



IN THE COURT OF APPEALS OF IOWA

STATE OF IOWA,	)	
Appellee,	)	February 22, 1979
v.	)	
MICHAEL SHERIDAN JONES,	)	<u>745</u>
Appellant.	)	61819

Appeal from Pottawattamie District Court - Leo F. Connolly, Judge.

Defendant appeals from judgment on his conviction for breaking and entering in violation of § 708.8, The Code 1977, alleging that inculpatory statements and other evidence were improperly admitted at trial. - Reversed and remanded.

Troyce A. Wheeler, Gary K. Anderson & Steve St. Clair, Council Bluffs,
for Appellant.

Thomas J. Miller, Attorney General of Iowa, Thomas Evans, Assistant
Attorney General and Patrick M. Carr, Assistant Pottawattamie County Attorney,
for Appellee.

Heard by Oxberger, C. J., and Donielson, Snell, Carter and Johnson, JJ.

PER CURIAM

Defendant, Michael Sheridan Jones, appeals from his conviction for breaking and entering in violation of § 708.8, The Code 1977. We reverse and remand to the trial court for further proceedings consistent with this opinion.

I. Defendant contends that the trial court erred in overruling his motion to suppress evidence seized pursuant to an arrest made without probable cause. The evidence sought to be suppressed included inculpatory statements made by the defendant after his arrest and tennis shoes worn by the defendant at the time of his arrest and confiscated by the police.

We note at the outset that the tennis shoes were not admitted into evidence and testimony concerning footprints, plaster casts of footprints, and the defendant's shoes was stricken from the record and the jury was admonished to disregard it. The striking of improper testimony, accompanied by an admonition to the jury to disregard such testimony, is ordinarily sufficient to cure error and assure a fair trial. *State v. Burrell*, 255 N.W.2d 119, 122 (Iowa 1977); *State v. LeMatty*, 263 N.W.2d 559, 563 (Ia. Ct. App. 1978). Reversal is mandated only in those instances where it is manifest that the prejudicial effect of the testimony remained with the jury despite its exclusion. *LeMatty, supra*; *State v. Fuhrman*, 257 N.W.2d 619, 623 (Iowa 1977). In this case no evidence exists which would lead us to believe that the testimony concerning the footprints and defendant's shoes was so inflammatory or prejudicial that the jury would be unable to abide by the trial court's admonition. Therefore, we will consider only whether defendant's inculpatory statements were the product of an illegal, warrantless arrest made without probable cause.

An arrest made without a warrant is valid if the arresting officer has probable cause to believe a crime has been committed and that the defendant committed it. Section 755.4(3), The Code 1977; *State v. Shane*, 255 N.W.2d 324, 326 (Iowa 1977). Probable cause exists if reasonably trustworthy information available to the arresting officer at the time of the arrest would cause a person of reasonable caution to believe that it was likely the arrestee committed the crime. *Shane, supra*; *State v. Harvey*, 242 N.W.2d 330, 340 (Iowa 1976). Probable cause

means probabilities and not legal technicalities. Shane, supra; Harvey, supra. A showing of probable cause is considerably less than a demonstration of guilt. Harvey, supra.

In this case, probable cause to arrest primarily derived from information supplied by Clifford Miller, the owner of the car located at the scene of the crime and containing the stolen equipment. Miller told police that he had loaned his car to the defendant on the evening of the crime. Also, Miller, after having made a telephone call to the defendant at the request of the police, said that the defendant was home although officers had earlier stopped at defendant's home and was told that he was not there. The defendant contends that this information, coming from a man who was a prime suspect in the case, could not be used to support an arrest made with probable cause.

We agree that information provided by a suspect of a crime is of questionable validity and does not carry the same weight of presumed trustworthiness that information provided by a citizen's aide, a witness, or a victim carries. See State v. Mattingly, 220 N.W.2d 865, 868-69 (Iowa 1974); Cundiff v. United States, 501 F.2d 188, 190 (8th Cir. 1974). Thus, in this case, knowledge possessed by the officers at the time of arrest was not necessarily trustworthy and could not be used to support a determination of probable cause without independent proof of the credibility of Miller and/or corroborating evidence of the validity of his information. See Aguilar v. Texas, 378 U.S. 108, 114, 84 S. Ct. 1509, 1514, 12 L.Ed.2d 723, 729 (1964); Spinelli v. United States, 393 U.S. 410, 415-16, 89 S. Ct. 584, 588-89, 21 L.Ed. 637, 643-44 (1969).

Furthermore, even if such proof had been available to the officers at the time of the arrest, the information provided by Miller served only to create a suspicion that defendant had committed the crime. Mere suspicion cannot support an arrest made without a warrant. Feguer v. United States, 302 F.2d 214, 246 (8th Cir. 1962), cert. denied 371 U.S. 872 (1962). More was needed here to cause a person of reasonable caution to believe it was likely defendant committed the crime.

II. Because his warrantless arrest was made without probable cause, defendant contends that incriminating statements made by him after arrest were inadmissible at trial as fruits of an illegal arrest. We agree with this contention.

After arrest, defendant was read his Miranda rights on two separate occasions. In response to the officer's query following the first reading whether defendant was ready to talk, the defendant remained silent. Following the second reading, defendant said he had done nothing wrong and thus could talk. After questioning by police, the defendant made several inculpatory statements.

Miranda warnings, in and of themselves, are not sufficient to purge the taint of evidence gathered pursuant to an illegal arrest. *Brown v. Illinois*, 422 U.S. 590, 603, 95 S. Ct. 2254, 2261, 45 L.Ed.2d 416, 427 (1975). Rather, Miranda warnings are only one factor to be considered in determining whether statements made were sufficiently the act of a free will to purge the taint of the original illegality. *Brown, supra*. Other factors to be considered include the temporal proximity of the arrest and the inculpatory statements made, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of official misconduct in making the arrest. *Brown, supra* at 603-04, 95 S. Ct. at 2261-62, 45 L.Ed.2d at 427. The voluntariness of the statement is a threshold requirement. *Brown, supra*. The burden of proof is on the prosecution. *Brown, supra*.

In this case, testimony indicates that the defendant's statements were the product of police questioning and not the product of an independent desire on the part of the defendant to cooperate. See *United States v. Ceccolini*, 435 U.S. 268, 276, 98 S. Ct. 1054, 1060, 55 L.Ed.2d 268, 277 (1977). Also, the inculpatory statements were made approximately an hour to an hour and a half after arrest and no intervening circumstances occurred to render the statements the product of something other than the illegal arrest. Furthermore, although the officers' conduct could not be deemed flagrant, the arrest itself was intentionally made without probable cause for investigatory purposes. Defendant's inculpatory statements were inadmissible at trial. The trial court erred in overruling defendant's motion to suppress with respect to these statements.

III. Because of our findings above, we have no occasion to discuss whether the warrantless entry of the officers into defendant's home rendered the arrest illegal.

REVERSED AND REMANDED.