No. _____

In The
Supreme Court of the United States

_____ ∆ _____

SHERARD MARTIN,

Petitioner,

v.

DAVIS MARINEZ, et. al.

Respondents.

_____ ∆ _____

Petition for a Writ of Certiorari to the United States Court of Appeals, Seventh Circuit

_____ ∆ _____

PETITION FOR WRIT OF CERTIORARI

_____ ∆ _____

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QUESTION PRESENTED FOR REVIEW:

Whether a plaintiff whose fourth amendment rights have been violated may be automatically denied damages for subsequent incarceration, attorneys fees, or economic loss, merely because the police discover contraband as the result of the illegal stop?

PARTIES TO THE PROCEEDING

Petitioner is Sherard Martin, the plaintiff below. Respondents are Chicago police officers Davis Marinez and Sofia Gonzalez, as well as the City of Chicago.

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PETITION FOR WRIT OF CERTIORARI

Attorney Stephen Richards, on behalf of Petitioner, Sherard Martin, respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Seventh Circuit Appendix Doc. B. (App.3-36)

OPINIONS BELOW

The opinion of the United States Court of Appeals, Seventh Circuit is reported as *Martin v. Marinez*, 934 F.3d 594 (7th Cir. 2019) at App.3-36(Doc B). The memorandum opinion and order of the United States District Court for the Northern District of Illinois, Eastern Division is unreported at App.37-70 (Doc. C), but is available on Westlaw at 2017 WL 56633.

JURISDICTION

The Seventh Court of Appeals entered its opinion on August 12, 2019 at App.3-26 (Doc B). Rehearing and rehearing en banc was denied on September 13, 2019 at App.1-2 (Doc A). This court has jurisdiction under 28 U.S.C. Sec. 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitution, amend. IV provides:

The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

United States Constitution, amend. XIV provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, with-out due process of law; nor deny to any per-son within its jurisdiction the equal protection of the laws.

Section 1983 of Title 42 of the U.S. Code provides:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, or any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress * * * .

STATEMENT OF THE CASE

On the evening of May 24, 2013, Plaintiff Sherard Martin was driving in Chicago when Officers Davis Marinez and Sofia Gonzalez pulled him over. (App.5-Doc. B). According to Martin, he had not committed any traffic violations when the officers stopped him, although the officers claim they initiated the stop because Martin's tail and brake lights were not working. When Officer Gonzalez approached the car and asked Martin for his license and insurance, Martin explained that he did not have his driver's license because it had been "taken for a ticket." At that point

both officers asked Martin to step out of the car as the other defendants, Officers Armando Chagoya and Elvis Turcinovic, arrived on the scene. (App. 5, Doc B).

According to Martin, the officers forced him from the car, conducted a pat-down search, handcuffed him, and put him into a police car. At that point, they searched his car, where they recovered a 9 mm semiautomatic handgun with a defaced serial number, and a plastic baggie of crack cocaine. (App.5, 7-8 Doc B.).

Officers then took Martin into custody. At the police station, Officer Marinez learned that Martin had previously been convicted of first-degree murder and unlawful use of a weapon by a convicted felon. Ultimately Martin was transferred to Cook County Jail and charged with four Illinois felonies: (i) being an armed habitual criminal in violation of 720 ILCS § 5/24-1.7; (ii) being a felon in possession of a firearm in violation of 720 ILCS § 5/24-1.1; (iii) possessing a firearm with a defaced serial number in violation of 720 ILCS § 5/24-5(b); and possessing cocaine in violation of 720 ILCS § 570/402. He also received traffic citations under Chicago Municipal Code Section 9-76-050 (taillight operation) and 625 ILCS § 5/6-112 (outlining

requirement to carry a driver's license). (App.6 Doc. B,).

Martin spent sixty-five days—from May 24 through July 29, 2013—incarcerated in connection with the charges resulting from the traffic stop. On July 29th, a different court revoked Martin's bond when he was convicted in an unrelated criminal case. During the course of the criminal proceedings for the felony charges arising from the traffic stop, Martin filed a motion to suppress the evidence, which the trial court granted on November 7, 2013. The state then dismissed the charges against Martin through a nolle prosequi motion. (App.6-7, Doc B).

Martin filed suit in federal court under 42 U.S.C. § 1983 against all of the officers involved in the stop as well as the City of Chicago (on a respondeat superior theory of liability), seeking money damages for violations of his Fourth Amendment rights. Martin sought civil damages totaling $110,500: $1,000 per day of his 65-day incarceration and $45,500 in lost business income—calculated at $700 per day—from his automobile dealership. (App.7, Doc B).

Before trial, the defendants moved for partial summary judgment, arguing that even if the stop was unlawful, once the

officers saw the handgun and cocaine, they had probable cause for Martin's arrest, which limited Martin's damages to the short period between his stop and his arrest. The district court agreed, granting the defendants' motion for partial summary judgment and concluding that although Martin's § 1983 case could proceed as to the initial stop of his car and seizure of his person—before the defendants discovered the illegal gun and cocaine—he could not seek damages for conduct post-dating the discovery of contraband, including his 65-day incarceration. (App. 7-8, Doc B).

Martin's case proceeded to a jury trial, limited as described above, by the grant of partial summary judgment. At trial, the facts largely tracked those described above, with the same basic areas of conflicting testimony: (1) Martin testified that his tail and brake lights were both functioning when he was stopped; (2) he also testified that he handed Officer Gonzalez his traffic ticket when he was unable to produce his license; and (3) Martin maintained that the handgun was under the driver's seat, as opposed to on it and visible when he stepped out of the car as directed by Officers Gonzalez and Marinez. (App.8, Doc. B).

The district court instructed the jury to decide the following Fourth Amendment questions: (1) whether the officers "unlawfully seized" Martin without reasonable suspicion to support a traffic stop; (2) whether they falsely arrested him without probable cause; and (3) whether they unlawfully searched his person or car without probable cause. The court also instructed the jury that if they found that Martin proved his claims, they could not award him damages for any time spent in custody after officers found the handgun, and should limit their consideration to the period of detention beginning with his traffic stop and ending when they found the gun. The jury found in favor of Martin and against Officers Marinez and Gonzalez on the unlawful seizure claim and awarded him $1.00 in compensatory damages. On that same claim, they found in favor of Officers Chagoya and Turcinovic, and on the remaining claims for false arrest and unlawful search, they found against Martin and in favor of all four officers. (App.8-9 Doc B).

On appeal, the Seventh Circuit affirmed. The court noted that there is a "split of authority on the question of whether a defendant whose Fourth or Fifth Amendment

rights have been violated can recover damages for incarceration, legal defense fees, or emotional distress in a subsequent civil suit under § 1983." (App.16, Doc B). After discussion, the Seventh Circuit chose to follow the rationale of the anti-recovery cases in the Second, *Townes v. City of New York*, 176 F.3d 138, 148 (2d Cir. 1999) and Third Circuits, *Hector v. Watt*, 235 F.3d 154, 155–59 (3d Cir. 2000) and to reject the pro-recovery rationale of the Ninth, *Borunda v. Richmond*, 885 F.2d 1384 (9th Cir. 1988) and Tenth Circuits. *Train v. City of Albuquerque*, 629 F. Supp.2d 1243 (D.N.M. 2009). (App. A, 14-33). The court therefore concluded that Martin was not entitled to recover damages for his incarceration and economic loss and affirmed.

REASONS FOR GRANTING THE PETITION

In the decision below, the Seventh Circuit held that a plaintiff who is unlawfully stopped in violation of the Fourth Amendment may not recover damages for the foreseeable consequences of the stop --including subsequent incarceration, attorney's fees, and

lost income -- so long as, as a result of the stop, officers discover illegal contraband.

This decision warrants this Court's review for two reasons.

First, the decision conflicts with this Court's opinion in *Carey v. Piphus*, 435 U.S. 247, 254 (1978). As this Court is well aware, *Piphus* held that which held that while the "damages awards under section 1983 should be governed by the principle of compensation," as established by the common law of torts, 435 U.S. at 257, the common law rules of damages will not "provide a complete solution to the damages issue in every section 1983 case." 435 U.S. at 258. The Court, further held that in cases where the "common law of torts do not parallel closely the interests protected by a particular constitutional right," the court's task will be the "more difficult one of adapting common-law rules of damages to provide fair compensation for injuries caused by the deprivation of a constitutional right." 435 U.S. at 259.

The Seventh Circuit failed to follow *Carey* in two critical respects. First, the Seventh Circuit focused heavily on analogies drawn from the common law tort of malicious prosecution, which does not "parallel closely" the interests protected by the Fourth

Amendment. (App. A, 10-11). Second, the Seventh Circuit rejected the time honored principle of "proximate cause" as a method of measuring Martin's injuries. (App. A, 29-30). The Seventh Circuit's opinion therefore conflicts with *Carey* and merits this court's review.

Second, the Seventh Circuit's decision has deepened a longstanding split as to the proper measure for Fourth Amendment damages, with the Seventh, Second and Third Circuits standing on the non-recovery side of the split, and the Ninth Circuit and a court in the Tenth Circuit standing on the side of recovery. This split, which dates from 1988, if not before, and which has never been resolved by the Court, strongly merits review.

I.

THE DECISION BELOW CONFLICTS WITH *CAREY V. PIPHUS*

In the leading case of *Carey v. Piphus*, 435 U.S. 247, 254 (1978), this Court forth the general framework for the assessment of damages in Section 1983 actions. In an oft-quoted passage, this Court stated:

> " Insofar as petitioners contend that the basic purpose of a § 1983 damages award should be to compensate persons for injuries caused by the deprivation of constitutional rights, they have the better of the argument. Rights, constitutional and otherwise, do not exist in a vacuum. Their purpose is to protect persons from injuries to particular interests, and their contours are shaped by the interests they protect.
>
> "Our legal system's concept of damages reflects this view of legal rights. "The cardinal principle of damages in Anglo-American law is that of compensation for the injury caused to plaintiff by defendant's breach of duty." 2 F. Harper & F. James, Law of Torts § 25.1, p. 1299 (1956) (emphasis in original)."

435 U.S. at 254–55.

Having recognized that section 1983 damages are intended to compensate for injuries caused by constitutional violations, this Court then wrestled with the problem of

how to tailor Sec. 1983 damages to particular constitutional violations:

> "[O]ver the centuries the common law of torts has developed a set of rules to implement the principle that a person should be compensated fairly for injuries caused by the violation of his legal rights. These rules, defining the elements of damages and the prerequisites for their recovery, provide the appropriate starting point for the inquiry under § 1983 as well.13"
>
> "It is not clear, however, that common-law tort rules of damages will provide a complete solution to the damages issue in every § 1983 case. In some cases, the interests protected by a particular branch of the common law of torts may parallel closely the interests protected by a particular constitutional right. In such cases, it may be appropriate to apply the tort rules of damages directly to the § 1983 action *** In other cases, the interests protected by a particular constitutional right may not also

> be protected by an analogous branch of the common law torts. *** In those cases, the task will be the more difficult one of adapting common-law rules of damages to provide fair compensation for injuries caused by the deprivation of a constitutional right."

435 U.S. at 258.

Three major principles emerge from *Carey*: (1) Section 1983 plaintiffs can collect damages for the usual harms caused by common law torts, such as economic or emotional injury, pecuniary loss and loss of freedom, (2) the common law rules regarding damages for particular torts are relevant, if not determinative, and (3) in some instances the Court is free to disregard the rules regarding common law torts and fashion rules of recovery more appropriate to constitutional wrongs.

The Seventh Circuit skipped the third stage of the analysis, focusing only on an analogy to the tort of malicious prosecution. The court concluded that, since the existence of probable cause is a bar to malicious prosecution, the acquisition of probable cause, even as the fruit of a poisonous tree, must preclude damages which accrue after probable cause is

acquired. (App.11-13, Doc B). But this conclusion is a non-sequitur.

In other contexts, this Court and other courts have *rejected* analogies between the common law tort of malicious prosecution and constitutional claims for violation of fourth amendment rights. See *Wallace v. Kato*, 549 U.S. 384, 388 (2007)(statute of limitations for fourth amendment false arrest claims should be based on analogy to common law tort of false imprisonment, not common law tort of malicious prosecution); *Manuel v. City of Joliet, Illinois*, 903 F.3d 667, 669–70 (7th Cir. 2018*), cert. denied sub nom. City of Joliet, Ill. v. Manuel*, 139 S. Ct. 2777 (2019) (statute of limitations for fourth amendment fabrication claim accrues on date of release from custody, not upon dismissal of charges, as for tort of malicious prosecution). Conversely, this Court has analogized the common law tort of malicious prosecution to Fourteenth Amendment due process and fabrication claims. See *McDonough v. Smith*, 139 S. Ct. 2149, 2156 (2019); *Heck v. Humphrey*, 512 U.S. 477, 484 (1994)("the common-law cause of action for malicious prosecution provides the closest analogy to claims of the type considered here because, unlike the related cause of action for false arrest or imprisonment, it permits

damages for confinement imposed pursuant to legal process").

Moreover, applying the third Carey priniciple strongly suggests that all injuries proximately caused by a Fourth Amendment violation should be compensable.

It is clear that individuals may bring civil claims for damages resulting from violations of their Fourth Amendment rights under § 1983. *See Manuel v. City of Joliet, Ill.,* 137 S. Ct. 911, 914 (2017). And this Court has also held that § 1983 damages "may include ... out-of-pocket loss and other monetary harms." *Memphis Cmty. Sch. Dist. v. Stachura*, 477 U.S. 299, 307 (1986). Actions brought under § 1983 are reviewed like common law tort claims and require a proximate cause analysis. *See Heck v. Humphrey*, 512 U.S. 477 (1994); *Carey,* 435 U.S. at (1978); *Olsen v. Correiro,* 189 F.3d 52 (1st Cir. 1999); *Gierlinger v. Gleason,* 160 F.3d 858 (2d Cir. 1998).

The first stage of traditional proximate cause analysis requires the court to find that the alleged tort is the "but for" cause, or the cause in fact of the plaintiff's injuries. *Paroline v. United States*, 572 U.S. 434, 444 (2014). Here, in this instance, there can be no question that, but for the defendants' act of

illegally stopping Sherard Martin's car, Sherard Martin would not have been arrested, prosecuted, and incarcerated. See *Hector v. Watt*, 235 F.3d at 154, 162 (3d Cir. 2000), *as amended* (Jan. 26, 2001)(Nygaard, J., concurring).

The next step is to determine if there was not only cause in fact, but proximate cause. Proximate cause is often explicated in terms of foreseeability or the scope of the risk created by the predicate conduct. See, e.g., ibid.; 1 Restatement (Third) of Torts: Liability for Physical and Emotional Harm § 29, p. 493 (2005) (hereinafter Restatement). A requirement of proximate cause thus serves, inter alia, to preclude liability in situations where the causal link between conduct and result is so attenuated that the consequence is more aptly described as mere fortuity. *Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 838–839 (1996).

In this case, defendants could reasonably forsee that, as the result of their illegal stop of Sherard Martin's car, contraband would be discovered, and Martin would be arrested, prosecuted, and imprisoned. After all, a major motivation for police stops of motor vehicles is to uncover contraband. Indeed,

"In today's society, where illegal drug activity is readily known and commonplace in urban, suburban, and ex-urban communities, and the pursuit by law enforcement authorities of this activity is not only expected but demanded by the public, to consider the acts of a prosecutor and trial court as "independent judgment" in the prosecution of one arrested under similar circumstances to the plaintiff may not be realistic. A reasonable observer may readily expect that plaintiff would be prosecuted arising from his arrest after defendant's search and seizure.[2] Rather than the acts of a prosecutor and judge being con-sidered intervening independent causes which interrupted or destroyed the causal connection between the wrongful act and injury to the plaintiff, it appears to the Court such subsequent acts were reasonably foreseeable by the officer. A tortfeasor is not relieved from liability for his wrongful conduct by the intervention of third persons if

> these acts were reasonably foreseeable."

Carter v. Georgevich, 78 F. Supp. 2d 332, 335 (D.N.J. 2000) *abrogated by Hector v. Watt*, 235 F.3d 154 (3d Cir. 2000).

This court should, therefore, grant the petition for writ of certiorari.

II:

THIS COURT SHOULD RESOLVE, THE ENTRENCHED, DEEPENING CIRCUIT CONFLICT REGARDING THE PROPER MEASURE OF DAMAGES FOR FOURTH AMENDMENT VIOLATIONS

As the Seventh Circuit below acknowledged, there is a deep and longstanding split between those cases which hold that there can be no recovery for an illegal stop, arrest, or search following the discovery of illegal contraband, see *Townes v. City of New York*, 176 F.3d 138, 148 (2d Cir. 1999); *Hector v. Watt*, 235 F.3d 154, 155–59 (3d Cir. 2000) and those that hold that a plaintiff is entitled to all damages proximately caused by the constitutional violation, see *Borunda v. Richmond*, 885 F.2d 1384 (9th Cir. 1988); *Train v. City of Albuquerque*, 629 F. Supp.2d

1243 (D.N.M. 2009). (App. A, 14). Cf. *Kerr v. City of Chicago*, 424 F.2d 1134 (7th Cir. 1970)(a "plaintiff in a civil rights action should be allowed to recover attorneys's fees in a state criminal action where the expenditure is a foreseeable result of the acts of the defendant").

To understand the origins of this split and its consequences it is necessary to examine the history in detail.

In *Kerr*, the plaintiff filed a civil suit, alleging a number of constitutional violations, including:

> "that for approximately 27 hours he was never brought before a judge, court or magistrate although in session; not charged with a crime; not permitted to make bail or bond; not permitted to contact or obtain counsel and advice; not informed of any formal charges; not informed of his privilege against self-incrimi-nation; not informed of his right to the advice of counsel; and that for 14 hours he was not permitted to eat or use washroom facilities. Additionally, Kerr alleges that he was physically abused and the

> confession was not voluntarily obtained; and that the polygraph test was taken without his or his parents' consent."

Kerr, 424 F.2d at 1137.

It should be noted that although the principal claim in *Kerr*, was violation of the Fifth Amendment, the Seventh Circuit also held that the jury should have been instructed that an arrest without an warrant and without probable cause violated due process. 424 F.2d at 1140.

The Seventh Circuit held that the jury should have been allowed to hear that plaintiff's parents had had to pay attorneys' fees which were expended on his behalf during the course of the criminal prosecution: "A plaintiff in a civil rights action should be allowed to recover the attorneys' fees in a state criminal action where the expenditure is a foreseeable result of the acts of the defendant."

424 F.2d at 1141.

Following *Kerr*, and citing *Kerr*, the Ninth Circuit held definitively that in the case of a fourth amendment violation, a plaintiff was entitled to recover for attorneys' fees incurred as the result of defending the ensuing criminal prosecution. *Borunda v. Richmond*,

885 F.2d 1384, 1390 (9th Cir. 1988). But the *Borunda* court, like the *Kerr* court used general language which went beyond the issue of attorneys' fees:

> "A plaintiff who establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages for all injuries suffered as a consequence of those deprivations. Such damages are calculated in most circumstances according to general tort law principles applicable to the types of deprivations proved. See generally *Carey v. Piphus*, 435 U.S. 247, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978). The victim of the constitutional deprivation is entitled to compensation for economic harm, pain and suffering, and mental and emotional distress that results from the violations. See id. at 257–64, 98 S.Ct. at 1048–53."

Borunda, 885 F.2d at 1389.

The *Borunda* court also rejected the argument that a prosecutor's decision to pursue criminal charge, based upon his own

assessment of probable cause, broke the causal chain between the defendants' conduct and the plaintiff's damages, noting that the presumption that a prosecutor acted independently may be rebuttable by evidence that the investigating officers made "material omissions or gave false information to the prosecutor." *Borunda*, 885 F.2d at 1390.

This is where the law stood until, eleven years later, the Second Circuit decided the case of *Townes v. City of New York*, 176 F.3d 138 (2d Cir. 1999). In the case of *Townes*, plaintiff was arrested after police illegally searched a taxicab in which he was a passenger. He was charged with possession of contraband found in the cab. His motion to suppress the evidence was denied at the trial court level and he pled guilty but his conviction was reversed on appeal and the motion to suppress was eventually granted, resulting in the dismissal of the indictment. 176 F.3d at 142.

The *Townes* court ruled that plaintiff was not entitled to damages for his incarceration for two separate reasons.

First, the *Townes* court held that the illegal search was not the proximate cause of plaintiff's imprisonment because the state trial court's exercise of independent judgment in

deciding not to suppress the evidence, though later ruled to be erroneous, broke the chain of causation for purposes of section 1983 liability. 176 F.3d at 147. This holding, which does not apply here (where the trial court granted Sherard Martin's motion to suppress) was consistent with *Borunda*.

However, the *Townes* went much further (perhaps unnecessarily further) to hold that plaintiff's Fourth Amendment right to be free from unreasonable searches and seizures "does not fit the damages he seeks (compensation for his conviction and incarceration)." 176 F.3d at 147.

The *Townes* court concluded:

> No Fourth Amendment value would be served if *Townes*, who illegally possessed firearms and narcotics,[6] reaps the financial benefit he seeks. *Townes* has already reaped an enormous benefit by reason of the illegal seizure and search to which he was subjected: his freedom, achieved by the suppression of evidence obtained in violation of the Fourth Amendment. That benefit to *Townes* is merely incidental to the purpose of suppression, which is to compel

> law enforcement compliance with the Fourth Amendment and thereby prevent the invasions of law-abiding citizens' privacy. *See United States v. Calandra,* 414 U.S. 338, 347, 94 S.Ct. 613, 619–20, 38 L.Ed.2d 561 (1974); *see also United States v. Peltier,* 422 U.S. 531, 536–39, 95 S.Ct. 2313, 2317–18, 45 L.Ed.2d 374 (1975). Now Townes seeks damages to compensate him for his conviction and time served, on top of the benefit he enjoys as a result of the suppression. That remedy would vastly overdeter police officers and would result in a wealth transfer that "is peculiar, if not perverse." *Jeffries*, *supra,* at 1475.

176 F.3d at 148.

One year later, two judges of a panel of the Third Circuit agreed with *Townes* that, as a general matter, a plaintiff who alleged a Fourth Amendment violation which uncovered contraband could not recover for attorneys fees and other expenses incurred in the course of an ensuing criminal proceedings. *Hector v. Watt*, 235 F.3d 154, 155-60 (3d Cir. 2000), as amended (Jan. 26, 2001). One judge,

however, concurred on the basis of the first *Townes* rationale, that the causal chain had been broken by the magi-strate who issued a search warrant before the officers recovered the contraband. *Hector*, 235 F.3d at 163 (Nygaard, J., concurring).

However, before the Seventh Circuit recently weighed in, a district court in the Tenth Circuit ruled, *contra* to *Townes* and *Watts* that post-indictment damages were recoverable in a Section 1983 action, even where the illegal search uncovered contraband:

> "The recovery should be guided by common-law tort principles—including principles of causation—and tailored to the interests that the Tenth Circuit has stated the Fourth Amendment protects. Those interests include liberty, property, and privacy interests—a person's sense of security and individual dignity. In appropriate circumstances, such damages may include damages flowing from post-indictment legal process, such as costs incurred in defending against charges brought as a result of an unlawful search,

> losses incurred because of incarceration while defending against the charges, and appropriate emotional distress damages."

Train v. City of Albuquerque, 629 F. Supp. 2d 1243, 1251 (D.N.M. 2009).

The *Train* court went on to reason that:

> "Given the Tenth Circuit's statement on the interests that the Fourth Amendment protects, the rules governing damages available in a § 1983 suit alleging a Fourth–Amendment violation should be tailored to protecting an individual's liberty, property, pri-vacy, and sense of security and individual dignity. The Third Circuit, in discussing the liberty interests at stake in a Fourth Amendment violation, mentioned only privacy. *See Hector v. Watt,* 235 F.3d at 157 ("The evil of an unreasonable search or seizure is that it invades privacy, not that it uncovers crime, which is no evil at all.") (citations and internal quotation marks omitted). The Tenth Circuit does not take such a narrow view of the Fourth Amend-

ment. According to the Tenth Circuit's guidance on the Fourth Amendment, any damage award available for a Fourth–Amendment violation under 42 U.S.C. § 1983 should be tailored to compensating losses of liberty, property, privacy, and a person's sense of security and individual dignity. While it may not be an evil to uncover crime, the drafters obviously did not think uncovering crime was a higher value than protecting and securing a person's home from unreasonable searches. Federal criminal charges, federal detention, and all of the negative consequences of those charges and attendant to federal custody implicated Train's interest in liberty and his sense of security and individual dignity. That imprisonment occasioned economic losses. Such losses should be compensable, given that they implicate the interests that the Tenth Circuit has explained the

Fourth Amendment protects."

Train v. City of Albuquerque, 629 F. Supp. 2d 1243, 1252 (D.N.M. 2009).

This deepening and obvious split between these two irreconcilable views of damages for Fourth Amendment violations is ripe for this Court's review. The petition for writ of certiorari should be granted.

CONCLUSION

For the foregoing reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

SHERARD MARTIN

Dated: December 9, 2019

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APPENDIX INDEX

APPENDIX A

UNITED STATES COURT OF APPEALS,
For The Seventh Circuit
Chicago, Illinois, 60604

September 13, 2019

Before

KENNETH F. RIPPLE, Circuit Judge
MICHAEL S. KANNE, Circuit Judge
ILANA DIAMOND ROVNER, Circuit Judge

No. 17-2667

SHERARD MARTIN, Plaintiff-Appellant ,	Appeal from the United States District Court for the Northern District of
v.	
DAVIS MARINEZ, ET AL., Defendants-Appellees,	Illinois, Eastern Division

No. 1:15-cv-04576
Amy J. St. Eve, Judge.

ORDER

No judge of the court having called for vote[+] on the Petition for rehearing and Rehearing En Banc, filed by Plaintiff-Appellant on August 26, 2019, and all of the judges on the original panel having voted to deny the same,

> IT IS HEREBY ORDERED that the Petition for Rehearing and Rehearing En Banc is DENIED.

[+] Judge Amy J. St. Eve did not participate in the consideration of this petition.

APPENDIX B

IN THE

UNITED STATES COURT OF APPEALS,
SEVENTH CIRCUIT

SHERARD MARTIN, PLAINTIFF-APPELLANT
v.

DAVIS MARINEZ, ET AL., DEFENDANTS-APPELLEES

[No. 17-2667]

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 15-CV-04576 – **Amy J. St. Eve**, Judge.

Argued November 2, 2018
Decided August 12, 2019

Before KIPPLE, KANNE, and ROVNER,

Circuit Judges,

Rovner, *Circuit Judge*. Sherad Martin appeals the district court's grant of partial summary judgment, Fed. R. Civ. P. 56, on his suit under 42 U.S.C. § 1983 against the City of Chicago and several of its police officers for false arrest and unlawful search. Martin's suit proceeded to trial, where a jury awarded him $1.00 in damages after finding that two of the defendants

lacked reasonable suspicion or probable cause to detain him. The jury found against Martin and in favor of the officers on the remainder of his claims. Martin appeals, challenging only the district court's pretrial grant of partial summary judgment to the defendants, which limited the damages Martin could seek at trial. We affirm.

I.

Martin's suit arises from a traffic stop in May 2013. We recount the facts surrounding the stop and subsequent events in the light most favorable to Martin, noting disputed facts where relevant and viewing the facts on

which the jury reached a verdict in the light most favorable to the verdict. On the evening of May 24, 2013, Martin was driving in Chicago when Officers Davis Marinez and Sofia Gonzalez pulled him over. According to Martin, he had not committed any traffic violations when the officers stopped him, although the officers claim they initiated the stop because Martin's tail and brake lights were not working. When Officer Gonzalez approached the car and asked Martin for his license and insurance, Martin explained that he did not have his driver's license because it had been "taken for a ticket." At that point both officers asked Martin to step out of the car as the other defendants, Officers Armando Chagoya and Elvis Turcinovic, arrived on the scene.

According to Martin, the officers forced him from the car, conducted a pat-down search, handcuffed him, and put him into a police car. At that point, they searched his car, where

they recovered a 9 mm semiautomatic handgun with a defaced serial number, and a

plastic baggie of crack cocaine.[1]

Officers then took Martin into custody. At the police station, Officer Marinez learned that Martin had previously been convicted of first-degree murder and unlawful use of a weapon by a convicted felon. Ultimately Martin was transferred to Cook County Jail and charged with four Illinois felonies: (i) being an armed habitual criminal in violation of 720 ILCS § 5/24-1.7; (ii) being a felon in possession of a firearm in violation of 720 ILCS § 5/24-1.1; (iii) possessing a firearm with a defaced serial number in violation of 720 ILCS § 5/24-5(b); and possessing cocaine in violation of 720 ILCS § 570/402. He also received traffic citations under Chicago Municipal Code Section 9-76-050 (taillight operation) and 625 ILCS § 5/6-112 (outlining requirement to carry a driver's license). *Id.*

Martin spent sixty-five days—from May 24 through July 29, 2013—incarcerated in connection with the charges resulting from the traffic stop. On July 29th, a different court

[1] In the officers' version of events, they spotted a handgun between Martin's legs as he stepped out of his car and placed him immediately into custody. Officer Chagoya claims to have found the plastic baggie of crack cocaine as well as $400 when he searched the car prior to having it impounded.

revoked Martin's bond when he was convicted in an unrelated criminal case. During the course of the criminal proceedings for the felony charges arising from the traffic stop, Martin filed a motion to suppress the evidence, which the trial court granted on November 7, 2013. The state then dismissed the charges against Martin through a nolle prosequi motion.

Martin filed this suit in federal court under 42 U.S.C. § 1983 against all of the officers involved in the stop as well as the City of Chicago (on a *respondeat superior* theory of liability), seeking money damages for violations of his Fourth Amendment rights. Martin sought civil damages totaling $110,500: $1,000 per day of his 65-day incarceration and $45,500 in lost business income—calculated at $700 per day—from his automobile dealership.

Before trial, the defendants moved for partial summary judgment, arguing that even if the stop was unlawful, once the officers saw the handgun and cocaine, they had probable cause for Martin's arrest, which limited Martin's damages to the short period between his stop and his arrest. The district

court agreed, granting the defendants' motion for partial summary judgment and concluding that although Martin's § 1983 case could proceed as to the initial stop of his car and seizure of his person—before the defendants discovered the illegal gun and cocaine—he could not seek damages for conduct post-dating the discovery of contraband, including his 65-day incarceration.

Martin's case proceeded to a jury trial, limited as described above by the grant of partial summary judgment. At trial, the facts largely tracked those described above, with the same basic areas of conflicting testimony: (1) Martin testified that his tail and brake lights were both functioning when he was stopped; (2) he also testified that he handed Officer Gonzalez his traffic ticket when he was unable to produce his license; and (3) Martin maintained that the handgun was under the driver's seat, as opposed to on it and visible when he stepped out of the car as directed by Officers Gonzalez and Marinez.

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The district court instructed the jury to decide the following Fourth Amendment questions: (1) whether the officers "unlawfully seized" Martin without reason-

able suspicion to support a traffic stop; (2) whether they falsely arrested him without probable cause; or (3) whether they unlawfully searched his person or car without probable cause. The court also instructed the jury that if they found that Martin proved his claims, they could not award him damages for any time spent in custody after officers found the handgun, and should limit their consideration to the period of detention beginning with his traffic stop and ending when they found the gun. The jury found in favor of Martin and against Officers Marinez and Gonzalez on the unlawful seizure claim and awarded him $1.00 in compensatory damages. On that same claim, they found in favor of Officers Chagoya and Turcinovic, and on the remaining claims for false arrest and unlawful search, they found against Martin and in favor of all four officers.

Martin now appeals from the district court's grant of partial summary judgment before trial limiting the scope of damages available.

II.

We review the district court's grant of

summary judgment *de novo*, considering the record in the light most favorable to Martin and construing all reasonable inferences from the evidence in his favor. *E.g. Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d 202 (1986); *Tolliver v. City of Chicago*, 820 F.3d 237, 241 (7th Cir. 2016). Summary judgment is appropriate when there are no genuine disputes of material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). As

for those issues presented to the jury, we view the evidence in the light most favorable to its verdict. *Matthews v. Wis. Energy Corp., Inc.*, 642 F.3d 565, 567 (7th Cir. 2011).

Martin challenges only the district court's grant of partial summary judgment before trial. He does not dispute the jury's verdict in his favor as to the initial traffic stop and against him on all of his remaining claims. His appeal thus raises the narrow issue of what type of damages he can recover as a result of his unlawful seizure by Officers Marinez and Gonzalez. In considering this issue, we are mindful of the jury's verdict rejecting Martin's false arrest claim as well

as his claim for unlawful search based on the officers' search of his vehicle. We thus consider solely whether Martin's initial unconstitutional seizure can support his claim for damages arising from losses from his subsequent incarceration on the weapon and drug charges.

Martin argues that the district court erroneously based its conclusion that he was barred from collecting damages from his wrongful incarceration on the premise that a § 1983 claimant may not recover damages as a result of the "fruit of the poisonous tree" doctrine. According to Martin, when assessing available damages under § 1983, we should begin by asking whether the plaintiff's alleged damages were proximately caused by the constitutional violation. From that starting point, Martin maintains that he is, at the very least, entitled to have a jury decide whether his incarceration and any consequential damages arising from it were proximately caused by the unconstitutional stop.

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The "basic purpose" of damages under § 1983 is to "compensate persons for injuries that are caused by the deprivation of

constitutional rights." *Carey v. Piphus*, 435 U.S. 247, 254, 98 S.Ct. 1042, 55 L.Ed.2d 252 (1978); *see also Memphis v. Cmty. Sch. District v. Stachura*, 477 U.S. 299, 306, 106 S.Ct. 2537, 91 L.Ed.2d 249 (1986). The Supreme Court has "repeatedly noted that 42 U.S.C. § 1983 creates a species of tort liability." *Heck v. Humphrey*, 512 U.S. 477, 483, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994) (quoting *Stachura*, 477 U.S. at 305, 106 S.Ct. 2537)(internal quotation marks omitted)). Thus, the appropriate starting place for the damages inquiry under § 1983 is the common law of torts. *Carey*, 435 U.S. at 253, 98 S.Ct. 1042.

Using the available common-law torts as a starting point, Martin's damages claim immediately runs into trouble. His complaint asserts claims for "false arrest" as well as "unlawful search" arising from the defendants' violation of his Fourth Amendment right to be free from "unreasonable searches and seizures," U.S. Const. Amend. IV. But a claim for false arrest cannot succeed because it is undisputed that officers discovered an illegal handgun and cocaine in Martin's vehicle, which gave them probable cause for his arrest, notwithstanding the previous

unlawful stop. *See Holmes v. Village of Hoffman Estates*, 511 F.3d 673, 679 (7th Cir. 2007) ("A police officer has probable cause to arrest an individual when the facts and circumstances that are known to him reasonably support a belief that the individual has committed, is committing, or is about to ... commit a crime."). Given this, Martin's claim runs headlong into the rule that if an "officer had probable cause to believe that the person he arrested was involved in criminal activity, then a Fourth Amendment claim for false arrest is foreclosed." *Id.* at 679–80; *Morfin v. City of East Chicago*, 349 F.3d 989, 997 (7th Cir. 2003) (collecting cases); *see also Maniscalco v. Simon*,

712 F.3d 1139, 1143 (7th Cir. 2013) ("Probable cause is an absolute bar to a claim of false arrest asserted under the Fourth Amendment and section 1983") (quoting *Stokes v. Bd. of Educ.*, 599 F.3d 617, 622 (7th Cir. 2010)). Moreover, the fact that the evidence was the fruit of an illegal detention does not make it any less relevant to establishing probable cause for the arrest because the exclusionary rule does not apply in a civil suit under § 1983 against police

officers. *See Vaughn v. Chapman*, 662 Fed.Appx. 464, 465 (7th Cir.2016) 2016) (unpublished order); *see also Lingo v. City of Salem*, 832 F.3d 953, 958–59 (9th Cir. 2016); *Black v. Wigington*, 811 F.3d 1259, 1267–68 (11th Cir. 2016); *Townes v. City of New York*, 176 F.3d 138, 145 (2d Cir. 1999); *Wren v. Towe*, 130 F.3d 1154, 1158 (5th Cir. 1997). And although Martin's complaint is limited to claims for false arrest and unlawful search, it bears noting that the existence of probable cause for the arrest would also bar recovery on a theory of malicious prosecution. *See Stewart v. Sonneborn*, 98 U.S. 187, 194, 25 L.Ed. 116 (1878) ("The existence of a want of probable cause is, as we have seen, essential to every suit for a malicious prosecution."); *Thompson v. City of Chicago*, 722 F.3d 963, 969 (7th Cir. 2013) (noting that malicious prosecution claim under Illinois law requires proof that underlying criminal proceeding concluded in manner indicating innocence).

Ignoring the insurmountable hurdles to his claim presented by possible tort law analogs, Martin insists that he is entitled to damages for his incarceration solely on a theory of proximate cause—under the general rule

of *Carey* that a damages award under § 1983 should compensate for what Martin characterizes as any injuries arising as a result of a constitutional deprivation. Although the district court considered Martin's claim that

his entitlement to damages for post-arrest incarceration should be resolved using a proximate cause analysis, after reviewing the cases Martin cited, the court deemed such an approach unnecessary in light of its conclusion that the existence of probable cause after the initial detention foreclosed any further damages.

Citing *Carey*, Martin points out that he should not be barred from recovering § 1983 damages simply because recovery would not be permitted under a common-law tort such as false arrest. As the Court explained in *Carey*, "the interests protected by a particular constitutional right may not also be protected by an analogous branch of the common law torts." *Carey*, 435 U.S. at 258, 98 S.Ct. 1042. Thus, the Court recognized that although the common law elements of damages and the prerequisites for their recovery are the appropriate "start-ing point for the inquiry under § 1983," those common-law tort

theories may not "provide a complete solution to the damages issues in every § 1983 case." *Id.* at 258, 98 S.Ct. 1042. The Court accordingly set out an approach to handling those situations where the common-law tort theories would not allow recovery but there were constitutional interests implicated that might nonetheless warrant redress when violated. *Carey* explained that "to further the purpose of § 1983, the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interest protected by the particular right in question—just as the common-law rules of damages themselves were defined by the interests protected in the various branches of tort law." *Id.* at 258–59, 98 S.Ct. 1042. Under that rationale, we must determine whether the post-arrest damages

for incarceration Martin seeks would effectively redress the interests the Fourth Amendment is intended to protect.

We have not resolved the specific question whether a plaintiff may recover damages for post-arrest incarceration following a Fourth Amendment violation when probable cause supported the ultimate arrest and initiation

of criminal proceedings, but the application of the exclusionary rule spared the plaintiff from the criminal prosecution. As Martin notes, there is a split of authority on the question of whether a defendant whose Fourth or Fifth Amendment rights have been violated can recover damages for incarceration, legal defense fees, or emotional distress in a subsequent civil suit under § 1983. *Compare Townes v. City of New York*, 176 F.3d 138, 148 (2d Cir. 1999) (no damages for costs associated with defending against gun possession charges when evidence for charges arose from unlawful search); *Hector v. Watt*, 235 F.3d 154, 155–59 (3d Cir. 2000)(no damages for costs incurred in criminal prosecution for drug possession charges arising from unconstitutional search) with *Borunda v. Richmond*, 885 F.2d 1384, 1389–90 (9th Cir. 1988) (allowing admission of acquittal of criminal charges in plaintiffs' subsequent § 1983 suit to recover money spent on attorneys' fees defending criminal charges); *see also Train v. City of Albuquerque*, 629 F. Supp.2d 1243, 1255 (D.N.M. 2009) (allowing jury to determine whether unlawful search that led to gun possession charges proximately caused plaintiff's

criminal defense costs, loss of income, and emotional distress damages).

Martin, however, insists that in *Kerr v. City of Chicago*, 424 F.2d 1134 (7th Cir. 1970), we held that such damages are recoverable and that here the district court was obligated

under *Kerr* to allow his damages claim. The district court re-jected *Kerr* as controlling here given "factual differences" and case law developments since it was "decided nearly 47 years ago." (Appellant's App. at A-14.)

Like the district court, we reject Martin's claim that *Kerr* is dispositive on the question of allowable damages. Martin relies almost exclusively on a sentence from *Kerr* stating without further explanation that "[a] plaintiff in a civil rights action should be allowed to recover the attorneys' fees in a state criminal action where the expenditure is a foreseeable result of the acts of the defendant." *Kerr*, 424 F.2d at 1141. The minor plaintiff in *Kerr* alleged that Chicago police had violated his Fifth Amendment constitutional rights by using physical force to obtain an involuntary confession, which was used to detain him for 18 months awaiting and during trial, when a

nolle prosequi was entered after the jury was unable to reach a verdict. *Kerr*, 424 F.2d at 1136–37. The precise issue in *Kerr* was thus whether the plaintiff should have been allowed to present evidence in his civil case of attorneys' fees expended in his underlying criminal case, which hinged entirely on his involuntary confession. *Id.* at 1141.

So although in the abstract *Kerr* stands for the proposition that foreseeable damages arising from a constitutional violation may be recovered, it sheds no light on the precise question Martin's appeal poses.[2] Using the

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[2] The same is true for a much more recent case from our circuit cited by Martin in his reply brief, *Johnson v. Winstead*, 900 F.3d 428 (7th Cir. 2018). Martin characterizes Johnson as holding that damages could be recovered for incarceration subsequent to a failure to provide Miranda warnings, despite the fact that a failure to provide such warnings is itself not a violation of the Fifth Amendment right against self-incrimination. But Martin misreads Johnson, which specifies that an actual Fifth Amendment violation occurs only when the information acquired without Miranda warnings is introduced at trial to secure a criminal conviction. Martin claims Johnson would allow damages based on a violation of a prophylactic rule–the failure to give Miranda warnings itself—but he misreads Johnson. The damages Johnson contemplates would be those arising from incarceration for the actual Fifth Amendment violation of admitting the statements at trial to secure a criminal conviction, not, as Martin suggests, for a violation of a prophylactic rule. Id. at 434–35.

framework of *Carey,* it is easy

to see that the interest protected by the Fifth Amendment right against self-incrimination was directly implicated by the coerced confession and resulting criminal trial. *Kerr* is thus entirely in keeping with *Carey* in the sense that the damages sought—expenses of defending the criminal trial prosecuted on the strength of the involuntary confession—arise directly from the constitutional violation and redress the precise interest the Fifth Amendment protects: the right not to be compelled in a criminal case to be a witness against oneself. Simply put, nothing in *Kerr* sheds any light on Martin's claim that he is entitled to pursue damages for his post-arrest incarceration.

That leaves us with the handful of appellate courts that have considered the specific issue of the proper scope of civil damages for damages following an illegal search or seizure. In *Townes*, the Second Circuit considered whether to award compensatory damages in a § 1983 civil suit after police stopped a taxi without probable cause and discovered an illegal firearm and cocaine. The plaintiff's motion to suppress

the firearm was initially denied, and he was convicted of unlawful possession of a firearm by a felon. Over two years later, the state appellate division reversed the conviction on the grounds that police had lacked probable cause to stop and search the taxicab. In his subsequent civil suit, the *Townes* plaintiff sought to recover compensatory damages arising from his conviction and incarceration. *Id.* at 149.

Citing *Carey,* the panel in *Townes* rejected the plaintiff's damages claim. After ruling out recovery under any common-law tort theories, the Second Circuit also rejected proximate cause as a possible basis for recovery. In doing so, the court noted that "the chain on causation between a police officer's unlawful arrest and a subsequent conviction and incarceration is broken by the intervening exercise of independent judgment"—specifically, the trial court's failure to suppress the incriminating evidence before trial. *Id.* at 147. In an attempt to distinguish *Townes*, Martin seizes this causation analysis, but ignores the rest of the holding in *Townes,* which would squarely foreclose Martin's claim.

In addition to concluding that the trial court's refusal to suppress the evidence of the unlawful search was an intervening and superseding cause of the conviction, the Second Circuit noted that the plaintiff was "foreclosed from recovery for a second, independent reason: the injury he pleads (a violation of his Fourth Amendment right to be free from unreasonable searches and seizures) does not fit the damages he seeks (compensation for his conviction and incarceration)." *Id.* Bearing in mind the Supreme Court's directive in *Carey* to tailor § 1983 liability to match the affected constitutional rights,

see Carey, 435 U.S. at 258, 98 S.Ct. 1042, *Townes* pointed out a "gross disconnect" between the constitutional violation (the Fourth Amendment right to be free from unreasonable searches and seizures) and the injury for which recovery was sought (the subsequent conviction and incarceration). *Townes*, 176 F.3d at 148. As the panel in *Townes* observed, "[t]he evil of an unreasonable search or seizure is that it invades privacy, not that it uncovers crime, which is no evil at all." *Id.*

Townes thus reasoned that to award damages for a conviction and incarceration that followed an illegal search would be tantamount to awarding a windfall benefit in that the plaintiff "already reaped an enormous benefit by reason of the illegal seizure and search to which he was subjected: his freedom, achieved by the suppression of evidence obtained in violation of the Fourth Amendment." *Id.*; *cf. United States v. Calandra*, 414 U.S. 338, 347, 94 S.Ct. 613, 38 L.Ed.2d 561 (1974) ("The purpose of the exclusionary rule is not to redress the injury to the privacy of the search victim ... [i]nstead, the rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures[.]"). The district court found the rationale of *Townes* persuasive and noted that it had been cited repeatedly by district courts in our circuit assessing civil damages for Fourth Amendment violations. *See Cannon v. Christopher*, No. 1:06-CV-267, 2007 WL 2609893, at *4 ("Several federal courts in the Seventh Circuit have adopted the *Townes* principle and applied it to dismiss cases where probable cause existed despite an

allegation of an improper initial stop and search."); *see also Williams v. Carroll*, No. 08 C 4169, 2010 WL 5463362, at *4–5 (N.D. Ill. Dec. 29, 2010) (collecting cases and observing that

although "holding of *Townes* has not been expressly adopted here in the Seventh Circuit, it has not been meaningfully challenged in this (or any other) circuit. On the other hand, it has been relied upon in numerous district court opinions.").

The following year, the Third Circuit reached a similar conclusion in *Hector v. Watt*, *supra*.In *Hector*, the plaintiff brought a § 1983 suit to recover compensation for expenses incurred during his criminal prosecution based on 80 pounds of hallucinogenic mushrooms seized from his airplane. Like Martin, the plaintiff had successfully litigated a suppression motion for the seized drugs and the prosecution against him was dismissed.

The Third Circuit first concluded, as we did above, that existing common-law torts could not provide the basis for the requested damages. *Hector*, 235 F.3d at 156 ("Given the Supreme Court's mandate that we look to

similar common-law causes of action, Hector appears to be on the horns of a dilemma. If his claim is categorized as being like false arrest, then his claim fails because false arrest does not permit damages incurred after an indictment, excluding all the damages he seeks. But if his claim is treated as resembling malicious prosecution, then he would face the problem that a plaintiff claiming malicious prosecution must be innocent of the crime charged in the underlying prosecution.")

In rejecting proximate cause as a theory for recovery, the Third Circuit, like the Second Circuit in *Townes*, concluded that the policy reasons behind the exclusionary rule would not be served by allowing the plaintiff to "continue to benefit from the exclusionary rule in his § 1983 suit and be relieved of defense

costs from a prosecution that was terminated only because of the exclusionary rule." *Id.* at 158. Specifically, the court in *Hector* carefully considered the competing policy concerns that might be served by allowing damages arising from defending a criminal proceeding triggered by the discovery of contraband via an

unconstitutional search. Bearing in mind the goal of the exclusionary rule to deter Fourth Amendment violations, the court concluded that policy considerations militated against any incremental contribution to such deterrence that might be had by allowing for civil damages arising well after the initial constitutional privacy violation that led to the discovery of contraband. *Id.* at 159.

The court in *Hector* thus ultimately concluded that although there would admittedly be some deterrent value to imposing liability for *all* consequences that unfold from a search or seizure unsupported by probable cause, the downsides of such an approach would outweigh its benefits. Specifically, the magnitude of the potential liability would routinely be unrelated to the seriousness of the underlying Fourth Amendment violation, in the sense that the damages award would often turn not on the nature of the unconstitutional invasion of privacy but on whatever contraband officers happened to uncover. *Id.* Noting that it would be irresponsible to impose potential liability so disproportionate to the underlying constitutional violation and that neither the scholarly au-thority nor any common-law tort supported such a theory of

recovery, the Third Circuit concurred with *Townes* to hold that, "Victims of unreasonable searches or seizures may recover damages directly related to the invasion of their privacy–including (where appropriate) damages for physical injury, property

damage, injury to reputation, etc.; but such victims cannot be compensated for injuries that result from the discovery of incriminating evidence and consequent criminal prosecution." *Id.* at 148 (quoting *Townes*, 176 F.3d at 148).

As Martin notes, however, the Ninth Circuit has concluded that damages for incarceration and legal fees arising from an unlawful detention and search may be recoverable in a § 1983 suit. In *Borunda v. Richmond*, 885 F.2d 1384 (9th Cir. 1988), the court rejected police officers' appeal from a civil damages award in favor of the plaintiffs after a finding that the officers arrested them without probable cause. The precise issue on appeal was whether the district court erred by admitting evidence that the plaintiffs had been acquitted of the underlying criminal charges as well as evidence of the plaintiffs' attorneys' fees incurred defending against the

charges. *Borunda*, 885 F.2d at 1386. The court concluded that a "plaintiff who establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages for all injuries suffered as a consequence of those deprivations." *Id.* at 1389.

In *Borunda*, the court concluded that the plaintiffs were entitled to recovery because the "jury was entitled to find, amidst the striking omissions in the police report, as well as the two officers' conflicting accounts of the incident, that appellants procured the filing of the criminal complaint by making misrepresentations to the prosecuting attorney." *Id.* at 1390. The attorneys' fees incurred defending the criminal prosecutions were thus directly attributable to the defendant officers'

misconduct—i.e., falsifying information in order to obtain a criminal complaint. *Id.*

Thus, while *Borunda*, like *Kerr*, may in the abstract stand for the proposition that civil damages may be recoverable for expenses related to a wrongful search or arrest, nothing about *Borunda*'s rationale is particularly helpful to Martin. First, in *Borunda*, the very

basis for the damages award was the jury's finding that the defendant officers had arrested the plaintiffs *without* probable cause and had likely fabricated facts to secure a criminal complaint against the plaitiffs. *Id.* at 1386–88. On the contrary, the jury here concluded that although Officers Marinez and Gonzalez unlawfully seized Martin without reasonable suspicion, it found *against* Martin on the claim that officers either arrested him or searched him or his car without probable cause. So unlike the plaintiffs in *Borunda*, whose claim succeeded precisely because the jury concluded that the defendant officers manu-factured a tale to support probable cause for both the arrest and subsequent prosecutions, the jury here concluded that probable cause existed for *both* Martin's arrest and any search of hisautomobile that yielded contraband. The holding in *Borunda* is thus a far cry from supporting the outcome Martin seeks here. Although Martin asserts that *Borunda* supports his theory that he may recover damages under a proximate cause analysis, *Borunda* adds little to the question of foreseeability given the jury's finding there that the defendant officers "procured the filing of the criminal complaint

by making misrepresentations to the prosecuting attorney." *Id.* at 1390. That finding leads fairly uncontroversially to the conclusion that the plaintiffs' attorney fees "incurred during the criminal prosecutions was a direct and

foreseeable consequence of the appellants' unlawful conduct." *Id.* Not so for Martin.

Martin's scenario is far more like those in *Townes* and *Hector*, where probable cause for an arrest existed despite an encounter that initially violated the Fourth Amendment. First, the precise relevant questions in *Borunda* were evidentiary: whether the district court had erred in admitting evidence of the plaintiffs' prior acquittal of the criminal charges and evidence of attorneys' fees spent during the criminal proceeding. *Id.* at 1389. And in *Borunda*, the court considered the jury's finding that the officers lacked probable cause and concluded it was defensible in light of general tort principles of recovery; the jury's verdict here cuts in the opposite direction given that, with the exception of the initial traffic stop, the jury concluded that the defendants *did* have probable cause for everything that followed.

Finally, Martin relies heavily on a case from the District of New Mexico holding that a plaintiff raising a constitutional claim based on an illegal search may be permitted to recover damages for post-indictment proceedings if the constitutional deprivation proximately caused the damages. *See generally Train v. City of Albuquerque*, 629 F. Supp.2d 1243 (D.N.M. 2009). The district court in *Train* concluded that in addition to protecting privacy, as the courts in and *Hector* recognized, the Fourth Amend-ment had been described in the Tenth Circuit as protecting " 'liberty, property, and privacy interests—a person's sense of security and individual dignity.' " *Id.* at 1252 (quoting *Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179, 1196 (10th Cir. 2001)). Believing that the Tenth Circuit did

not "take such a narrow view of the Fourth Amendment" as the one advanced in *Townes* and *Hector*, the district court in *Train* concluded as follows:

> According to the Tenth Circuit's guidance on the Fourth Amendment, any damage award available for a Fourth-

> Amendment violation under 41 U.S.C. § 1983 should be tailored to compensating losses of liberty, property, privacy, and a person's sense of security and individual dignity. While it may not be an evil to uncover crime, the drafters obviously did not think uncovering crime was a higher value than protect-ing and securing a person's home from unreasonable searches. Federal criminal charges, federal detention, and all of the negative consequences of those charges and attendant to federal custody implicated Train's interest in liberty and his sense of security and individual dignity. That imprisonment occasioned economic losses. Such losses should be compensable, given that they implicate the interests that the Tenth Circuit has explained the Fourth Amendment protects. *Id.*

Although Martin urges us to reject the logic of both *Townes* and *Hector* in favor of that found in *Train*, he fails to identify any Seventh Circuit law urging the broad view of interests protected by the Fourth Amendment that drove the district court's conclusion in *Train*. Nor did *Train* analyze the plaintiff's

claim in light of common-law false arrest. Because Martin explicitly framed his claim as one for false arrest,

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(Pl. Compl. 1), we are bound by our own precedent limiting dam-ages regardless of what we might conclude under a proximate cause analysis. *See Gauger v. Hendle*, 349 F.3d 354, 362–63 (7th Cir. 2003), over-*ruled* on other grounds by *Wallace v. City of Chicago*, 440 F.3d 421 (7th Cir. 2006) (citing *Heck v. Humphrey*, 512 U.S. 477, 484, 114 S.Ct. 2364, 129 L.Ed.2d 383 (1994)) (available damages for false arrest cover only time of detention until issuance of process or arraignment). And although *Train* ably sets forth the competing rationale for an expans-ive view of both the interests protected by the Fourth Amendment as well as damages avail-able for their breach, the rationale in *Townes* and *Hector*, in addition to being more widely accepted as dis-cussed *infra*, is also more applicable to the facts here.

Given the jury's verdict against Martin on his claims for false arrest and unlawful search, the only Fourth Amendment injury being redressed is the brief initial seizure before officers asked Martin for his license.

Allowing Martin to recover damages for his subsequent imprisonment, set in motion by an arrest supported by probable cause, would amount to precisely the sort of mismatch between the violation and the damages that *Townes* and *Hector* sought to avoid. We do not go so far as to hold that post-arrest damages may *never* be recovered, only that here such damages would be inconsistent with the rule in *Carey* that damages should be tailored to protect the right in question, 435 U.S. at 258, 98 S.Ct. 1042. Here, the right in question is Martin's Fourth Amendment right not to be stopped by officers without reasonable suspicion. That right was vindicated by the nominal damages the jury awarded Martin.

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It is thus ultimately unnecessary to delve into the thorny question of proximate cause. *See Hector*, 235 F.3d at 161 ("Given that the cases on intervening causes are legion and difficult to reconcile ... and that we have other, sufficient grounds for resolving this case, we will not reach the issue of intervening causation."). That said, it is worth noting that there is no reason Martin's claim would fare any better under that analysis.

Martin's stop was certainly the but-for cause of his imprisonment in the sense that but for the stop officers would never have discovered the handgun and cocaine and arrested him. But that tells us little about whether the stop was the *proximate cause* of his incarceration. *See CSX Transp., Inc. v. McBride*, 564 U.S. 685, 691, 131 S.Ct. 2630, 180 L.Ed.2d 637 (2011) ("The *term* 'proximate cause' is shorthand for a concept: Injuries have countless causes, and not all should give rise to legal liability."). Any number of superseding, intervening events could have broken the chain of causation, from the discovery of the contraband itself to the independent decision to deny bail, which was undoubtedly predicated in part on Martin's criminal history and other factors unrelated to the initial stop.

Moreover, consideration of proximate cause takes us back around to where we began: with the observation that probable cause for Martin's arrest, which the jury concluded existed shortly after Martin was pulled over, forecloses Martin's claim for damages from all that followed. *See Townes*, 176 F.3d at 146 (recognizing that "ordinary principles of tort causation" apply to initial stop and search but concluding that allowing the fruit

of the poisonous tree doctrine to "elongate the chain of causation" would "distort basic tort concepts of proximate causation"); *accord Williams v. Edwards*, 2012 WL 983788 at *7–8(noting the

same). In short, the damages arising from Martin's incarceration are simply too attenuated from and unrelated to the Fourth Amendment violation he has proven: a brief detention unsupported by probable cause or reasonable suspicion. His damages award was thus properly limited to the harm arising from his unconstitutional detention before his lawful arrest. The decision regarding those damages was left to the jury, which determined one dollar was the proper amount.

III.

For the foregoing reasons, we AFFIRM the judgment of the district court.

APPENDIX C

[2017 WL 56633]

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IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

SHERARD MARTIN,

Plaintiff

v.

CITY OF CHICAGO, DAVIS MARINEZ, # 15460, SOFIA GONZALEZ, # 17298, ARMONDO CHAGOYA, # 19938, ELVIS TURCINOVIC, # 13509

Defendants

No. 15-cv-04576

MEMORANDUM OPINION AND ORDER

AMY J. ST. EVE, United States District Judge

Defendants City of Chicago and Officers Davis Marinez, Sofia Gonzalez (Arellano), Armando Chagoya, and Elvis Turcinovic (collectively, "Defendants") have moved the Court for partial summary judgment pursuant to Federal Rule of Civil Procedure 56. (R.36). For the reasons set forth below, the Court grants Defendants' motion.

BACKGROUND

Plaintiff Sherard Martin ("Martin") commenced this action under 42 U.S.C. 1983 to redress alleged constitutional violations committed by Defendants. In particular, Martin alleges that Defendants illegally stopped him, falsely arrested him, and unlawfully searched his person and his vehicle. (R.1, Compl. ¶¶ 7-24). He brings claims for false arrest (Count I), unlawful search (Count II), and for *respondeat superior* liability against the City of Chicago (Count III), requesting a damage award

"sufficient to compensate him for the injuries he suffered," in addition to punitive damages and fees and costs. (*Id.*). Acknowledging the existence of disputed factual issues related to Martin's initial stop and search claims, Defendants now seek partial

summary judgment on Martin's claims "related to their conduct *after* the Defendant Officers discov-ered narcotics and an illegal firearm in [Martin's] possession, which provided proba-ble cause to arrest or to continue detaining [Martin] from that point forward." (R.37, Opening Br. at 2) (emphasis added). Martin opposes the motion but does not dispute any fact as set forth in Defendants' Local Rule 56.1(a)(3) state-ment. *See Petty v. City of Chicago*, 754 F.3d 416, 420 (7th Cir. 2014) ("A party filing a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure must file a statement of material facts as to which the moving party contends there is no genuine issue and that entitle the moving party to a judgment as a matter of law") (citing L.R. 56.1(a)(3)). The relevant facts are as follows.

Around 7:00PM on May 24, 2013, Martin was driving near the intersection of E. 90th Street and S. Burley Avenue in Chicago, when officers Marinez and Gonzalez pulled him over. (R.38, Rule 56.1(a)(3) Stmt. Facts ¶ 6). According to Martin, he had not committed any traffic violations prior to being pulled over. (*Id.*).[1] Office Gonzalez then approached Martin's car, requesting his driver's license and insurance. Martin could not produce his license, however, stating that he "had his license taken for a ticket." (*Id.* ¶ 7). Officers Gonzalez and Marinez then asked Martin to step out of his car, at which point Officers Turcinovic and Chagoya arrived. (*Id.* ¶ 8). According to Martin, the police officers forced him out of the car, handcuffed him, conducted a pat-down search of his person, and placed him inside a police vehicle. The officers then searched his car. (*Id.* ¶ 9).[2] During the search

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[1] According to Defendants, Officers Marinez and Gonzalez pulled him over because the taillights and brake lights on his car were not working. (Id.).

[2] According to Defendants, when Martin stepped out of his car, the officers saw a gun between his legs and immediately placed him into custody. Officer Chagoya then searched Martin's car prior to im-pound, and found a plastic baggie containing crack cocaine and $400.00. (Id.).

of Martin's car, the officers recovered a 9

mm semiautomatic handgun and a plastic baggie containing crack cocaine. (*Id.* ¶ 10). On scene, Officer Marinez noticed that the serial number on the handgun had been defaced. (*Id.*).

After searching Martin's car, the police officers transported him to the station for processing. At the police station, Officer Marinez printed Martin's rap sheet and discovered that he had previous convictions on felony charges for first-degree murder and unlawful use of a weapon by a convicted felon. (*Id.* ¶¶ 11-12). Martin was later transferred to the Cook County Jail, and charged with four felonies: (i) being an armed habitual criminal in violation of 720 ILCS 5/24-1.7(a); (ii) being a convicted felon in possession of a firearm in violation of 720 ILCS 5/24-1.1(a); (iii) being in possession of a firearm with a defaced serial number in violation of 720 ILCS 5/24-5(b); and (iv) being in possession of cocaine in violation of 720 ILCS 570/402. Martin also received traffic citations pursuant to Chicago Municipal Code Section 9-76-050 (relating to the operation of

taillights) and 625 ILCS 5/6-112 (relating to the requirement to carry a driver's license). (*Id.* ¶¶ 11, 13).

Martin was incarcerated from May 24, 2013 through July 29, 2013 in connection with his May 24, 2013 arrest. (*Id.* ¶ 14).[3] During the course of criminal proceedings, Martin filed a motion to suppress the evidence, which the trial court granted on November 7, 2014. (*Id.*). As a result, the State dismissed the charges through a nolle prosequi motion. (*Id.*). Martin now seeks $65,000 in civil damages for his incarceration, calculated at a rate of $1,000 per day for 65 days (May 24, 2013–July 29, 2013). He also seeks to recover lost business income of $700 per day for 65 days—a total of $45,500—in relation to his automobile dealership. (*Id.* ¶ 15). Defendants argue that such damages are not recoverable in this Section 1983 action.

LEGAL STANDARD

Summary judgment is appropriate "if the

[3] On July 29, 2013, a different court revoked Martin's bond after he was convicted in an unrelated criminal case. (Id.). He remained incarcerated in connection with that case.

movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(a). A genuine dispute as to any material fact exists if "the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). In determining summary judgment motions, courts "must view the record in the light most favorable to the non-moving party and give the benefit of reasonable inferences to the non-moving party." *Chaib v. Geo Grp., Inc.*, 819 F.3d 337, 341 (7th Cir. 2016). After "a properly supported motion for summary judgment is made, the adverse party must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 255 (quotation omitted); *Life Plans, Inc. v. Sec. Life of Denver Ins. Co.*, 800 F.3d 343, 349 (7th Cir. 2015).

ANALYSIS

In his false arrest claim, Martin alleges that he "was stopped and seized without a warrant, without probable cause, and without reasonable suspicion" in violation of the

Fourth and Fourteenth Amendments. (R.1, Compl. ¶ 16). He further alleges that he was "unlawfully and maliciously arrested ... and wrongfully detained[.]" (*Id.* ¶ 17). His unlawful search claim, meanwhile, asserts that "Defendant Officers searched [his] person and his car without a search warrant and without probable cause to believe [he] was committing or had committed a crime" in violation of the Fourth Amendment. (*Id.* ¶ 20).

In seeking partial summary judgment, Defendants argue that Martin "can only proceed on his claim related to his brief detention on scene before the handgun and drugs were found, the

search of his person, and the search of his vehicle." (R.37, Opening Br. at 9).[4] According to Defendants, once the police officers discovered the handgun and cocaine in Martin's car, probable cause existed to arrest Martin, precluding him from recovering

[4] Defendants recognize that "Plaintiff's claims related to his initial stop, handcuffing, the search of his person, and the search of his vehicle" depend on "disputed facts." (R.52, Reply Br. at 1).

damages related to his 65-day incarceration on felony charges. After reviewing the summary judgment record and applicable precedent, the Court agrees.

I. The Existence of Probable Cause for Weapons and Drug-Related Offenses

"Probable cause to arrest is an absolute defense to any claim under Section 1983 against police officers for wrongful arrest, false imprisonment, or malicious prosecution." *Mustafa v. City of Chicago*, 442 F.3d 544, 547 (7th Cir. 2006). Where the underlying facts are undisputed in a false arrest case, the court can determine whether probable cause supported the arrest at the summary judgment stage. *See Abbott v. Sangamon Cty., Ill.*, 705 F.3d 706, 714 (7th Cir. 2013).

Here, it is undisputed that, on May 24, 2013, Martin was in possession of an illegal handgun and cocaine in violation of various penal statutes, including 720 ILCS 5/24-1.7(a), 720 ILCS 5/24-1.1(a), 720 ILCS 5/24-5(b), and 720 ILCS 570/402. (R.38, Rule 56.1(a)(3) Stmt. Facts ¶¶ 9-10, 12-13). By

failing to refute these facts (and Defendants' related arguments) in response to the present motion, Martin has effectively conceded that—once the Defendant Officers recovered contraband in his car—probable cause existed for his May 24, 2013 arrest. *See Holmes v. Vill. of Hoffman Estate*, 511 F.3d 673, 679 (7th Cir. 2007) ("A police officer has probable cause to arrest an individual when the facts and circumstances that are known to him reasonably support a belief that the individual has committed, is committing, or is about to [ ] commit a crime").[5] The fact that Defendants only later learned about Martin's criminal history

(as relevant to two of the felony charges)

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[5] In addition, Martin has developed no argument that "the initial seizure was the arrest, and not merely an investigatory detention," such that post-seizure observations "would not factor into the probable-cause inquiry." See *Gutierrez v. Kermon,* 722 F.3d 1003, 1007 n.1 (7th Cir. 2013); cf. *Ramos v. City of Chicago*, 716 F.3d 1013, 1018 (7th Cir. 2013) ("The proliferation of cases in this court in which 'Terry' stops involve handcuffs and everincreasing wait times in police vehicles is disturbing, and we would caution law enforce-ment officers that the acceptability of handcuffs in some cases does not signal that the restraint is not a significant consideration in determining the nature of the stop").

does not vitiate the probable cause determination, where the officers recovered on scene a handgun with a defaced serial number and a plastic baggie containing crack cocaine. *See id.* at 682 ("probable cause to believe that a person has committed *any* crime will preclude a false arrest claim, even if the person was arrested on additional or different charges for which there was no probable cause"); *Abbott*, 705 F.3d at 715 ("an arrest can be supported by probable cause that the arrestee committed any crime, regardless of the officer's belief as to which crime was at issue").

Similarly, in this Section 1983 action, the fact that Martin prevailed on a suppression motion related to the initial traffic stop does not vitiate the probable cause determination with respect to the discovered contraband. The Seventh Circuit's recent opinion in *Vaughn v. Chapman* is instructive on this issue. In *Vaughn*, an Illinois state trooper stopped the plaintiff—a felon then living in Arizona—for purported traffic infractions while he was driving through Illinois. *See* No. 16-1065, 2016 WL 5944726, at *1 (7th Cir. Oct. 13, 2016). After learning that Vaugh

"was driving on a suspended license and was wanted on a warrant from Wisconsin[,]" the trooper called for a drug-sniffing dog. Another Illinois state trooper then arrived, who—according to Vaughn—" 'signaled' the dog to give a false alert so that the troopers would have an excuse to search the car." The troopers found a pistol in the trunk of the car. *Id.* They then took Vaugh to county jail and contacted Arizona authorities, learning that "Vaughn was suspected of committing an armed robbery and aggravated assault a few days earlier." *Id.* The state prosecutor later charged Vaught with possession of a firearm as a felon in violation of 720 ILCS

5/24–1.1(a). *Id.* Vaughn remained in custody from August 2013 through December 2014, when the prosecutor dismissed his case to allow the Arizona prosecution to proceed. *Id.* Vaughn then brought suit against "every-one involved in the criminal case," including a claim against the individual troopers for malicious prosecution. *Id.* at *1-2.

In relevant part, the Seventh Circuit noted that, "[u]nder both federal and state law, the existence of probable cause is a complete

defense to malicious prosecution[.]" *Id.* at *2 (citing *Johnson v. Saville*, 575 F.3d 656, 659 (7th Cir. 2009)). The Seventh Circuit then held:

> Here the troopers had discovered a firearm in the trunk of the car Vaughn was driving and learned from a records search that Vaughn is a felon. They also learned from authorities in Arizona that Vaughn was a suspect in an aggravated assault and armed robbery involving a weapon of the same caliber. This was sufficient [to establish probable cause].
>
> Although Vaughn alleges that this evidence was the fruit of an illegal search of the car, this would not undermine its relevance to the question of probable cause. The exclusionary rule does not apply in a § 1983 suit against police officers. *See Lingo v. City of Salem*, 832 F.3d 953, 958-959 (9th Cir. 2016); *Black v. Wigington*, 811 F.3d 1259, 1267-68 (11th Cir. 2016); *Townes v. City of New York*, 176 F.3d 138, 145 (2d Cir. 1999); *Wren v. Towe*, 130 F.3d 1154, 1158 (5th Cir. 1997) ... Thus,

> regardless of whether Troopers Chapman and Howell had justification for searching the trunk of the car that Vaughn was driving, their discovery established probable cause for the charge and thus defeated any claim of malicious prosecution. *See Johnson*, 575 F.3d at 664.

Id. at *2-3.

In this case, even assuming that the recovered contraband constituted "the fruit of an illegal search of [Martin's] car," such a fact does not "undermine its relevance to the question of probable cause." *See id.* In other words, "regardless of whether [the Defendant Officers] had justification for searching ... the car that [Martin] was driving, their discovery established probable cause for the charge[s] and thus defeated any claim" of false arrest under Section 1983. *See id.* As other Circuit Courts have recognized, "The lack of probable cause to stop and search does not vitiate the probable cause to arrest, because (among other reasons) the fruit of the poisonous tree doctrine is not available to assist a § 1983 claimant." *See Townes v. City of New York*,

176 F.3d 138, 149 (2d Cir. 1999); *see also Lingo v. City of Salem*, 832 F.3d 953, 960 (9th Cir. 2016) (rejecting the suggestion that "probable cause to arrest may be supported only by information that was obtained in accordance with the Fourth Amendment"); *Black v. Wigington*, 811 F.3d 1259, 1268 (11th Cir. 2016) ("We now join our sister circuits and hold that the exclusionary rule does not apply in a civil suit against police officers"); *Hector v. Watt*, 235 F.3d 154, 157-61 (3d Cir. 2000) (same); *Wren v. Towe*, 130 F.3d 1154, 1158 (5th Cir. 1997) (same).

District courts, too, have recognized that the exclusionary rule does not apply to Section 1983 claims. *See, e.g.*, *Williams v. Edwards*, No. 10 C 1051, 2012 WL 983788, at *5-7 (N.D. Ill. Mar. 22, 2012) ("The court concludes that the undisputed evidence of Williams's drug use and possession establishes probable cause for his ultimate arrest regardless of whether the initial stop was constitutionally valid"); *Dyson v. Vill. of Midlothian*, No. 12-CV-7632, 2015 WL 778850, at *7 n.7 (N.D. Ill. Feb. 18, 2015) ("While in a criminal case the 'fruit of the poisonous tree' doctrine might render the

arrest in this case tainted by the possible constitutional infirmity of the initial stop, no such doctrine extends to civil cases for false arrest"); *Swanigan v. Trotter*, No. 7 C 4749, 2011 WL 658156, at *3 (N.D. Ill. Feb. 14, 2011) (same); *Colbert v. Willingham*, No. 13-CV-2397, 2015 WL 3397035, at *5 n.5 (N.D. Ill. May 26, 2015) (same); *Rivera v. Burke*, No. 06C0734, 2008 WL 345612, at *5 (N.D. Ill. Feb. 7, 2008) (same); *Bradshaw v. Mazurski*, No. 03 C 2074, 2004 WL 170337, at *6 (N.D. Ill. Jan. 15, 2004) (same); *Williams v. Carroll*, No. 08 C 4169, 2010 WL 5463362, at *4-5 (N.D. Ill. Dec. 29, 2010)(same): *Cannon v. Christopher*, No. 1:06-CV-267, 2007 WL 2609893, at *4 (N.D. Ind. Sept. 6, 2007) ("Several federal courts in the Seventh Circuit have adopted the *Townes* principle and applied it to dismiss cases where probable cause existed despite an allegation of an improper initial stop and search").

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In this case, disputed facts exist with respect to the reasonableness of the initial stop and search of Martin and his car. If such conduct was unjustified, Defendants "may be liable for false arrest for an improper

investigative detention[,]" *see Edwards*, 2012 WL 983788 at *7, and Martin may be entitled to nominal damages resulting from such Fourth Amendment violation. *See Townes*, 176 F.3d at 145 ("Here, the only actionable violations of that [Fourth Amendment] right are the stop of the taxicab and the associated seizure and search of Townes's person, which alone might at most support slight or nominal damages"). Based on the undisputed facts, however, probable cause existed to arrest Martin for weapons and drug-related offenses on May 24, 2013. The existence of probable cause "defeat[s] any claim" of false arrest following the contraband discovery. *See Vaughn*, 2016 WL 5944726 at *3; *Mustafa*, 442 F.3d at 547. Accordingly, Martin cannot "recover for his [65-day] incarceration before the charges against him were dropped." *See Edwards*, 2012 WL 983788 at *8; *see also Carroll*, 2010 WL 5463362 ("Having determined that probable cause emerged at least as early the discovery of the guns and I.D.s, there can be no recovery for false arrest under § 1983 after that point"); *Townes*, 176 F.3d at 149 ("Neither may Townes recover compensatory damages for his arrest and pre-arraignment detention ... Ultimately, [his]

only possible damage claim would be limited to the brief invasion of privacy related to the seizure and initial search of his person").

II. Martin's Response Brief

Instead of addressing authorities such as *Townes*, *Carroll*, and *Edwards*, Martin urges the Court to examine the damages available to a Section 1983 litigant—including for incarceration, legal fees, and/or emotional distress—by reference to principles of proximate causation. In particular, he argues: (i) that the Seventh Circuit's decision in *Kerr v. City of Chicago*, 424 F.2d 1134 (7th Cir. 1970), is dispositive and allows recovery here, as does a district court decision

from the District of New Mexico; and (ii) that, in any event, whether independent intervening actors—such as Martin himself—caused his incarceration damages is a question for the jury, not for summary judgment. Ultimately, however, Martin's arguments do not convince the Court to deviate from the above-discussed precedent.

A. *Kerr v. City of Chicago*

The Court first addresses the import

of *Kerr v. City of Chicago*. In *Kerr*, the plaintiff alleged that the Chicago police had violated his constitutional rights by, *inter alia*, obtaining an involuntary confession through the use of physical force, and using that unlawful confession to detain him for 18 months. 424 F.2d at 1138. The Seventh Circuit observed, without further explanation, that "[a] plaintiff in a civil rights action should be allowed to recover the attorneys' fees in a state criminal action where the expenditure is a foreseeable result of the acts of the defendant." *Id.* at 1141. Given case law developments since the Seventh Circuit decided *Kerr* almost 47 years ago, and factual differences from *Kerr*, however, this Seventh Circuit statement does not convince the Court to deny partial summary judgment here.

In particular, *Kerr* does not address whether alleged damages resulting from detention or prosecution pursuant to a *lawful* arrest—*i.e.*, where probable cause supported the arrest—are recoverable in a Section 1983 false arrest action. *Contra id.* at 1140 ("an arrest without a warrant and without probable cause [is] unlawful"). To the contrary, Seventh Circuit precedent supports

that such damages are not recoverable—as a matter of law—insofar as "[p]robable cause is a bar to claims of false arrest under 42 U.S.C. § 1983[.]" *Huon v. Mudge*, 597 Fed.Appx. 868, 877 (7th Cir. 2015); *Holmes*, 511 F.3d at 679-80 ("If the officer had probable cause to believe that the person he arrested was involved in criminal activity, then a Fourth Amendment

claim for false arrest is foreclosed").[6] Without a showing of liability on a false arrest theory *following* the contraband discovery, the Court need not determine Martin's corresponding entitlement to damage recovery. *Contra Borunda v. Richmond*, 885 F.2d 1384, 1389 (9th Cir. 1988) ("A plaintiff who

[6] As the Supreme Court has explained, the tort of false imprisonment remedies a "sort of unlawful detention" – specifically, one "without legal process." See *Wallace v. Kato*, 549 U.S. 384, 389 (2007). The tort of malicious prosecution, meanwhile, remedies unlawful detention stemming from the wrongful institution of legal process – beginning, for example, when the individual "is bound over by a magistrate or arraigned on charges." Id. at 389-90; see also *Serino v. Hensley*, 735 F.3d 588, 594 (7th Cir. 2013) ("when the arrest takes place without a warrant, the plaintiff only becomes subject to legal process afterward, at the time of arraignment"). Martin has not asserted a malicious pro-secution claim here.

establishes liability for deprivations of constitutional rights actionable under 42 U.S.C. § 1983 is entitled to recover compensatory damages for all injuries suffered as a consequence of those deprivations").

In this case, the existence of probable cause defeats any claim for compensatory damages for Martin's arrest and pre-arraignment detention.[7] *See Townes*, 176 F.3d at 149. As the Second Circuit observed in *Townes*:

> Although the common law tort of false arrest (or false imprisonment) allows plaintiffs to seek damages from "the

[7] As the Seventh Circuit has recognized, even if an arrest lacks probable cause, an individual seeking relief under a false arrest theory "is entitled to recover only for injuries suffered from the time of arrest until his arraignment." *Wallace v. City of Chicago,* 440 F.3d 421, 425 (7th Cir. 2006), aff'd sub nom. *Wallace v. Kato*, 549 U.S. 384 (2007) (citing *Wiley v. City of Chicago*, 361 F.3d 994, 998 (7th Cir. 2004 ("[W]e have held that the scope of a Fourth Amendment claim is limited up until the point of arraignment") and *Gauger v. Hendle*, 349 F.3d 354, 362-63 (7th Cir. 2003) ("[T]he interest in not being prose-cuted groundlessly is not an interest that the Fourth Amendment protects")). As noted above, Martin has not asserted a malicious prosecution claim based on post-arraignment conduct. Even if he had, "[p]robable cause to arrest is an absolute defense to any claim under Section 1983 against police officers for . . .malicious prosecution." *See Mustafa*, 442 F.3d at 547.

> time of detention up until issuance of process or arraignment, but no[ ] more," Keeton et al., *supra,* § 119, at 888, the existence of probable cause defeats any such claim. The individual defendants here lacked probable cause to stop and search Townes, but they certainly had probable cause to arrest him upon discovery of the handguns in the passenger compartment of the taxicab in which he was riding ... Ultimately, Townes's only possible damage claim would be limited to the brief invasion of privacy related to the seizure and initial search of his person.

Id. (citation omitted). The Court finds this reasoning both persuasive and applicable. Given the Seventh Circuit's positive citation of *Townes* in *Vaughn, see* 2016 WL 5944726 at *3, the Court

declines to interpret *Kerr* as setting forth a broad rule that "a plaintiff whose constitutional rights have been violated ... is entitled to recover damages for incarceration, legal fees, and/or for emotional distress caused by

an unlawful detention or search." (R.46, Response Br. at 7).

B. *Train v. City of Albuquerque*

The Court acknowledges, nonetheless, a district court decision from the District of New Mexico, which held that a plaintiff who raises a "constitutional claim based on [an] illegal search" may be entitled to recover damages for post-indictment proceedings, assuming that the constitutional deprivation proximately caused the asserted damages. *See generally Train v. City of Albuquerque*, 629 F. Supp. 2d 1243 (D.N.M. 2009) ("*Train II*"). In so concluding, the *Train* court looked to the Tenth Circuit's guidance "about the interests that the Fourth Amendment protects," including "liberty, property, and privacy interests—a person's sense of security and individual dignity." *Id.* at 1252 (citing *Holland ex rel. Overdorff v. Harrington*, 268 F.3d 1179, 1195 (10th Cir. 2001)). The district court then reasoned:

> According to the Tenth Circuit's guidance on the Fourth Amendment, any damage award available for a Fourth-Amendment violation under 42 U.S.C. § 1983 should be tailored to

> compensating losses of liberty, property, privacy, and a person's sense of security and individual dignity. While it may not be an evil to uncover crime, the drafters obviously did not think uncovering crime was a higher value than protecting and securing a person's home from unreasonable searches. Federal criminal charges, federal detention, and all of the negative consequences of those charges and attendant to federal custody implicated Train's interest in liberty and his sense of security and individual dignity. That imprisonment occasioned economic losses. Such losses should be compensable, given that they implicate the interests that the Tenth Circuit has explained the Fourth Amendment protects.

Id. The *Train* court further noted the existence of "evidence from which a reasonable jury might infer that the Defendants' actions proximately caused" such damages. *Id.* at 1253, 1255.

After reviewing applicable precedent, however, the Court declines to follow the reasoning in *Train*. As an initial matter,

the *Train* court deemed itself "not bound to adhere to

the common-law contours" of the tort of false arrest, insofar as the plaintiff had brought a "constitutional claim based on [an] illegal search" rather than a Section 1983 false arrest claim. *See id.* at 1255; *see also Train v. City of Albuquerque*, No. CIV08-0152JB/RLP, 2009 WL 1330095, at *2 (D.N.M. Apr. 13, 2009) ("*Train I*") ("Train brought this lawsuit in state court for violations of his rights under the Fourth Amendment to the United States Constitution. The Defendants filed a notice of removal, removing this case to federal court"). Here, by contrast, Martin has plainly brought a Section 1983 false arrest claim. (R.1). Accordingly, the Court is bound by precedent such as *Gauger v. Hendle*, 349 F.3d 354, 362-63 (7th Cir. 2003), limiting available damages "to the harm [the criminal defendant] incurred from the false arrest before he was charged." *See Gauger v. Hendle*, 349 F.3d 354, 362-63 (7th Cir. 2003) (citing *Heck v. Humphrey*, 512 U.S. 477, 484 (1994), *Townes*, 176 F.3d at 145-48, and *Hector*, 235 F.3d at 157-61), *abrogated on*

other grounds by Wallace v. City of Chicago, 440 F.3d 421 (7th Cir. 2006). Indeed, in this case, the existence of probable cause to arrest means that Martin cannot recover even for *pre*-indictment damages following the contraband discovery. *See Townes*, 176 F.3d at 149. The *Train* court, by contrast, did not purport to examine whether probable cause existed to arrest the plaintiff following the discovery of a firearm in his apartment. *See Train I*, 2009 WL 1330095 at *10 ("Ultimately, Pettit and Simmons did not have a sound basis to conduct a warrantless search of the apartment"); *Train II*, 629 F. Supp. 2d at 1246 ("The Court has already found that the search of Train's apartment was unlawful and granted summary judgment in Train's favor on that issue"). For these reasons, *Train* is not instructive here.

Furthermore, although the district court in *Train* rejected a series of "policy arguments" regarding the non-compensability of post-indictment damages stemming from an unlawful

search, *see Train II*, 629 F. Supp. 2d at 1253-54, more recent Circuit Court cases have

entertained and affirmed such arguments. As the Ninth Circuit, for example, recently observed:

> "[I]n a § 1983 suit, the need for deterrence is minimal. Here, application of the exclu-sionary rule would not prevent the State from using illegally obtained evidence *against* someone, but instead would prevent state actors merely from *defending themselves* against a claim for monetary damages. Exclusion of evidence in this context would not remove any preexisting incentive that the government might have to seize evidence unlawfully. It would simply increase state actors' financial exposure in tort cases that happen to involve illegally seized evidence. In effect, § 1983 plaintiffs would receive a windfall allowing them to prevail on tort claims that might otherwise have been defeated if critical evidence had not been suppressed. Even if such application of the rule might in some way deter violative conduct, that deterrence would impose an extreme cost to law enforcement officers that is

> not generally countenanced by the doctrine.

*8 *Lingo*, 832 F.3d at 958–59. The Eleventh Circuit, too, recently observed:

> The cost of applying the exclusionary rule in this context is significant: officers could be forced to pay damages based on an overly truncated version of the evidence. And the deterrence benefits are miniscule. Police officers are already deterred from violating the Fourth Amendment because the evidence that they find during an illegal search or seizure cannot be used in a criminal prosecution—the primary "concern and duty" of the police. Moreover, plaintiffs can still sue a police officer for the illegal search or seizure, regardless whether the officers can rely on illegally obtained evidence to defend themselves against other types of claims. This threat of civil liability will adequately deter police officers from violating the Fourth Amendment, whether or not the exclusionary rule applies in civil cases.

Black v. Wigington, 811 F.3d at 1268 (citations omitted). The Seventh Circuit, in

turn, has cited both *Lingo* and *Black* with approval. *See Vaughn*, 2016 WL 5944726 at *3.

In the Section 1983 context, "the rules governing compensation for injuries caused by the deprivation of constitutional rights should be tailored to the interests protected by the particular right in question." *Carey v. Piphus*, 435 U.S. 247, 258-59 (1978). In this case, Martin invokes his Fourth Amendment right to be free from unreasonable searches and seizures. A disconnect exists, however, between the alleged constitutional violation and the injury for which Martin now seeks a recovery—that is, his 65-day incarceration on felony charges. In view of this disconnect, the Court agrees with the reasoning of *Townes*: "Victims of unreasonable searches

or seizures may recover damages directly related to the invasion of their privacy ... but such victims cannot be compensated for injuries that result from the discovery of incriminating evidence and consequent criminal prosecution." *See Townes*, 176 F.3d at 148; *accord Hector*, 235 F.3d at 157 ("the damages incurred in [the post-indictment

legal] process are too unrelated to the Fourth Amendment's privacy concerns") (discussing *Carey*). Although the Seventh Circuit has not expressly adopted this principle regarding compensability, courts in this District have applied it. *See, e.g.*, *Carroll*, 2010 WL 5463362 at *4-5; *Edwards*, 2012 WL 983788 at *7-8. Given this reasoning, and given the Seventh Circuit's positive citation of *Townes* and *Hector* in *Gauger* and *Vaughn*, the Court is likewise persuaded. Accordingly, the Court declines to follow the reasoning set forth in *Train*.

C. The Proximate Cause Inquiry

Contrary to Martin's suggestion, moreover, the Court need not undertake a causation analysis in determining the present motion.[8] Although the *Train* court left the

[8] Even applying traditional causation principles, it seems that—while "ordinary principles of tort causation" apply with respect to Martin's initial stop and search claims—the "fruit of the poisonous tree doc-trine is not available to elongate the chain of causation" with respect to his false arrest claim following the contraband discovery, including his $110,500 damage claim for a 65-day incarceration. See *Townes,* 176 F.3d at 146; see also id. ("allowing this and other § 1983 actions to proceed solely on a fruit of the poisonous tree theory of damages . . . would distort basic tort concepts of proximate causation"); accord *Edwards,* 2012 WL 983788 at *7 (noting the same).

proximate cause inquiry to the jury, it did so in light of disputed "evidence." In relevant part, the *Train* court held:

> The parties in this case dispute causation. Train has evidence of injuries, including legal costs, lost wages, and emotional distress, which a reasonable jury might find were a foreseeable consequence of the constitutional deprivation and which would not have occurred absent the constitutional deprivation. A reasonable jury might infer from the evidence that the constitutional deprivation proxi-mately caused Train's asserted losses. On the other hand, Simmons and Pettit have evidence that other parties, including possibly Train himself, his criminal defense attorney, and the grand jury that returned an indictment against him, proximately caused the asserted injuries. In light of the evidence, the Court believes proximate cause in this case is appropriately left to a jury.
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See Train II, 629 F. Supp. 2d at 1253. In this case, however, regardless of whether an

"intervening judgment" by a judge or grand jury broke the causal chain between Defendants' conduct and Martin's 65-day incarceration, Martin "is foreclosed from recovery for a second, independent reason: the injury he pleads (a violation of his Fourth Amendment right to be free from unreasonable searches and seizures) does not fit the damages he seeks (compensation for his [incarceration])." *See Townes*, 176 F.3d at 146-47; *see also Hector*, 235 F.3d at 161 ("Given that the cases on intervening causes are legion and difficult to reconcile ... and that we have other, sufficient grounds for resolving this case, we will not reach the issue of intervening causation"). Following the reasoning of *Townes* and *Hector*—which the *Train* court explicitly declined to follow—the Court does not reach the issue of intervening causation.

Accordingly, the Court grants Defendants' motion for partial summary judgment. While Martin's Section 1983 case may proceed as to the initial stop and search of his person and car on May 24, 2013—before Defendants' discovery of the illegal firearm and crack cocaine—he may not seek damages

based on Defendants' post-discovery conduct, including damages related to his 65-day incarceration. *See Townes*, 176 F.3d at 149 ("Ultimately, Townes's only possible damage claim would be limited to the brief invasion of privacy related to the seizure and initial search of his person"); *see also Edwards*, 2012 WL 983788 at *8 ("while Williams might be entitled to damages for harm he suffered as a result of being unlawfully removed from the car at gunpoint, he would not be able to recover for his fourteen-month incarceration before the charges against him were dropped"); *Carroll*, 2010 WL 5463362 at *5 ("Having determined that probable cause emerged at least as early the discovery of the guns and I.D.s, there can be no recovery for false arrest under § 1983 after that point").

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CONCLUSION

For the foregoing reasons, the Court grants Defendants' motion for partial summary judgment. (R.36).

Dated: January 5, 2017

ENTERED

s/

AMY J. ST. EVE
United States District Court Judge