

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

OMARKO MATTHEW PARKER,

Defendant-Appellant.

UNPUBLISHED

June 25, 1996

No. 164796

LC No. 92-001909

Before: White, P.J., and Holbrook, Jr. and P. D. Schaefer,* JJ.

PER CURIAM.

Defendant was convicted following a bench trial of armed robbery, MCL 750.529; MSA 28.797, and was sentenced to serve eight to twenty years in prison. He appeals as of right.

Defendant first contends that the police lacked probable cause to arrest him without a warrant at his grandfather's home and that any statements he made to the police were the product of that illegal arrest. Notwithstanding trial counsel's failure to raise this issue below, we find that remand is necessary to ensure that defendant's conviction is constitutionally valid. *People v Grant*, 445 Mich 535, 547; 520 NW2d 123 (1994). Accordingly, we remand this matter to the trial court for a de novo evidentiary hearing to resolve the issues whether the police had probable cause to arrest defendant without a warrant and, if probable cause was lacking, whether the subsequent statements defendant made to the police were the product of an illegal arrest. See, e.g., *People v McCray*, 210 Mich App 9, 11-12; 533 NW2d 359 (1995). If, on remand, the trial court determines that probable cause to arrest existed, defendant's statements were admissible at trial despite his warrantless arrest. See *New York v Harris*, 495 US 14; 110 S Ct 1640; 109 L Ed 2d 23 (1990). On the other hand, if the trial court determines that probable cause to arrest did not exist, the court must consider whether the prosecution can sustain its burden of establishing that the confession was not only voluntary but also "sufficiently an act of free will to purge the primary taint" of an illegal arrest. *Brown v Illinois*, 442 US 590; 95 S Ct 2254; 45 L Ed 416, 426 (1975), quoting *Wong Sun v United States*, 371 US 471, 486; 83 S Ct 407; 9 L Ed 2d 441 (1963). The court shall look to the temporal proximity of the arrest and the confession, the

* Circuit judge, sitting on the Court of Appeals by assignment.

presence of intervening circumstances, and the purpose and flagrancy of the official misconduct. *Brown* at 427. If probable cause was lacking and the prosecution does not establish the requisite attenuation, defendant's conviction must be vacated and his statements must be suppressed in the event he is retried.

In the event that defendant's conviction is found on remand to be constitutionally valid, we address the merits of defendant's remaining appellate issues to preserve judicial economy.

Defendant's contention that the corpus delicti rule was violated is wholly without merit. The prosecution presented evidence, independent of defendant's statements to police, that established the occurrence of the specific injury to the victim and some criminal agency as the source of the injury. *People v Cotton*, 191 Mich App 377, 394; 478 NW2d 681 (1991). Thus, the prosecutor properly established the corpus delicti of armed robbery. See also *People v Konrad*, 449 Mich 263, 270; 536 NW2d 517 (1995).

Finally, defendant's eight-year minimum sentence is at the high end of the recommended guidelines range of three to eight years, and is proportionate to the offender and the seriousness of the offense. The trial court did not abuse its discretion in imposing the sentence. *People v Milbourn*, 435 Mich 630; 461 NW2d 1 (1990).

Remanded for further proceedings consistent with this opinion. We retain no further jurisdiction.

/s/ Helene N. White

/s/ Donald E. Holbrook, Jr.

/s/ Philip D. Schaefer