In The
United States Court of Appeals
For The Fourth Circuit

TYRONE LORENZO ROBINSON,

Plaintiff – Appellant,

v.

JOSEPH FRANKLIN CLIPSE,
Public Safety Trooper First Class,

Defendant – Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF SOUTH CAROLINA AT CHARLESTON

BRIEF OF APPELLEE

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STATEMENT OF JURISDICTION

This is a civil-rights action, pursuant 42 U.S.C. § 1983. Subject matter jurisdiction in the district court was proper, pursuant to 28 U.S.C. § 1331. This Court has jurisdiction, pursuant to 28 U.S.C. § 1291 because this is an appeal from a final judgment of the district court. J.A. 382. The district court filed its judgment on March 28, 2008, *id.*, supported by a final order, J.A. 369-381. The Plaintiff filed his notice of appeal on April 24, 2008. J.A. 383.

STATEMENT OF THE ISSUES PRESENTED FOR REVIEW

I. Was the district court correct that the doctrine of *res judicata* bars the Appellant's action?

II. Was the district court correct in its application of Fed. R. Civ. P. 15(c) in granting Trooper Joe Clipse's motion for summary judgment where the Appellant did not file an amended complaint naming Clipse as a defendant until a year and a half after the statute of limitations expired?

STATEMENT OF THE CASE

The Appellant filed this action on November 3, 2005, seeking money damages pursuant to 42 U.S.C. § 1983. The only defendant was the South Carolina Department of Public Safety, Highway Patrol. The lawsuit alleges that the Appellee, Trooper Joe Clipse, a highway patrol trooper employed by the South Carolina Department of Public Safety, violated his Fourth Amendment rights by shooting him during attempts to effect an arrest.

On February 3, 2006, the district court, *sua sponte*, issued an order that the South Carolina Department of Public Safety cannot be held liable for Trooper Clipse's actions and ruling that Clipse was entitled to qualified immunity. J.A. 31-38. The district court denied the Appellant's motion for reconsideration and dismissed the action, with prejudice. J.A. 42-49. The Appellant appealed the order.

On March 28, 2007, this Court issued an opinion that the district court made an improper credibility finding in determining that Clipse was entitled to qualified immunity. The Court those vacated portions of the district court's order and remanded for further proceedings. The Court affirmed the remainder of the district court's order and granted the Appellant's motion to add Clipse as a party. J.A. 50-53.

In May of 2007, a year and a half after the statute of limitations expired, the Appellant filed an amended complaint naming Clipse as a defendant, attempting to sue him in both his individual and his official capacity. J.A. 54-274. The Magistrate Judge authorized service upon Trooper Clipse and ordered the United States Marshal to serve the pleading. J.A. 276-278. The Marshal Service, unable to locate Trooper Clipse personally, made a notation on the Process Receipt and Return, "Office of General Counsel accepts papers for troopers at SC Dept. of Public Safety," and delivered the summons and complaint to that office on August

3, 2007. On August 15, 2007, the Marshal Service filed the Process Receipt and Return with the clerk as executed. J.A. 279.

On August 16, 2007, the Appellee filed an answer, raising the statute of limitations, *res judicata* and insufficiency of service of process as affirmative defenses. J.A. 280-285. On November 5, 2007, the Appellee filed a motion for summary judgment, asserting immunity from suit under 42 U.S.C. § 1983, arguing that Trooper Clipse is entitled to qualified immunity, that the Complaint is barred by *res judicata* and that the Appellant failed to timely and properly serve the summons and complaint. J.A. 286-346. On March 28, 2008, the district court granted summary judgment. J.A. 382. In its order, the court found that the defendant was, indeed, served with process, J.A. 376, but the relation-back provisions of Fed R. Civ. P. 15 were not satisfied and, therefore, the statute of limitations barred the action against Trooper Clipse. J.A. 377-380.

In addition to the instant action, whose jurisdictional history is set forth above, the Appellant filed five other actions related to the high-speed chase and arrest. The factual basis for each of those lawsuits lies in the November 14, 2002, flight, pursuit, arrest and prosecution.

On April 23, 2003, in Case No. 9:30-cv-1366-SB, the Appellant filed a § 1983 suit against Trooper Clipse, in his individual and official capacities, seeking money damages for violation of his civil rights under the Fourth Amendment,

based upon the November 14, 2002, auto chase and resulting arrest. The complaint makes claims for use of excessive force, assault and battery with intent to kill and violation of the Fourth Amendment. The narrative detailed the same incident outlied in the matter currently before the Court. After Defendant Clipse moved for summary judgment, fully briefed the issue and submitted evidence in support, Plaintiff Robinson failed to respond. The Court, after twice extending the time for the Appellant's response, finally dismissed the action, without prejudice, for lack of prosecution.

On May 1, 2006, the Appellant filed Case No. 2:06-cv-1288-SB, a § 1983 suit against Joseph Franklin Clipse seeking money damages for violation of his constitutional rights subsequent to his arrest for the high-speed chase. In his March 15, 2007, order granting summary judgment, the district court introduces the background with specific references to the high-speed chase and events subsequent to arrest. The district court evaluated Robinson's claims as excessive force claims under the Fourth Amendment and then granted summary judgment to Trooper Clipse. Robinson appealed the order, Case No. 07-6571, and this Court affirmed on June 15, 2007.

On May 1, 2006, in Case No. 2:06-cv-1289-SB, the Appellant sued Solicitor Randolph Murdaugh and Deputy Solicitor Steven Knight for violating his constitutional rights in prosecuting him as a result of the November 14, 2002, high-

speed chase. The district court dismissed the action without issuance or service of process. The Appellant did not appeal the dismissal.

On May 16, 2006, in Case No. 2:06-cv-1492-SB, the Appellant brought a § 1983 suit against the South Carolina Department of Public Safety and Trooper Clipse, in his official and individual capacity, seeking damages related to the November 14, 2002, high-speed chase and the charges brought against him. Finding the case to be based upon a similar matter already pending, the district court dismissed the action without issuance and service of process. Robinson took no appeal from this order.

On May 25, 2006, in Case No. 2:06-cv-1602-SB, Robinson filed a § 1983 suit based upon the same incident – the chase, subsequent arrest and detention – against the Beaufort County Sheriff's Office. The district court dismissed the action without issuance or service of process. Robinson did not appeal.

STATEMENT OF FACTS

On November 14, 2002, at approximately 8:00 a.m., Trooper Joseph Clipse, a state employee of the South Carolina Department of Public Safety, a uniformed Highway Patrol officer, was on duty in a marked cruiser in Bluffton, South Carolina. J.A. 303-304. In response to a citizen's complaint that a dark-colored car ran her off the road, Trooper Clipse located the particular vehicle turning eastbound onto U.S. Route 278 in Bluffton, South Carolina, J.A. 309, and driven

by the Appellant, Tyrone Robinson, J.A. 326. The vehicle was the property of Benny Bolden who had earlier reported it stolen and had not given Robinson permission to use the car. J.A. 311-313.

Trooper Clipse pursued the Appellant who accelerated, forced several vehicles off the road, traveled eastbound on U.S. Route 278, then turned onto Buck Island Road. J.A. 315. Trooper Clipse caught up with the Appellant and initiated his blue lights and siren, but the vehicle again sped away fleeing farther down Buck Island Road and out of Trooper Clipse's sight. When Robinson attempted a U-turn, he collided with oncoming traffic and came to a stop. Trooper Clipse arrived at the scene, parked at the side of the road and exited his vehicle. Before the trooper could approach either car involved in the crash, Robinson backed away from the impacted vehicle, accelerated and drove at a high rate of speed directly at the trooper. Clipse tried to retreat to his car to get out of the way. Seeing that he could not escape the speeding car coming directly for him, he pulled his service revolver and discharged several rounds into the windshield of the car the Appellant was driving. One of the bullets struck Robinson in the chest and another in the hand, and he veered off the road and stopped. While Trooper Clipse radioed for assistance, the Appellant accelerated and drove away from the scene, back toward U.S. Route 278, where he finally stopped, got out of his vehicle and attempted to flee. It took three officers to subdue him. J.A. 322-328, 319-320, 317.

At trial, the jury convicted Tyrone Robinson of possession of a stolen vehicle and failure to stop for a blue light. J.A. 332-333.

SUMMARY OF ARGUMENTS

The Appellant filed eight civil suits based upon the same set of facts, the Appellee's pursuit of the stolen vehicle, Appellant's apprehension and ultimate prosecution. Six of the lawsuits targeted the trooper and/or his employer and two specifically named the Appellant as a defendant. Of those latter two, the district court dismissed one and granted summary judgment on the other. Those orders terminating the cases bar further actions based upon the same set of facts and involving the same parties.

The Appellee had no reason to believe that the instant suit's initial failure to name him as a party was anything other than a conscious decision by the Appellant. The district court correctly analyzed and applied Fed. R. Civ. P. 15(c) to determine that the statute of limitations bars the instant lawsuit.

ARGUMENTS

STANDARD OF REVIEW

On appeal, this Court reviews the district court's grant of summary judgment *de novo*. *Shipbuilders Council of America v. U.S. Coast Guard*, 578 F.3d 234, 243 (4th Cir. 2009). The Court views all facts and reasonable inferences therefrom in

the light most favorable to the nonmoving party. *Pueschel v. Peters*, 577 F.3d 558, 563 (4th Cir. 2009).

I. THE DOCTRINE OF *RES JUDICATA* BARS RECOVERY ON THE ORIGINAL COMPLAINT AND SERVES AS A BAR TO THE AMENDED COMPLAINT, AS WELL.

Res judicata prevents the Appellant from pursuing a claim that was decided or could have been decided in his previous lawsuits. "A final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." *Federated Dept. Stores, Inc. v. Moitie*, 452 U.S. 394, 399, 101 S. Ct. 2424, 2428 (1981). "Under the doctrine of *res judicata*, or claim preclusion, '[a] final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action.'" *Pueschel v. U.S.*, 369 F.3d 345, 354 (4th Cir. 2004), quoting *Federated Dept. Stores, Inc.*, *supra*, at 398, 101 S.Ct. 2424.

The elements of *res judicata* are (1) a final judgment on the merits in an earlier suit, (2) an identity of the cause of action in both the earlier and the later suit and (3) an identity of parties or their privies in the two suits.

The test for deciding whether the causes of action are identical for claim preclusion purposes is whether the claim presented in the new litigation arises out of the same transaction or series of transactions as the claim resolved by the prior

judgment. *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156, 162 (4th Cir. 2008).

There is one series of events common to the numerous lawsuits brought by Tyrone Robinson, one series of incidents that began when Appellant Robinson drove a stolen vehicle in Bluffton, South Carolina, and Trooper Clipse attempted to stop him. Each of the lawsuits filed by the Appellant is based upon that factual predicate. There can be no doubt that all of the cases arise out of the same transaction or series of transactions and that the final judgments and decisions rendered serve as a bar to the instant action.

The Amended Complaint, the pleading at issue in this matter, received approval for service of process on July 3, 2007. Appellant's Brief, Page 8. However, the district court had already considered the same facts, the same allegations against Trooper Clipse by the same plaintiff, Tyrone Robinson, in Case No. 2:06-cv-1288-SB and granted summary judgment four months earlier, on March 15, 2007. This Court reviewed Robinson's appeal and affirmed on June 15, 2007. By the time the Appellant's Amended Complaint was approved for service, there was already a final order in place based upon the same cause of action and involving identical parties, an order appealed and affirmed through this Court, a final judgment on the merits in an earlier suit. The Amended Complaint at issue was, therefore, barred by the doctrine of *res judicata*. The Appellee correctly

relied on his affirmative defense, asserted in the answer, and as the district court correctly noted, "[T]he Plaintiff's claims, if they had been timely filed, nevertheless would be barred by the doctrine of *res judicata*." J.A. 381.

The Appellant has an even earlier decision that works against him. Case No. 9:03-cv-01366-SB, filed on April 9, 2003, contains the same allegations, makes the same claims and seeks money damages against the Appellee, just as in the Amended Complaint before this Court. In that suit, the Appellee moved for summary judgment on February 4, 2004, but the Appellant did not respond and did not file a motion of his own. On April 2, 2004, the magistrate extended the time for the Appellant to file a response. He filed nothing. Again on May 24, 2004, the magistrate extended the time for opposition to the motion for summary judgment and received no response. On July 16, 2004, the district court dismissed the suit for want of prosecution. Robinson took no appeal from the district court's order. This decision, too, is a final decision on which *res judicata* serves as a bar to further litigation.

The Appellant posits that *res judicata* does not serve to bar the instant action, arguing that his 2006 suit involved a different issue and the 2003 suit was not adjudicated on the merits because it was dismissed without prejudice. That is not the law.

Newly articulated claims based on the same nucleus of facts are still subject to *res judicata* if the claims could have been brought in the earlier action. *Laurel Sand & Gravel, Inc. v. Wilson*, 519 F.3d 156, 162 (4th Cir. 2008). Not only could the Appellant have brought the claims, he did so. In Case No. 2:06-cv-1288-SB, the district court granted Trooper Clipse summary judgment, and the order was affirmed. Trooper Clipse is entitled to rely on that prior decision. Case No. 09:03-cv-1366-SB, brought pursuant to § 1983, names Trooper Clipse as the defendant. The Appellant's opening narrative paragraph details his claim for use of excessive force, assault and battery with intent to kill and violation of the Fourth Amendment. His narrative then describes in detail his version of the automobile pursuit and his injury. Even the *ad damnum* makes it clear that he seeks money damages as a result of Clipse's pursuit. There can be no doubt that he attempted to litigate precisely the same incident that is at issue in the matter before this Court. The Appellee moved for summary judgment and the Appellant elected to ignore the motion. Despite two extensions of time in which to respond, the Appellant did not and the court dismissed his case for failure to prosecute.

The dismissal of his 2003 litigation is a final judgment for purposes of *res judicata*.

> If a litigant chooses not to continue to assert his rights after an intermediate tribunal has decided against him, he has concluded his litigation as effectively as though he had proceeded through the highest tribunal available to him. An adjudication of an issue implies

> that a man had a chance to win his case. The chance was necessarily afforded by the [that] litigation. It was in process of determination when the [district court] decided against him. He forewent his right to have a higher court…enable him to win his chance by holding that he was right and that the [district] court was wrong. He cannot begin all over again in an action involving the same issues before another forum in the same state.

Angel v. Bullington, 330 U.S. 183, 190-191, 67 S. Ct. 657, 661 (1947).

The Appellant urges this Court, on the one hand, to find the issue of *res judicata* not properly before the Court, and on the other hand, raises the issue for full discussion in his brief. In asserting this position, the Appellant ignores long established precedent: "The prevailing party may, of course, assert in a reviewing court any ground in support of his judgment, whether or not that ground was relied upon or even considered by the trial court." *Dandridge v. Williams*, 397 U.S. 471, 476, n.6, 90 S. Ct. 1153, 1157 (1970). The authority of courts of appeals to uphold judgments of district courts on alternate grounds is well recognized. *Cochran v. Morris*, 73 F.3d 1310, 1316 (4th Cir. 1996). This Court is entitled to sustain the judgment of a lower court on any ground apparent from the record, *CFA Institute v. Institute of Chartered Financial Analysts of India*, 551 F.3d 285, 292 (4th Cir. 2009), including the district court's notation that "the Plaintiff's claims, if they had been timely filed, nevertheless would be barred by the doctrine of *res judicata*."

"[T]he appellee may, without taking a cross-appeal, urge in support of a decree any matter appearing in the record, although his argument may involve an

attack upon the reasoning of the lower court or an insistence upon matter overlooked or ignored by it." *Dandridge v. Williams*, *supra*, 397 U.S. at 476, note 6, 90 S. Ct. at 1157, *Keller v. Prince George's County*, 923 F.2d 30, 32 (4th Cir. 1991). Reviewing the history of litigation by the Appellant, including the adjudication of two prior cases based on the same facts, the district court correctly noted that *res judicata* bars the instant action. This Court should affirm.

II. THE DISTRICT COURT CORRECTLY ANALYZED AND APPLIED FED. R. CIV. P. 15(C) IN GRANTING TROOPER JOE CLIPSE'S MOTION FOR SUMMARY JUDGMENT WHERE THE APPELLANT DID NOT FILE AN AMENDED COMPLAINT NAMING CLIPSE AS A DEFENDANT UNTIL A YEAR AND A HALF AFTER THE STATUTE OF LIMITATIONS EXPIRED.

The district court correctly analyzed and applied Rule 15 of the Federal Rules of Civil Procedure. Initially, the magistrate correctly determined that the Appellant's claims against Trooper Clipse were time-barred. The magistrate found no evidence to show that the addition of Clipse as a Defendant in May 2007 related back, pursuant to Fed. R. Civ. P. 15(c), to the date of the original filing of the complaint in November of 2005.

The district court, in light of the amended complaint naming a new party, made a careful and detailed analysis of this case examining Rule 15(c)(1)(C) and its requirements. The court looked to *Goodman v. Praxair, Inc.*, 494 F.3d 458 (4th Cir. 2007), in its evaluation of this case.

Goodman acknowledged that Rule 15 allows a plaintiff to amend a pleading, for whatever reason, and that his amendment should be freely allowed. The Court noted, however, that the Rule does not concern itself as much with the amending party's state of mind; rather it focuses on the *notice to the new party* and *the effect on the new party* the amendment will have. *Id.* at 470 (emphasis in original). "These core requirements preserve for the new party the protections of a statute of limitations. They assure that the new party had adequate notice *within the limitations period* and was not prejudiced by being added to the litigation." *Id.* (emphasis in original).

Goodman teaches that an amendment relates back only when it changes a party or the naming of a party, when it arises out of the same transaction as that referred to in the original complaint, when it causes no prejudice to the new defendant in maintaining his defense and when the new defendant should have known that it was the party that would have been sued but for a mistake. This final requirement "explicitly describes the *type of notice or understanding* that the *new party* had." *Id.* (emphasis in original.) The Court reasoned that this application of the Rule allows plaintiffs the ability to amend pleadings while preserving to new parties the protections afforded by statutes of limitations. *Id.*

In its order granting summary judgment, the district court recognized the "subtle and complex compromise," called for in *Goodman*, 494 F.3d at 467,

between simplicity in pleadings, a fair and just determination of the dispute and the fact that statutes of limitations are legislative determinations that give defendants predictable repose from claims after the passage of a specified time. *Id.* The court properly considered that it must be hesitant in extending or ignoring such legislative determinations for judicially created reasons. *Id.* at 468.

The district court correctly held that Rule 15(c) by requires a new party to have had adequate notice within the limitations period and that the new party not be prejudiced by the passage of time between the original and the amended pleading. The court was correct that since Trooper Clipse reasonably believed that the time for filing suit had expired, without receiving notice that he should have been named in an existing action, he is entitled to repose.

Applying the requirements of the Rule to the finding that the amended complaint asserts a claim or defense that arose out of the conduct, transaction or occurrence set out in the original pleading, the court focused on whether Trooper Clipse received notice of the action such that he would not be prejudiced in defending on the merits and knew or should have known that the action would have been brought against him, but for a mistake concerning the proper party's identity. The court concluded that since the Plaintiff filed his original complaint on November 3, 2005, which named the South Carolina Department of Public Safety as the lone defendant and because Trooper Clipse had no notice of the

Plaintiff's attempt to name him as a defendant until May of 2007, he did not receive notice of the action within the limitation period and, therefore, was prejudiced by the amended complaint. That analysis was correct.

> Rule 15 has its limits, and courts properly exercise caution in reviewing an application of the rule that would increase a defendant's exposure to liability. Thus, an amendment to the pleadings that drags a new defendant into a case will not relate back to the original claims unless that defendant had fair notice of them.

Intown Properties Management, Inc. v. Wheaton Van Lines, Inc., 271 F.3d 164, 170 (4th Cir. 2001).

The district court was also correct in his determination that Trooper Clipse had no reason to know that the action would have been brought against him but for the Appellant's mistake. It is important to note that the district court correctly observed that Robinson knew very well that he could sue Trooper Clipse, based upon the previous suits filed by the Appellant, "at least two of which have been filed against Defendant Clipse." J.A. 381.

There is nothing in the overall record, considering the Appellant's litigation history and knowledge of the court system, to indicate that naming only the Department of Public Safety in the complaint was anything but a conscious choice on the Appellant's part. And, from Trooper Clipse's viewpoint, he had already been personally sued twice and received a favorable outcome each time. Why should he have thought - let alone known or even should have known - that the

action would have been brought against him, but for a mistake concerning the proper party's identity? He would not.

The Appellant's reliance on the Rule 4(m) period for serving the complaint is not availing. Fed. R. Civ. P. 4(m) calls for dismissal of the pleading if not served, "within 120 days after the complaint is filed." Before 1983 there was no enumerated time limit for service of process after filing the complaint. In 1983, Rule 4 changed to require service within 120 days, measured from the complaint's filing. That requirement carried forward in subdivision (m) of the 1993 revision of Rule 4 and applies in this instance. *See* Advisory Committee Notes, Section C4-38. The effect of the Rule is not to arbitrarily extend the legislatively created statute of limitations, but rather to retain the flexibility of the old rule while giving some measure of certainty and protection to litigants. In the instant situation, it must be read together with Fed. R. Civ. P. 15(c)(1)(C).

Rule 15(c)(1)(C) provides:

> An amendment to a pleading relates back to the date of the original pleading when…the amendment changes the party or the naming of the party against whom a claim is asserted, if Rule 15(c)(1)(B) is satisfied and if, within the period provided by Rule 4(m) for serving the summons and complaint, the party to be brought in by amendment:
>
> (i) received such notice of the action that it will not be prejudiced in defending on the merits; and

> (ii) knew or should have known that the action would have been brought against it, but for a mistake concerning the proper party's identity.

Reading Rules 4 and 15 together demonstrates their application to this matter: Trooper Clipse must have received notice of the initial complaint within 120 days of its filing. To hold otherwise would impermissibly extend the South Carolina statute of limitations.

The Appellee agrees that reading *Goodman* to hold that a newly added defendant must receive notice of the action before the statute of limitations expires would be incorrect. The Appellee does not agree, however, that the wording of Rule 4(m) opens indefinitely the time in which a new defendant may be added. It merely extends the time for service for 120 days for a complaint filed within the statute of limitations. As demonstrated above, the time in which Trooper Clipse should have known of the suit was the statute of limitations plus 120 days. As the district court found, Trooper Clipse had no knowledge of the amended complaint until long after both the statute of limitations expired and the 120-day period for service of process had elapsed. Accordingly, the court was correct to rule that the statute of limitations barred the amended complaint as to Clipse.

Neither is the Appellant able to satisfy the second requirement of Rule 15(c)(1)(C), that Trooper Clipse knew or should have known that the action would have been brought against him, but for a mistake concerning the proper party's

identity. Based upon the prior suits against him and their adjudication in his favor, even if the Appellee received notice of the suit against the South Carolina Department of Public Safety within the requisite time period, there is nothing new about the case or its allegations that would have signaled that the action was anything different from his prior attempts to collect money from the underlying incidents.

Since the events giving rise to this litigation, the Appellant had already sued Clipse personally in Case Nos. 9:03-cv-1366-SB and 2:06-cv-1492-SB, the latter case including the Department of Public Safety as a codefendant. In addition, the Appellant sued the Beaufort County Sheriff's Office, 14th Judicial Circuit Solicitor Randolph Murdaugh, Deputy Solicitor Steven Knight and three times sued the South Carolina Department of Public Safety. Even had Trooper Clipse been made aware of the instant matter at its inception or within 120 days of its filing, he would not have considered that the action would have been brought against him, but for a mistake concerning the proper party's identity.

The district court's application of Rule 15 is correct and this Court should affirm.

CONCLUSION

Because the doctrine of *res judicata* bars the Appellant's action and because the district court correctly evaluated and applied Fed. R. Civ. P. 15(c) in granting

the Appellee's motion for summary judgment where the Appellant did not file an amended complaint adding a new defendant until a year and a half after the statute of limitations expired, the Appellee respectfully urges this Court to affirm the judgment of the district court.

Dated at Beaufort, South Carolina this 4th day of January 2010, and

Respectfully submitted,

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Dated: January 4, 2010

/s/ Marshall H. Waldron, Jr.
Counsel for Appellee

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 4th day of January 2010, I caused this Brief of Appellee to be filed electronically with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to the following registered CM/ECF users:

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I further certify that on this 4th day of January, 2010, the required number of bound copies of the foregoing Brief of Appellee have been hand-filed with the Clerk of this Court and one copy of the same has been served, via UPS Ground Transportation, upon all Counsel of Record at the above-listed address.

/s/ Marshall H. Waldron, Jr.
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