

20-6503
No. _____

IN THE SUPREME COURT OF THE UNITED STATES

November 25, 2020

GEORGE JOSEPH RAUDENBUSH, III,

Petitioner

v.

MONROE COUNTY, TENNESSEE, et al.,

Respondents.

ORIGINAL

FILED

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OFFICE OF THE CLERK
SUPREME COURT, U.S.

**On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit**

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This is a police brutality case. On the evening of December 30, 2010, police officer Brian Millsaps of the Monroe County Police Department attacked the Petitioner, George Joseph Raudenbush.

Officer Millsaps attack was part of a coordinated effort by the police of Monroe County, Tennessee to remove Raudenbush from the area. The police wanted Raudenbush out because they were protecting the illegal methamphetamine industry in the area. Raudenbush was attempting to report their involvement to the Federal Bureau of Investigation.

After Millsaps attacked Raudenbush, the police of Monroe County pressed false charges against Raudenbush, in an attempt to discredit and silence his testimony. During the subsequent criminal proceedings, the local court denied Raudenbush the right to counsel and actually appointed the bailiff, a non-lawyer, to represent him.

Raudenbush filed suit against Monroe County, Tennessee for damages for police brutality and false prosecution.

U.S. District Court Judge Pamela Reeves dismissed the case, contending that Raudenbush was bound by collateral estoppel, from the unlawful criminal prosecution. Collateral estoppel did not actually apply, since Raudenbush did not receive a full and fair opportunity to litigate the original maliciously-filed criminal case against him.

Raudenbush appealed Judge Reeves' decision, contending that he had been denied due process in the Tennessee criminal proceeding. On appeal, Raudenbush asked to appear *in forma pauperis*, due to the injuries he suffered in the attack.

The U.S. Court of Appeals for the Sixth Circuit refused to allow Raudenbush to do so, based on principles of collateral estoppel. The Court found that Raudenbush was bound by the underlying Tennessee conviction -- even though Raudenbush was not permitted to present exculpatory evidence in the underlying Tennessee case.

The issues in this case are as follows:

1. Whether the Sixth Circuit erred by denying Raudenbush's application to proceed *in forma pauperis*.
2. Whether the Sixth Circuit erred by finding that Raudenbush's appeal was "frivolous," when he was denied a full and fair opportunity to litigate the related criminal defense case.
3. Whether the Sixth Circuit erred by finding that Raudenbush's appeal was "frivolous," when he was denied the right to effective counsel in the underlying criminal defense case.

PARTIES TO THE PROCEEDING

The Petitioner is George Joseph Raudenbush, III. The Petitioner was the Appellant in the Sixth Circuit case below.

The Respondents are various police officers, county officials and government entities in Monroe County, Tennessee. Specifically, the Respondents are:

Monroe County, Tennessee

Bill Bivens, in his capacity as Sheriff of Monroe County

Town of Tellico Plains, Tennessee

Police Officer Brian Millsaps

Police Officer Travis Jones

The Respondents were the Appellees in the proceeding below.

STATEMENT OF RELATED PROCEEDINGS

Raudenbush v. Monroe County, et al., U.S. Court of Appeals for the Sixth Circuit, Case No. 19-5390, order entered on July 10, 2020, dismissing case.

Raudenbush v. Monroe County, et al., U.S. Court of Appeals for the Sixth Circuit, Case No. 19-5390, opinion and order entered on November 4, 2019, denying Petitioner's request for *in forma pauperis* status.

Raudenbush v. Monroe County, et al., U.S. District Court for the Eastern District of Tennessee, Case No. 3:11-CV-625, order of the Honorable Pamela L. Reeves, entered June 21, 2019, accepting findings of Magistrate Debra C. Poplin.

Raudenbush v. Monroe County, et al., U.S. District Court for the Eastern District of Tennessee, Case No. 3:11-CV-625, report of Magistrate Debra C. Poplin, entered June 3, 2019, recommending that Petitioner be denied *in forma pauperis* status on appeal.

Raudenbush v. Monroe County, et al., U.S. District Court for the Eastern District of Tennessee, Case No. 3:11-CV-625, opinion of the Honorable Pamela L. Reeves, entered March 29, 2019, granting Respondents' motions for summary judgment.

Raudenbush v. Monroe County, et al., U.S. District Court for the Eastern District of Tennessee, Case No. 3:11-CV-625, judgment entered March 29, 2019.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....	i
PARTIES TO THE PROCEEDING.....	iii
TABLE OF AUTHORITIES.....	viii
PETITION FOR WRIT OF CERTIORARI.....	1
OPINIONS BELOW.....	4
JURISDICTIONAL STATEMENT.....	5
CONSTITUTIONAL PROVISION IN QUESTION.....	5
STATEMENT OF CASE.....	6
Raudenbush is assaulted for reporting police drug trafficking in Monroe County, Tennessee to the FBI.....	7
Raudenbush learns that the attack is connected to the Monroe County police.....	9
Monroe county police officer Brian Millsaps attacks Raudenbush during a traffic stop.....	10
Raudenbush calls 911, and asks for assistance from the Tennessee State Police.....	11
The Monroe County police refuse to take Raudenbush before a magistrate to set bail.....	13
The Tennessee court appoints the bailiff -- a nonlawyer -- to appoint Raudenbush in the first trial.....	14
I. The Appellate Court erred by finding that Raudenbush's appeal was "frivolous" because Raudenbush was denied a full and fair opportunity to litigate the original case.....	23
CONCLUSION.....	27

APPENDIX A	<i>Raudenbush v. Monroe County, et al.</i> , U.S. Court of Appeals for the Sixth Circuit, Case No. 19-5390, order entered on July 10, 2020, dismissing case.	App-1
APPENDIX B	<i>Raudenbush v. Monroe County, et al.</i> , U.S. Court of Appeals for the Sixth Circuit, Case No. 19-5390, order entered on May 12, 2020, denying Petitioner's motion for reconsideration of <i>in forma pauperis</i> status.	App-2
APPENDIX C	<i>Raudenbush v. Monroe County, et al.</i> , U.S. Court of Appeals for the Sixth Circuit, Case No. 19-5390, opinion and order entered on November 4, 2019, denying Petitioner's request for <i>in forma pauperis</i> status.	App-3
APPENDIX D	<i>Raudenbush v. Monroe County, et al.</i> , U.S. District Court for the Eastern District of Tennessee, Case No. 3:11-CV-625, order of the Honorable Pamela L. Reeves, entered June 21, 2019, accepting report of Magistrate Debra C. Poplin.	App-9
APPENDIX D	<i>Raudenbush v. Monroe County, et al.</i> , U.S. District Court for the Eastern District of Tennessee, Case No. 3:11-CV-625, report of Magistrate Debra C. Poplin, entered June 3, 2019, recommending that Petitioner be denied <i>in forma pauperis</i> status on appeal.	App-12
APPENDIX E	<i>Raudenbush v. Monroe County, et al.</i> , U.S. District Court for the Eastern District of Tennessee, Case No. 3:11-CV-625, opinion of the Honorable Pamela L. Reeves, entered March 29, 2019, granting Respondents' motions for summary judgment.	App-17
APPENDIX F	List of Affidavits and Supporting Evidence submitted by Petition in response to the motion of Monroe County, Tennessee for summary judgment.	App-44
APPENDIX G	Affidavit of Charles Scotty Morgan, dated February 25, 2014.	App. 47

APPENDIX H	Affidavit of Hugh Edwin Voyles, dated March 8, 2007.	App. 50
APPENDIX I	Affidavit of Charles D. Morgan, dated February 26, 2007.	App. 52
APPENDIX J	Affidavit of Charles Scotty Morgan, dated March 12, 2018.	App. 54
APPENDIX K	Affidavit of Fenton McCahill, dated January 19, 2007.	App. 56
APPENDIX L	Affidavit of Fenton McCahill, dated January 16, 2007.	App. 57
APPENDIX M	Affidavit of Gary Church, dated January 16, 2007.	App. 58
APPENDIX N	Affidavit of Joan Champion, dated January 17, 2011.	App. 60
APPENDIX O	Affidavit of Gary Church, dated February 1, 2011.	App. 61
APPENDIX P	Transcript of Petitioner's calls to Monroe County 911 dispatcher on the evening of December 30, 2010, requesting assistance from Tennessee State Police.	App-62

TABLE OF AUTHORITIES

Cases

<u>Am. Indus. Servs., Inc. v. Howard</u> , 2006 Tenn. App. LEXIS 261, at *14, 2006 WL 1082833, at *5 (Tenn. Ct. App. Apr. 25, 2006).....	24
<u>Booth v. Kirk</u> , 53 Tenn. App. 139, 381 S.W.2d 312, 315 (Tenn. Ct. App. 1963).....	24
<u>Cantrell v. Burnett & Henderson Co.</u> , 187 Tenn. 552, 216 S.W.2d 307, 309 (Tenn. 1948).....	24
<u>Gibbs v. Nevels (In re Nevels)</u> , 2007 Bankr. LEXIS 2403, *17-18 (6th Cir. 2007).....	24
<u>Lusk v. Williams (In re Lusk)</u> , 282 B.R. 267, 277 (Bankr. N.D. Ga. 2002).....	25
<u>Massengill v. Scott</u> , 738 S.W.2d 629, 632 (Tenn. 1987).....	23
<u>Rally Hill Prods. v. Bursack (In re Bursack)</u> , 65 F.3d 51, 54 (6th Cir. 1995).....	23
<u>Ray's Servs. v. Cunningham (In re Cunningham)</u> , 2014 Bankr. LEXIS 1461, *16-17, 2014 WL 1379136 (6th Cir. 2014).....	25
<u>Richardson v. Tenn. Bd. of Dentistry</u> , 913 S.W.2d 446, 459 (Tenn. 1995).....	24
<u>S. Atl. Neurology and Pain Clinic, P.C. v. Lupo (In re Lupo)</u> , 353 B.R. 534, 553 (Bankr. N.D. Ohio 2006).....	25
<u>South Atlanta Neurology and Pain Clinic, P.C. v. Lupo (In re Lupo)</u> , 353 B.R. 534, 553 (Bankr N.D. Ohio 2006).....	25

Statutes

28 U.S.C. § 1254 (2020).....	5
42 U.S.C. § 1983 (2020).....	18
42 U.S.C. § 1985 (2020).....	18
42 U.S.C. § 1986 (2020).....	18

Rules

Sup. Ct. Order 589 (2020).....	5
Sup. Ct. R. 13.1 (2020).....	5

PETITION FOR WRIT OF CERTIORARI

George Joseph Raudenbush, III files this Petition for a writ of certiorari to review a judgment of the United States Court of Appeals for the Sixth Circuit.

Raudenbush is a victim of police brutality, occurring in the State of Tennessee. Raudenbush was attacked for two reasons.

First, Raudenbush sponsored mission trips that brought dozens of African American youth to remote areas of Monroe County, Tennessee. On the mission trips, the African Americans performed mission work, such as habitat for humanity in the local community. The local police told Raudenbush to stop bringing African Americans to their ethnically white community.

Second, Raudenbush had reported the local police to the FBI for failing to prosecute an illegal drug lab operating adjacent to church property.

In 2006, an intruder with known connections with the Monroe County police assaulted Raudenbush, and threatened to kill him because Raudenbush had ignored the instructions from the police to leave Monroe County. Raudenbush was seriously injured in the assault.

The former girlfriend of the assailant later approached Raudenbush, and told him that the assailant had planned to kill him. She also told Raudenbush that her ex boyfriend, the attacker worked for the police, and that they knew of the attack in advance. A second person, Hugh Edwin Voyles also tied the Monroe County Police to the attack.

Afterwards, Monroe County officials continued to harass Raudenbush and volunteers at Appalachian Youth Missions.

On the evening of December 30, 2010, Monroe County police officer, Brian Millsaps, stopped Raudenbush's vehicle. During the stop, Millsaps asked Raudenbush to get out of the car. Raudenbush complied with the request by rolling up his window and opening the driver's side door. Officer Millsaps placed his knee against the door, and prevented Raudenbush from exiting the vehicle. Millsaps then began to strike the window of the car with his metal flashlight. After the window broke, Millsaps struck Raudenbush repeatedly in the face and head with the flashlight.

Officer Millsaps then placed his hand on his gun. At this point, Raudenbush became concerned that Officer Millsaps intended to kill him, on a purported traffic stop.

Fearing for his life, Raudenbush fled in his vehicle. He drove to a new office operated by Appalachian Youth Missions, and then went next door to a neighbor's house. At the neighbor's house, he called the local 911 emergency phone number asking for assistance from The Tennessee State highway Patrol. The local police dispatcher refused to contact the state police.

Instead, the Monroe County police arrested Raudenbush and charged him with resisting arrest, and fleeing the scene.

The courts in Monroe County, Tennessee initially refused to arraign Raudenbush. Raudenbush was forced to sleep on the concrete floor of a cell for twenty-eight days, before he appeared before a magistrate. Raudenbush suffered injuries to his health, as a result of the poor treatment in the jail.

When the case was finally tried, the Monroe County Judge, Judge Carroll Ross, denied Raudenbush the right to counsel. Judge Ross actually appointed the bailiff, a non-lawyer, to represent Raudenbush during the hearing. The court also required Raudenbush to wear an

electronic straight jacket during the jury trial. The bailiff who was "representing" Raudenbush told Raudenbush, if he spoke out of turn, he would be subject to excruciating shocks.

Raudenbush subsequently filed a case against Monroe County, Tennessee and various county officials, alledging police brutality and failure to treat Raudenbush's injuries in the Monroe County jail.

The case was filed in the U.S. District Court for the Eastern District of Tennessee.

Unfortunately, the case was never heard. District Court Judge Pamela Reeves dismissed the case on grounds of collateral estoppel, contending that Raudenbush had received a "fair trial" in the Tennessee state courts.

The issue in this case is whether the principles of collateral estoppel should have applied, when Raudenbush was denied a full and fair opportunity to litigate the underlying criminal case, and did not have effective assistance of counsel during such case.

OPINIONS BELOW

The order of the Court of Appeals, dated July 10, 2020, is unreported, but is available at 2019 U.S. Dist. LEXIS 54183. It is reproduced at App. 1.

The opinion of the Court of Appeals, dated November 4, 2019, is unreported. It is reproduced at App. 3.

The opinion of the District Court, dated June 21, 2019, is unreported, but is available at 2019 U.S. Dist. LEXIS 104230. It is reproduced at App. 9.

The report of Magistrate Debra C. Poplin, dated June 3, 2019, is unreported, but is available at 2019 U.S. Dist. LEXIS 105259. It is reproduced at App. 12.

The opinion of the District Court, dated March 29, 2019, is unreported. It is reproduced at App. 17.

JURISDICTIONAL STATEMENT

This appeal is from an order of the U.S. Court of Appeals for the Sixth Circuit entered on July 10, 2020. (App. 1).

This Court has jurisdiction over this petition pursuant to 28 U.S.C. § 1254 (2020). Such statute states that cases heard by the federal courts of appeals may be reviewed by the U.S. Supreme Court by means of a writ of certiorari.

This petition has been filed in a timely manner. According to Supreme Court Rule 13.1, a petition for a writ of certiorari is timely if it is filed with the clerk of the Court within 90 days of the entry of the judgment. *See* Sup. Ct. R. 13.1 (2020).

On March 19, 2020, the Court extended this deadline by sixty days, due to delays caused by quarantines relating to covid-19 quarantines. *See* Sup. Ct. Misc. Order 589 (2020). The deadline for filing this petition was thus extended to December 7, 2020.

CONSTITUTIONAL PROVISION IN QUESTION

The Fifth Amendment of the United States Constitution states in pertinent part as follows:

No person ...be deprived of life, liberty, or property, without due process of law.

U.S. Const., Amend 5 (2020).

STATEMENT OF CASE

This is a case about police harassment of an individual that sought to expose the involvement of the Monroe County police in the illegal drug trade.

The Petitioner, George Raudenbush, was severely injured during an attack by a local police officer. To cover up and justify the attack, the local authorities in Monroe County, Tennessee falsely prosecuted Raudenbush. Raudenbush did not receive a fair trial in the criminal case, and ultimately spent almost four years in Tennessee state prison on charges relating to a routine traffic stop.

Raudenbush became a target of the Monroe County police in two different ways.

First, Raudenbush coordinated Appalachian Youth Missions organizing mission trips for inner city African-American youth. The mission projects would bring dozens of young African American youth to remote areas of Monroe County, Tennessee, a county that, at that time, had an entirely white population.

During two of these mission trips, local police warned Raudenbush that he should not bring black teenagers to their community. When Raudenbush persisted, the police warned the black church leaders directly. The black participants *immediately* left the area, and stopped coming to Monroe County.

Second, Raudenbush learned of police involvement in the manufacturing and sale of illegal drugs in the area. The situation was as follows.

Appalachian Youth Missions ("AYM") owned property at 1300 Wilson Station Road, in Monroe County, Tennessee.

On April 7, 2006, Raudenbush learned that the persons on the property adjacent to the AYM property on Wilson Station Road were making large quantities of methamphetamine, in violation of Tennessee law. That property was owned by M.L. Akins. (App. 50, Affidavit of Hugh Edwin Voyles, dated March 8, 2007).

Raudenbush called the local police to report the illegal drug operation. The police initially sent out a young police officer to investigate. The officer investigated the building, and returned saying, "We have got them now, it is a drug lab." Shortly thereafter, a more senior officer -- a Sergeant Williams -- appeared on the scene. Sgt. Williams told the younger officer, "I know these guys; they are ok." He also said, "Nothing is going on here. Leave it alone." (App. 52, Affidavit of Charles Daniel Morgan, dated February 26, 2007).

As a result, the local police in Monroe County, Tennessee took no action in connection with the drug lab.

**Raudenbush is assaulted for reporting police drug trafficking
in Monroe County, Tennessee to the FBI.**

Raudenbush began reporting the drug activity to the Federal Bureau of Investigation, and told the FBI that the local police were refusing to take action. The FBI never apparently took action in connection with the reports. However, the local authorities in Monroe County did.

The police in Monroe County, Tennessee harassed Raudenbush, periodically stopping him for alleged traffic violations. (Affidavit of Daniel Morgan, July 10, 2009).

The harassment began violent. At approximately 3:00 a.m. on the morning of May 18, 2006, Raudenbush was sleeping at the church residence at 104 McConnell Street in Tellico Plains, Tennessee.

At that time, an individual knocked on the back door of the AYM residence, where Raudenbush was sleeping. Raudenbush went out the front door with a flash light and cordless phone, thinking that someone was in distress and seeking help.

Outside, Raudenbush encountered an individual dressed in tactical black clothing, with a black ski mask, close to the back door. The intruder attacked Raudenbush to the head, body and hands with a metal pipe. Raudenbush fought to protect himself from the blows.

For the next two hours, the intruder tortured Raudenbush outside the residence hitting him in the head with the pipe, and cutting his face and body with a knife. At one point, the intruder placed a gun in Raudenbush's mouth.

The assailant told Raudenbush that the "he had been warned to leave the county," and that Raudenbush had not done so. As noted above, the police of Monroe County had warned Raudenbush to leave the county, because Raudenbush was seeking to expose their involvement in the illegal drug trade.¹

The intruder asked Raudenbush if he wanted to say a last prayer before he killed Raudenbush. Raudenbush, a Christian Missions Worker since the age 15 asked his abductor if he could pray for him. At that point, the intruder became upset and fled to a white four-door mid sized car waiting with a driver inside.

Raudenbush suffered severe injuries as a result of the assault.

¹ The chief of police in Tellico Plains, Tennessee at the time of the assault was Bill Bivens. Over a dozen federal lawsuits were filed against Bivens for police brutality, misconduct, theft, and abuse of authority.

**Raudenbush learns that the attack is
connected to the Monroe County police.**

Later, a woman approached Raudenbush and told him that she used to date the person who had attacked Raudenbush on May 18, 2006.

She told Raudenbush the identity of her former boyfriend, the assailant and said that her ex boyfriend had been involved in the drug trade in Monroe County. She admitted that local law enforcement personnel were protecting those producing methamphetamine in the area, and said that the local police knew of the assailant's plan to attack Raudenbush.

She said that her former boyfriend had been sent to kill Raudenbush that night. The murder never occurred, after Raudenbush asked to pray for the assailant. Apparently, the assailant became upset and he could not go through with the killing in this case.

The assailant is currently serving a long sentence in the Tennessee state correctional system for other crimes. Both the female informant and Raudenbush's attacker fear for their lives, should their identities be revealed.

**Monroe county police officer Brian Millsaps
attacks Raudenbush during a traffic stop.**

The Monroe county police continued to harass Raudenbush, randomly stopping his vehicle on June 24, 2009 and July 9, 2009, to issue citations.

On June 8, 2010, the Monroe county police seized a 45 foot semi-truck trailer from the Appalachian Youth Missions property. The trailer contained all of the youth group's tools, and had a value of \$120,000. This action led to litigation by AYM against Sheriff Bivens and Monroe County.

A Tennessee county clerk, Evonne Holback, also refused to renew Raudenbush's vehicle registration, for no apparent cause, other than to force Raudenbush to leave the area.

On the evening of December 30, 2010, Monroe County police officer, Brian Millsaps, pulled Raudenbush over on an alleged traffic stop. Raudenbush later testified that he was not speeding at the time. (R. IV, at 335).

During the incident, Officer Millsaps became increasingly agitated, as Raudenbush was fully cooperating with his questions. After about a minute, Officer Millsaps asked Raudenbush to get out of the vehicle.

Raudenbush complied with the request by rolling up his window and opening the driver's side door. Raudenbush was unable to open the door, because Officer Millsaps leaned against the door and held it closed. Millsaps then began to strike the window of the car with his metal flashlight. (R. IV, at 324-25). After the window broke, Officer Millsaps struck Raudenbush two or three times in the face and head with the metal flashlight.² (R. IV, at 324).

² Raudenbush was seriously injured in the attack. A worker's compensation judge later ruled that Raudenbush was disabled as a result of Officer Millsaps' assault.

At this point, Officer Millsaps placed his hand on his gun. Raudenbush saw Millsaps' eyes, and realized that Officer Millsaps intended to kill him. (R. IV, at 326-27).

**Raudenbush calls 911, and asks for assistance
from the Tennessee State Police.**

Raudenbush profusely bleeding from the attack put the car in gear, and drove forward. Raudenbush drove the vehicle to the church satellite office. There was no phone at the new church office, so Raudenbush went next door to Joan Champion's house to call for help. (R. IV, at 328).

Mrs. Champion submitted an affidavit stating that Raudenbush "appeared to be terrified" when he came to her house, and that he desperately wanted to call the state police following the attack. (App. 60).

Raudenbush called the local 911 number three times. (R. IV, at 329). Petitioner has submitted to the Court a copy of the transcript from the calls. (App. 62).

During the calls, Raudenbush told the operator that Officer Millsaps had attempted to kill him during traffic stop. (R. IV, at 329). Raudenbush also requested assistance from the Tennessee State Police. The dispatcher relayed the request to the Monroe County police, who refused to request assistance from the Tennessee State Police.

Officer Millsaps falsely claimed that Raudenbush had rammed two police vehicles during the incident. He claimed that Raudenbush had rammed his own police vehicle, and a truck operated by Detective Travis Jones. (R. III, at 273-75). There was, in fact, no damage to either vehicle. (R. IV, at 327). In addition, there was no damage to Raudenbush's vehicle, other than the window that had been broken by Officer Millsaps. (R. III, at 293-94).

The Monroe County police arrested Raudenbush later that night and charged him with speeding, reckless endangerment, simple assault, evading arrest, evading arrest with risk of death, violation of the financial responsibility law, and driving on a suspended license.

Raudenbush was transported to Sweetwater Hospital emergency room and was treated at 1:22 a.m. on December 31, 2010. He was accompanied by a police officer at the time of the treatment. The police officer, an officer who was related to Sheriff Bivens, told the hospital that the medical records should only say that Raudenbush suffered a laceration to his index finger. The medical records were not to include anything about a head injury.

**The Monroe County police refuse to take Raudenbush
before a magistrate to set bail.**

Raudenbush was processed, and incarcerated in the Monroe County jail.

The police and jail officials refused to take Raudenbush before a magistrate to set bail. Raudenbush remained in the local jail until January 18, 2011, for nineteen days, before he was taken before a General Sessions Judge.

During that time, Raudenbush was isolated in a concrete holding cell called “the drunk tank” where he spent two weeks without a shower, access to running water, and personal hygiene (soap, toothpaste and tooth brush). He received a small dixie cup of water each day and the toilet was automatically flushed once each day.

On January 18, 2011, a Monroe County General Sessions Judge held a preliminary hearing in Raudenbush's case, and set bail at \$73,000.

Raudenbush was unable to make bail, and remained in jail. However, he was now transferred to the general population at the Monroe County jail. The holding cell Raudenbush was transferred to was designed to temporarily hold 16 persons, (8 stationary framed bunk beds), but would often hold up to 55 people, while Raudenbush was kept there. New persons arriving in the cell were issued plastic mats to sleep on. The mats lay directly on the concrete floor of the cell.

Raudenbush was given a mat that had no foam padding in it. The mat was just the plastic liner, with no insulation. As a result, Raudenbush was forced to sleep on the cold, damp, concrete floor of the holding cell, in the middle of the winter. Raudenbush lay on the floor for twenty-eight days until a framed bed opening became available.

During the 54 days in the Monroe County jail, Raudenbush became very sick and began to cough up blood. The left side of his body became paralyzed due to laying on the extremely cold concrete floor.

On February 18, 2011, the General Sessions court reduced Raudenbush's bond to \$25,000, an amount that a local minister paid for his release. He made bail shortly thereafter, and was released from the Monroe County jail.

**The Tennessee court appoints the bailiff, a nonlawyer
to represent Raudenbush in the first trial.**

On August 25, 2011, the Monroe County Circuit Court held a trial in the case. Raudenbush did not receive a fair trial in the case. There were numerous errors in the trial.

First, the trial court denied Raudenbush his right to be counsel. Since Raudenbush could not afford an attorney, Monroe County Circuit Judge Carroll Ross appointed the court's bailiff, a non-lawyer, to represent Raudenbush during the trial.

Next, Judge Ross required Raudenbush to wear an electric straightjacket during the trial. The straight jacket was capable of delivering taser-strength electric shocks to Raudenbush at any time. The bailiff appointed to "represent" Raudenbush told him, that if Raudenbush spoke up, or objected to anything during the trial, that he would be shocked by means of the electric straight jacket. Raudenbush was also required to wear orange prison clothing, and shackles during the hearing.

Judge Ross also restricted the evidence that Raudenbush could present during the trial. Raudenbush attempted to present the transcript from his calls to the 911 dispatcher after the incident, to show that he did not have the mental state to commit most of the charges. (App. 62). Judge Ross ruled that the transcript was inadmissible. Raudenbush also attempted to present

evidence showing that the Monroe County police were biased in their handling of the matter, because Raudenbush has been attempting to report their failure to investigate or prosecute the illegal methamphetamine lab. Judge Ross refused to allow any testimony on that subject, even though it was directly relevant to Officer Millsaps's credibility.

Finally, Judge Ross did not give the jury time to deliberate in the case. Judge Ross held the trial on a single day, until after midnight. The jury was required to consider the case in the middle of the night, without having any rest.

The jury convicted Raudenbush on all seven counts, since it was eager to leave the courtroom after midnight, on August 26, 2011.

On October 17, 2011, Judge Ross sentenced Raudenbush to serve four years in prison, to be served in the Tennessee Department of Corrections. Thirteen days later, the state of Tennessee transported Raudenbush to the Morgan County Correctional Complex, to serve the sentence.

On December 3, 2013, the Tennessee Court of Criminal Appeals reversed Raudenbush's conviction, and remanded the case back to the trial court. In its opinion, the Court found that Judge Ross had denied Raudenbush his right to counsel, by not appointing a lawyer to represent him.

On November 24, 2014, the State of Tennessee tried Raudenbush a second time.

During the second trial, the court appointed a young attorney Leon Shayhan, who had little experience in trying criminal cases. During the proceedings, attorney Shayhan advised the Court that he did not have enough time to prepare the case, and was not ready for trial. The court required that the trial go forward.

As with the first case, the trial court judge refused to allow Raudenbush to present the audio recording transcript of his calls to 911, in which Raudenbush asked for assistance from the state police. (App. 62).

The trial court judge also refused to allow Raudenbush to present any evidence concerning the failure of the Monroe County police to investigate or prosecute the illegal drug lab in the property adjacent to the Appalachian Youth Mission office, even though such evidence was directly relevant to the credibility of Officer Millsaps.

Finally, there was evidence of jury tampering during the second trial. During the trial, the trial court judge asked the foreman of the jury whether he knew Officer Brian Millsaps. The foreman said that he did not. However, after the trial, at least four people saw the jury foreman hug Brian Millsaps, at the conclusion of the case. The jury foreman congratulated Officer Millsaps, and discussed old family and friends with Millsaps, during such conversation. (Affidavit of Scotty Morgan, Feb. 25, 2014).

Raudenbush was convicted a second time, and re-sentenced to an additional four years probation, under the Tennessee Department of Corrections supervision. This additional sentence exceeded the original maximize sentence for the charges.

The Tennessee Court of Criminal Appeals affirmed the verdict on September 20, 2016. The Tennessee Supreme Court denied a petition for review on October 3, 2017.

PROCEDURAL BACKGROUND

The Petitioner commenced this case on December 29, 2011, by filing a civil complaint in the U.S. District Court for the Eastern District of Tennessee.

The complaint stated claims against Monroe County, Tennessee, police officer Brian Millsaps, Sheriff Bill Bivens, and police officer Travis Jones for violation of Raudenbush's civil rights under 42 U.S.C. §§ 1983, 1985 and 1986. Specifically, the complaint contends that these Respondents used excessive force against Raudenbush during his arrest, and denied him medical care after he was transported to the Monroe County jail. The complaint contends that these respondents did so, in retaliation for the religious activities of Raudenbush with Appalachian Youth Mission in Monroe County, Tennessee.

The complaint sought damages from these Respondents for false arrest, assault, battery, false imprisonment, malicious prosecution, conspiracy, negligent and intentional infliction of emotional distress.

The complaint also stated a claim against Monroe County, Tennessee and the Town of Tellico Plains for failure to adequately train, instruct and supervise their law enforcement officers.

Finally, the complaint asserted a cause of action against Southern Health Partners, Inc., for failure to provide medical care to the Petitioner in the Monroe County jail.

On January 26, 2012, the Petitioner filed an amended complaint. The amended complaint stated the same claims against the above defendants. In addition, it added a claim against the town of Tellico Plains, Tennessee.

On February 15, 2012, Southern Health Partners, Inc. filed a motion to dismiss the claim against it. The motion argued that the claim was a professional malpractice lawsuit, and that the Petitioner had allegedly not complied with Tennessee state law in asserting such a claim.

On July 19, 2012, the District Court granted Southern Health Partners' motion, and dismissed the Plaintiff's claim against said defendant.

On January 2, 2014, the remaining defendants filed a motion to stay the case, pending the outcome of the Petitioner's appeal in the criminal case. On January 8, 2014, the District Court entered an order staying the case, pending the outcome of the appeal.

On January 14, 2014, Raudenbush was released from prison, after serving approximately two and a half years of the original four year sentence. He received credit for good time, and for teaching classes in the prison.

On December 6, 2017, District Court Judge Pamela L. Reeves entered an order allowing Raudenbush's attorney, Roy Steve Merritt, to withdraw from the case. The order gave Raudenbush two weeks to obtain new counsel. Raudenbush could not afford to retain new counsel, and represented himself *pro se* for the balance of the case.

On January 25, 2018, Monroe County and its co-defendants filed motions for summary judgment in the case.

On February 12, 2019, Raudenbush filed a motion for an extension of time to respond to the summary judgment motions. In his motion, Raudenbush asked for 60 additional days to prepare his response to the Respondents' motions.

The following day, Judge Pamela Reeves entered an order giving Raudenbush only two additional days to prepare his response. Her order gave Raudenbush until February 27, 2019 to file his response.

On February 14, 2019, Raudenbush filed a motion for reconsideration of Judge Reeve's order. In his motion, Raudenbush argued that he needed additional time to respond to the summary judgment motions, because he was *pro se*. In addition, Raudenbush had suffered traumatic brain injury, as a result of the assault that he had suffered in 2010.

Judge Reeves denied Raudenbush's motion for reconsideration the following day, on February 15, 2019.

On February 27, 2019, Raudenbush filed a timely response to the Respondents' motions for summary judgment. Raudenbush filed twenty-three affidavits, the transcripts from both of the underlying criminal trials, pages from two depositions, and numerous letters and photographs. (App. 44-46).

The evidenced showed that there was a material issue of fact on the case, and that he had been denied a fair trial in the Monroe County criminal case. (App. at 44-59).

On March 29, 2019, Judge Reeves granted the Respondents' motions for summary judgment. (App. 17-43).

In her opinion, Judge Reeves found that all of Raudenbush's claims were barred on the basis of collateral estoppel, because the State of Tennessee had convicted Raudenbush of evading arrest in connection with the December 30, 2010 incident. Judge Reeves found, as a matter of law, that Officer Millsaps had used reasonable force in connection with the incident, since she was bound by the prior determination in the underlying criminal case.

On April 8, 2019, Raudenbush filed a timely notice of appeal of the District Court's order. Two weeks later, on April 25, 2019, Raudenbush filed a motion for leave to appeal as *in forma pauperis*. Judge Reeves referred the motion to Magistrate Judge Debra C. Poplin.

On June 3, 2019, Magistrate Poplin issued a report and recommendation in connection with Raudenbush's motion. The report recommended that Raudenbush's proposed appeal be found to be "frivolous," and that the Petitioner's motion for leave to proceed *in forma pauperis* be denied. (App. 12-16).

On June 21, 2019, Judge Reeves entered an order accepting the Magistrate's report, and denying Raudenbush's motion for leave to proceed *in forma pauperis*. (App. 9-11).

Shortly thereafter, Raudenbush filed a request with the U.S. Court of Appeals for the Sixth Circuit for leave to proceed *in forma pauperis* status.

On July 1, 2019, the clerk for the Sixth Circuit sent a letter to Raudenbush asking him to file a financial affidavit. On July 12, 2019, Raudenbush complied with the request, and filed an affidavit showing that he was indigent.

On November 4, 2019, the Sixth Circuit entered an opinion and order denying Raudenbush's request to proceed on appeal with *in forma pauperis* status. (App. 3-8).

On November 18, 2019, Raudenbush filed a motion for reconsideration of the Circuit's order.

On May 12, 2020, the Sixth Circuit issued an order denying the Petitioner's motion for reconsideration. (App. 2).

On July 10, 2020, the Court issued an order dismissing Raudenbush's appeal for failure to pay the filing fee for the appeal. (App. 1).

ARGUMENT

I. The Appellate Court erred by finding that Raudenbush's appeal was "frivolous" because Raudenbush was denied a full and fair opportunity to litigate the original case.

The issue in this case is whether the Sixth Circuit should have granted Raudenbush leto proceed on an *in forma pauperis* basis.

There is no issue in the case as to whether Raudenbush was, in fact, indigent. The sole issue is whether there was merit to Raudenbush's appeal, and whether the Circuit Court erred by finding the appeal "frivolous."

It is proper for this Court to grant a writ of certiorari in this case, and reverse the Circuit Court's finding.

Raudenbush's appeal to the Sixth Circuit is not frivolous because Raudenbush was denied a full and fair opportunity to litigate his original criminal court conviction. Under the principles of collateral estoppel, a prior judgment or order is only binding if there is a full and fair opportunity to litigate the original case.

Under Tennessee state law, "collateral estoppel bars relitigation of an issue if it was raised in an earlier case between the same parties, actually litigated, and necessary to the judgment of the earlier case." Rally Hill Prods. v. Bursack (In re Bursack), 65 F.3d 51, 54 (6th Cir. 1995) (citing Massengill v. Scott, 738 S.W.2d 629, 632 (Tenn. 1987)).

"[M]aterial facts or questions, which were in issue in a former action, and were there admitted or judicially determined, are conclusively settled by a judgment rendered therein, and . . . such facts or questions become res judicata and may not again be litigated in a subsequent action between the same parties." Booth v. Kirk, 53 Tenn. App. 139, 381 S.W.2d 312, 315 (Tenn. Ct. App. 1963) (quoting Cantrell v. Burnett & Henderson Co., 187 Tenn. 552, 216 S.W.2d 307, 309 (Tenn. 1948)).

Application of collateral estoppel requires a demonstration that "1) the judgment in the prior case was final and concluded the rights of the party against whom the defense is asserted, and 2) both cases involve the same parties, the same cause of action, or identical issues." Richardson v. Tenn. Bd. of Dentistry, 913 S.W.2d 446, 459 (Tenn. 1995).

In order to invoke the doctrine successfully, the party must demonstrate (1) that the issue sought to be precluded is identical to the issue decided in the earlier suit; (2) that the issue sought to be precluded was actually litigated and decided on its merits in the earlier suit; (3) that the judgment in the earlier suit has become final; (4) that the party against whom collateral estoppel is asserted was a party or is in privity with a party to the earlier suit; and (5) that the party against whom collateral estoppel is asserted had a full and fair opportunity in the earlier suit to litigate the issue now sought to be precluded. Gibbs v. Nevels (In re Nevels), 2007 Bankr. LEXIS 2403, *17-18 (6th Cir. 2007), citing Am. Indus. Servs., Inc. v. Howard, 2006 Tenn. App. LEXIS 261, at *14, 2006 WL 1082833, at *5 (Tenn. Ct. App. Apr. 25, 2006).

The "full and fair opportunity to litigate" element of the issue preclusion doctrine "is rooted in due process concerns." Ray's Servs. v. Cunningham (In re Cunningham), 2014 Bankr. LEXIS 1461, *16-17, 2014 WL 1379136 (6th Cir. 2014); South Atlanta Neurology and Pain Clinic, P.C. v. Lupo (In re Lupo), 353 B.R. 534, 553 (Bankr N.D. Ohio 2006).

The key to the full and fair opportunity analysis from a due process perspective is determining "whether the party had adequate notice of the issue and was afforded the opportunity to participate in its determination." Ray's Servs. v. Cunningham (In re Cunningham), 2014 Bankr. LEXIS 1461, *16-17, 2014 WL 1379136 (6th Cir. 2014), citing S. Atl. Neurology and Pain Clinic, P.C. v. Lupo (In re Lupo), 353 B.R. 534, 553 (Bankr. N.D. Ohio 2006) (quoting Lusk v. Williams (In re Lusk), 282 B.R. 267, 277 (Bankr. N.D. Ga. 2002)).

In this case, Raudenbush was not given a full and fair opportunity to litigate his original criminal case. As noted above, in the first trial, the trial court judge appointed the bailiff a nonlawyer to represent Raudenbush. That action alone indicates that something is severely amiss in this case namely respect and due process. The trial court judge also required Raudenbush to wear an electric straight jacket during the hearing, which would have severely shocked Raudenbush if he objected during the case.

The second trial also denied Raudenbush due process because the court denied Raudenbush the opportunity to present key exculpatory evidence.

As noted above, in the Statement of Facts section Raudenbush had an audio recording and a transcript of his phone call to the Monroe County 911 dispatcher, from the night of his assault. (App. 62).

The transcript confirmed that Raudenbush called 911 immediately after the traffic stop, and asked for intervention of the Tennessee State Police. The call shows that Raudenbush did not have the mental intent to evade arrest, and that Raudenbush reasonably believed that he was being assaulted by Monroe County police officer, Brian Millsaps. (App. 62). This was key evidence, which the jury was entitled to hear. However, Raudenbush was not permitted to present the evidence to the jury. As such, it was completely improper for Judge Pamela Reeves to apply principles of collateral estoppel. Raudenbush did not receive a fair trial, and did not have a "full and fair opportunity" to litigate the underlying criminal conviction.

The trial court in the criminal case also denied Raudenbush the opportunity to present evidence that he was being harassed by the Monroe County police department because Raudenbush had reported the department's failure to investigate and prosecute the illegal methamphetamine lab to the Federal Bureau of Investigation.

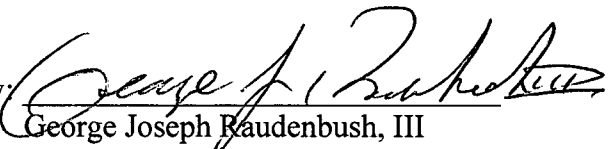
By denying Raudenbush the opportunity to present such evidence, the Tennessee criminal court denied Raudenbush a full and fair opportunity to litigate his case. Accordingly, the principles of collateral estoppel do not apply, and Raudenbush was not bound in the subsequent civil case with the findings in the prior case.

It is therefore proper for the Court to grant a writ of certiorari in this case, so that the District Court can hold a proper trial in this matter. Issues of public policy warrant proper treatment of this case.

CONCLUSION

WHEREFORE, for the reasons set forth above, the Petitioner, George Raudenbush, III, respectfully requests that this Honorable Court enter an order granting a writ of certiorari in this case.

Respectfully submitted,

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