IN THE SUPREME COURT OF TENNESSEE AT KNOXVILLE

No. E2015-00674-CCA-R3-CD

AUGUST 4, 2017

STATE OF TENNESSEE
Plaintiff- Appellee

FILED
2017 AUG-4 PM 1:11
APPELATE COURT KNOXVILLE

v.

GEORGE JOSEPH RAUDENBUSH III
Defendant Appellant

APPELLANT BRIEF TO GRANT FURTHER REVIEW

Comes now Indigent and disabled Appellant, George J Raudenbush III, denied counsel per order (see attached order filed on June 29, 2017 per curiam, no signature) of the Tennessee Supreme Court at Knoxville.

Appellant humbly apologizes to the court where he lacks in knowledge, understanding and proper procedure in law.

BACKGROUND

August 24, 2011
The trial court denied counsel to the accused, the accused was tried and convicted of driving on a suspended license, violating the financial responsibility law, speeding, felony evading arrest, misdemeanor evading arrest, assault, and reckless endangerment.

December 03, 2013
The Knoxville Criminal Court of Appeals reverses and remands the appellants (see attached letter from Chief Counselor Richard Hughes) conviction back to the trial court as the appellants Sixth Amendment Right to counsel was violated by forcing the accused to represent himself. The appellate court reversal releases the appellant serving a 4 year maximum prison sentence within, a few months of finishing that sentence.

November 24, 2014
Appellant is appointed counsel (Donald Leon Shahan) and the accused is retried again (when no greater punishment or sentence could be obtained under law) on the same charges (see appeals court opinion Pg. 14, line 10) and appellant is convicted a second time of driving on a suspended license, violating the financial responsibility law,

speeding, felony evading arrest, misdemeanor evading arrest, assault, and reckless endangerment.

December 15, 2014
Appellant is re-sentenced to another 4 year sentence under The Tennessee Department of Corrections supervision above the original maximum 4 year sentence allowable by law.

April 07, 2015
Counselor Shahan for appellant files a Notice to Appeal and respectfully withdrawls on September 25, 2015 per the request of his client, as appellant is required to relocate to Knoxville Tennessee for medical, housing and public transportation.

September 25, 2015
Gerald L. Gulley is appointed as counsel to appellant.

June 06, 2017
The Knoxville Court of Criminal Appeals gives an opinion that the conviction for misdemeanor evading arrest and the conviction for felony evading arrest should be merged and the court remanded the convictions for merger while affirming all other judgments of the trial court. Counselor Gerald Gulley intentionally withdraws (refer to attached letter and motion with exhibits from Mr. Gulley) as counsel to the appellant abandoning his client immediately on the day the appellate court declares its opinion to uphold the trial courts decision, knowing that his indigent client is innocent and will be unable to retain any kind of counsel within the next 60 days, to appeal the appellate courts decision.

June 09, 2017
Appellant petitions the Tennessee Appellate Court for appointment of counsel and is denied appointment of counsel on June 12, 2017.

June 28, 2017
Appellant petitions the Tennessee Supreme Court for appointment of counsel and is denied appointment of counsel on June 29, 2017.

August 4, 2017
Appellant submits his brief standing innocent of all charges brought against him and is now forced to write and submit a legal brief without counsel, without knowledge of procedures, without knowledge of law and statues that govern those procedures, to the highest court in the state, ordered in the interest of justice.

BACKGROUND HISTORY

The appellant became a resident of East Tennessee in 1998, being issued a Tennessee drivers license and tags and registration. The appellant was well liked in the community and was asked to organize and coordinate groups of youth and adults in performing youth missions work starting in 1999. That work was very successful in Polk County, Tennessee and the appellant was invited to expand that work in Monroe County, Tennessee where a sponsor purchased land for that work. A local sponsor agreed to register all the vehicles used in performing free services to the community in Monroe and McMinn Counties. The appellant never took a salary or pay of any kind as the community supported this work.

In January of 2006, an elected official, Evonne Hoback the McMinn Tag & Registration County Clerk refused to renew the tag and registration belonging to Appalachian Youth Missions or any of its representatives on the grounds she was opposed to the volunteer christian work that was being performed in the community stating she didn't have to issue tags and registration. (Appalachian Youth Missions is a legally formed Tennessee organization registered with the Board of Equalization in Nashville, Tennessee). Refer to Affidavits of Fenton McCahill and Gary Church.

On July 5, 2006 Appalachian Youth Missions and its representatives contacted The Pope Law Firm in Athens, Tennessee to address the issue of being denied registration based upon its state status. Refer to letter from the Pope Law Offices dated July 5, 2006. After receiving the legal letter, Ms. Hoback continued to refuse to issue a renewal sticker and registration to the youth mission. Appellant contacted the Pope Law Firm and was directed to file a civil suit costing tens of thousands of dollars in legal fees which the youth mission did not have. Appellant then contacted The Director of the Department of Safety, Mr. Kennith Birdwell, and was advised by Mr. Birdwell to file a civil suit stating his department had no control over an elected official.

Appellant contacted Attorney Libby Miller with the Tennessee Department of Revenue and Commissioner Reagan Farr who both were successful in helping restoring the youth mission vehicle registration at a later date. Refer to letters to commissioner Reagan Farr and Legal Counsel Libby Miller.

Evonne Hoback found another way to obstructed the registration again by stating the youth mission did not have a proper address when in fact, the address on record with the state was the same physical address the youth mission had used in years past with no issues. As a result, Ms. Holback refused to accept or recognize any new address to renew the vehicle registration and demanded the youth mission tags be turned in to her office even though the youth mission was compliant with the law. Ms. Holbacks contacted Officer Millsaps at the Tellico Plains Police Department notifying him that the youth mission vehicles were illegal, to be on the look out for the unregistered mission vehicles. Evonne Hobacks personal agenda and objective was clearly to stop the christian youth work from being performed in the community.

The state encouraged the appellant to file a civil suit since it was obvious Ms. Hoback, an elected official, was not going to renew any of the registrations on either of the mission vehicles again. Appellant was told the civil suit would cost around One hundred Thousand dollars from start to finish however, it could be more. Appellant consulted with counsel (the mission sponsors could not afford the cost of filing a civil action) and thus the appellant was forced to obtain a valid drivers license through another means outside of the state of Tennessee to continue to support the youth work he was performing in the community. Appellant found a Christian organization that issues passports drivers

license and registrations that was recognized by the U.S. State Department and services used by Federal agency's and missionary's in other countries. The appellant applied for and received the new credentials.

The appellant's valid (genuine) K.O.H Credentials contained accurate information that matched appellants birth and baptismal certificate and vehicle identification that was not false or misleading in any way shape or form. The purpose of the new credentials was to accurately identify the appellant when he traveled. The appellant had been questioned and asked for his license and registration in routine check points and when he was helping to change a tire for a stranded women in Florida. This happened several times over the years and appellant never encountered any citations with his K.O.H drivers license or registration as a missionary.

On or before July 30, 2009 Officer Brian Millsaps placed a call to Sgt James Kennedy of the Treasure Island Police Department in Florida informing officer Kennedy that appellant George J Raudenbush III had over 18 felony warrants out for his arrest describing the appellant as extremely dangerous and informs officer Kennedy of the event that the appellant was co-coordinating on July 30, 2009 (refer to CNW national press release) An undercover sting operation costing the City of Treasure island thousands of dollars was set up to to capture this notorious felon that Officer Millsaps purported had eluded law enforcement all over the nation.

When the appellant arrived the day before the Christian mom and daughter event to help set up banners, he was surround by undercover and uniformed law enforcement and placed under arrest. The Christian family event had to be canceled because of the false and misleading information Officer Brian Millsaps intentionally disseminated to Florida law enforcement. The Appellants 1986 Ford Escort was impounded and all appellants K.O.H identification including his drivers license, registration and vehicle tag and title were confiscated.

The state issued a $1,470 bond knowing the accused was returning back to Tennessee. The appellants 1986 Ford Escort was released back to him along with all his KOH Documents including his drivers license. The appellant returned back to Pinellas County, Florida and stood trial before Chief Judge David Demers where all charges were nollo pros as the state could not produce any valid warrants of any kind.

The Appellant would still have a Tennessee license and registration today if Evonne Holbok had complied with the law. In fact, all the damage that has been done and the cost to the state, all the work that the mission couldn't perform over the past 10 years to benefit the state and community is gone. Instead, a prison sentence and unnecessary protracted litigation has left the appellant disable and unproductive to the community. None of this would ever have had to happen if Ms. Holbok simply complied with the law and renewed the registration on one vehicle, so the appellant could perform and coordinate services in and for the community and state.

Evonne Hoback used her influence and position to advance her personal agenda in the capacity as an elected state official to intimidate and harm a christian youth organization, abusing her authority and violating the public trust.

APPELLATE COURT OPINION REVIEW

Opinion delivered by Judge Thomas Woodall

In the states proof and background found in the appellate court opinion on page 4, line 37 (last line) states, defendant *"struck his truck as he was passing defendant"*. On page 5, line 2-3 states, He noted that defendant struck his vehicle a total of three times during the pursuit, *"there was two times on the right side and one time on the left side of my truck", refer to page 274, line 24-25.* This testimony was given by detective Jones.
In the first trial transcripts Mr. Jones makes this statement on page 238 line 16-17, *"But I know the, the the impact there actually stalled my truck out, and that's a pretty good impact"*. On Page 241 line 19-24 Mr. Jones makes another statement about the impacts. On page 243 line 2-25 Mr. Jones alleges he felt an impact with each of the collisions yet he could not produce any repair bills or pictures of the damages. On page 244 line 5-8 Mr. Jones is unable to produce photos of the damage to his truck, and on line 20-22 Mr. Jones states he couldn't forget being struck. Mr. Jones also stated on record that he did not have a dash cam at the time of the stop. Mr. Jones did not produce any body cam or dash cam video footage of the events he described on the evening of December 30, 2010.

In the first trial transcript which is a record of the court Mr. Millsap states to the court on page 171, line 1-25 that he observed appellants vehicle collide 3 times with Mr. Jones truck and again on page 172, line 1-25. On page 194, line 20-21, Mr. Millsap states,*"It looked to me like you hit your brakes and caused him (Mr. Jones) to rear end you". Page 196, line 8-9, Mr. Millsap further states,"Because there was another incident at Pondridge Road where you rear-ended Jones again"*, statement by Mr. Millsap. Mr. Millsap did not produce any body cam or dash cam video footage of the events he described on the evening of December 30, 2010.

I bring this to the courts attention for two very important reasons: First, the collisions never happened. The 12 photographs that were taken by Gary Church on January 5, 2011 and his state notarized sworn affidavit stating, *"The condition of the vehicle does not reflect any impact of any kind. Upon inspection, it has no dents scratches anywhere except where the driver window was broken"*. Refer to attached affidavit of Gary Church dated February 01, 2011 and photos submitted by appellant as evidence to counselor Leon Shanan and counselor Gulley, and entered into the court record. Mr. Churches testimony in both the first and second trial transcripts page 289 through page 296 verify the photos Mr. Church took of the appellants 1986 Blue Ford Escort on January 5, 2011. In addition, Mr. Hamilton, a witness at trial, and owner of the impound yard who had possession of the appellants vehicle upon the authority of Mr. Millsap, testified that he observed no damage to the appellants vehicle a 1986 Blue Ford Escort other than the window being broke out, refer to court transcript page 410, line 1-20. The testimony of events in both Mr. Millsap and Mr. Jones testimonies are inconsistent and conflicting in addition to the evidence when comparing both trial transcripts or each transcript independently. The trial testimony of Mr. Millsap and Mr. Jones resulted in felony charges that sent the appellant to prison.

Second, Mr. Shahan and Mr. Gulley (counsel appointed to appellant) never fully presented the above evidence or brought it into the light, to the jury or to the criminal appeals courts attention. Both counselor Shahan and counselor Gulley failed to challenge the charges and convictions for misdemeanor reckless endangerment, driving on a suspended license, violating the financial responsibility law, and speeding. The appellant gave the above testimony and evidence to both Mr. Shahan and Mr. Gulley however they both failed to bring out the inconsistency and evidence that was readily available to them from their client.

With insufficient time to adequately prepare his clients case Mr. Shahan could not effectively file motions to suppress, gain valuable evidence, supervise the investigator and represent the best interest of his client, per Mr. Shahan's statement in the Motion for New Trial transcript page 4, line 20-25 and page 5, line 1-18. In the sentencing transcript the appellant makes the following statements about counsel contacting him and expressing counsels concern about not effectively being able to represent his client found on page 3, line 21-25 and page 4 line 1-16.

Counselor Shahan failed to established and use basic principles of evidence discovery. For example, the year of the F150 truck, the height of the truck or the height of the 4 cylinder compact economy vehicle refer to page 299, line 1- 2, which the appellant was operating that evening. If Counselor Shahan had established the above heights/clearances from ground to bumper of both vehicles through direct and cross examination the jury would have clearly recognized that major damage would have been inflicted to the appellants vehicle and not to Mr. Jones truck which was a heavy duty truck having a lift kit, putting it over the standard Ford F150 bumper clearance of 24' front and 36.9' rear clearance. The record entered by the state verifies appellants vehicle is a 1986 4 cylinder Ford Escort. It has a ground clearance of 5.3 inches from ground to the vehicle and the small subcompact vehicle stands 52 inches tall. According to Mr. Jones and Mr. Millsaps multiple statements, in the court transcripts, the appellants vehicle should have sustain heavy collision damages to the hood, sides and hatchback areas of the 3 door subcompact vehicle not to the F-150 Heavy Duty Truck, counselor Shahan and Gulley fail to establish these important and vital facts.

No pictures of the vehicle Mr. Jones drove that evening were presented as evidence by the state or the defense. Mr. Jones even drove the F-150 Heavy Duty Truck to the court house during pretrial, trial and during sentencing each time however, NO DAMAGE or repair of any kind was observed in plain public view of Mr. Jones truck. The state provided Counselor Shahan with a private investigator. However, no pictures were taken of the Heavy Duty F 150 by the investigator, defense or the state which Mr. Jones operated on the night of December 30, 2010, this clearly shows the officers statements to have been collaborated, false and misleading.

Mr. Shahan told the court he was overwhelmed with a work load that prohibited him from properly representing his client. The court error-ed in not allowing counselor Shahan to properly prepare his case. Mr. Shahan further failed in his responsibilities to this client to obtain the dozens of front page slanderous news paper articles published and distributed by the Monroe County "Buzz", a local gossip publication when the state had paid a private investigator to assist him with that task. The appellant had to rely on others individuals at the last minute to get back issues of some of those front page news articles. It clearly shows counselor Shahan was overwhelmed and unable to complete the simplest of tasks in evidence collection and shows that the investigator was incompetent or negligent to perform the simple task of obtaining copy's of back issues which are freely accessible to the public. The appellant limited in his capacity was forced to performed these tasks at the last minute because both counsel and the investigator failed to perform the simplest of tasks, to acquire evidence favorable to the defense.

Mr. Shahan failed to present evidence and wittiness that were readily available to him as he was made to rush his client to Judgment. Mr. Shahan failed to cross examine Mr. Jones, *"I have no questions for cross of this witness"*, after the state finished direct examination of Mr. Jones on the stand, refer to page 278, line 10-11 of the trial transcript. The court errored and violated the appellants right to effective assistance of counsel by not allowing Mr. Shahan to properly prepare appellants case. Judge Blackwood stated in the court transcript he wasn't going to allow a mistrial, denying all defense

counsels motions and rushing the appellant to judgement. Just as Judge Carroll Ross did in the first trial, which this court recognizes, was reversed based upon testimony in the trial transcripts.

Mr. Shahan did not raise the simplest issues and secure vital evidence, wittiness and expert wittiness to prove his clients innocence due to counsels lack of experience (Donald Leon Shahan admitted to the bar on May 04, 2012 bar # 30820) and the overwhelming case load that was thrust upon counsel. Counsel often appeared over worked, over whelmed, tired, disoriented, confused and unsure of issues at hand to his client during pretrial, trial and sentencing. Refer to sentencing transcript page 4, line 21-25 and page 5 line 1-16 preserved for the record, *"The second issue that I would like to address the court today, your honor, is the issue of ineffective counsel. Now, we both know that there's two prongs to ineffective counsel. One is deficient performance of counsel, and two, resulting prejudice as a result of ineffective assistance of counsel on deficient performance. The result with effective assistance counsel would have been different where there was no evidence to support the conviction in my particular case. So my concern at this point, your honor, in the ineffective assistance of counsel of Mr. Shahan is one, that I received an e-mail from Mr. Shahan stating that he had to take on more cases because of an associate that was sick at that time and he said he was pretty much overwhelmed in the e-mail, and I understand that, your honor. But, second, I believe I have met the first and second prong of ineffective counsel, one that counsel did fail to obtain evidence and witnesses in favor of myself before the trial and during the trail, that counsel failed to investigate the prosecutor's witnesses and hold the investigator accountable. As you well know, your Honor, in the one motion for a change of venue your ruling was that we did not have sufficient evidence to support that motion"*.

On page 10 of the criminal court of appeals opinion the court states that counsel Shahans argument for judgement of acquittal should have been raised pretrial in a suppression motion as pointed out by the state. Counsel for the defendant failed to file a pre trail motion to suppress evidence nor did counsel object to the admission of the evidence at trial. Because counselor Shahan did not file the motion to suppress he waived his clients right to object to that material. The defendant on numerous occasions asked counsel to object to many of the states documents, counsel failed to follow the instructions of his client resulting in a felony conviction and imprisonment for a crime the appellant did not commit.

A. DENIAL OF MOTIONS FOR A JUDGMENT OF ACQUITTAL

Presiding Judge Jon Kerry Black Wood had the responsibility and authority to direct a Judgment of acquittal, as the evidence at trial was insufficient to warrant a felony conviction when the state rested its case. Judge Blackwood chose not to direct a judgment for acquittal despite the insufficiency of evidence to support a conviction.

At sentencing Judge Blackwood choose not to reason with the facts or the evidence of the case but postured himself in verbalizing very cynical and condescending rebukes directed to the defendant in front of counsel and the public. This was done without provocation or cause as the defendant remained polite, respectful, proper, quiet and orderly at all times, throughout all of the pretrial, trial and sentencing hearings.

For example refer to page 5, line 5-6 in the trial transcript,*"why don't you grow up man"* referring to the motion to change to venue in which counselor Shahan had failed to obtain and present affidavits, newspaper articles, witnesses and testimony. Judge Blackwood goes on to rebuke the defendant stating, *"this venue thing was the most ill founded, unwarrented motion I have ever seen in my life"*, refer to page 5, line 6-7. Judge Blackwood is not directing his critical words to Counselor Shahan but to the defendant where counsel failed to perform the simplest of tasks in acquiring readily available evidence

in favor of his client. Why would Judge Blackwood scold the client when his attorney failed to perform his duties and responsibilities, being the simplest of tasks. Mr. Shahan failed by refusing to raise the issue of ineffective counsel per his clients request in the motion for new trial, refer to Page 7, line 10-11 in the trial transcript *"If you have got issues about ineffective assistance of counsel that comes up when you address a motion for new trial"* (Judge Blackwood).

Judge Blackwood further mocks the defendant during the sentencing hearing on page 10, line 13-17, *"you could sit down with Clara Bell as your lawyer and get the same thing", Defendants response, "yes sir"*. Judge Blackwoods asks, *"So what do you want, Clara Bell or do you want yourself?"*. Clara Bell was a mute clown on the Howdy Doody Show (1946-1960). Judge Blackwood is asking the defendant to chose to have counselor Shahan, a mute clown or the defendant to represent himself. Its clear that Judge Blackwood had labeled counselor Shahan Clara Bell during the trial due to the fact that counsel for defendant spoke very little in his clients behalf. The question arises why Judge Blackwood did not honor counselor Shahans request and motion for sufficient time to prepare the case?

It appears Judge Blackwood from his remarks to the client gave the appearance of being the prosecutor against the accused. Page 9, line 14-19, of the sentencing hearing, *"Yes your honor. And I respect what you are saying, your honor, however it's not about the money, it's about a wrong that was done that needs to be righted and -", "There hasn't been nothing wrong that needs to be righted, (Judge Blackwood)"*. Why does Judge Blackwood not want to look at the evidence or lack of evidence on the states behalf, its very clear that officers Millsap and Jones gave false and misleading testimony to the court and jury as a matter of record (in the trial transcript) to gain an unlawful felony conviction against the appellant to further cover up Mr. Millsaps use of excessive force and attempt to fatally discharge his weapon into the appellant at point blank range.

ANALYSIS

In the Criminal Court of Appeals opinion counselor Gulley fails to challenge and raise issues at the request of his client on the charges of misdemeanor reckless endangerment, driving on a suspended license, violating the financial responsibility law and speeding refer to page 8, line 23-25.

SUFFICIENCY OF THE EVIDENCE

In the Criminal Court of Appeals opinion counselor Shahan fails to raise the simple issue of error to the court where the defendant was convicted of both felony and misdemeanor evading arrest resulting in the trial court not merging these two convictions together which violated his clients right for protection under the double jeopardy clause of the Tennessee Constitution. Further more the court failed to merge these two convictions violating the defendants rights under the double jeopardy rule denying the appellant equal protection under the law.

The accused testified that he was asked to get out of the vehicle and complied doing so rolling up his window, as he suspected Mr. Millsaps was going to place him under arrest. The accused then stated that he rolled up the window anticipating to get out of the vehicle, the accused did not state at any time that he locked the door nor did Mr. Millsaps say he was under arrest, the accused stated that when he complied he heard a thump at the window, then another louder noise and the glass shattering. The appellant rolled up the window as anyone would do on a cold winters night not wanting to leave their vehicle for someone to steel on the side of the road in a rural area. Tennessee law at that time stated a vehicle could set up to 72 hours (the appellant was aware of this information as he worked with

Mountain View Wrecker Service in Benton Tennessee under Lenoard Curtis Lee in 2008) on the side of the road before it would be towed. The accused had a responsibility to secure the vehicle especially under the circumstances that evening. Mr. Millsap was well known in the community for having stolen equipment from the Vonore Police Department, he was caught and suspended for taking city property. Everyone born and raised in the Monroe County Community is familuar with everyone in these small communities especially if you were born and raised there like Mr. Millsaps . The accused had the responsibility and right to roll up his window at 10:45 pm on the side of the road in Tellico Plains before being taken into custody.
Where were the body and dash cams? It was mandatory policy in Tennessee at that time that all peace officers have dash cams in their vehicles. Mr. Millsap had his dash cam that night it just wasn't turned on or working according to his testimony on the court transcript. Counselor Shahan failed to question Mr. Millsap effectively and thoroughly about this since all Tennessee Peace Officers are required to have a working dash cam turned on.

Counselor Shahan had the burden to show the court and the jury why the officers testimony was insufficient to support the verdict, counsel failed to do this, there existed enough reasonable doubt through the photos of the defendants vehicle and wittiness testimony about the condition of defendants vehicle to show the court and jury, Mr. Millsap and Mr. Jones testimony to be less than truthful. Again, counselor Shahan fail to do this.

On page 12 of the Criminal Court of Appeals opinion, *"The jury heard this evidence and chose to reject it as was their prerogative"*. The jury did not hear all the evidence. Counselor Shahan was ineffective as counsel and did not present all the evidence, what he did present was not relevant as he emphasized how hard Mr. Millsaps struck the glass to the jury, not the fact that the evidence and testimony showed both Mr. Millsap and Mr. Jones to have lied to the court and the jury. Judge Blackwood would not allow the 911 tapes into evidence to show the calls I made for help, my state of mind and the fact that I stated to the 911 center that officer Millsap attempted to shoot and kill me without any provocation that evening. Judge Blackwood ordered that the jury should never hear that recording. Why would Judge Blackwood want to withhold that recording from the Jury?

Counselor Shahan fails to address the following: Failed to object to the prosecutors false and misleading statements to the jury, the listing of two victims in a count charging an assault charge in this case and thus forfeits another of his clients rights, conviction of reckless endangerment having the evidence in his possession to dispute and dismiss those charges, failing to submit 7 affidavits and testimony the accused had taken from well known members and leaders of the community who testified at the McMinn County Court House that the accused could not get a fair jury trial in Monroe County, failing to obtain articles published by the "Democrat advocate" and the "Monroe County buzz", failing to show the nature, extent, and timing of pretrial, trial publicity the nature of the publicity as inflammatory; the particular content of the publicity the degree to which the publicity complained and circulated, and the time elapsed from the release of the publicity until the trial, fails to include the transcript of all the hearings in the appellate court record, fails to provide a an adequate record for appellate review and failed to show a presumption of prejudice with the jury foreman. Counselor Shahan had all the resources, to challenge the conflicting and inconsistent testimony of Mr. Millsaps, he does not ask for the dismissal on the double jeopardy rule, does not address the issue that officer April Shaffer is an un-certified peace officer that falsified an affidavit to secure a warrant against the accused, had documents and witness available to him but failed to use those resources to exonerate his client in the interest of justice.

On page 15 of the Criminal Court of Appeals opinion, counselor Shahan again fails to establish that the trial court abused its discretion in denying the accused motion for change of venue when he has all the resources at his disposal affidavits, wittiness testimony hearing transcripts he does nothing. If an individual has a bias and an agenda, or just wants to be on a jury, or is applying for a job they are most likely are going to tell the interviewer what they think he or she wants to hear in order to get what they want. This is common practice in our society today regarded as normal and taught in our nations academic institutions including our high schools. That is why its so important when counsel pursues these issues of change of venue that counsel present all the facts and evidence which counselor Shahan failed to do for his client when he had all the resources to get a change of venue. The Criminal Court of Appeals opinion addresses the defendant however, it was counselor Shahan who made all the decisions, presented the case and told his client that he would not bring up the issue of ineffective counsel even though counsel stated many times he was over loaded with cases and appeared tired and under stress.

OPINION ANALYSIS

I disagree with Judge Woodalls opinion however, he raises some valid questions of law during oral argument concerning effective assistance of counsel and double jeopardy. Judge Woodall asks Gerald Gulley appointed counsel to the appellant, if pretrial motions to suppress were filed in the trial court and counselor Gulley responds that there were no motions on record that were filed. Counselor Gulley points out that Counselor Shahan appointed to the defendant failed to file motions to suppress. Judge Woodall draws the conclusion, *"the defendant should have won but didn't"*.

During oral argument Judge Woodall makes the statement, *"The officer didn't know him"*, refer to trial transcript page 210-211 and affidavit of Danial Morgan. Mr. Millsap goes further by stating in the transcript he had wrote the appellant two tickets in the past refer to page 284. Its evident that Judge Woodall based his opinion on misinformation and Mr. Millsaps was required to write a citation in stead of using excessive force on a cooperating well known member of the community according to the Tennessee Codes Annotated.

Further, misinformation was entered into the court during oral argument by counselor Gulley when he made the statement, *"Mr. Raudenbush declined"*, referring to Officer Millsaps telling Mr. Raudenbush to get out of the car. The appellant at all times cooperated with all the officers that evening. The appellants testimony in the court transcripts is consistent that appellant was cooperating with all the requests of the officers. It wasn't until the appellant was brutally assaulted to the face and head repeatedly with a heavy metal flash light, causing bleeding and seeing officer Millsaps draw his gun preparing to discharge, that the appellant fled in fear for his life. This was not typical police behavior as the appellants fathers side of his family are law enforcement officers including a police captain. The appellant is opposed to violence and has never struck another individual ever due to his religious beliefs since a young age.

Counslor Gulley enters additional misinformation at oral argument stating the appellant was represented at both trials by the public defenders office. The court records clearly show appellant was denied counsel at the first trial where the Knoxville Appellate Court of Appeals reversed that decision and remanded it back to the trial court where the appellant was appointed counsel, Donald Leon Shahan for the second trial.

Counslor Gulley enters more misinformation about his client at oral argument stating the appellant was going 12 miles over the speed when appellants testimony in the trial transcript directly contradicts that

of counsels as appellant had discussed with counselor Gulley that he was not speeding that evening. Counselor Gulley should have stated that the officer alleges his client was going 12 miles over the speed limit however counselor Gulley enters more false and misleading information to the appellate court about his client, refer to audio recording of oral argument. Counselor Shahan made an intentional note for the record in the sentencing hearing on page 12, lines 9-14, *"the officer that did the pre-sentence report has been terminated from probation and parole under mysterious circumstances, there were a lot of opinionated instances in the last sentencing hearing by the probation officer"*. The appellant filed a motion to correct the many errors in the pre-sentence report including defendants full social security number appearing in several places in that report which is a matter of public records and is against federal law to publicly display that number along with other information which gives anyone the opportunity to commit identity theft. In addition, to the defendants personal and confidential information protected under federal law appearing in the pre-sentence report, arrests and convictions appeared that were not the defendants. To date these errors were never corrected and they continue to harm and injure the appellant. Counslor Shahan failed to addressed or corrected these errors and appellant was forced to submit a motion to correct the record which the court redirect the appellant that he was represented by counsel and that duty was counsels responsibility.

So many errors and misinformation have occurred and been allowed in the record that has gone unchallenged and has not been corrected by counsel or the court that is has tainted every proceeding and has created prejudice and biased toward the appellant. How can an appellant who stands innocent get relief and justice when the very individuals tasked with the responsibility of performing their sworn duty's negate and neglect those responsibility's?

INEFFECTIVE ASSISTANCE OF COUNSEL

Donald Leon Shahan was appointed by the public defenders office to represent the defendant from an unlawful arrest and over zealous prosecution, to preserve his clients rights to a fair and impartial trial. The court did not allow a young and inexperienced lawyer sufficient time to properly prepare his clients case under extenuating circumstances (an unreasonable amount cases). Had the court granted this young attorney adequate time to properly prepare his case, Mr. Shahan would have no doubt prevailed as it was a very simple case. However, that was not the case. Counselor Shahan and his client were rushed to judgment by a well seasoned zealous prosecution team who's intent and motivation was to gain convictions not to seek justice as the state could have brought charges against officer Millsap for an unlawful arrest and using excessive force.

Gerald L. Gulley was appointed by the court to represent the defendant on appeal from the unjust and unconstitutional trial court convictions which violated the appellants 6th, 8th and 14th amendment rights protected under the United States Constitution, the right to effective assistance of counsel when accused in criminal matters, the right to be free from excessive bail and cruel and unusual punishment, and the right to equal protection under the law with due process of law.

The Tennessee Rules of Professional Conduct state that counsel must be a zealous, competent, prompt and a diligent advocate which zealously asserts the clients position and is mindful of deficiency's in the administration of justice.

Counselor Gulley at every stage of the direct appeal process intentionally worked against the appellant. As a result of Mr. Gulleys misconduct, the appellant was compelled and obligated to file motions to the court, complaints of misconduct to the Tennessee Board of Professional Responsibility (complaint # 47934c-2 Gerald Gulley) and filing a federal complaint 3:17-CV-12 for negligence for failing to

address an excessive detention issue which continued to the determent of his client, the appellant. The appellate court errored when the appellant provided direct evidence of misconduct to the court of counselor Gulley, the court failed to appoint new counsel to the defendant where the out come would have been different if new counsel were appointed.

The attached documents below verify the above statements pertaining to Mr. Gulley.

MOTION TO CORRECT AND CLARIFY MISINFORMATION AT ORAL ARGUMENT

NARRATIVE OF APPEALS COURT ORAL ARGUMENT

NOVEMBER 29, 2015 TWO MONTHS NO RESPONSE LETTER.

MAY 25, 2016 MOTION FOR APPOINTMENT OF NEW COUNSEL.

JUNE 01, 2016 BOARD OF PROFESSIONAL RESPONSIBILITY LETTER.

JUNE 17, 2016 MOTION TO CLARIFY AND SHOW GOOD CAUSE FOR APPOINTMENT OF NEW COUNSEL.

SEPTEMBER 30, 2016 BOARD OF PROFESSIONAL RESPONSIBILITY LETTER

OCTOBER 31, 2016 BOARD OF PROFESSIONAL RESPONSIBILITY LETTER

DEFENDANTS RESPONSE TO THE STATE RESPONSE BRIEF

FEBRUARY 03, 2017 MOTION TO APPOINTMENT NEW COUNSEL

APRIL 01, 2017 BOARD OF PROFESSIONAL RESPONSIBILITY LETTER

JUNE 09, 2017 MOTION FOR APPOINTMENT OF COUNSEL

5 E-MAILS RESPONSES FROM COUNSELOR GULLEY

EXCESSIVE DETENTION NARRATIVE

The appellant brings this brief before The Tennessee Supreme Court for review and preserves all the issues raised in The Criminal Court of Appeals, in addition to all the issues raised in this brief to the Tennessee State Supreme Court in the interest of justice.

Appellant stands innocent and is at the courts service.

Respectfully Submitted,

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George J. Raudenbush III
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A copy of this brief will be sent on August 7, 2017 to the state attorney.