

**IN THE SUPREME COURT OF OHIO**

IN THE MATTER OF: : Supreme Court Case No.: 2016-0353  
 : Court of Appeals Case No.: 3-15-12  
 A.J., DOB: 07-22-2014 :  
 : On Appeal from the Crawford County  
 ADJUDGED NEGLECTED CHILD : Court of Appeals, Third Appellate District

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**BRIEF OF APPELLEE – CRAWFORD COUNTY JOB & FAMILY SERVICES**

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**GUARDIAN AD LITEM**

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## STATEMENT OF THE FACTS AND STATEMENT OF THE CASE

Annabella Marie Johnson was born on July 22<sup>nd</sup>, 2014. Annabella's biological parents are Brittany C. Johnson and Brian K. Schlutow.

At the time of Annabella's birth, the mother was incarcerated at the Ohio Reformatory for Women after having been convicted of Robbery, in violation of Ohio Revised Code § 2911.02(A)(2), a Felony of the Second Degree in Crawford County Common Pleas Case No. 14-CR-0092, and Possession of Drugs, in violation of Ohio Revised Code §2925.11(C)(1), a Felony of the Fifth Degree in Crawford County Common Pleas Case No. 14-CR-0096. (See Record - Exhibit 1 for Permanent Custody Hearing). The mother was sentenced a total prison sentence of four (4) years and eleven (11) months, with credit for time served. *Id.* Her anticipated release date, at the time of the filing of the complaint was May 23<sup>rd</sup>, 2019; however, her anticipated release date was updated to December 23<sup>rd</sup>, 2018 as of the time of the hearing on the Motion for Permanent Custody. (See record – Complaint, and May 26, 2015 Report of Guardian Ad Litem).

The father was in Pennsylvania at the time of Annabella's birth.

Prior to filing any proceedings with the Trial Court, the Crawford County Job & Family Services attempted to evaluate potential relative placements for Annabella. (See Record – August 1, 2014 Reply Motion). No available or appropriate relatives were located to provide care for Annabella. *Id.*

Due to the mother's incarceration, the father's unavailability, and the unavailability of any appropriate relative placements, the Crawford County Job & Family Services filed a Complaint alleging Annabella to be a Neglected Child as defined in Ohio Revised Code § 2151.03(A)(2). Said Complaint further contained a prayer for the award of Permanent Custody of Annabella to the Crawford County Job & Family Services. The Crawford County Job &

Family Services additionally filed a Motion for a Shelter Care Hearing to ensure the safety and welfare of Annabella pending the formal adjudication.

A Shelter Care Hearing was held on July 22<sup>nd</sup>, 2014. The Crawford County Job & Family Services was awarded temporary custody of Annabella at that hearing. The Crawford County Job & Family Services requested that the Trial Court further Order that if the Crawford County Job & Family Services approved a potential relative placement, that the Crawford County Job & Family Services could proceed to placement without the need of a formal hearing. (See record – July 22, 2014 Judgment Entry, and August 1, 2014 Reply Motion). The Trial Court Ordered the same.

The maternal grandmother and great-grandmother filed a Motion to Intervene in the child welfare proceedings. The Crawford County Job & Family Services filed a reply to the same requesting that the Court deny the motion. Specifically, the maternal grandmother could not be approved as an appropriate relative placement due to prior child welfare adjudications and substantiated child welfare findings. (See Record – August 1, 2014 Reply Motion). The Crawford County Job & Family Services initiated a home-study evaluation of the maternal great-grandmother. *Id.* She was likewise denied as (a) there was a registered sex offender residing in the household, (b) there were substantiated child welfare findings against the maternal great-grandmother, and (c) in previous proceedings, the maternal great-grandmother requested the removal of another child from her care due to her inability to care for the child due to health, personal, and transportation issues. *Id.* The Trial Court ultimately denied the Motion to Intervene. (See Record – February 5, 2015 Judgment Entry).

The Adjudication occurred on August 18<sup>th</sup>, 2014. The mother and father were both properly notified of the proceedings; however, neither parent appeared, the mother due to her

continued incarceration, the father due to a self-reported tooth abscess. (See Record – September 16, 2014 Judgment Entry). The Trial Court entered a general denial to the allegations of the Complaint on behalf of the absent parents. *Id.* Thereafter, the parties, through their respective counsel of record, stipulated to the Trial Court’s consideration of the mother’s criminal sentencing entries, without the necessity of presenting any additional evidence, for its determination of the merits of the Complaint. *Id.* The Trial Court found Annabella to have been in a Neglected condition by clear and convincing evidence. *Id.* Thereafter, the parties requested a bifurcation of the adjudication and disposition so as to “allow the reputed father to be present for the disposition, to conduct genetic testing upon the reputed father, and to initiate an interstate home-study evaluation upon the reputed father.” *Id.* The Trial Court granted the bifurcation while continuing the Shelter Care Orders, and further Ordered the reputed father to submit to genetic testing herein for the establishment of paternity. *Id.*

The Dispositional hearing occurred on October 10<sup>th</sup>, 2015. The mother and father were both properly notified of the proceedings; however, neither parent appeared, the mother again due to her continued incarceration, the father due to self-reported transportation issues. (See Record – October 20, 2014 Judgment Entry). As a preliminary matter, the Crawford County Job & Family Services withdrew its prayer for Permanent Custody as a Dispositional Order as the father, through his attorney, reported he was desirous of an opportunity to comply with Case Plan goals in an attempt to gain custody of Annabella. *Id.* The Trial Court formally committed Annabella to the Temporary Custody of the Crawford County Job & Family Services for appropriate foster care or relative placement. *Id.* The Trial Court additionally approved the Case Plan document at that hearing. *Id.*

The goals and objectives of the initial Case Plan were straightforward. Due to the mother's continued lengthy incarceration, no services were put in place for her completion. The father was released from the Dauphin County Work Release Community Corrections Facility on August 3<sup>rd</sup>, 2014, and began residing with four other recently released inmates. (See Record - Case Plan). As a result, he was to obtain and maintain stable housing for a minimum of ninety (90) days. *Id.* He was also to obtain and maintain income sufficient to provide for Annabella. *Id.* The Case Plan further provided for visitation with Annabella and her father. *Id.* Crawford County Job & Family Services further initiated an interstate home-study to be conducted upon the father to determine the appropriateness of potentially placing Annabella with the father in Pennsylvania. (Transcript, Page 18, Lines 16-17).

On January 5<sup>th</sup>, 2015, the Crawford County Job & Family Services conducted a Semi-Annual Review of the case. (See Record – Semi-Annual Review). The mother and father failed to appear at the review. *Id.* The review notes that the father reported he had an apartment, however that was not verified by ICPC (Interstate Compact for the Placement of Children), and was a different residence than when the interstate home-study was initiated. *Id.* The father has not fully cooperated with the interstate home-study evaluation. *Id.* The father's income was unknown. *Id.* The father's ability to provide appropriate care for Annabella was likewise unknown. *Id.* The father, despite scheduling two (2) visits with Annabella, failed to attend those visits, in fact has never met his daughter. *Id.*

Considering the lack of progress by the father, the mother's continued incarceration, and the lack of suitable alternative relative placements, on January 29<sup>th</sup>, 2015, the Crawford County Job & Family Services filed a Motion for Permanent Custody of Annabella.

Prior to the initial hearing on the Motion for Permanent Custody, Crawford County Job & Family Services requested a copy of whatever documentation was contained in the interstate home-study evaluation of the father. It received documentation that indicated that *if* the father was able to demonstrate stability of residency, he would be approved by Pennsylvania. (Transcript, Page 35, Lines 11-12). It should be noted however, that the father had relocated since this evaluation was completed, and the evaluation would have to have been completed as to his new residence. (Transcript, Page 39, Lines 18-21). The Crawford County Job & Family Services requested, and was granted, a continuance of the initial hearing upon the Motion for Permanent Custody of Annabella, so as to allow the father to update the home-study evaluation at his new residence, as well as to attempt to demonstrate some commitment / effort to establish a bond with Annabella by visiting his daughter between the initial date and the continued hearing date. (See Record - April 3<sup>rd</sup>, 2015 Motion for Continuance). The father failed to appear for any visitations with Annabella. (Transcript, Page 45, Lines 21-25).

The Trial Court conducted the hearing upon the Motion for Permanent Custody on May 26<sup>th</sup>, 2015. The mother and father were both properly notified of the proceedings; however, neither parent appeared, the mother again due to her continued incarceration, the father due to unknown reasons. (See Record –June 23<sup>rd</sup>, 2015 Judgment Entry). After admission of the certified copy of the mother’s criminal sentencing entry, the Trial Court received sworn testimony from the caseworker assigned to the case, no other witnesses were called. *Id.* The Trial Court issued its decision, granting the Motion for Permanent Custody to the Crawford County Job & Family Services on June 23<sup>rd</sup>, 2015. *Id.*

The mother initiated an appeal of the Trial Court’s grant of Permanent Custody to the Crawford County Job & Family Services raising two assignments of error: that Crawford County

Job & Family Services failed to make a good faith effort to reunify Anabella with either parent, and that the grant of permanent Custody was not supported by clear and convincing evidence. (See Record – August 10<sup>th</sup>, 2015 Brief of Appellant). Finding that the Trial Court complied with the statutory requirements for the grant of Permanent Custody to the Crawford County Job & Family Services, the Appellate Court affirmed the decision of the Trial Court. (See Record – Opinion January 25<sup>th</sup>, 2016).

The instant appeal followed.

## ARGUMENT

### **Response to Proposition of Law:**

#### **Crawford County Job & Family Services Complied with its Statutory and Administrative Obligations in an attempt to reunify Annabella with the parents.**

The Appellant/Mother herein concedes that due to her current incarceration she could not be considered as a viable placement for the within child. (See Record – August 10<sup>th</sup>, 2015 Brief of Appellant, Page 3). The remainder of her argument therefore attempts to paint the Crawford County Job & Family Services as nefarious, acting solely to adopt Annabella to the foster parents, acting in bad faith. In reality, however, it was the shortcomings of the mother, the father, and the relatives, not the actions of the Crawford County Job & Family Services which ultimately led to the grant of Permanent Custody herein.

The Ohio Revised Code imposes a duty on the part of children services agencies to make reasonable efforts to reunite parents with their children where the agency has removed the children from the home. R.C. 2151.419; see, also, *In re Brown*, 98 Ohio App.3d 337, 344 (3d Dist.1994). Further, the agency bears the burden of showing that it made reasonable efforts. R.C. 2151.419(A)(1). “Case plans are the tools that child protective service agencies use to facilitate the reunification of families who \* \* \* have been temporarily separated.” *In re Evans*, 3d Dist. Allen No. 1–01–75, 2001–Ohio–2302, \* 3.

To that end, case plans establish individualized concerns and goals, along with the steps that the parties and the agency can take to achieve reunification. *In re Evans* at \* 3. Agencies have an affirmative duty to diligently pursue efforts to achieve the goals in the case plan. *Id.* “Nevertheless, the issue is not whether there was anything more that [the agency] could have done, but whether the [agency's] case planning and efforts were reasonable and diligent under the circumstances of this case.” *In re Leveck*, 3d Dist. Hancock Nos. 5–02–52, 5–02–53, 5–02–54, 2003–Ohio–1269, ¶ 10. We also note that the statute provides that in determining whether reasonable efforts were made, the child's health and safety is paramount. See R.C. 2151.419(A)(1). *In re T.S., 2015-Ohio-1184, ¶¶ 26-27.*

Brian K. Schultow is the biological father of Annabella. At the Adjudicatory Hearing on the underlying Complaint, the parties requested a bifurcation of the adjudication and disposition so as to “allow the reputed father to be present for the disposition, to conduct genetic testing

upon the reputed father, and to initiate an interstate home-study evaluation upon the reputed father. Despite the father's failure to appear at the Dispositional Hearing, the Crawford County Job & Family Services withdrew its prayer for Permanent Custody as a Dispositional Order as the father, through his attorney, reported he was desirous of an opportunity to comply with Case Plan goals in an attempt to gain custody of Annabella.

The goals and objectives of the initial Case Plan were straightforward. As the father was released from the Dauphin County Work Release Community Corrections Facility on August 3<sup>rd</sup>, 2014, and began residing with four other recently released inmates, he was to obtain and maintain stable housing for a minimum of ninety (90) days. He was also to obtain and maintain income sufficient to provide for Annabella. The Case Plan further provided for visitation with Annabella and her father. Crawford County Job & Family Services further initiated an interstate home-study to be conducted upon the father to determine the appropriateness of potentially placing Annabella with the father in Pennsylvania.

Six months passed with Annabella in foster care. The father failed to have any contact with Annabella. The father failed to provide any information on paternal relatives for consideration. The mother was incarcerated. The maternal relatives home-study evaluations were all denied. The Crawford County Job & Family Services had not yet received any response from Pennsylvania as to the status of the father's interstate home-study evaluation. On January 29<sup>th</sup>, 2015, the Crawford County Job & Family Services filed its Motion for Permanent Custody.

Prior to the scheduled hearing upon the Motion for Permanent Custody, the Crawford County Job & Family Services requested, and received, information that the father's current residence could be approved provided that he could demonstrate stability of residency. The father moved from that residence. The Crawford County Job & Family Services requested and

received a continuance of the hearing upon its Motion for Permanent Custody so as to update the father's home-study evaluation at his new residence, and to afford him the opportunity to develop some type of bond with Annabella by visiting with her. The father again failed to visit his then nine month old child.

Between his release from incarceration in August 2014 to, in essence, a half-way house, and the hearing upon the Motion for Permanent Custody on May 26<sup>th</sup>, 2015, the father *reported* five different changes of address. (Transcript, Page 39, Line 17). There were periods of time between those address changes where the Crawford County Job & Family Services did not know where the father was residing. (Transcript, Page 45, Line 8-11).

The father failed to meet the fairly simple terms and conditions of the Case Plan by maintaining stable residency for a period of ninety (90) days. Further, the condition precedent for approval of the interstate home-study was not met – proof of stable residency. The Trial Court correctly found that the father was not motivated or committed to completing the thing necessary to be considered for placement of this child. As the father failed to ever have any contact with Annabella, the Trial Court correctly found that there is no true interpersonal parent-child relationship in existence.

The actions of the Crawford County Job & Family Services, in juxtaposition to the actions of the father, clearly demonstrate that it made all reasonable efforts to attempt to secure placement with the father and to develop the necessary parent-child bond. The allegations of the Complaint supported the grant of Permanent Custody as a dispositional Order, yet the Crawford County Job & Family Services withdrew that request to work with the father. The Crawford County Job & Family Services, not the father or Appellant/Mother, requested and received the continuance of the initially scheduled hearing upon the Motion for Permanent Custody, again in

an attempt to work with the father. What more could the Crawford County Job & Family Services have done to work with this out-of-state father, who has continuously and repeatedly failed to cooperate with the agency, and who has never visited with Annabella?

Although alluded to in the Appellant/Mother's brief, as the facts were presented at the hearing upon the Motion for Permanent Custody, the Trial Court would not have been in a position to grant an initial extension of temporary custody to the agency. In order for a Court to grant an initial extension, the Court must find

by clear and convincing evidence, that the extension is in the best interest of the child, there has been significant progress on the case plan of the child, and there is reasonable cause to believe that the child will be reunified with one of the parents or otherwise permanently placed within the period of extension. **Ohio Revised Code § 2151.415 (D)(1).**

Considering the factual information presented above, the father was not in a position to demonstrate "significant progress" in obtaining and maintaining appropriate housing herein.

The Appellant/Mother further alleges that the Crawford County Job & Family Services acted in bad faith to reject all alternative maternal relative placements. Prior to the inception of the case, the Crawford County Job & Family Services attempted to conduct relative home-studies on maternal relatives in an effort to maintain Annabella with a family member. The two suggested relatives could not be approved. Specifically, the maternal grandmother could not be approved as an appropriate relative placement due to prior child welfare adjudications and substantiated child welfare findings. The maternal great-grandmother was likewise denied as (a) there was a registered sex offender residing in the household, (b) there were substantiated child welfare findings against the maternal great-grandmother, and (c) in previous proceedings, the maternal great-grandmother requested the removal of another child from her care due to her inability to care for the child due to health, personal, and transportation issues. At some point,

the Appellant/Mother, the maternal grandmother, and/or maternal great-grandmother, proposed Jody Johnson, a maternal great-aunt, as a potential relative placement. She likewise could not be approved due to a prior history with children services, participation in illegal activities, and a lack of income.

When a child cannot remain in her own home, Crawford County Job & Family Services explores both maternal and paternal relatives regarding their willingness and ability to assume temporary custody or guardianship of the child, as is required by Ohio Administrative Code Section 5101:2-42-05. If the home of a suitable relative, or non-relative, as determined in accordance to Ohio Administrative Code Section 5101:2-42-18 is unavailable, the child would then be placed in foster care as the next least restrictive option.

When evaluating the suitability of potential placements with relative and nonrelative caregivers, a child welfare agency relies upon Ohio Administrative Code § 5101:2-42-18 to assess the appropriateness of that placement. Ohio Administrative Code Section 5101:2-42-18 provides in part:

(B) Prior to placing the child with the relative or nonrelative substitute caregiver, the PCSA ... shall adhere to the following procedures and document its actions in approving the placement setting:

(1) Collect identifying information ... on the prospective caregiver and all household members.

(2) Assure that a search of the statewide automated child welfare information system (SACWIS) has been completed for the prospective caregiver and adult household members pursuant to rule 5101:2-33-22 of the Administrative Code.

(3) Assess the safety of the home by checking on all of the following:

- (a) Cleanliness of the home.
- (b) Absence of hazardous conditions inside and outside.
- (c) Storing of poisonous and otherwise dangerous or combustible materials.
- (d) Proper heating, lighting and ventilation.
- (e) Condition of indoor plumbing and toilet facilities.

(f) Installation of a working smoke alarm on each level of occupancy of the home.

(g) Safe storing of weapons, including firearms and ammunitions, in inoperative condition and in a secured and locked area.

(h) Adequacy of each child's bedding and appropriateness to his or her needs.

(i) Availability of a working telephone within the home or reasonable access to a working telephone for emergency situations.

(4) Provide the prospective caregiver with known information regarding educational, medical, child care, and special needs of the child including information on how to access support services to meet the needs of the child.

(5) Provide the prospective caregiver with the following information:

(a) How to apply for Ohio works first (OWF) child-only financial assistance and medicaid coverage.

(b) How to apply for certification as a foster caregiver.

(c) The requirements for foster caregiver certification.

(d) The difference in payment between an OWF child-only payment and the foster care per diem.

(e) The difference (if any) in the eligibility for supportive services.

(6) Assess the prospective caregiver's ability and willingness to provide care and supervision of the child and to provide a safe and appropriate placement for the child.

(7) Require all adults in the home to identify prior PCSA or children services agency (CSA) involvement. When involvement with another PCSA or CSA is indicated or suspected, secure the necessary releases of information and initiate requests for information from the other PCSAs or CSAs.

(8) Submit fingerprints for the prospective relative or nonrelative caregiver and all adults residing within the home according to the requirements of the bureau of criminal identification and investigation (BCII). Information on how to obtain a criminal records check can be found at [www.webcheck4.ag.state.oh.us](http://www.webcheck4.ag.state.oh.us). The agency shall request that BCII include information from the federal bureau of investigation (FBI) in the criminal records check. The required criminal records check must be completed prior to an agency approving the prospective relative or nonrelative placement.

(9) Require the prospective caregiver to submit written notification if a person at least twelve years of age but less than eighteen years of age residing within the home of the prospective caregiver has been convicted of or plead guilty to any offenses described in section 5103.0319 of the Revised Code, or has been adjudicated to be a delinquent child for committing an act that if committed by an adult would have constituted such a violation.

...

(E) The PCSA or PCPA shall approve or deny the relative or nonrelative placement and provide him or her with written notification of the approval or denial no later than thirty days from the date that the assessment was initiated, or the child was placed, whichever comes first.

(F) The PCSA or PCPA shall not approve the placement if the relative or nonrelative or other adult residing within the home has a felony conviction for spousal abuse, rape, sexual assault, or homicide.

(G) The PCSA or PCPA may deny the placement if the relative or nonrelative had his or her parental rights involuntarily terminated.

(H) The PCSA or PCPA shall not approve the placement if the relative or nonrelative or other adults residing within the home have been convicted of or pleaded guilty to any offense listed in paragraph (I)(1) of this rule unless the agency finds and documents that person has met all of the following conditions:

(1) Except as provided in paragraph (H)(3) of this rule, where the offense was a misdemeanor, or would have been a misdemeanor if conviction had occurred under the current criminal code, at least three years have elapsed from the date the person was fully discharged from any imprisonment or probation arising from the conviction. A person who has had his record of misdemeanor conviction sealed by a court pursuant to section 2953.32 of the Revised Code shall be considered to have met this condition.

(2) Except as provided in paragraph (H)(3) of this rule, where the offense was a felony, at least ten years have elapsed since the person was fully discharged from imprisonment or probation.

(3) The victim of the offense was not one of the following:

(a) A person under the age of eighteen.

...

(I) Except as provided in paragraph (H) of this rule, a relative or nonrelative caregiver or other adult residing in the home shall not have been convicted of or pleaded guilty to, any of the following offenses:

(1) A violation of section ... 2919.22. **Ohio Administrative Code § 5101:2-42-18.**

As is clear from the rule, there are multiple grounds for the determination that a relative is unsuitable to be considered as a placement for a child. A prior history of abuse or neglect as evidenced by a check of SACWIS, safety concerns regarding the home, the ability and

willingness to provide care for the child, specifically prohibited criminal offenses, these are all reasons to deny a relative for placement. The maternal great-aunt's prior substantiated history of abuse or neglect with Richland County *alone* was sufficient to deny her as a suitable placement. The maternal great-aunt's lack of financial resources to provide for the child *alone* was sufficient to deny her as a suitable placement. A conviction for child endangering in violation of Ohio Revised Code § 2919.22, where the victim of the offense is under the age of eighteen, *regardless of how long ago that offense occurred*, is exclusionary when considering a potential relative or non-relative placement under the Ohio Administrative Code.

Although it is rather unfortunate that the outcome of Jody Johnson's *charge* of child endangering appears never to have made it into the Trial Court's record, the victim was her own infant child who was left unattended in a vehicle. (Transcript, Page 16, Lines 22-2).

The rule does not require multiple factors to be found by a child welfare agency to determine that a relative is unsuitable. One factor is sufficient. Jody Johnson's charge of child endangering, coupled with her prior substantiated abuse or neglect involvement through Richland County, coupled with her lack of financial resources formed the basis for the rejection as a relative caregiver. As the Crawford County Job & Family Services had appropriate grounds for the determination that the various maternal relatives' were unsuitable, the Crawford County Job & Family Services did not act in bad-faith when rejecting all suggested maternal relative placements.

Upon the denial of the maternal great-aunt as a potential relative placement, the Appellant/Mother took no action regarding the denial in the Trial Court. The Trial Court was not bound by the suitability determination of the Crawford County Job & Family Services; if the Appellant/Mother was capable of presenting credible, competent evidence to the Trial Court that

the maternal great-aunt was in fact suitable, and that placement with the maternal great-aunt would have been in Annabella's best interests, the Trial Court could have approved said placement. That was not done, however. The only attempt to address the suitability determination was at the hearing upon the Motion for Permanent Custody where counsel for the Appellant/mother cross examined caseworker Bauer, who wasn't the caseworker responsible for completing the homestudy evaluation / suitability determination of the maternal great-aunt. The mother called no witnesses, not the caseworker who completed the evaluation, nor the maternal great-aunt, to counter the Crawford County Job & Family Services suitability determination. The agency's determination was proper. The Trial Court's determination that the maternal great-aunt was unsuitable and that it was in Annabella's best interests to grant Permanent Custody to the Crawford County Job & Family Services likewise was proper.

*A parent* does have a fundamental right to care for and have custody of his or her child. Termination of parental rights is an alternative of last resort. *Parents* must be afforded every procedural and substantive protection the law allows. The right of children to be raised by their *parents* should not be interfered with unless the *parent* is unfit. Jody Johnson is not a parent of Annabella. Her parents, Brittany C. Johnson and Brian K. Schultow, by their own actions and choices, have demonstrated that they are unfit, and that their parental rights should be terminated to protect the best interests and welfare of Annabella.

The Appellant/Mother's proposition of law is without merit and must be denied.

**CONCLUSION**

For the reasons stated herewithin, the Appellee respectfully requests that the Appellant/Mother's proposition of law be denied, and that the decision of the Trial Court, as affirmed by the Court of Appeals, be affirmed.

Respectfully Submitted,



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**PROOF OF SERVICE**

I hereby certify that a copy of the foregoing *Appellee Brief* has been duly served upon the following by regular U.S. Mail this 20 day of June, 2016.

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