

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA :
v. : CRIMINAL NO. 04-949-ALL
EDWARD R. FORCHION, et al. :

CONSOLIDATED BRIEF FOR APPELLEE

I. STATEMENT OF SUBJECT MATTER JURISDICTION

_____ Because the defendants were charged in violation
notices with misdemeanor violations of federal criminal law and
because he was specially designated to exercise jurisdiction of
such offenses, the magistrate judge had jurisdiction over the
case pursuant to 18 U.S.C. §§ 3231 and 3401(a).

II. STATEMENT OF APPELLATE JURISDICTION

_____ Based upon the timely filing of notices of appeal from
the orders of judgment in a criminal case entered on November 18,
2004, this Court has jurisdiction over this matter pursuant to 18
U.S.C. § 3742(h) and Fed. R. Crim. P. 58(g).

III. STATEMENT OF ISSUES

_____ A. Did the trial judge correctly find that the
defendants had not established an affirmative defense under the
Religious Freedom Restoration Act in the criminal prosecution for
possession of a controlled substance within a national park?

B. Did the trial judge violate the Religious Freedom Restoration Act when he imposed the statutorily-mandated conditions of probation relating to drug usage?

IV. STATEMENT OF THE CASE

_____ On December 20, 2003, defendant Forchion was issued Violation No. P028826 and defendant Duff was issued Violation No. P257101, both for possession of a controlled substance within a national park in violation of 36 C.F.R. § 2.35(b)(2). App. 13-14. On March 20, 2004, both defendants were issued violation notices for the same offense (Violation No. P257955 to Forchion and No. P257040 to Duff). App. 15, 17. In addition, Forchion was issued Violation No. P257996 for interfering with agency functions, 36 C.F.R. § 2.32(a)(1). App. 16. Finally, on April 17, 2004, Forchion was issued Violation No. P257037 for possession of a controlled substance and Violation No. P257038 for disorderly conduct in violation of 36 C.F.R. § 2.34(a)(2). Duff was issued Violation No. P256628 for interfering with agency functions. App. 18-20.

Trial on all of these violation notices was scheduled before United States Magistrate Judge Arnold C. Rapoport on September 29, 2004. App. 49-91. Immediately before the trial, Forchion and Duff, representing themselves, submitted to the Court and the government a pleading denominated "Motion: To

Dismiss 'Affirmative Defense' of Religious Freedom (42 U.S.C. §2004bb(a))." App. 21-25. The government presented the testimony of one witness, and then Magistrate Judge Rapoport adjourned the hearing and directed the government to submit a written response to the defendants' pleading. The government did so (App. 26-36) and a second hearing was held on November 10, 2004. App. 92-205.

Following extensive witness testimony and legal argument, Magistrate Judge Rapoport rejected defendants' argument that the Religious Freedom Restoration Act ("RFRA"), 42 U.S.C. § 2000bb-1, created an affirmative defense to the criminal prosecution. App. 182-184. With respect to defendant Forchion, Magistrate Judge Rapoport found him guilty on the three violation notices charging him with possession of a controlled substance within a national park, but not guilty on the violation notice charging interfering with agency functions. The government voluntarily dismissed the violation notice charging disorderly conduct. App. 164. With respect to defendant Duff, Magistrate Judge Rapoport found him guilty on the two violation notices charging possession of a controlled substance, but not guilty on the violation notice charging interfering with agency functions. App. 180-187. Sentencing began on that date and was continued on November 12, 2004. App. 206-253.

With respect to each defendant, the court imposed a sentence of 12 months probation, a \$150 fine, and a \$10 special assessment. The periods of probation were subject to the mandatory conditions of 18 U.S.C. § 3563 and the standard conditions adopted in this district. In addition, the following special conditions were imposed: (1) that if the defendant entered Independence National Historical Park, he must abide by all the rules and regulations of the Park Service, and must obtain a permit to stage a protest or demonstration and (2) the defendant must participate in substance abuse testing and treatment as directed by the Probation Office. App. 37-48. Forchion and Duff filed timely appeals.

V. STATEMENT OF FACTS

_____ During the two hearings before Magistrate Judge Rapoport, the government established, through the testimony of two park rangers and an offer of proof, that on December 20, 2003 and March 20 and April 20, 2004, defendants Forchion and Duff committed the offense of possession of a controlled substance within a national park in that they smoked marijuana cigarettes. In each instance, Forchion and Duff were participating in a marijuana legalization rally which involved 25-30 other people and which occurred over a time period of approximately an hour and a half. App. 50-56, 104-112, 117-119.

Forchion and Duff did not dispute that they had engaged in this conduct, explaining that they believe that marijuana should be legalized and that the federal narcotics laws are racist. They had decided that two cases in the Ninth Circuit construing the Religious Freedom Restoration Act made it legal to use marijuana on federal property so long as such use occurred during a religious ceremony. Therefore, seeking to advance their cause of marijuana legalization, they smoked marijuana on the three occasions in Independence National Historical Park so that they could obtain a judicial determination in this district that their interpretation of the Ninth Circuit decisions was correct: "We were holding a religious demonstration. We were demonstrating what we thought was the legality of using marijuana on federal property as per some court rulings we read and we interpreted to mean that it was legal to smoke marijuana on federal property so long as it's in the course of religious ceremony." App. 30.

In their effort to establish an affirmative defense under the RFRA, Forchion and Duff established that they are practicing members of the Rastafarian religion and that marijuana is the sacrament of their faith. Smoking marijuana is used "to obtain peacefulness" and "to bring one closer to God." App. 32, 41. Forchion testified that he and Duff were holding a religious

ceremony when they smoked marijuana. In addition, he presented excerpts from videotapes of the events on December 20, 2003 and April 17, 2004 which showed Forchion stating that it did not matter what religion an individual belonged to, that the use of marijuana in a religious ceremony was absolutely legal according to the Religious Freedom Restoration Act, and that there was no reason that the Park Police should arrest anyone during the course of a religious ceremony. App. 136, 155.

However, on cross-examination by the government, Forchion admitted that the Rastafarian religion did not require him to smoke marijuana in Independence National Historical Park. App. 163.

The trial judge imposed sentences of probation on the defendants subject to the mandatory conditions of 18 U.S.C. § 3563(a) relating to drug usage. The defendants did not squarely challenge the imposition of these conditions as violative of the RFRA, and the issue was not briefed before magistrate judge. However, the defendants did assert that the conditions would preclude them from practicing their religion. App. 200, 224-226, 234-238.

VI. SUMMARY OF ARGUMENT

The magistrate judge who presided over the trial of the defendants on the misdemeanor violations of possession of a

controlled substance within a national park, violations arising from the defendants' actions of smoking marijuana while participating in marijuana legalization demonstrations in Independence National Historical Park, correctly found that the defendants had not carried their burden of proof in establishing an affirmative defense under the Religious Freedom Restoration Act, either under the facts or the law. The court found that the defendants sincerely believed that marijuana should be legalized and that the federal narcotics laws are racist, and were exercising their right of free speech while protesting with groups of 25 to 30 other people. However, the defendants cannot establish that the court committed plain error when it found that the defendants were not engaged in a religious ceremony when they smoked marijuana in the course of the protest.

The trial court further correctly found that even accepting the defendants' characterization of their conduct as a Rastafarian religious ceremony, they could not establish that the government action in prosecuting them substantially burdened their religious exercise because they admitted that their religion did not require them to smoke marijuana in Independence National Historical Park. Therefore, the prosecution did not force them to refrain from religiously-motivated conduct or compel conduct that was contrary to their beliefs.

With respect to the statutorily-mandated conditions of probation prohibiting the defendants from using narcotics, the defendants failed to establish that these conditions substantially burdened their practice of their Rastafarian religion because they failed to establish that they could not practice their religion without smoking marijuana. In fact, defendant Forchion conceded that he could practice his religion without smoking marijuana because he refrained from doing so while serving a multi-year period of parole in the state of New Jersey. In addition, even assuming the probationary conditions substantially burdened the defendants' religious practice, this Court can determine as a matter of law that the conditions further a compelling state interest in the least restrictive manner.

The federal narcotics laws and the supporting Congressional findings establish a compelling government interest in the uniform enforcement of the drug laws to prevent harm to public health and safety. The government also has a significant interest in the uniform application of supervision conditions to all defendants. Finally, Congress did not intend the RFRA to provide an automatic defense to drug laws and directed courts to examine pre-RFRA free exercise cases. Those cases unanimously

held that there was an overriding governmental interest in regulating marijuana.

The conditions of probation are the least restrictive means of accomplishing these governmental objectives because a court cannot carve out a religious exception without creating significant administrative problems for the Probation Office and without opening the door to a myriad of claims for religious exceptions.

VII. ARGUMENT

_____ A. THE MAGISTRATE JUDGE CORRECTLY FOUND THAT THE DEFENDANTS DID NOT ESTABLISH THAT THE GOVERNMENTAL ACTION IN PROSECUTING THEM FOR POSSESSION OF MARIJUANA WITHIN INDEPENDENCE NATIONAL HISTORICAL PARK SUBSTANTIALLY BURDENED THEIR PRACTICE OF THEIR RASTAFARIAN RELIGION AND THEREFORE, NO AFFIRMATIVE DEFENSE EXISTED UNDER THE RELIGIOUS FREEDOM RESTORATION ACT.

Standard of Review

To the extent that this issue involves the factual findings of the trial judge, this Court reviews for clear error. United States v. Weaver, 267 F.3d 231, 235 (3d Cir. 2001), cert. denied, 534 U.S. 1152 (2002).

To the extent that this issue involves the trial judge's interpretation of a federal statute, this Court's review is plenary. Gibbs v. Cross, 160 F.3d 962, 964 (3d Cir. 1998).

Discussion

Forchion and Duff argue that the magistrate judge erred in denying their motion under the RFRA to dismiss the violation notices. Their arguments rest upon a misapprehension of the nature of the magistrate judge's ruling and upon the same misapprehension of the law under which they both engaged in the conduct at issue and sought to dismiss the resulting criminal charges.

Forchion and Duff first argue that Magistrate Judge Rapoport held that the RFRA did not apply in the Third Circuit and that this was error because the RFRA is a nationwide law. In the course of considering defendants' motion to dismiss this prosecution based upon the RFRA, Judge Rapoport stated: "There's nothing affirmative in the Third Circuit that suggest (sic) that they agree with the Ninth Circuit." App. 34. These statements were made in the context of the defendants' citation of the Ninth Circuit's decisions in Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002) and United States v. Bauer, 84 F.3d 1549 (9th Cir. 1996). Defendants misconstrue Judge Rapoport's statements; he was simply noting that the Third Circuit had not considered the issue of when an affirmative defense to a criminal prosecution exists under the RFRA. In fact, Judge Rapoport recognized the applicability of the RFRA and carefully and thoroughly considered

the evidence offered and the legal arguments made by the defendants, and only then determined that they failed to establish an affirmative defense to the charges.

Defendants next claim that Judge Rapoport erred in that determination; they seem to argue that he misunderstood the applicable law and that he incorrectly concluded that the defendants did not establish that this prosecution substantially burdened their professed religion.

Defendants themselves have consistently misunderstood the extremely narrow holdings of Bauer and Guerrero, contending that the cases made it legal for someone of any religion to use marijuana in a religious ceremony on federal property. Defendants' conclusion is just plain wrong.

In Bauer, the defendants were prosecuted for conspiracy to manufacture and distribute marijuana and distribution of marijuana in violation of 21 U.S.C. §§ 846 and 841(a)(1) and of the lesser included offense of simple possession in violation of 21 U.S.C. § 844. The district court excluded the RFRA as a defense to all counts and the court of appeals held that this was error as to the simple possession counts, but not as to the other counts, stating: "As to the counts relating to conspiracy to distribute, possession with intent to distribute, and money laundering, the religious freedom of the defendants was not

invaded. Nothing before us suggests that Rastafarianism would require this conduct." Id. at 1559.

With respect to how the district court should proceed on remand to determine if the defendants could establish an affirmative defense, the Ninth Circuit stated:

The government should be free to cross-examine them on whether they, in fact, are Rastafarians and to introduce evidence negating their asserted claims. It is not enough in order to enjoy the protections of the Religious Freedom Restoration Act to claim the name of a religion as a protective cloak. Neither the government nor the court has to accept the defendants' mere say-so. The court may conduct a preliminary hearing in which the defendants will have the obligation of showing that they are in fact Rastafarians and that the use of marijuana is a part of a religious practice of Rastafarians.

Id.

Bauer was relied upon in Guam v. Guerrero, 290 F.3d 1210 (9th Cir. 2002) where the defendant was prosecuted under the statutes of Guam for importation of controlled substances. The court of appeals first determined that the RFRA applied to Guam, an unincorporated territory of the United States, an issue which arose in light of the Supreme Court's declaration in City of Boerne v. Flores, 521 U.S. 507, 532 (1997), that the RFRA was unconstitutional as applied to the states. The court then rejected the RFRA defense to the importation charges, holding that this statute did not substantially burden Guerrero's free

exercise of his Rastafarianism because "we are satisfied that Rastafarianism does not require importation of a controlled substance, which increases the availability of controlled substances and makes it harder for Guam to control." Id. at 1223. The court left open the question whether a statute proscribing simple possession of marijuana might substantially burden defendant's ability to practice Rastafarianism.

The holdings of Bauer and Guerrero are extremely limited, merely stating that the RFRA might create an affirmative defense to simple possession charges. The cases do not address the issue of the RFRA as an affirmative defense to a prosecution for possession of a controlled substance within a national park, the issue in this case. Forchion and Duff misread those cases as squarely holding that the RFRA creates an absolute affirmative defense for a Rastafarian to any prosecution for simple possession of marijuana, particularly when the prosecution arises from conduct involving the use of marijuana in an alleged religious ceremony on federal property. Throughout the course of this prosecution, defendants have also consistently ignored the fundamental legal principle that the Free Exercise Clause of the First Amendment guarantees absolute constitutional protection of religious belief, but only qualified protection of religious conduct. Cantwell v. Connecticut, 310 U.S. 296, 303-04 (1940).

With respect to the issue of the RFRA's affirmative defense, neither the parties nor the Court disagreed with the following legal principles. Under limited circumstances, the RFRA creates an affirmative defense in a criminal prosecution. To state a prima facie free exercise claim, a defendant must establish, by a preponderance of the evidence, three threshold requirements: "The governmental action must (1) substantially burden, (2) a religious belief rather than a philosophy or way of life, (3) which belief is sincerely held by the defendant." United States v. Meyers, 95 F.3d 1475, 1482 (10th Cir. 1996) (citations omitted). Only if the defendant establishes these threshold requirements does the burden shift to the government to demonstrate that the challenged regulation furthers a compelling state interest in the least restrictive manner. Id. The Third Circuit has held that these same standards apply when a defendant asserts the RFRA in a civil action. Adams v. C.I.R., 170 F.3d 173, 176 (3d Cir. 1999). This Court applied those principles in United States v. Philadelphia Yearly Meeting, 322 F.Supp.2d 603, 608 (E.D. Pa. 2004).

A substantial burden "is one that forces adherents of a religion to refrain from religiously motivated conduct, inhibits, or constrains conduct or expression that manifests a central tenet of a person's religious beliefs, or compels conduct or

expression that is contrary to those beliefs." Mack v. O'Leary, 80 F.3d 1175, 1179 (7th Cir. 1996).

Defendants failed to sustain their burden that the governmental action in prosecuting them for possession of marijuana within Independence National Historical Park substantially burdened their religion. The focus of Judge Rapoport's inquiry in this regard was whether defendants' Rastafarian religion required them to smoke marijuana in Independence National Historical Park. This focus was consistent with the cases addressing the factual situation of the applicability of the RFRA in criminal marijuana prosecutions, Bauer and Guerrero, where the question was whether Rastafarianism required any of the conduct which formed the basis of the prosecution.

Knowing that they had to establish the affirmative defense, defendants elected to present no evidence about their professed religion beyond the testimony of Forchion. When the government asked Forchion the following question: "Where is it written in your religion that you're required to hold what you call a religious ceremony and smoke marijuana in Independence National Historical Park?," he answered: "No where." App. 72. Forchion's own counsel then stated: "I have nothing in light of that." In light of this defense concession, Judge Rapoport

correctly found that the defendants could not establish that this prosecution substantially burdened their religious beliefs.

Both before the trial court and on this appeal, defendants repeatedly cite the case of O Centro Espirita Beneficiente Uniao Do Vegetal v. Ashcroft, 389 F.3d 973 (10th Cir. 2004) (en banc) where the court of appeals affirmed the district court's issuance of a preliminary injunction against the enforcement of the Controlled Substances Act as it pertained to the importation, possession, and distribution of hoasca for religious ceremonies. In that context, the government conceded that the religious organization had established a prima facie case under RFRA, and then litigated whether it had a compelling interest in prohibiting hoasca under the Controlled Substances Act. The defendants cannot avail themselves of the government's concession because it occurred in a factual situation which involved a different drug and the private practice of religion, not a factual situation involving efforts to allegedly practice religion publicly within a national park.

A central point about the O Centro case, and one not acknowledged by defendants, is that it exemplifies how free exercise cases should be litigated because there the members of the church sought an injunction to enjoin the government from enforcing the Controlled Substances Act, a vastly preferable way

to proceed than the one chosen by the defendants where they proceeded to break the law and then sought a determination that their conduct was lawful under the RFRA.

Defendants also chose to break the law in Independence National Historical Park without recognizing that a national park is a unique place and a different forum than a public street. A national park is space reserved for the public at public expense for a special purpose. Independence National Historical Park, if not the most important, is one of the most important national parks because it displays the history of the creation of American government. Millions of visitors come to Philadelphia from all over the world every year to view that history and defendants wholly ignored the impact on those visitors on the three Saturdays when they chose Independence National Historical Park as a public place to use marijuana.

In summary, Forchion and Duff were engaged in the public action of protesting the marijuana laws and concluded that they could smoke marijuana in the course of that event and shield themselves from prosecution by calling their public protest a private religious ceremony. Importantly, they chose to engage in this conduct; their professed Rastafarianism did not require them to engage in this conduct. It is this choice, exercised on

occasional Saturdays, which eliminates the affirmative defense. The trial court did not err.

B. THE DEFENDANTS DID NOT ESTABLISH THAT THE STATUTORILY-MANDATED CONDITIONS OF PROBATION RELATING TO DRUG USAGE SUBSTANTIALLY BURDENED THEIR PRACTICE OF THEIR RASTAFARIAN RELIGION BECAUSE THEY DID NOT ESTABLISH THAT THEY CANNOT PRACTICE THEIR RELIGION WITHOUT USING MARIJUANA.

Standard of Review

To the extent that this issue involves the factual findings of the trial judge, this Court reviews for clear error. United States v. Weaver, 267 F.3d 231, 235 (3d Cir. 2001), cert. denied, 534 U.S. 1152 (2002).

To the extent that this issue involves the trial judge's interpretation of a federal statute, this Court's review is plenary. Gibbs v. Cross, 160 F.3d 962, 964 (3d Cir. 1998).

Discussion

Defendants contend that the statutorily-mandated conditions of probation relating to drug use violate the RFRA because these conditions substantially burden their exercise of their Rastafarian beliefs. As with their efforts to establish an affirmative defense to the criminal charges, the defendants failed to establish the role of marijuana in the practice of their religion and therefore, failed to establish that the

conditions of probation substantially burdened their religious practice.

In their briefs, defendants make many factual assertions about their usage of marijuana as Rastafarians. However, these assertions go far beyond the record they established below, and that record does not establish that the use of marijuana is necessary to the practice of Rastafarianism.

To invoke the protections of the RFRA, the defendants needed to establish with precision the place of marijuana use in the Rastafarian religion, that is conduct that manifests a central tenet of the religion. The record contains some evidence that marijuana use is part of the defendants' faith, but that evidence is limited to some testimony from the defendants that it is the sacrament of the faith. App. 132, 148-149. However, the defendants also offered evidence about other Rastafarian religious practices and simply did not establish that they cannot

practice their religion without smoking marijuana.¹ Forchion himself admitted that while he was on parole in the New Jersey state court system, he refrained from using marijuana. That admission indicates that one can practice Rastafarianism without smoking marijuana.

One reported decision considers an RFRA challenge to drug usage supervised release conditions² imposed on a Rastafarian, United States v. Jefferson, 175 F.Supp.2d 1123 (N.D. Ind. 2001). There the district court was faced with a record which established that smoking marijuana was a main doctrine of Rastafarianism, but had no evidentiary basis on which to make a

¹Defendants repeatedly raised the question of why Native Americans can possess peyote when they cannot possess marijuana. An interesting discussion of this issue is found in McBride v. Shawnee County, 71 F.Supp.2d 1098 (D. Kan. 1999). In rejecting the defendant's habeas corpus challenge on equal protection grounds, the district court found that Rastafarians were not similarly situated to Native Americans because "their marijuana use is uncontrolled." The court cited testimony that "the Rastafarian religion is a loosely structured religion, the practice of which is primarily up to the individual. The Rastafarian faith has no central text to direct marijuana use. Rastafarians smoke marijuana either in a group or 'whenever the mood strikes.' . . . [there is] no set time, amount, or procedure for smoking the marijuana as part of the Rastafarian faith." Id. at 1101.

²The mandatory conditions of supervised release are found in 18 U.S.C. § 3583(d) whereas the mandatory conditions of probation are found in 18 U.S.C. § 3563(a). However, the drug usage conditions are the same so the Jefferson opinion applies to the issue in this case.

determination about the religiously-required level of usage, and therefore assumed that the defendant's constant usage was consistent with his religious practice. Id. at 1128-29. The government submits that such an assumption is unwarranted and that this Court should follow the requirements of the RFRA and where defendants have not offered specific evidence about when marijuana use is required by their religion, hold that defendants have not met their burden of proof.

The Jefferson court proceeded to consider whether the government could establish that the supervised release conditions furthered a compelling state interest in the least restrictive manner, and concluded that it did. Two reasons asserted by the government as to why it had a compelling interest in regulating the defendant's conduct were "its health and safety interest in prohibiting [the defendant's] use of marijuana" and its "interest in uniformly enforcing drug laws." Id. at 1130. The district court summarized the government's position as follows:

At the hearing the Government requested that the court take judicial notice of certain statutory provisions namely, 21 U.S.C. § 801(2), 21 U.S.C. § 812(b)(1)(a)-(c); 21 U.S.C. § 811; 21 U.S.C. § 844(a); and 21 U.S.C. § 841. Title 21, section 801 sets forth the Congressional findings and declarations relating to the Controlled Substances Act ("the Act"). Specifically, § 801(2) is a Congressional finding stating that "[t]he illegal importation, manufacture, distribution, and possession and improper use of controlled substances have a substantial and

detrimental effect on the health and general welfare of the American people." The Government also points out that marijuana is a Schedule I controlled substance under the Act and has been classified as such because of the rationale provided in 21 U.S.C. § 812(b)(1)(a)-(c), that is, that the drug has a high potential for abuse, has no currently accepted medical use, and there is a lack of safety for use of the drug. Finally, the Government notes that 21 U.S.C. § 841 and § 844 prohibit the possession of marijuana in addition to the manufacturing, distribution, and dispensing controlled substances. Thus, the Government's position is that there is a compelling government interest in enforcing all the drug laws in a uniform manner and in regulating the distribution of illegal drugs to protect the health and safety of United States citizens.

Id. The court accepted these arguments and concluded that a compelling government interest existed which justified the substantial burden on the defendant's freedom of religious expression.

The court cited two other rationales for its conclusion. First, "there is a compelling government interest in the uniform application of conditions of supervised release to all defendants." Id. Second, the legislative history of the RFRA demonstrated that Congress did not intend the law to provide an automatic defense to drug laws, and directed courts to look to existing free exercise cases for guidance. All such cases "accepted the congressional determination that marijuana in fact poses a real threat to individual health and social welfare, and [have] upheld the criminal sanctions for possession and

distribution of marijuana even where such sanctions infringe on the free exercise of religion.'" Id. at 1131 (citation omitted).

Finally, the court found that the conditions of supervised release were "the least restrictive means of accomplishing the objective of enforcing the drug laws and protecting the health and public safety of citizens" because "[a]ny judicial attempt to carve out a religious exception will result in significant administrative problems for the probation office and open the door to a myriad of claims for religious exceptions." Id. at 1132.

Assuming arguendo that Forchion and Duff had established that the probationary conditions prohibiting drug use substantially burdened their religious practice, the government submits that this Court can reach the same conclusions as the Jefferson court without the necessity of a remand because the Court can take judicial notice of the same statutes and legislative history.

IV. CONCLUSION

_____ For the reasons stated above, the government respectfully requests that the judgments of the magistrate judge be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I caused a copy of the foregoing Consolidated Brief for Appellee and Appendix for Appellee to be served on defendants/appellants addressed as follows:

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