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5 **UNITED STATES DISTRICT COURT**  
6 **EASTERN DISTRICT OF CALIFORNIA**  
7

8 **GARY WILLIS,**

9 **Plaintiff**

10 **v.**

11 **JOSEPH MULLINS, et al.,**

12 **Defendants**

**CASE NO. 1:04-CV-6542 AWI BAM**

**ORDER RE: MOTION TO EXCLUDE  
DAMAGES AND MOTION FOR  
RECONSIDERATION**

**(Docs. 401, 403, and 404)**

13  
14 **I. History**

15 Gary Willis ("Plaintiff") was a registered occupant of the E-Z 8 Motel in Bakersfield, CA  
16 on March 27, 1996. Police received reports of heavy traffic from that room and were informed it  
17 was registered under Plaintiff's name. The Defendants are four law enforcement officers from  
18 different departments who were sent to investigate: Bakersfield Police Officer Joseph Mullins,  
19 Bakersfield Police Officer Silvius, Kern County Deputy Sheriff Hood, and California State Parole  
20 Officer Diane Mora.<sup>1</sup> Defendant Mullins consulted a list of parolees generated by the California  
21 Department of Corrections and distributed to local police departments on a roughly monthly basis  
22 ("Parole Roster"). He presented the Parole Roster to Defendant Mora; she confirmed the Parole  
23 Roster indicated that Plaintiff was on parole (based on 1987 convictions and a 1994 parole  
24 revocation) and subject to search. After announcing their presence and entering the motel room,  
25 Defendants found two individuals inside, Plaintiff and third party Kathleen Moye. Also visible  
26 were a knife, a syringe, and a briefcase. Defendants announced the commencement of a parole  
27

28 <sup>1</sup> Defendants Mullins and Silvius are employees of the City of Bakersfield. They are jointly represented by counsel. Defendant Hood and Defendant Mora each have separate counsel.

1 search. Plaintiff informed Defendant Mullins he was no longer on parole and provided his parole  
2 discharge card. Defendant Mora left to seek telephone confirmation of Plaintiff's parole status. In  
3 fact, Plaintiff had been discharged from parole nine months prior. While the call was taking place,  
4 Defendant Mullins detained Plaintiff outside the motel room while Defendants Silvius and Hood  
5 talked with Ms. Moyer inside the room. Ms. Moyer admitted to recently using methamphetamine,  
6 stated that she put a speed pipe in the briefcase, and consented to search of the briefcase.  
7 Defendant Mullins brought Plaintiff back into the room. Plaintiff objected to the search of the  
8 briefcase. Defendants Mullins, Silvius, and Hood opened the briefcase and found  
9 methamphetamine, speed pipes, syringes, set of scales, small plastic bags, spoons, and pay-owe  
10 sheets. At some point, Defendant Mora returned and informed Defendant Mullins that Plaintiff  
11 was not on parole. Defendants arrested Plaintiff and Ms. Moyer.

12 Plaintiff made a motion to suppress evidence, which the California trial court denied.  
13 Based on evidence found within the motel room, Plaintiff was convicted of possession of  
14 methamphetamine for sale (Cal. Health & Safety Code § 11378) and possession of narcotics  
15 paraphernalia (Cal. Health & Safety Code § 11364). He ultimately served six years in state prison.  
16 On appeal, the Fifth District Court of Appeal found the entry unconstitutional and the good faith  
17 exception to the exclusionary rule inapplicable, but nonetheless affirmed the denial of suppression  
18 based on the finding that the officers had sufficient probable cause to search the briefcase based on  
19 Ms. Moyer's statements to Defendant Silvius. The Fifth District's rationale was that the "freeze"  
20 in search was a reasonable response to the uncertainty concerning Plaintiff's parole status. People  
21 v. Willis, 71 Cal. App. 4th 530, 541 (Cal. Ct. App. 1999). On appeal, the attorney general  
22 conceded that the Fifth District's rationale for denying the motion to suppress was erroneous.  
23 People v. Willis, 28 Cal. 4th 22, 25 (Cal. 2002). The California Supreme Court overturned  
24 Plaintiff's conviction on June 3, 2002, finding that evidence from the search must be suppressed as  
25 the good faith exception did not apply. People v. Willis, 28 Cal. 4th 22, 38 (Cal. 2002). Plaintiff  
26 was released on August 31, 2002.

27 Thereafter, Plaintiff filed a civil suit based on 42 U.S.C. § 1983. The procedural history of  
28 this case is elaborate. Before the trial, this court ordered summary adjudication on the following

1 issues:

2 1. Defendants' initial entry into the motel room violated Plaintiff's Fourth  
3 Amendment rights. Qualified immunity can not be determined at this time.  
Summary judgment on the unconstitutional entry Section 1983 claim is DENIED.

4 2. Defendants' seizure of Plaintiff while determining his parole status violated  
5 Plaintiff's Fourth Amendment rights. Qualified immunity applies. Summary  
6 judgment on the unconstitutional seizure Section 1983 claim is GRANTED in favor  
of Defendants.

7 3. The search of the briefcase based on Ms. Moye's consent did not violate  
8 Plaintiff's constitutional rights. Summary judgment on the unconstitutional search  
Section 1983 claim is GRANTED in favor of Defendants.

9 4. Plaintiff's arrest based on the evidence found in the briefcase did not violate  
10 Plaintiff's constitutional rights. Summary judgment on the unconstitutional arrest  
Section 1983 claim is GRANTED in favor of Defendants.

11 5. Defendants actions in supporting Plaintiff's criminal prosecution do not  
12 constitute malicious prosecution. Summary judgment on the malicious prosecution  
Section 1983 claim is GRANTED in favor of Defendants.

13 Doc. 260, August 16, 2011 Order, 21:25-22:11. The case proceeded to trial on the first issue only  
14 and the jury found that each of the Defendants had an objectively reasonable belief that the  
15 Plaintiff was on parole when they entered the motel room. Doc. 362. Qualified immunity was  
16 granted to Defendants on that issue and judgment was entered in their favor. Docs. 360 and 364.

17 Plaintiff filed an appeal with the Ninth Circuit. Doc. 365. The Ninth Circuit affirmed in  
18 part and reversed in part the summary adjudications granted by this court, finding that summary  
19 judgment should not have been granted regarding the search of the briefcase. Doc. 391, Ninth  
20 Circuit Memorandum. After remand, the parties and Magistrate Judge Barbara McAuliffe held a  
21 status conference in which it was determined that additional motions would further the resolution  
22 of this case. Doc. 400.

23 Defendants Mullins and Silvius seek summary adjudication "precluding the Plaintiff from  
24 seeking to recover damages as a result of his incarceration at the time of trial." Doc. 401,  
25 Defendants' Motion, 1:22-23. Plaintiff seeks summary adjudication for "damages for plaintiff's  
26 six years of imprisonment following his conviction which was reversed by the California Supreme  
27 Court." Doc. 403, Plaintiff's Brief, 1:22-23. The two are essentially cross motions on the same  
28 issue.

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2 **II. Discussion**

3 Defendants Mullins and Silvius assert that this court has already ruled that Plaintiff may  
4 not recover damages for the time he was incarcerated. Plaintiff asserts that the Ninth Circuit’s  
5 recent order permits recovery of those damages. In addition to the rulings mentioned above that  
6 discussed the five potential bases for liability in this case, this court also made rulings as to what  
7 damages could be recovered as a consequence. Specifically, this court found that the exclusionary  
8 rule only applied in the criminal context and did not translate to Section 1983 cases, following  
9 Second Circuit precedent in Townes v. City of New York, 176 F.3d 138 (2nd Cir. 1999); thus,  
10 “For the purposes of Section 1983, Plaintiff may not recover for damages arising from the arrest as  
11 he did not suffer a constitutional violation in being arrested. Causation for damages cut off at  
12 Plaintiff’s arrest, prior to the prosecutor making any decision about bringing charges.” Doc. 332,  
13 April 24, 2014 Order, 5:12-15. Relevant to the issue raised by the parties, this court’s prior  
14 conclusion rests on two parts: Plaintiff’s arrest did not violate his constitutional rights and the  
15 exclusionary rule does not apply to Section 1983 cases.

16 On review, the Ninth Circuit explicitly upheld the jury verdict and the ruling on malicious  
17 prosecution while reversing the ruling on the search of the briefcase. Doc. 391, Ninth Circuit  
18 Memorandum. Plaintiff argues that the Ninth Circuit also reversed this court’s ruling on the  
19 validity of Plaintiff’s arrest, stating that the Ninth Circuit “held that Kathleen Moye’s purported  
20 content to search the briefcase would not provide probable cause for plaintiff’s arrest, and does not  
21 operate to cut off liability for the damages resulting from plaintiff’s seizure, including the six year  
22 term of his imprisonment.” Doc. 403, Plaintiff’s Brief, 4:3-7. Plaintiff’s interpretation of the  
23 Ninth Circuit opinion is overbroad. The panel did not find a lack of probable cause for arrest;  
24 rather it found that “The district court erred by granting summary judgment in favor of defendants  
25 on Gary Willis’ Fourth Amendment claim for the warrantless search of his briefcase....a  
26 reasonable jury could conclude that Kathleen Moye’s consent was ineffective, and that  
27 defendants’ subsequent search of Willis’ briefcase violated clearly established Fourth Amendment  
28 law.” Doc. 391, Ninth Circuit Memorandum, at 1-2. The more limited holding only addresses the

1 propriety of the search, not the arrest.

2 As part of his appeal, Plaintiff listed as an issue presented for review, “7. Did the court err  
3 in ruling that plaintiff was restricted to proving compensatory damages for the actual physical  
4 entry into his motel room and that plaintiff could not prove compensatory damages proximately  
5 caused by the illegal entry, which included the six years he spent in prison?” Ninth Circuit Case  
6 No. 14-16071, Doc. 21-1, Plaintiff’s Opening Brief, at 4. In response, Defendants argued both  
7 that this court’s ruling was correct on the merits and that the issue was moot given the jury verdict.  
8 Ninth Circuit Case No. 14-16071, Doc. 38-1, Defendant Mora’s Answering Brief, at 44. In its  
9 ruling, the Ninth Circuit stated that “7. Because we affirm the jury’s verdict that the defendants are  
10 not liable for the initial unlawful entry into the motel room, Willis’ argument that the district court  
11 erred in excluding evidence regarding the extent of damages for that entry is moot.” Doc. 391,  
12 Ninth Circuit Order, at 6. Thus, the Ninth Circuit has neither overturned nor affirmed this court’s  
13 earlier ruling on the issue.

14 Given this history, the cross-motions by the parties are more properly considered a request  
15 for reconsideration by Plaintiff. “Reconsideration is appropriate if the district court (1) is  
16 presented with newly discovered evidence, (2) committed clear error or the initial decision was  
17 manifestly unjust, or (3) if there is an intervening change in controlling law. There may also be  
18 other, highly unusual, circumstances warranting reconsideration.” School Dist. No. 1J Multnomah  
19 County v. ACandS, Inc., 5 F.3d 1255, 1263 (9th Cir. 1993), citations omitted. Plaintiff do not  
20 argue that there is any newly discovered evidence or intervening change in controlling law.  
21 Instead, Plaintiff argues that the prior rulings were in error.

22 Thus, it is necessary to recapitulate the reasoning of those rulings. First, Plaintiff was  
23 validly arrested based on the evidence found in the briefcase. “The Fourth Amendment requires  
24 that a law enforcement officer have ‘probable cause’ to arrest an individual without a warrant. The  
25 test for whether probable cause exists is whether at the moment of arrest the facts and  
26 circumstances within the knowledge of the arresting officers and of which they had reasonably  
27 trustworthy information were sufficient to warrant a prudent man in believing that the petitioner  
28 had committed or was committing an offense.” United States v. Jensen, 425 F.3d 698, 704 (9th

1 Cir. 2005), citations and quotations omitted. “To prevail on his § 1983 claim for false arrest and  
2 imprisonment, [plaintiff] would have to demonstrate that there was no probable cause to arrest  
3 him.” Cabrera v. City of Huntington Park, 159 F.3d 374, 380 (9th Cir. 1998). In determining what  
4 constitutes sufficient probable cause for arrest, an officer may consider inadmissible information;  
5 “nothing within the fruit-of-the-poisonous-tree doctrine suggests that an officer must ignore facts  
6 that would give him probable cause to arrest a person merely because those facts were procured  
7 through an unlawful search. Indeed, as a general matter, probable cause determinations depend on  
8 the substance of the information known to the officer, not whether that information would be  
9 admissible in court.” Lingo v. City of Salem, 2016 U.S. App. LEXIS 14535, \*14 (9th Cir. Aug. 8,  
10 2016). In this case, it is undisputed that Defendants Mullins and Silvius opened a briefcase  
11 belonging to Plaintiff and used by both Plaintiff and Ms. Moye to find “a hypodermic syringe  
12 containing a small amount of brown fluid that Officer Mullins believed contained  
13 methamphetamine, a blue plastic container which contained about five grams of  
14 methamphetamine, two hypodermic syringes, a set of electronic gram scales, narcotic packaging  
15 consisting of several small pieces of clear plastic and several Ziplock baggies, two glass  
16 methamphetamine smoking pipes, several spoons, and a handwritten pay-and-owe sheet.” Doc.  
17 172, September 25, 2007 Order, 24:12-17. Possession of methamphetamine is a violation of Cal.  
18 Health & Saf. Code § 11377(a). Possession of drug paraphernalia is a violation of Cal. Health &  
19 Saf. Code § 11364. Possession of a controlled substance for the purpose of sale is a violation of  
20 Cal. Health & Saf. Code § 11378. Notwithstanding the legality or illegality of the search, the  
21 contents of the briefcase and the surrounding circumstances constituted sufficient probable cause  
22 for arresting Plaintiff.

23         The second part of the prior ruling is that the exclusionary rule does not apply in the  
24 Section 1983 context and thus damages for prosecution and incarceration are cut off due to  
25 Plaintiff’s valid arrest. Many years ago, the Second Circuit examined the underlying purposes of  
26 the exclusionary rule and fruit of the poisonous tree doctrine to conclude that “In a § 1983 suit,  
27 constitutionally invalid police conduct that by itself causes little or no harm is assessed on  
28 ordinary principles of tort causation and entails little or nominal damages. The fruit of the

1 poisonous tree doctrine is not available to elongate the chain of causation.” Townes v. City of  
2 N.Y., 176 F.3d 138, 146 (2nd Cir. 1999). The second part of Townes finds that damages are  
3 closely tied to the specific nature of the bad conduct and violation of rights at issue:  
4 “constitutional tort liability under § 1983 is limited to the kind of injury that the constitutional  
5 right at issue was designed to prevent. Victims of unreasonable searches or seizures may recover  
6 damages directly related to the invasion of their privacy--including (where appropriate) damages  
7 for physical injury, property damage, injury to reputation, etc.; but such victims cannot be  
8 compensated for injuries that result from the discovery of incriminating evidence and consequent  
9 criminal prosecution.” Townes v. City of N.Y., 176 F.3d 138, 148 (2nd Cir. 1999). Together,  
10 these rules work to cut up police-civilian interactions into discrete links that must be analyzed  
11 largely independent of what came before or after; damages are tied tightly to the specific right  
12 associated with each link and tend not to expand into other stages of the interactions. In this case,  
13 Plaintiff’s damages are tied to an allegation of an invalid search and so do not encompass the time  
14 he spent incarcerated. To recover for that injury, Plaintiff would have to establish liability for  
15 invalid arrest, malicious prosecution, or some other violation involving seizure of a person.

16 Plaintiff’s central argument is a rejection of the rule propounded in Townes. Plaintiff  
17 explicitly asserts that lack of probable cause for the search of the briefcase should permit Plaintiff  
18 to seek damages for his subsequent arrest and incarceration. Doc. 403, Plaintiff’s Brief, 5:13-15.  
19 Plaintiff argues that Townes “has no bearing and is inapposite, and it is an unreasoned, moralizing  
20 outlier, that has been followed by only a few appellate courts.” Doc. 412, Plaintiff’s Opposition,  
21 8:10-12. For support, Plaintiff cites Ninth Circuit precedent stating that “A plaintiff who  
22 establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is  
23 entitled to recover compensatory damages for all injuries suffered as a consequence of those  
24 deprivations. Such damages are calculated in most circumstances according to general tort law  
25 principles applicable to the types of deprivations proved.” Borunda v. Richmond, 885 F.2d 1384,  
26 1389 (9th Cir. 1988). While this language is expansive, Borunda did not deal with the  
27 exclusionary rule or with damages that would properly be considered a consequence of a separate  
28 bad act. In that case, police officers arrested plaintiffs without probable cause and interfered with

1 the prosecutor's judgment on whether to bring charges. See Borunda v. Richmond, 885 F.2d 1384,  
2 1389 (9th Cir. 1988). As a result, plaintiffs' attorney's fees for their criminal defenses were a  
3 direct consequence of the specific violation of rights and could be recovered as damages.

4 The recent case law that has dealt directly with this issue has uniformly supported the  
5 conclusion reached in Townes. Of special note, the Ninth Circuit recently reviewed the extant  
6 case law and found "federal courts of appeals have widely held that the exclusionary rule does not  
7 apply in § 1983 cases. We agree, and we join those courts now." Lingo v. City of Salem, 2016  
8 U.S. App. LEXIS 14535, \*10 (9th Cir. Aug. 8, 2016). Similarly, recent decisions of the district  
9 courts of the Ninth Circuit have recognized that courts nationwide have reached a general  
10 consensus on this issue. See, e.g. Moreno v. Idaho, 2017 U.S. Dist. LEXIS 49910, \*19 (D. Idaho  
11 Mar. 31, 2017), Ramirez v. United States, 93 F. Supp. 3d 1207, 1230 (W.D. Wash. 2015), Fowler  
12 v. Cal. Highway Patrol, 2014 U.S. Dist. LEXIS 58107, \*35 (N.D. Cal. Apr. 25, 2014), Orellana v.  
13 Cty. of L.A., 2013 U.S. Dist. LEXIS 198186, \*15 (C.D. Cal. Apr. 29, 2013). Absent contrary  
14 direction from higher courts, the non-applicability of the exclusionary rule to Section 1983 is  
15 considered to be settled law.

16 Another objection Plaintiff raises concerns the assertion that Defendant Mullins made  
17 misrepresentations and omissions in his police report after the fact, affecting the decision by the  
18 District Attorney's office to prosecute Plaintiff. Doc. 403, Plaintiff's Brief, 7:23-8:1. Insofar as  
19 Plaintiff is arguing that this would allow him to recover damages for his incarceration based on the  
20 alleged invalid search of the briefcase, Plaintiff is mistaken. The chain of causation from the  
21 search had already been broken by the valid arrest under the logic of Townes. Subsequent police  
22 misrepresentations to the prosecutor do not change the initial validity of an arrest. See Roberson v.  
23 City of Los Angeles, 220 Fed. Appx. 522, 523 (9th Cir. Jan. 30, 2007) ("Even viewing the record  
24 in the light most favorable to plaintiff, the officers had probable cause to arrest him because he  
25 was observed accepting the proceeds of a drug transaction. Thus, plaintiff suffered no Fourth  
26 Amendment violation. That Officer Beard may have deliberately reported false information as to  
27 the exact sequence of events is of no consequence"), citations omitted.

28 Allegations of misrepresentations or omissions in the police report that affect the filing of a

1 criminal complaint sound in malicious prosecution. However, the Ninth Circuit has explicitly  
2 affirmed the grant of summary adjudication in favor of Defendants on that cause of action: “To  
3 prevail on this claim, Willis must show not only that his underlying criminal conviction was  
4 overturned, but also that the basis on which the conviction was overturned reflects Willis’  
5 innocence of the underlying charges....Because the basis of the California Supreme Court’s  
6 decision did not reflect Willis’ innocence of the charges, Willis cannot prevail on his malicious  
7 prosecution claim.” Doc. 391, Ninth Circuit Memorandum, at 3.

8 Plaintiff argues that apart from malicious prosecution, he “still has a direct § 1983 claim  
9 for violation of his Fourth Amendment rights not to be subject to an illegal search and seizure.”  
10 Doc. 416, Plaintiff’s Reply, 9:13-15. Plaintiff’s Fourth Amendment rights regarding entry, search,  
11 and arrest have already been discussed. Insofar as Plaintiff is referring to his right not to be held  
12 without probable cause during the pendency of his criminal case, Plaintiff has not made any  
13 explicit argument concerning that right. “[T]he Fourth Amendment requires a judicial  
14 determination of probable cause as a prerequisite to extended restraint of liberty following  
15 arrest....we do not imply that the accused is entitled to judicial oversight or review of the decision  
16 to prosecute.” Gerstein v. Pugh, 420 U.S. 103, 114 and 119 (1975). Plaintiff has not shown or  
17 explained how his Fourth Amendment rights have been violated in any other way. Plaintiff cites  
18 to other cases, but the constitutional violation they were dealing with was arrest without probable  
19 cause. See Smiddy v. Varney, 665 F.2d 261, 265 (9th Cir. 1981; O’Neal v. Johnson, 2017 WL  
20 416128, \*11 (E.D. Cal. Jan. 31, 2017). As such those cases are distinguishable as an invalid arrest  
21 and an invalid search give rise to different damages. “Victims of unreasonable searches or  
22 seizures may recover damages directly related to the invasion of their privacy...but such victims  
23 cannot be compensated for injuries that result from the discovery of incriminating evidence and  
24 consequent criminal prosecution.” Lingo v. City of Salem, No. 14-35344, 2016 U.S. App. LEXIS  
25 14535, \*15 (9th Cir. Aug. 8, 2016), quoting Hector v. Watt, 235 F.3d 154, 157 (3rd Cir. 2001).  
26 None of Plaintiff’s arguments provide sufficient reason to deviate from the conclusion that  
27 damages for incarceration may not be recovered in this action.

**III. Order**

Defendants' motion to exclude any claim for damages resulting from Plaintiff's incarceration is GRANTED.

Plaintiff's motion for reconsideration is DENIED.

IT IS SO ORDERED.

Dated: July 28, 2017

  
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SENIOR DISTRICT JUDGE

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