

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF ALABAMA  
NORTHERN DIVISION**

**MARKIS ANTWUAN WATTS,** )  
 )  
 **Plaintiff,** )  
 )  
 vs. )  
 )  
 **CITY OF MONTGOMERY,** )  
 **THE HONORABLE MILTON J.** )  
 **WESTRY, THE HONORABLE LES** )  
 **HAYES III,** )  
 )  
 **Respondents.** )

**Case No. 2:13-cv-00733-MEF-CSC**

**AMENDED COMPLAINT**

**INTRODUCTION**

1. Plaintiff Markis Watts is an indigent man who has been ordered<sup>1</sup> to be incarcerated because of his inability to pay court-ordered fines and costs, in violation of his constitutional rights to due process, equal protection, and to counsel.

2. Plaintiff was shot in the face in October 2011. His injuries were substantial, and the bullet remains lodged in his jaw. The shooting left Plaintiff unable to work for many months and facing approximately \$40,000 in medical expenses. Although he recently found work again laying concrete, he has been unable to pay multiple outstanding traffic tickets and other fines assessed by the Montgomery Municipal Court (“Municipal Court”).

3. On August 14, 2013, Plaintiff appeared in Municipal Court in connection with a misdemeanor charge. Defendant, the Honorable Milton J. Westry, dismissed the charge, but when he learned that Plaintiff had not paid fines and costs assessed in unrelated cases, he ordered Plaintiff to either pay \$1,800 immediately to satisfy those fines or serve a 54 day sentence in jail.

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<sup>1</sup> This order has not been vacated. Plaintiff was released from jail on a bond, and Defendants and the Municipal Court have agreed not to arrest him on the cases implicated by this lawsuit while it remains pending.

Although Plaintiff told Defendant that he could not pay the full \$1,800, he was nonetheless placed in custody and taken to the Montgomery Municipal Jail.

4. The next day, Plaintiff was brought back into the Municipal Court on unrelated traffic cases and misdemeanors. Defendant, the Honorable Les Hayes III, allowed Plaintiff until the end of the year to pay fines and fees on these cases. He refused to accept a letter from Plaintiff's mother regarding Plaintiff's recent unemployment and reasons for being unable to pay in the past, but stated that Plaintiff would have to remain incarcerated based on Defendant Judge Westry's order.

5. Plaintiff challenges these collection procedures and practices and his incarceration under the due process and equal protection clauses of the U.S. and Alabama Constitutions, and the Alabama state law implementing these provisions. *See* U.S. Const. amend. XIV; Ala. Const. art. I, §§ 1, 6, 22; Ala. R. Crim. P. 26.11. Although Plaintiff informed Defendants Judge Westry and Judge Hayes that he could not pay, Defendants failed to make a meaningful inquiry into Plaintiff's financial situation before ordering him to be jailed.

6. Plaintiff further challenges this incarceration as violating his right to counsel under the U.S. and Alabama Constitutions, as he was jailed without being provided counsel to represent him during the aforementioned proceedings or waiving that right. *See* U.S. Const. amend. VI; Ala. Const. art. I, § 6.

7. Plaintiff therefore asks that this Court declare that this order violates the U.S. and Alabama Constitutions and Alabama law.

#### **PROCEDURAL HISTORY, JURISDICTION, AND VENUE**

8. Plaintiff filed this action in the Circuit Court of Montgomery County on August 28, 2013. Defendants removed to this Court on October 4, 2013.

9. Plaintiff brings claims arising under 42 U.S.C. § 1983 and the U.S. Constitution, which this Court has jurisdiction over pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(3). This Court has supplemental jurisdiction over all claims arising under the Alabama Constitution and laws pursuant to 28 U.S.C. § 1367.

10. Venue is proper in this District pursuant to 28 U.S.C. § 1441(a) because this Court sits in the district and division in which the state court action was pending.

### **PARTIES**

11. Plaintiff Markis Watts is a 22-year-old resident of Montgomery, Alabama.

12. Defendant City of Montgomery (“City”) is an Alabama municipal corporation organized pursuant to Act 73-618 of the Alabama Legislature and located in Montgomery County, Alabama.

13. Defendant Judge Milton J. Westry is a resident of the State of Alabama.

14. Defendant Judge Les Hayes III is a resident of the State of Alabama.

### **STATEMENT OF FACTS**

#### ***Order of Incarceration***

15. Plaintiff Markis Watts was ordered by the Municipal Court to be incarcerated in the Montgomery Municipal Jail for 54 days because of his inability to pay fines and fees on multiple traffic tickets and misdemeanor charges.

16. These traffic tickets and misdemeanor charges were incurred between 2010 and 2012.

17. Plaintiff voluntarily appeared in court on August 14, on a charge that is unrelated to those for which he is currently being incarcerated. At the hearing, after dismissing the charge,

Defendant Judge Milton J. Westry asked if Plaintiff had any prior tickets or cases. The clerk informed Defendant Judge Westry that Plaintiff had outstanding fines and fees on various cases totaling nearly \$2,736. Plaintiff told Defendant Judge Westry that he recently found employment and that he could make some payments soon. Defendant Judge Westry told Plaintiff that he would have to either pay \$1,800 immediately, or serve a 54 day sentence to satisfy the full amount owed, at a rate of a \$50 credit for each day of incarceration. Plaintiff stated that he was unable to make that payment, and was ordered to jail immediately. Defendant Judge Westry did not ask why Plaintiff was unable to pay or what efforts Plaintiff had made to obtain the money to pay in the past.

18. No lawyer was appointed to represent Plaintiff during this proceeding. Although an individual spoke to Plaintiff before he was called before the court, this individual did not tell Plaintiff that he was his attorney or represent him when he appeared before Defendant Judge Westry.

19. A copy of the transcript given to Plaintiff, which details the court's disposition of each of these cases,<sup>2</sup> is attached to this Complaint as Exhibit A. Each case is listed as "commuted," and the judge's order to either pay the fine or spend 54 days in jail is detailed at the bottom of the order.

20. On August 15, Plaintiff was brought back to the Municipal Court. Defendant Judge Hayes allowed Plaintiff until the end of the year to pay fines and fees owed on other, unrelated traffic cases and misdemeanors. He again reiterated that Plaintiff would be incarcerated for 54 days if he could not pay the amount ordered by Defendant Judge Westry the previous day. Plaintiff's mother attempted to hand Defendant Judge Hayes a letter from

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<sup>2</sup> The case numbers are 2012CRA004094; 2010TRT040922; 2011CRA006721A; 2011TRT019935; 2012CRA00595; 2012TRT003265; 2012TRT009362; 2012TRT009363; 2012TRT061175; 2012 TRT061178; and 2012TRT061182.

Plaintiff's current employer, detailing that Plaintiff was recently rehired at a construction company after being laid off from December until June due to lack of work and a death in the company. Defendant Judge Hayes would not accept or look at the letter. He did not ask why Plaintiff was unable to pay or what efforts Plaintiff had made to obtain the money to pay in the past.

***Financial History and Indigency***

21. When he was unable to pay the fines and costs owed on his tickets, Plaintiff was previously ordered to make payments of \$140 per month to Judicial Correction Services ("JCS"), a private probation company, of which \$40 per month went directly to JCS. In December 2012, he was ordered to make payments of \$200 per month to the Municipal Court. In neither instance did the Municipal Court conduct a review of his financial situation or ability to make those payments.

22. The court files for the cases on which Plaintiff was jailed do not contain records of the entire amount paid to JCS towards his fines and court costs. Upon information and belief, the court files do not reflect the amounts that Plaintiff actually owes.

23. Plaintiff was the victim of a shooting in October 2011 and was rendered unable to work for many months because of serious injuries sustained to his jaw. Doctors have determined that they are unable to remove the bullet which remains lodged in Plaintiff and still causes him pain and medical complications. His outstanding medical bills total more than \$40,000, and he must pay out of pocket for his medications. His mother tried to make some payments on his behalf to JCS, but was unable to continue to make those payments while simultaneously helping him with medical payments and basic necessities after he was shot.

24. Plaintiff finally was able to work and found a job at the end of 2012, but was laid off soon thereafter. He was unable to find another job until he was rehired less than two months before his hearing and incarceration.

25. He is still employed at the same location after his incarceration; however, he is paid only when he is assigned to a specific project. As he is one of the most junior members of the team, he is one of the last to be assigned to projects that arise. Plaintiff missed job opportunities when he was in jail, and work has been slow since his release. He is searching for additional work.

***Policies and Practices of the City of Montgomery and Judges of the Municipal Court***

26. It is the policy and practice of Defendants to offer an alternative sentence to those who have not paid outstanding fines and court costs—requiring them to either pay the amount owed immediately or “sit out” the time in jail at a rate of \$50 per day.

27. When individuals are first sentenced or plead guilty and are unable to pay fines and court costs, these individuals are assigned to probation with JCS pursuant to general practice and the Municipal Court’s standing orders. Individuals must make monthly payments to JCS that include monthly supervision fees of \$40. When these individuals fail to make their payments, JCS reports back to the Municipal Court, triggering further proceedings in the Municipal Court to collect what is owed.

28. The Municipal Court does not conduct indigency determinations or explain how an individual may claim indigency if s/he is unable to pay either when the person is initially assigned to JCS or facing jail time for nonpayment.

29. The City’s “Amnesty Program” further demonstrates Defendants’ practice of jailing persons who are unable to pay. In May 2013, Montgomery Mayor Todd Strange and Ken

Nixon, the City's Municipal Court Administrator and member of the Mayor's cabinet, announced that the Municipal Court would offer an amnesty program on the first two Saturdays in June. Under this program, the court would, theoretically, remove certain fees, eliminate arrest warrants, and institute a payment plan if individuals were unable to pay the full amount owed.

30. However, at least 15 people were arrested on the first day of the Amnesty Program because they had too much money outstanding (greater than \$2,500) or did not have at least \$150 (or 10% of what was owed, if greater) to pay towards their fines. Mr. Nixon publicly acknowledged that the arrests probably scared others from participating.

31. Mr. Nixon warned that, following the amnesty program, the City would be even stricter about arresting people with outstanding warrants.

32. Plaintiff has heard of at least one other person who was put into jail without a determination of his ability to pay or being provided a lawyer.

33. The City of Montgomery relies on the Municipal Court to provide money not only for the court's own expenses, but to pay for the jail and other general fund expenses.

34. Defendants' policy is to charge court costs on every individual ticket, as was done in Plaintiff's cases, even if multiple tickets arise from the same incident. *But see* Ala. Code § 12-19-150(c) ("For the purpose of assessing fees in criminal cases, a case shall include all offenses arising out of the same incident. Fees shall be assessed on the basis of the most serious offense of which the defendant is convicted, provided, that the judge may, *in his discretion*, assess costs for each conviction." (emphasis added)).

**CLAIMS**

**COUNT I**

**Declaratory Judgment of Violation of Plaintiff's Rights under the Fourteenth Amendment and 42 U.S.C. § 1983 (28 U.S.C. §§ 2201–2202)**

35. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 34.

36. Under 28 U.S.C. §§ 2201–2202, Plaintiff seeks a declaration that Defendants' actions, policies, and practices that led to his incarceration for his inability to pay violated the rights to due process and equal protection contained in the Fourteenth Amendment of the United States Constitution.

37. The U.S. Supreme Court has consistently held that the Fourteenth Amendment prohibits treating indigent criminal defendants differently than those who are able to pay or automatically converting a fine-only sentence to a sentence of imprisonment without an inquiry into their ability to pay.

38. Defendants' actions in violating Plaintiff's constitutional rights also constitute violations of 42 U.S.C. § 1983. Defendants were acting under color or law when their actions, policies, or practices caused Plaintiff's confinement.

39. There is a substantial continuing controversy, and Plaintiff will suffer further imminent injury if he is required to serve the remainder of his sentence. Defendants have not vacated the order confining Plaintiff or promised not to enforce it, but instead have agreed to stay the remainder of the incarceration period and other post-conviction collections until this Court has ruled on this case.



**COUNT II**

**Declaratory Judgment of Violation of Plaintiff's Rights under the Sixth Amendment and 42 U.S.C. § 1983 (28 U.S.C. §§ 2201–2202)**

40. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 39.

41. Under 28 U.S.C. §§ 2201–2202, Plaintiff seeks a declaration that Defendants' actions, policies, and practices that led to his incarceration violated the right to counsel contained in the Sixth Amendment of the United States Constitution.

42. Defendants violated Plaintiff's right to counsel through their actions, policies, and practices that led to the failure to appoint counsel to represent him in his proceedings before the Municipal Court. Plaintiff was actually imprisoned, and did not knowingly, intelligently, or voluntarily waive his right to counsel.

43. Defendants' actions in violating Plaintiff's constitutional rights also constitute violations of 42 U.S.C. § 1983. Defendants were acting under color or law when their actions, policies, or practices caused Plaintiff's confinement.

44. There is a substantial continuing controversy, and Plaintiff will suffer further imminent injury if he is required to serve the remainder of his sentence. Defendants have not vacated the order confining Plaintiff or promised not to enforce it, but instead have agreed to stay the remainder of the incarceration period and other post-conviction collections until this Court has ruled on this case.

**COUNT III**

**Common Law Certiorari**

45. Plaintiff re-alleges and incorporates herein by reference the allegations set forth in paragraphs 1 through 44.

46. Plaintiff requests review in the nature of certiorari to determine whether the order of incarceration violated Plaintiff's rights under the U.S. and Alabama Constitutions and Alabama law.

47. Defendants violated Plaintiff's constitutional rights to due process, equal protection, and counsel as explained in the preceding paragraphs, including the equivalent protections under the Alabama Constitution, Ala. Const. art. I, §§ 1, 6, 22. Their actions, policies, and practices also violated his rights to an examination into his ability to pay before incarceration and not to be incarcerated as an indigent person under Rule 26.11 of the Alabama Rules of Criminal Procedure, Ala. R. Crim. P. 26.11(g), (h), (i).

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff respectfully prays for relief as follows:

- a. A declaration that Defendants violated Plaintiff's Fourteenth Amendment rights under the U.S. Constitution and 42 U.S.C. § 1983;
- b. A declaration that Defendants violated Plaintiff's Sixth Amendment rights under the U.S. Constitution and 42 U.S.C. § 1983;
- c. A declaration, pursuant to certiorari review, that Defendants violated Plaintiff's rights under the U.S. and Alabama Constitutions and Alabama law;
- d. An order awarding reasonable attorneys' fees under 42 U.S.C. § 1988; and
- e. Other and further relief as the Court deems just and proper.

Dated this 12th day of November, 2013.

Respectfully submitted,

/s/ Sara Zampierin  
Sara Zampierin, Ala. Bar No.1695-S34H  
Southern Poverty Law Center  
400 Washington Avenue  
Montgomery, Alabama 36104  
Telephone: (334) 956-8200  
Fax: (334) 956-8481  
Email: sara.zampierin@splcenter.org  
***Attorney for Plaintiff***

CERTIFICATE OF SERVICE

I hereby certify that on this 12th day of November, 2013, I have filed a copy of the foregoing Amended Complaint with the Clerk of Court by means of CM/ECF, which provides electronic copies of the foregoing to the following counsel for Defendants.

Jason Cole Paulk, Esq.  
City Attorney's Office  
Post Office Box 1111  
Montgomery, AL 36101-1111  
[jpaulk@montgomeryal.gov](mailto:jpaulk@montgomeryal.gov)

/s/ Sara Zampierin  
Sara Zampierin

MANDATORY TIME RELEASE DATE:

THIS REPORT CREATED:

COMMUTED TIME RELEASE DATE: *Oct 6, 2013*

8/14/2013 2:19 PM

REVISION #:

TRANSCRIPT PREPARED BY: T. NEELY

**MONTGOMERY MUNICIPAL COURT - STATE OF ALABAMA**

BOOKING DATE & TIME: 8/14/2013 2:11 PM BOOKING #: *13-8030*

NAME: MARKIS ANTWUAN WATTS

RACE: B

SEX: M

DOB: [REDACTED]

SSN: [REDACTED]

ADDRESS: 3850 GOVENORS DR APT-355

MONTGOMERY, AL 36116

	CHARGE DESCRIPTION	CASE #	COURT DISPOSITION OF CASE		
1	VIOLATION OF LICENSE TO CARRY PISTOL	2012CRA004094	\$557.00 COMMUTED		
2	D.L. SUSPENDED	2010TRT040922	\$62.00 COMMUTED		
3	THEFT OF PROPERTY 3 <sup>RD</sup>	2011CRA006721A	\$511.00 COMMUTED		
4	NO D.L.	2011TRT019935	\$229.00 COMMUTED		
5	THEFT OF PROPERTY 3 <sup>RD</sup>	2012CRA003095	\$357.00 COMMUTED		
6	IMP TAIL LIGHT	2012TRT003265	\$25.00 COMMUTED		
7	D.L. SUSPENDED	2012TRT009302	\$230.00 COMMUTED		
8	NO INSURANCE	2012TRT009368	\$205.00 COMMUTED		
9	D.L. SUSPENDED	2012TRT061175	\$280.00 COMMUTED		
10	NO INSURANCE	2012TRT061172	\$255.00 COMMUTED		
11	IMP TAIL LIGHT	2012TRT061182	\$25.00 COMMUED		
12	<i>3A</i>				
13				<i>\$ 2736.00 or 54 days</i>	
14					
15	<i>593-1956</i>				

*4110-41198*

**DEFENDANT  
COPY**

MANDATORY TIME RELEASE DATE: \_\_\_\_\_  
 COMMUTED TIME RELEASE DATE: \_\_\_\_\_

THIS REPORT CREATED:  
 8/15/2013 1:08 PM  
 REVISION #: 2

TRANSCRIPT PREPARED BY: ATE #014

**MONTGOMERY MUNICIPAL COURT - STATE OF ALABAMA**

BOOKING DATE & TIME: 8/14/2013 2:22 PM BOOKING #:

NAME: MARKIS A WATTS

RACE: B SEX: M

DOB: [REDACTED] SSN: [REDACTED]  
 ADDRESS: 6948 LAKEVIEW DRIVE MONTGOMERY, AL 36107

	CHARGE DESCRIPTION	CASE #	COURT DISPOSITION OF CASE
1	VIOLATION OF LICENSE TO CARRY PISTOL	12CRA004094	SERVING COMMUTED TIME
2	DRIVING WHILE SUSPENDED	10TRT040923	SERVING COMMUTED TIME
3	THEFT OF PROPERTY 3 <sup>RD</sup>	11CRA006721A	SERVING COMMUTED TIME
4	NO DRIVERS LICENSE	11TRT019935	SERVING COMMUTED TIME
5	THEFT OF PROPERTY 3 <sup>RD</sup>	12CRA005095	SERVING COMMUTED TIME
6	IMPROPER TAILLIGHTS	12TRT003265	SERVING COMMUTED TIME
7	DRIVING WHILE SUSPENDED	12TRT009362	SERVING COMMUTED TIME
8	NO INSURANCE	12TRT009363	SERVING COMMUTED TIME
9	DRIVING WHILE SUSPENDED	12TRT061175	SERVING COMMUTED TIME
10	NO INSURANCE	12TRT061178	SERVING COMMUTED TIME
11	IMPROPER TAILLIGHTS	12TRT061182	SERVING COMMUTED TIME
12	VIOLATION OF LICENSE TO CARRY PISTOL	12CRA005840	\$857.00 DUE 12/30/2013
13	SPEEDING	12TRT107179	\$180.00 DUE 12/30/2013
14	NO SEATBELT	13TRT001914	\$41.00 DUE 12/30/2013
15	RUNNING STOP SIGN	13TRT001915	\$180.00 DUE 12/30/2013
16	DRIVING WHILE SUSPENDED	13TRT001917	\$280.00 DUE 12/30/2013
17	<i>Wesley here today &amp; tomorrow</i>		
18	<i>Can be released with</i>		
19	<i>\$1,800.00</i>		

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