THE STATE OF SOUTH CAROLINA
In the Supreme Court

CERTIORARI TO GEORGETOWN COUNTY
The Honorable William H. Seals, Jr., Circuit Court Judge

Appellate Case No: 2018-000139

RONALD EDWARD GOODEN, PETITIONER,

v.

STATE OF SOUTH CAROLINA, RESPONDENT.

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

Benjamin H. Culbertson, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

RONALD GOODEN,

APPELLANT

APPELLATE CASE NO. 2011-202546

FINAL BRIEF OF APPELLANT

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STATEMENT OF ISSUE ON APPEAL

The trial court erred in admitting Gooden's 1992 conviction for strong armed robbery for impeachment purposes. This was subject to a Rule 403 analysis for prejudice since it was distinguished from State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). It was too remote in time, despite the ten year time admission requirement.

STATEMENT OF THE CASE

In March 2011, the Georgetown County Grand Jury indicted Ronald Edward Gooden on the charge of attempted murder. On October 26-27, 2011, Gooden proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. Gooden was represented by Reuben Goude, and the state was represented by Erin Bailey. The jury found Gooden guilty of the lesser offense of assault and battery of a high and aggravated nature (ABHAN). Judge Culbertson sentenced Gooden to the maximum sentence of twenty years. R. 109, ll. 1 – 4. Gooden's attorney filed a notice of appeal. This appeal follows.

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ARGUMENT

The trial court erred in admitting Gooden's 1992 conviction for strong armed robbery for impeachment purposes. This was subject to a Rule 403 analysis for prejudice since it was distinguished from State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. 2003). It was too remote in time, despite the ten year time admission requirement.

Ronald Gooden, a forty-one year old single man, lived in Andrews, South Carolina as a child, and moved away when he was twenty. He returned to Andrews in 2009 which was about one year before this incident. R. 32, ll. 3 – 25; R. 33, ll. 1 – 12.

Gooden lived in a trailer that belonged to his father. However, his living conditions were poor as he had no electricity, no water, no stove or refrigerator, and no vehicle. He had only a bed. R. 34, ll. 1 – 25. He would go to Shaw's Corner Store to eat a hot dog and a drink because it was only about a half mile from his house. He washed cars to earn money. R. 34, ll. 24 – 25; R. 35, ll. 1 – 15; R. 41, ll. 16 – 19.

At one point, about two weeks before this incident, Gooden allowed Johnny Bradshaw to move in with him. R. 35, ll. 16 – 25; R. 36, ll. 1 – 4. Jackie Shaw, the owner of Shaw's Corner Store, told him that the rumor was that Bradshaw was gay. Gooden said he confronted Bradsahw who admitted he was. Then Gooden made him move out. R. 36, ll. 5 – 25; R. 37, ll. 1 – 23.

There were three men who also hung out at Shaw's Corner Store which included the victim, Curtis Anderson, and his friends, Gerry Chandler and Greg Tisdale. R. 39, ll. 10 – 13; R. 37, ll. 24 – 25. Anderson accused Gooden of being gay, and he and his friends made vulgar comments about possible sexual activities between Gooden and Bradshaw. R. 38, ll. 20 – 25; R. 39, ll. 1 – 25; R. 40, ll. 1. Gooden begged them to stop, and to leave him alone.

But they continued. They invited him to a barbecue to make fun of him. R. 40, ll. 2 – 25; R. 41, ll. 1 – 12.

Later on another day, they were all in the parking lot at Shaw's, and the three men pulled knives from the trunk of their car and put them to Gooden's neck. R. 41, ll. 13 – 25; R. 42, ll. 1 – 25. Then two or three days before the incident, he was sleeping in his trailer, and someone shot into his trailer. R. 43, ll. 15 – 25; R. 44, ll. 1 – 9. When he asked Anderson about it, Anderson told him it wasn't the first time he tried to get someone. R. 44, ll. 10 – 25; R. 45, ll. 1 – 8.

A couple of days later on October 22, 2010, Gooden went to Shaw's store after work. Anderson and his two friends started making nasty comments to Gooden again. Gooden testified that he told them to stop "lying on him or he was going to set your ass on fire." R. 46, ll. 1 – 25; R. 47, ll. 1 – 8.

A heated argument began. Tisdale threatened to get his gun and walked out. R. 47, ll. 8 – 25; R. 48, ll. 1 – 4. Gooden knew that Anderson and Chandler had each killed a person in the past, and he was scared. R. 48, ll. 5 – 25. Gooden left and went home. He cut a bush axe in half to use if they pulled a gun on him. He then told himself he was not a killer. He returned to the store to get his cell phone which he left there to charge. R. 49, ll. 14 – 25.

When he arrived, he saw the three men returning to the store also. He went in and got his cell phone. R. 50, ll. 1 – R. 51, ll. 1 – 25. Once in the store, Anderson made a motion to him like a pistol as though he were going to shoot him. R. 52, ll. 1 – 25; R. 53, ll. 1 – 13. Gooden then went outside, grabbed a gas can he saw earlier, went back into the store, threw the gas on Anderson, and lit it. Anderson caught on fire. R. 53, ll. 14 – 25; R. 54, ll. 1 – 25; R. 55, ll. 1 – 3.

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When the police arrived, Gooden decided to turn himself in. He walked up to the police and told them he did it. Gooden believed the three men were going to kill him. He just wanted them to leave him alone. R. 55, ll. 4 – 25; R. 56, ll. 1 – R. 5, ll. 24.

Curtis Anderson testified that he was burned extensively as he suffered third degree burns on much of his body. He spent three months in the burn center in Augusta and one month in a rehabilitation center. R. 27, ll. 5 – 23; R. 29, ll. 6 – 25; R. 30, ll. 1 – 21.

During his testimony, Gooden told Anderson he was sorry this had happened as he did not mean to mess him up. R. 53, ll. 10 – 13.

During pretrial motions, defense made a motion asking the solicitor to disclose the impeachable offenses they intended to use when Gooden testified. The state told the judge they were planning to use a conviction for strong arm robbery (SAR) from 1992. It met the ten year requirement because he violated parole in 1999 and returned to prison. He was released from confinement January 18, 2002, so the conviction fell within the ten year requirement for an impeachable offense. R. 6,, ll. 21 – 25; R. 7, ll. 1 – 18.

Defense counsel argued that the SAR was a 1992 conviction which was almost twenty years ago for the conviction, and the offense occurred before that. Counsel argued the offense was too remote, was not relevant, and the prejudicial effect outweighed any credibility issues. Counsel asked that this SAR conviction be excluded if Gooden testified. R. 7, ll. 20 – 25; R. 8, ll. 1 – 8.

When the judge asked what the probative value was, the state responded that the sole issue was Gooden's credibility because self-defense was an issue in the case based on Gooden's claims of actions by the victim. The state said the victim had a violent record also. The judge said the prior conviction would have a "pretty" prejudicial effect if the state was

using it to show him as a violent person. The judge said the SAR was not evidence in this case. R. 8, ll. 8 – 25; R. 9, ll. 1.

The state argued that SAR was a crime of dishonesty. The judge said he still had to balance the probative versus the prejudicial value. R. 9, ll. 5 – 22. Defense counsel argued that the victim had a violent record, and he and his friends were picking on Gooden. Counsel argued again that the SAR was twenty years ago. The judge ruled that he was not going to let the SAR come in as the prejudicial effect outweighed the probative value. R. 9, ll. 2 – 25; R. 10, ll. 1 – 25; R. 11, ll. 1.

The state then cited the case of State v. Al-Amin, 353 S.C. 405, 578 S.E.2d 32 (Ct. App. filed March 3, 2003) which held that armed robbery was a crime of dishonesty and the court did not need to weigh the prejudicial effect versus the probative. R. 11, ll. 2 – 25. The judge said he thought everything had to be weighed for prejudicial effect. R. 12, ll. 1 – 16. After reviewing the case, the judge reversed his ruling, and said that SAR was a crime of dishonesty and could be used to attack Gooden's credibility. R. 12, ll. 17 – 25.

When Gooden testified, on cross examination, the state asked Gooden if he had been convicted of SAR, and he said he had. R. 58, ll. 7 – 17.

The jury found him guilty of the lesser included offense of ABHAN. R. 108, ll. 17 – 20.

Rule 402 SCRE provides that "all relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, the Constitution of the State of South Carolina, statutes, these rules, or by other rules promulgated by the Supreme Court of South Carolina. Evidence which is not relevant is not admissible."(emphasis supplied)

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Rule 403, SCRE provides where evidence is relevant it "may still be excluded if its probative value is substantially outweighed by the danger of unfair prejudice..." Unfair prejudice "means an undue tendency to suggest decision on an improper basis..." State v. Alexander, 303 S.C. 377, 401 S.E.2d 146 (1991).

State v. Al-Amin, *supra,* provided that armed robbery was a "crime of dishonesty" and a prior armed robbery conviction was admissible to attack the defendant's credibility; it was the larcenous element of taking property of another which made the action dishonest. The Court also held that the admission of prior criminal acts involving dishonesty to attack the credibility of a witness did not require the balancing of the probative value against its prejudicial effect.

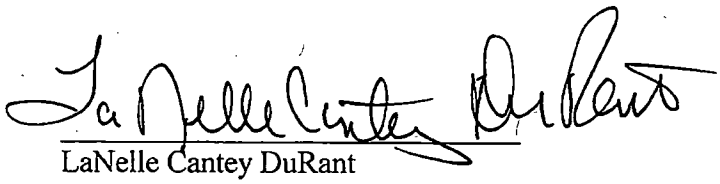
However, in Estelle v. Williams, 425 U.S. 501 (1976), the United States Supreme Court ruled that due process under the Fourteenth Amendment guaranteed a defendant the fundamental right to a fair trial. South Carolina's due process clause is found in Article I, Sect. 3 of the South Carolina Constitution.

Gooden's case is distinguished from Al-Amin in that the conviction in Al-Amin's case was only twelve years old. Gooden's conviction was almost twenty years old. The conviction was for SAR and not armed robbery. The judge in Gooden's case believed the SAR was too prejudicial to be admitted and was not relevant until he read the holding in Al-Amin.

CONCLUSION

Based on the above, the conviction and sentence should be reversed, and the case remanded for a new trial.

Respectfully submitted,



LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

This 12th day of December, 2012.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 12th, 2012

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Georgetown County

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THE STATE,

RESPONDENT,

V.

RONALD GOODEN,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Brief of Appellant in the above referenced case has been served upon J. Benjamin Aplin, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 12th day of December, 2012.

LaNelle Cantey DuRant
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 12th day of December, 2012.

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.

STATE OF SOUTH CAROLINA
In The Court of Appeals

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The trial court properly admitted Appellant's prior strong arm robbery conviction for impeachment purposes under Rule 609, SCRE, without conducting a probative value/prejudicial impact analysis where the conviction met the ten year time limit under Rule 609(b) and where strong arm robbery is a crime of dishonesty under Rule 609(a)(2). 6

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RESPONDENT'S STATEMENT OF ISSUE ON APPEAL

1. Whether the trial court properly admitted Appellant's prior strong arm robbery conviction for impeachment purposes under Rule 609, SCRE, without conducting a probative value/prejudicial impact analysis where the conviction met the ten year time limit under Rule 609(b) and where strong arm robbery is a crime of dishonesty under Rule 609(a)(2)?

STATEMENT OF THE CASE

Appellant was indicted at the March, 2011, term of the grand jury for Georgetown County for attempted murder (2011-GS-22-54). He was represented by Reuben Goude, Esquire. On October 26-27, 2011, Appellant proceeded to trial by jury pursuant to which he was found guilty of the lesser included statutory offense of assault and battery of a high and aggravated nature (ABHAN). He was sentenced by the Honorable Benjamin H. Culbertson to twenty (20) years' imprisonment. Appellant timely filed a notice of intent to appeal his conviction and sentence and subsequently submitted an Initial Brief. This Initial Brief of Respondent follows.

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STATEMENT OF FACTS

After jury selection but before the jury was sworn, counsel for Appellant made a motion in limine asking the trial court to rule on the admissibility of any prior offenses the State intended to use to impeach Appellant in the event he testified. The solicitor said she believed a 2007 North Carolina conviction for larceny of a firearm, and a 1992 South Carolina conviction for strong arm robbery would be admissible. Appellant objected to the 1992 conviction being used, and argued that at twenty years old it was too remote for admission despite technically falling within the ten year time frame. The trial court then asked for each party's position on the probative value of the conviction versus its prejudicial effect. After hearing from counsel, the court ruled the solicitor would not be able to use the strong arm robbery. However, the solicitor handed up a copy of this Court's published opinion in State v. Al-Amin.[1] After reviewing the opinion, the trial court reversed its ruling and decided the State could use the 1992 strong arm robbery to attack Appellant's credibility if he took the stand. (R. p.6, line 21-p.12, line 25).

On October 22, 2010, Appellant walked into Shaw's Corner Store in the city of Andrews in Georgetown County, threw something on a customer, and set him on fire. (R. p.16, line 17-p.17, line 64, line 19). Officer Timothy Harrelson of the Georgetown County Sheriff's Office responded to the scene when he was flagged down by a pedestrian who said she had seen a man on fire running across the road adjacent to the store. He went inside the store and found Curtis Anderson walking around in a daze. Mr. Anderson had burn injuries on his face, nose, mouth, throat, chest and arm. (R. p.18, line 10-p.19, line 14). Officer Harrelson said it was a gruesome scene and that Mr.

[1] 353 S.C. 405, 414, 578 S.E.2d 32, 37 (Ct. App. 2003), cert. denied, (October 21, 2004).

Anderson's skin was peeling away from his face. (R. p.20, lines 9-17). Officer Matthew Hoeffer with the Andrews Police Department also responded to the scene and observed Mr. Anderson with severe third-degree burns to his chest, face and both of his arms. (R. p.21, line 23-p.22, line 15). When he exited the store, Officer Hoeffer saw Appellant standing on the edge of the roadway. Appellant put his hands in the air and stated: "It's me. I did it." (R. p.23, lines 17-25). Alphonso Giles, Sr., was standing beside Mr. Anderson in the store at the time of the incident. When Appellant entered the store, he said "like I told you," just before Mr. Anderson burst into flames. Mr. Giles helped extinguish the fire by patting it out. (R. p.24, lines 3-10; p.25, line 6-p.26, line 14).

Mr. Anderson testified he remembered being in the store when Appellant approached him, said "watch out," and dashed him with gas. The next thing he remembers is being on fire. (R. p.27, line 10-p.28, line 7). He was flown by helicopter to the burn center in Augusta, Georgia, where he spent three months, followed by one month in a rehabilitation center in Florence, South Carolina. (R. p.28, line 18-p.29, line 15). Mr. Anderson described his ongoing treatment and the extent of his injuries. (R. p.30, line 15-p.31, line 25).

Appellant testified in his own defense. He described his poor living conditions and proximity to the store, and how he had been picked on by Mr. Anderson and two other patrons, Gerry Chandler and Greg Tisdale. Appellant said the three men accused him of being gay because he had let a man named Johnny Bradshaw live in his trailer. Appellant claimed he had been beaten up by the others in the past, that in the days leading up to the incident he had been threatened with swords and guns, and that someone had even fired shots into his trailer during the night. (R. p.32, line 4-p.45, line

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9). He testified that he confronted the three men in the store the afternoon before the incident and told them if they kept "bothering " him and "lying on" him, he was "going to set your ass on fire." (R. p.46, line 5-p.47, line 6). Appellant claimed they responded that: "Yeah, and we'll set your ass on fire." Appellant testified that Mr. Tisdale said he was going to get a gun, and left the store. (R. p.47, lines 7-20). He testified he went home, but decided to return to the store later to get his cell phone, which was charging in the back room. Appellant claimed that as he approached the store, he picked up a jug of gas that was on top of a lawnmower next to the store. He testified that when he walked into the store Mr. Anderson made a motion with his hand, like he was shooting a pistol. (R. p.49, line 17-p.53, line 3). Appellant testified he threw the gas on Mr. Anderson and lit his lighter all in one motion, at which point both he and Mr. Anderson caught fire. (R. p.54, line 19-p.55, line 3).

On cross-examination, the solicitor asked Appellant about the 2007 North Carolina conviction for larceny of a firearm, as well as the 1992 South Carolina conviction for strong arm robbery. The solicitor did not question Appellant about the details of the prior crimes. (R. p.58, lines 7-17).

ARGUMENT

I.

Appellant contends the trial court erred in admitting his prior strong arm robbery[2] conviction for impeachment purposes without conducting a probative value/prejudicial effect analysis under Rules 403 & 609, SCRE. He argues the analysis was required because strong arm robbery, unlike armed robbery, is not a crime of dishonesty under Rule 609(a)(2), and because the prior offense was "too remote in time." The State disagrees and submits these arguments are without merit.

First, the State submits Appellant's prior strong arm robbery conviction fits squarely within the time limits for admission of impeachment evidence under the Rules of Evidence. Rule 609 provides:

> Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of conviction or of the release of the witness from the confinement imposed for that conviction, whichever is the later date, unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial effect.

Rule 609(b), SCRE (emphasis added). Here, Appellant's trial took place on October 26-27, 2011. His prior conviction for strong arm robbery was in 1992; however, in 1999, after Appellant's release to parole, he violated parole and was returned to prison. Appellant was ultimately released from confinement on the strong arm robbery sentence on January 18, 2002. (R. p.7, lines 2-15). Since only nine years and nine months had elapsed since Appellant's release from confinement on the prior conviction, that prior conviction clearly falls within the ten-year time limit provided by Rule 609(b), SCRE,

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[2] Common law or "strong arm" robbery was codified as "common law robbery" in Section 16-11-325 of the South Carolina Code with an effective date of January 1, 1994.

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and it was admissible to impeach Appellant at trial. State v. Al-Amin, 353 S.C. 405, 414, 578 S.E.2d 32, 37 (Ct. App. 2003), cert. denied, (October 21, 2004). Appellant argues his case is distinguished from Al-Amin because Al-Amin's conviction was only twelve years old, while Appellant's conviction was almost twenty years old. Although this distinction is correct, the State submits Appellant has focused on a distinction without a difference. Rule 609 specifically hinges on the time elapsed between the witness's release from confinement and the date of trial. In both Appellant's case and Al-Amin's case, that time was less than ten years, so the trial court properly concluded it met the Rule 609(b) time limit.

Second, the State submits Appellant's prior strong arm robbery conviction fits squarely within the requirements for the admission of impeachment evidence as a "crime of dishonesty." Rule 609 provides in part that: "evidence that any witness has been convicted of a crime shall be admitted if it involved dishonesty or false statement, regardless of the punishment." Rule 609(a)(2), SCRE. In Al-Amin, supra, this Court considered the novel question of whether armed robbery is a "crime of dishonesty" in South Carolina. After a thorough analysis of case law from other jurisdictions, the Court held that armed robbery is indeed a "crime of dishonesty" for purposes of Rule 609(a)(2), SCRE. Appellant argues his case is distinguished from Al-Amin because Al-Amin's conviction was for armed robbery, while Appellant's conviction was for strong arm robbery. Although this distinction is correct, the State submits Appellant has again focused on a distinction without a difference.

In Al-Amin, this Court noted that the common law offense of robbery is essentially the commission of larceny with force. Id. at 424, 578 S.E.2d at 42; State v.

Brown, 274 S.C. 48, 49; 260 S.E.2d 719, 720 (1979). The Court found: "It is the larcenous element of taking property of another which makes the action dishonest," Al-Amin at 425, 578 S.E.2d at 43, and concluded armed robbery is a crime of dishonesty under rule 609(a)(2). This analysis clearly extends to strong arm robbery and larceny, which have the exact same "larcenous element" as armed robbery. Therefore, the State submits the trial court properly found Appellant's prior strong arm robbery was a crime of dishonesty for impeachment purposes.

Since Appellant's strong arm robbery conviction met the Rule 609(b) time limit and fit the description of a crime of dishonesty under Rule 609(a)(2), there was no requirement for a probative value/prejudicial impact analysis. As held by this Court, "Rule 609(a)(2) . . . clearly limits the discretion of the court by mandating the admission of crimes involving dishonesty without any determination as to a balancing test." Al-Amin at 426, 578 S.E.2d at 43. Thus, the State submits Appellant's prior strong arm robbery conviction was properly admitted as impeachment evidence by the trial court. In any event, to the extent the strong arm robbery should have been excluded, Appellant suffered no prejudice from its admission because it was cumulative to the evidence of the North Carolina conviction for larceny of a firearm, which was admitted under Rule 609 without objection.

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CONCLUSION

For all of the foregoing reasons, the State respectfully requests that the judgment, conviction, and sentence of the lower court be affirmed.

Respectfully submitted,

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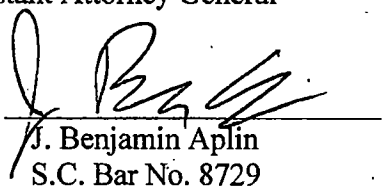
BY: 
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November 29, 2012

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

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Columbia, South Carolina
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THE STATE, ...RESPONDENT

v.

RONALD EDWARD GOODEN, ...APPELLANT.

PROOF OF SERVICE

I, Angela Bennett, Legal Assistant, hereby certify that I have served the within *Final Brief of Respondent*, dated November 29, 2012, on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record:

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I further certified that all parties required by Rule to be served have been served. This 29th day of November, 2012.

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