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**IN THE COURT OF APPEALS  
STATE OF GEORGIA**

**CAMILLE S. HARRELL,** )  
 )  
 **Appellant,** )  
 )  
 **v.** )  
 )  
 **SENTINEL OFFENDER SERVICES,** )  
 **LLC, and HOUSTON COUNTY,** )  
 **GEORGIA,** )  
 )  
 **Appellees.** )

**Appeal No. A09A0393**

**REPLY BRIEF OF PLAINTIFF/APPELLANT**

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extract a steady stream of unnecessary and unearned “supervision fees” for Sentinel Offender Services (“Sentinel”), a private probation company paid on a fee for service basis.<sup>1</sup> Every step in Houston County’s traffic court procedures was constitutionally tainted and apparently remains so. This taint was egregious, systemic and invariably worked to the financial benefit of the County and Sentinel.

## **II. Argument**

When Appellant appeared in traffic court on January 7, 2005, she did not have counsel. Her intent was to plead not guilty to the speeding charge. There she was confronted with a series of unconstitutional practices calculated to discourage the exercise of the right to counsel and trial by jury. They worked. She paid her fine and based on what Judge Richardson said, she believed that payment

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<sup>1</sup> Supervision fees were the sole source of revenue for Sentinel; Sentinel was not a line item in the Houston County budget. Under the Sentinel contract, the Court was obligated to impose a \$25 “supervision fee” in connection with every suspended sentence. (R-1 at 879, 899, 914, 953-958) Since Judge Richardson imposed a suspended sentence with every traffic fine, this assured that \$25 would go into Sentinel’s coffers for every guilty plea entered at arraignment.

automatically terminated her suspended sentence. (R-1 at 916-917) These unconstitutional practices – administered by Judge Richardson for the County – were the “moving force” behind Appellant’s guilty plea, fine, suspended sentence, unlawful arrest and three days of detention in jail.

1. Mass Arraignment – The County refers to Judge Richardson’s “opening dialogue” in traffic court as though it supports rather than undermines their position.<sup>2</sup> That “dialogue” was just the first step in an “en masse arraignment” procedure ruled unconstitutional in Georgia in 1991.<sup>3</sup> (R-1 at 919) Judge Richardson admittedly did not call the calendar before his announcement to those assembled in his courtroom. (R-1 at 910-911, 919-920) No one knew who was in the courtroom when this explanation of rights was given, much less whether they heard or understood the explanation.<sup>4</sup> This evidence is strongly indicative of

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<sup>2</sup> Brief of Appellees, p.5, note 5.

<sup>3</sup> Washington v. City of Atlanta, 201 Ga.App. 876, 438 S.E.2d 624 (1991).

<sup>4</sup> Judge Richardson routinely told traffic court defendants to discuss the entry of the waiver of rights form with the attorney prosecuting them:

Houston County's conscious disregard for the constitutional rights of traffic court defendants.

2. Punitive Double Bond for Assertion of Right to Trial by Jury – When Appellant indicated her intent to plead not guilty, she was advised that the trial would be scheduled for another date and that she would have to post a cash bond in twice the amount of the anticipated fine before leaving the courthouse. (R-1 at 881) This requirement pressured Appellant into changing her mind. (R-1 at 108-116) This was Judge Richardson's practice in every case. It is flagrantly illegal and unconstitutional.<sup>5</sup>

First, under O.C.G.A. § 40-13-53(a) and O.C.G.A. § 17-6-11(a), no cash bond is required to assure the court appearance of persons like Appellant. The display of a Georgia driver's license is sufficient. Second, even if Judge

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Q: "Now, as far as the explanation of this [waiver] form is concerned, I thought you previously indicated that the solicitor would be the person that might review the form with the defendant.

A: Yes, sir." (R-1 at 917)

<sup>5</sup> Judge Richardson has since abandoned this practice. (R-1 at 886)

Richardson had the authority to impose a cash bond on traffic court defendants, he could not do so solely because they entered not guilty pleas. At a minimum, he had to consider factors set forth in O.C.G.A. § 17-6-11. These are constitutional requirements under the Eighth Amendment as well. See Pullin v. Dorsey, 271 Ga. 882, 525 S.E.2d 87 (2000). Judge Richardson ignored them in traffic court.

Indeed, he had no factual basis for imposing cash bond against Appellant in any amount. After all, she appeared on January 7, 2005, as she was required to do. She was not a flight risk. Judge Richardson's double bond policy was arguably coercive in nature and thus raises a triable jury issue under section 1983.<sup>6</sup> To compound this constitutional affront, Judge Richardson applied this policy that traffic court defendants were unrepresented in violation of Barnes v. State, 275 Ga.499, 570 S.E.2d 277 (2002).

Even worse, the double bond policy was applied without any advance notice to traffic court defendants (R-1 at 886-891) amidst an otherwise inconsistent array of fine payment practices. If a traffic court defendant wanted to avoid a court

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<sup>6</sup>Judge Richardson did not issue arrest warrants for traffic court defendants who failed to appear for arraignment. (R-1 at 883-884)

appearance, the State Court Clerk accepted fine payment by money order, certified check or by credit card online. (R-1 at 892-893) In that case, Sentinel would get no “supervision fee.” However, if a traffic court defendant appeared at arraignment, he could pay a fine with a certified check or a money order but not a credit card. (R-1 at 893-894) Under Judge Richardson’s suspended sentence practice, all fines had to be paid directly to Sentinel guarantying at least a \$25 supervision fee. (R-1 at 894-895)

For those unrepresented few inclined to plead not guilty, Judge Richardson had a surprise. They would suddenly have to come up with substantially more money to go to trial than to plead guilty. They would also have to face the prospect of perhaps sitting in jail until bond could be posted. (R-1 at 889-890) Most of those shy of the necessary cash would give up as Appellant did. Effective defense counsel could have opposed this unconstitutional pressure tactic.

3. Unconstitutional Waiver of Counsel and Other Trial Related Rights – The County cites Odum v. State, 255 Ga.App. 70, 564 S.E.2d 490 (2002) for the proposition that the County’s “boilerplate” waiver form was valid. This reliance is incorrect for two reasons.

First, unlike Appellant in this case, the traffic court defendant in Odum had an attorney when he signed the waiver of rights form. He was convicted of speeding in a bench trial. On appeal, he argued that the jury trial waiver was invalid. On the facts in Odum, this Court found the waiver form to be sufficient evidence that a represented defendant “personally, voluntarily, knowingly and intelligently participated in the decision to waive a jury trial . . . .” Id. 225 Ga.App. at 71, 564 S.E.2d at 493.

Second, the County ignores decisions of this Court that destroy its waiver argument, most notably Barnes v. State, 261 Ga.App. 112, 581 S.E.2d 727 (2003), an opinion handed down on remand from the Georgia Supreme Court<sup>7</sup> in light of Alabama v. Shelton, 535 U.S. 654 (2002). Under those decisions, Appellant was entitled to counsel – private or appointed – to defend her against the speeding charge. The only evidence of waiver in Barnes was a signed “boilerplate” waiver form that did not explain the hazards of “proceeding without representation.” Barnes, 261 Ga.App. at 114, 581 S.E.2d at 729. Subsequently, this Court added to that list the necessity of warning about the “dangers of self representation.” Merritt

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<sup>7</sup> See Barnes v. State, 275 Ga.499, 570 S.E.2d 277 (2002).

v. State, 261 Ga.App. 597, 598, 583 S.E.2d 283, 285 (2003). Based on Barnes and Merritt, the record in this case shows unequivocally that Appellant did not waive her right to counsel or any other trial related constitutional rights. A jury could infer that the County in conjunction with Sentinel knowingly, willfully and continuously violated Appellants' constitutional rights. These issues are triable against the County and Sentinel under section 1983.

4. Court Must Advise Appellant Concerning Waiver of Rights — The explanation of constitutional rights must come from the Court as an impartial source, not the Solicitor as occurred in this case. (R-1 at 905, 917-918) In Pinkerton v. State, 262 Ga.App. 858, 586 S.E.2d 743 (2003), this Court addressed the practice of sending an unrepresented misdemeanor defendant to plea bargain with the Solicitor. After plea negotiations broke down, the Solicitor tried to introduce certain incriminating statements against the defendant at trial. Defendant was represented at that point and successfully excluded the statements on the ground that the waiver of counsel was invalid. This Court upheld the ruling of the trial court, observing that to establish a valid waiver, “the court must do more than simply inform the defendant of his right to counsel; the court must give the defendant sufficient information and guidance for him to make a voluntary,

knowing, and intelligent decision about whether to proceed pro se. . . . The accused should understand, for example, the nature of the charges against him, any statutory lesser included offenses, the range of possible punishments for the charges, possible defenses, mitigating circumstances, and any other facts necessary for a broad understanding of the matter.” 262 Ga.App. at 860, 586 S.E.2 at 745.

Pinkerton is directly on point here. A trial judge cannot advise an unrepresented defendant to discuss waiver of his trial rights or answer questions about the waiver form with the attorney trying to prosecute him. Note that in this case Appellant’s “boilerplate” waiver form was not even signed by Judge Richardson, much less discussed with Appellant. (R-1 at 905, 917-918) Not only does Judge Richardson’s abdication of responsibility violate the Constitution, it was also arguably unethical for the Solicitor to participate in the practice.<sup>8</sup>

5. Supervision Fee Violates Connally v. Georgia – Under its contract with Sentinel, the State Court of Houston County agreed that “each suspended sentence court order shall provide for a supervision fee of \$25.00 per month, for each month or partial month of the suspended sentence period.” (R-1 at 934, 953-

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<sup>8</sup> See Georgia Bar Rule 4-102, RPC 4.2 and 4.3.

958) Accordingly, Judge Richardson, a signatory to this contract, established a blanket practice of placing all traffic court defendants who were fined under a twelve months suspended sentence. (R-1 at 914) He did so even when a defendant could pay the fine “within 20 minutes” following the entry of a guilty plea.(R-1 at 934) As previously stated, the practice guaranteed Sentinel at least \$25 per guilty plea because defendants were not allowed to leave the courthouse to get the money to pay a fine without first being “processed” by Sentinel. (R-1 at 934-937) Interestingly, the only exception was when the bailiff knew a “local” and showed them “leniency.” (R-1 at 895-896) A traffic court defendant with counsel could have opposed this discriminatory practice.

This practice is subject to the conflict of interest prohibition announced in Connally v. Georgia, 429 U.S. 245 (1977). As a private probation service, Sentinel’s only means of compensation are court imposed supervision fees. Like the unsalaried judge in Connally, Sentinel works on a fee for service basis. By imposing a mandatory \$25 supervision fee, Judge Richardson pays a debt that Houston County taxpayers would otherwise have to incur and did incur in the 1990s before privatization. (R-1 at 876-878) If Sentinel does not get enough revenue, it can cancel the year-to-year contract. (R-1 at 953-958) Acting through

Judge Richardson, the County thus has a strong incentive to impose suspended sentences even when a fine can be paid immediately. Sentinel gets paid \$25 to do what the State Court Clerk does for free. With obvious calculation, this practice shifts a financial burden away from Houston County taxpayers on to unsuspecting and unrepresented traffic court defendants. No one speaks for them – a fact that Sentinel’s business model grasps and astutely exploits. Best of all, when someone doesn’t pay a fine or supervision fee, Sentinel gets the use of the State’s arrest powers to collect the debt, a privilege that no other private business in Georgia enjoys.

6. Arrest Warrant Facially Invalid – In attempting to repackage the arrest warrant flaws, the County retreats to the definition of “affidavit,” hoping somehow to demonstrate compliance with the “oath or affirmation” requirement of the Fourth Amendment.<sup>9</sup> The County concedes, as it must, that the arrest warrant

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<sup>9</sup> An “oath or affirmation” is an absolute prerequisite to the issuance of either an arrest or search warrant. Similarly, for an affidavit to be valid, the affiant must be placed under oath in the presence of a notary who certifies that the statement was under oath. See Anderson v. Hardoman, 286 Ga.App. 499, 649 S.E.2d 611 (2007).

application has to be sworn. On its face, however, the application in this case does not contain any recitation that it was under oath. Interestingly, Judge Turner's summary judgment affidavit – which contains such a recitation – does not state that he placed the Sentinel applicant under oath. (R-1 at 398-400) Indeed, his affidavit does not contradict Judge Richardson's deposition testimony, which was (a) Sentinel's routine practice was to deliver a "stack" of arrest warrant applications for signature and (b) he did not put Sentinel applicants under oath<sup>10</sup> as was the custom when he issued arrest warrants under other circumstances. (R-1 at 880-881, 932) Sentinel's arrest warrant application form is a standard pre-printed form. (R-1 at 951-952) Judge Richardson signed them as presented and, according to Judge Richardson, Judge Turner's practice was the same as his. (R-1 at 880-881, 933)

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<sup>10</sup> While Judge Richardson used the term "affidavit" early in his deposition (R-1 at 880), he clarified his meaning later. For example, he agreed that the notary only attested to the validity of the signature on the application for Appellant's arrest. He also agreed that there was no recitation that the notary placed the applicant under oath. (R-1 at 931-933)

Wilson v. State, 292 Ga.App. 540, 664 S.E.2d 890 (2008) removes any doubt about the validity of Appellant's argument here. This Court rejected a Sentinel arrest warrant and affidavit submitted **in July 2005** in the State Court of Houston County. This is the very same month that Appellant's arrest warrant was signed. The issue arose pursuant to Wilson's motion to terminate probation and oppose resentencing. The critical flaw in the Sentinel affidavit in support of the arrest warrant, which was signed by Judge Richardson, was the absence of "language purporting to be an oath or swearing by the affiant or attestation by the notary." 292 Ga.App. at 543, 664 S.E.2d at 893. "In the absence of a valid jurat, a writing in the form of an affidavit has no force, no validity, amounts to nothing, when standing alone, or when construed in connection with other evidence." Id. In Appellant's case and apparently as a matter of routine practice in Houston County, neither Judge Richardson nor Sentinel took this most basic Fourth Amendment requirement.

Worse, Sentinel does not even check its payment records against those maintained by the State Court Clerk even though Sentinel has ready access to those records and is contractually required to "reconcile its records with the State Court Clerk's office "on a monthly basis." (R-1 at 953-958) This is a simple safeguard,

which among other things, would provide some assurance that people are not arrested by mistake.<sup>11</sup> The State Court of Houston County is ultimately responsible for supervising Sentinel's account reconciliation obligation as well as the warrant issuance procedure. As Judge Richardson admitted, he did neither.

7. Judge Richardson as Final Policymaker Under Section 1983 – The County's discussion of the final policymaker issue is puzzling. The County does not dispute that high-ranking subordinate officials in the County can become final policymakers for the purpose of section 1983 Monell liability. The Houston County traffic court practices are not only unconstitutional from start to finish; they have the force of law on behalf of the County because Judge Richardson, as a signatory to the Sentinel contract, had responsibility for administering and overseeing compliance. In short, Judge Richardson was Houston County for this

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<sup>11</sup> As a measure of just how lax Sentinel's practices were, note the facial errors in the application for Appellant's arrest. It erroneously recites that she had defaulted on payments of \$187 per month. It then recites that she owed a total of \$337 as of July 2005, which would be a mathematical impossibility if the previous sentence was correct. (R-1 at 951-952)

purpose. ~~Ned Sanders~~, Chair of the Houston County Board of Commissioners, signed the Sentinel contract (R-1 at 876, 953-958) but only because Judge Richardson lacked the authority in his capacity as judge to enter into it. Judge Richardson's authority derived entirely from the Houston County's power to enter into contracts. This evidence is sufficient to raise a triable question for the jury as to the County's Monell liability to Appellant under section 1983.

### III. Conclusion

The government is expected to follow the law. Here Appellant has developed detailed proof that in Houston County traffic court, the judge, the solicitor and Sentinel knowingly and willfully mock the requirements of the Constitution. The Appellant richly deserves a jury trial. She asks the Court to reverse the ruling below granting summary judgment to Houston County.

Respectfully submitted this 6<sup>th</sup> day of January, 2009.

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**CERTIFICATE OF SERVICE**

This is to certify that I have this day served a copy of the REPLY BRIEF OF APPELLANT by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to:

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