD Investigator Carney Terry arrived at the Marquez residence later that morning. Among other things, Investigator Terry discovered a footprint on top of the freezer and a hole near the top of the ceiling, leading from the outside of the house to the inside. Soil found outside by the hole matched soil found by the footprint on the freezer, and the footprint also matched A.P.'s shoe.

United States Federal Bureau of Investigations ("FBI") Special Agent Brent Dana recovered a "patent" handprint[7] from the top of the freezer. Nicole Cover, an FBI forensic examiner, testified that the patent print lifted from the freezer matched A.P.'s right palm print.

2. Post-mortem Analysis of the Bodies

Dr. Marybeth Lorengatakikien, an emergency physician at Majuro Hospital, examined Robert's body on June 26, 2017. Dr. Lorengatakikien opined that Robert died from a gaping lacerated wound on his neck.

Dr. Ivy Lepidas, an OB/GYN at Majuro Hospital, conducted a gynecological exam of

[7] According to Special Agent Dana, a "patent" print is visible to the natural eye and can be detected without the use of any aids, such as fingerprint powder.

Ashley's body. She identified redness, a laceration, and several hymen tears. Taking into account all of her findings, Dr. Lepidas opined that she was "one hundred percent" certain that Ashley was subjected to vaginal penetration. When asked if the penetration was before or after death, Dr. Lepidas testified that "it must have been past" death because if Ashley was alive at the time of the penetration, her vaginal wall would have contracted back to its original state. Finally, Dr. Lepidas explained that she took a vaginal swab, which was then provided to the FBI for analysis.

3. DNA Testing Results

Lara Adams, an FBI forensic examiner, testified as an expert in DNA analysis. She first explained that the vaginal swabs taken from Ashley were found to contain semen. The semen was then subjected to DNA analysis and found to contain A.P.'s DNA with "the likelihood ratio" of "four hundred and seventy septillion," which falls into the highest level of identification of DNA evidence.

4. A.P.'s Arrest, Interview, and Confession

Detective Ceaser, Sergeant Peter, and Officer Jack all testified to A.P.'s initial arrest, the *Miranda* rights given to A.P., and his subsequent confession. Specifically, Detective Ceaser testified that A.P. confessed that he entered the Marquez residence through a hole in the ceiling, "landed on top of the freezer," and then "stole cigarettes, vodka, grizzly and money." Further, A.P. admitted that he killed both Robert and Ashley by cutting their throats, and that he placed Ashley's body in the Marquez store freezer.

C. The High Court's Verdict

On January 19, 2018, the High Court convicted A.P. of the murder of Robert, the sexual

assault of Ashley, and the burglary of the Marquez store.[8] Based on the convictions, the High Court sentenced A.P. to a total sentence of 50 years on February 2, 2018. This sentence consisted of 25 years for murder and 25 years for sexual assault in the first degree, with these terms to be served consecutively, and 10 years for burglary, to be served concurrently with the sentences for murder and sexual assault in the first degree.

III. STANDARDS OF REVIEW

A. Motion to Suppress

Under the RMI Constitution:

> No person shall be subjected to coercive interrogation, nor may any involuntary confession or involuntary guilty plea, or any confession extracted from someone who has not been informed of his rights to silence and legal assistance and of the fact that what he says may be used against him, be used to support a criminal conviction.

RMI Const. Art. II, § 4(8).[9]

We have not adopted a standard when reviewing a lower court's ruling on a motion to suppress. In the United States, a district court's finding that waiver of *Miranda* rights was knowing and intelligent is reviewed for clear error, and a finding that the waiver was voluntary is reviewed *de novo*. *See, e.g.*, *United States v. Doe*, 219 F.3d 1009, 1016 (9th Cir. 2000); *United*

[8] Although the High Court first found A.P. "guilty" of these offenses, the High Court later clarified that because A.P. was a juvenile, it was more accurate to state that he was adjudicated as a delinquent child as to these offenses. For ease of reference, we refer to the High Court's finding as a conviction.

[9] These rights are also codified in the Criminal Procedures Act. Specifically, 32 MIRC § 120(2)(a)-(b) states that any arrested person shall be advised of the "right to remain silent and that anything the person says can be used against that person" and that "the person has the right to legal assistance of that person's choice and that if the persons lacks funds to procure such assistance, to receive it free of charge if the interests of justice so require."

States v. Frank, 599 F.3d 1221, 1228 (11th Cir. 2010). We agree with these standards and adopt them as the law of the RMI.

B. Sufficiency of the Evidence

"A conviction is supported by the sufficiency of the evidence when 'after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *RMI v. Kijiner*, 3 MILR 122, 124 (2010) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "In viewing the evidence in the light most favorable to the prosecution, the court 'may not ask whether a finder of fact could have construed the evidence produced at trial to support acquittal.'" *Id.* (quoting *United States v. Nevils*, 598 F.3d 1158, 1164 (9th Cir. 2010)). "Instead, the court must construe evidence 'in a manner favoring the prosecution.'" *Id*. (quoting *Nevils*, 598 F.3d at 1167). "'Only after we have construed all the evidence at trial in favor of the prosecution do we take the second step, and determine whether the evidence at trial, including any evidence of innocence, could allow *any* rational trier of fact to find the essential elements of the crime beyond a reasonable doubt.'" *Id*. (quoting *Nevils*, 598 F.3d at 1164-65).

IV. DISCUSSION

A. A.P. Knowingly and Intelligently Waived his *Miranda* Rights and His Waiver of Those Rights and Subsequent Confession was Voluntary

A.P. argues that his waiver of *Miranda* rights was not knowing and intelligent, and that the waiver and subsequent confession was coerced and thus involuntary. We disagree.

A knowing and intelligent waiver of rights occurs when "a suspect has full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon." *United States v. Carpentino*, 948 F.3d 10, 26 (1st Cir. 2020) (quotation marks and citation

omitted); *Moran v. Burbine*, 475 U.S. 412, 421 (1986). And a voluntary relinquishment of a right occurs when a waiver is the "product of a free and deliberate choice rather than intimidation, coercion, or deception." *Moran*, 475 U.S. at 421; *see also RMI v. Lang et al*, Cr. No. 2010-020, at 8 (High Ct. Feb. 13, 2012) ("This standard [of voluntariness] requires that the will of the defendant not be overborne and that the statements be the product of rational intellect and free will.").

In determining both whether a waiver was knowing and intelligent, and whether a waiver and subsequent confession were voluntary, courts examine the totality of the circumstances. *Fare v. Michael C.*, 442 U.S. 707, 725 (1979). Factors relevant to a juvenile include the juvenile's age, experience, education, background and intelligence, prior experience with the criminal justice system, whether the questioning was repeated or prolonged, and the presence or absence of a friendly adult such as a parent or an attorney. *See A.M. v. Butler*, 360 F.3d 787, 799 (7th Cir. 2004) (citing *Fare*, 442 U.S. at 725-26). Further, in assessing whether a juvenile's waiver of rights or confession was voluntary, courts have

> appreciate[ed] that special problems may arise with respect to waiver of the privilege by or on behalf of children, and that there may well be some differences in technique—but not in principle—depending upon the age of the child and the presence and competence of parents. . . . If counsel was not present for some permissible reason when an admission was obtained, the greatest care must be taken to assure that the admission was voluntary, in the sense not only that it was not coerced or suggested, but also that it was not the product of ignorance of rights or of adolescent fantasy, fright or despair.

In re Gault, 387 U.S. 1, 55 (1967), *overruled on other grounds by Allen v. Illinois*, 478 U.S. 364, 372-73 (1986).

1. A.P. Knowingly and Intelligently Waived his Miranda Rights

The High Court did not commit error, let alone clear error, when it found that A.P. knowingly and intelligently waived his *Miranda* rights. The findings by the High Court are amply supported by the record. First, although A.P. was a minor, he was nearly sixteen years old at the time of his arrest. And while A.P.'s formal education ended at fourth grade, the High Court correctly found "no evidence that his intelligence level [was] less than the average sixteen-year-old Marshallese male." Further, as determined by the High Court, A.P.'s answers to questions show that he had the capacity to understand his rights, including the privilege against self-incrimination and his right to counsel. *See United States v. Male Juvenile (95-CR-1074)*, 121 F.3d 34, 40 (2d Cir. 1997) (explaining that a juvenile with "dull normal intelligence" can have the capacity to knowingly waive his *Miranda* rights); *Garner v. Mitchell*, 557 F.3d 257, 262 (6th Cir. 2009) (explaining that behavior indicating that juvenile understood his rights and the consequences of waiving them provides persuasive evidence that the waiver was voluntary).

Second, A.P.'s rights were read to him line-by-line in Marshallese and he was asked if he understood the legal effects of his waiver. A.P. acknowledged each statement before moving to the next. The rights were also presented in writing, in both Marshallese and English. At the bottom of the advisement form, A.P. was asked if he wanted a lawyer and he wrote "No" and signed his name. When asked if he understood each and every one of his rights, he wrote "Yes" and signed his name. *See Garner*, 557 F.3d at 261 (finding that testimony that juvenile was read each of his rights and was asked and indicated that he understood them suggested his waiver of those rights was knowing).

Finally, A.P.'s advisement was not rushed, lasting approximately 30 to 45 minutes. And A.P.'s mother was present during this entire period. Given these circumstances, there is nothing

to suggest that A.P. did not fully understand his rights or the consequences of waiving them. The High Court correctly determined that A.P.'s waiver of his *Miranda* rights was knowing and intelligent. *See Male Juvenile*, 121 F.3d at 40-41 (statements were knowing and voluntary, despite any disputed learning disabilities, because juvenile was read rights line by line, stopping at each statement, and it was clear that the juvenile made a choice willingly).

2. A.P.'s Waiver and Subsequent Confession Were Voluntary

A.P. argues that the waiver of his rights and subsequent confession were involuntary because (1) legal counsel was not present; and (2) they were the product of coercion. Again, the Court disagrees.

The Court considers the voluntariness of a minor's waiver and confession based on a number of factors. Specifically, the

> defendant's age, education, intelligence, experience and physical condition; the duration of the questioning; whether the defendant was advised of his constitutional rights; whether the defendant was threatened, enticed with promises, or coerced; and whether the defendant was induced to speak by police deception. For juveniles, additional considerations include the time of day during which the youth was questioned and the presence or absence of a parent or other friendly adult.

Gilbert v. Merchant, 488 F.3d 780, 787 (7th Cir. 2007).

First, the court rejects A.P.'s primary argument—that the confession of a juvenile should be deemed coercive as a matter of law in the absence of legal counsel. We find no such absolute requirement. Instead, if counsel is not present for a permissible reason (as in the case here, given A.P.'s knowing and voluntary *Miranda* waiver), "the greatest care must be taken to assure that the admission was voluntary . . . ." *In re Gault*, 387 U.S. at 55.

And, in applying this standard, we conclude that A.P.'s waiver of his rights and confession were not the result of any coercion, but were made voluntarily. First, A.P.'s mother was present throughout both the advisement and the confession. Second, neither the advisement nor the interview took an unreasonable amount of time. Further, A.P. was offered food and water, and there is simply no evidence that the police engaged in any threatening conduct or applied any undue influence.[10]

Against this evidence of voluntariness, A.P. presents very little evidence that his waiver or confession was coerced. Although A.P. was detained overnight, there is no evidence that he was mistreated in any manner while at MIPD headquarters. *See Bridges v. Chambers*, 447 F.3d 994, 999 (7th Cir. 2006) (finding a seventeen-year-old's confession voluntary where he was detained overnight but "the actual questioning . . . was relatively brief . . . [and t]here was no evidence he was not allowed to sleep between interviews"). In short, there is little evidence that A.P. was coerced, intimidated, or threatened, leaving the Court to conclude that his waiver of rights and subsequent confession were voluntary—not "coerced or suggested"—and not the product of "ignorance of rights or of adolescent fantasy, fright or despair." *In re Gault*, 387 U.S. at 55.

B. Sufficiency of the Evidence at Trial

A.P. argues there was insufficient evidence to convict him of all three counts. We conclude that there was sufficient evidence as to the murder and burglary convictions, but

[10] A.P.'s confession was not recorded, either by video or audio. Although we do not adopt a per se rule requiring every interview to be recorded, law enforcement is strongly encouraged to record (by video and audio or audio alone) any custodial statement of an arrested person.

insufficient evidence as to the sexual assault conviction. We begin with the murder and burglary convictions.

1. Murder and Burglary

A.P. argues that even if his confession to the murder and burglary offenses is admissible, there is insufficient evidence in the record to corroborate his confession. We disagree.

The sufficiency of evidence needed to corroborate a confession is an issue of first impression in the RMI. We begin with a basic principle—a confession alone is insufficient evidence to find guilt beyond a reasonable doubt. But a confession is sufficient if coupled with corroborating evidence to indicate the trustworthiness of the confession. *See United States v. Waller*, 326 F.2d 314, 314 (4th Cir. 1963) ("All that is required . . . is that there be sufficient corroboration of the confession (or admission) to indicate that it is trustworthy, but the corroborating evidence need not, itself, establish every element of the offense."); *United States v. Brown*, 617 F.3d 857, 861-62 (6th Cir. 2010) (noting the "corroboration" rule is an iteration of a "sufficiency-of-the-evidence" argument, and that "[w]hen an accused confesses to a crime involving 'physical damage to person or property,' the independent corroborating evidence need only show that the crime occurred" (citing *Wong Sun v. United States*, 371 U.S. 471, 489-90 n.15 (1963)); *see also Trust Territory v. Sokad*, 4 TTR 434, 438 (1969). We adopt this rule as the law of the RMI.

The RMI's case was largely built around A.P.'s confession, with evidence from the Marquez residence providing corroboration. For example, A.P.'s confession as to how he entered the Marquez residence was corroborated by A.P.'s handprint and footprint found on the top of the freezer. The first witnesses to find Robert after his murder described him as lying face down in his bed, consistent with A.P.'s confession. Items (grizzly, cigarettes, and vodka) that

A.P. admitted he stole from the Marquez store were later located at A.P.'s place of residence and/or appeared to be burned by him. And, finally, the swabs taken from Ashley's vagina were determined to contain semen and were a match to A.P.'s DNA with a "likelihood ratio" of "four hundred and seventy septillion" the highest level of DNA identification used by the FBI.

In short, the RMI presented evidence that: 1) A.P. confessed to the murder of Robert and the burglary of his store; and 2) corroborated the trustworthiness of the confession. Put differently, the corroborating evidence presented to the High Court was fully consistent with A.P.'s confession. Thus, the confession and corroborating evidence would permit any rational trier of fact to find each essential element of these crimes beyond a reasonable doubt. We thus **AFFIRM** the convictions for murder and burglary.

2. Sexual Assault

A.P. also argues that there was insufficient evidence to support the sexual assault conviction. The court agrees, finding that because Ashley was no longer alive at the time of the sexual assault, A.P. did not commit the crime of sexual assault as defined in the Criminal Code.

Under the Criminal Code, an individual is guilty of sexual assault if that person knowingly or recklessly "subjects another *person*" to sexual penetration or sexual contact. 31 MIRC §§ 213.1, 213.2, 213.3, 213.4 (sexual assault in the first, second, third, and fourth degree) (emphasis added). "Person," in turn, includes "any natural person." 31 MIRC § 1.13(8). The question thus becomes whether a "natural person" only includes living individuals or could include a corpse. Applying established rules of statutory construction, we conclude that a "natural person" under the sexual assault statutes only includes a living person.

The Nitijela enacted a separate criminal offense, also located in Article 213 covering sexual offenses, for "Bestiality and Necrophilia:"

> A person is guilty of felony of the third degree if the person knowingly engages in any act of sexual gratification with an animal *or a corpse*, involving the sex organs of one and the mouth, anus, or sex organs of the other.

31 MIRC § 213.7 (emphasis added). Applying canons of statutory interpretation, it is clear that the Nitijela intended for a "natural person" to be different and separate from a "corpse."

"'The preeminent canon of statutory interpretation requires us to presume that the legislature says in a statute what it means and means in a statute what it says there.'" *Lekka v. Kabua, et al.*, 3 MILR 167, 171 (2013) (quoting *Miranda v. Anchondo*, 684 F.3d 844, 849 (9th Cir. 2012)). "'If the statutory language is unambiguous and the statutory scheme is coherent and consistent, judicial inquiry must cease.'" *Id.* Further, "[i]t is a well known canon of statutory construction that courts should construe statutory language to avoid interpretations that would render any phrase superfluous." *United States v. Cooper*, 396 F.3d 308, 312 (3d Cir. 2005), *as amended* (Feb. 15, 2005) (citing *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001)); *see also Dribo v. Bondrik*, 3 MILJ 127, 138 (2010) (explaining that courts are to avoid constructions that produce 'odd' or 'absurd results'" or that are 'inconsistent with common sense.'") (internal citations omitted). "'[G]eneral language of a statutory provision although broad enough to include [one term], will not be held to apply to a matter specifically dealt with in another part of the same enactment.'" *United States v. Corrales-Vazquez*, 931 F.3d 944, 950-51 (9th Cir. 2019) (rejecting a statutory interpretation that "would have been not only superfluous but subsumed *entirely* within" another section) (citing *Bloate v. United States*, 559 U.S. 196, 207-08 (2010)); *see also Samuel v. Chief Electoral Officer*, Supreme Court No. 2018-01 at 10 n.3 (2019) ("A reviewing court should not confine itself to examining a particular statutory provision in isolation. The

meaning—or ambiguity—of certain words or phrases may only become evident when placed in context.") (quoting *FDA v. Brown & Williamson Tobacco Corp.*, 529 U.S. 120, 132 (2000)).

The existence of a separate statute for necrophilia, covering any act of sexual gratification with a "corpse," is compelling evidence that the Nitijela intended the use of the term "person" in the sexual assault statute to refer to a living person. To hold otherwise would render the necrophilia statute superfluous.

We thus conclude that a "person" under the sexual assault statutes means a living person—any victim of a sexual assault must be alive at the time the assault occurred.

Here, Dr. Lepidas, the gynecologist who conducted Ashley's autopsy, testified at trial that she was certain that Ashley was forcefully penetrated, but she was also certain that this assault occurred *after* Ashley's death. There is no evidence in the record contradicting this testimony. Thus, because Ashley was deceased at the time the penetration occurred, by definition, she was not a "person" within the meaning of the statute of conviction.[11]

We are acutely aware of the gruesome facts before us—the evidence is overwhelming that A.P. killed three-year-old Ashley and then raped her. But as a matter of law, Ashley was not a "person" within the meaning of the statute at the time of rape. We thus **REVERSE** the conviction of sexual assault in the first degree.

C. A.P.'s Sentence

We **VACATE** the High Court's sentence and direct the High Court to sentence A.P. anew for the convictions of murder and burglary. Because we **REVERSE** and **REMAND** to the

[11] In its Amended Information, the RMI claimed that A.P. first sexually assaulted Ashley and then killed her. Again, as stated above, no evidence at trial was offered to support this sequence of events.

High Court for resentencing consistent with the Opinion, we need not address the arguments regarding the validity of A.P.'s fifty-year sentence.

The High Court is to resentence A.P. anew. That is, although the High Court will be limited to a statutory maximum sentence of 35 years, the High Court is not bound by its earlier decision to impose the sentence for the burglary conviction concurrent to the sentence for the murder conviction.

V. CONCLUSION

For the foregoing reasons, we **AFFIRM** A.P.'s conviction for the murder and burglary convictions, **REVERSE** A.P.'s sexual assault conviction, **VACATE** A.P.'s sentence, and **REMAND** the matter to the High Court for a sentencing anew consistent with this Opinion.

Dated: January 4, 2020

/s/ Daniel N. Cadra
Daniel N. Cadra
Chief Justice

Dated: January 4, 2020

/s/ J. Michael Seabright
J. Michael Seabright
Associate Justice

Dated: January 4, 2020

/s/ Richard Seeborg
Richard Seeborg
Associate Justice