2014 IL App (1st) 130063-U

SIXTH DIVISION
September 30, 2014

No. 1-13-0063

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	04 CR 14022
	)	
DEMETRIUS DANIELS,	)	Honorable
	)	Lawrence Edward Flood,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HALL delivered the judgment of the court.
Justice Rochford concurred in the judgment.
Justice Lampkin dissented.

ORDER

HELD: The trial court's finding of attenuation between defendant's arrest and his subsequent statements to police was not manifestly erroneous. Trial court's finding of probable cause was not manifestly erroneous. The evidence was sufficient to sustain defendant's conviction for first-degree murder. Mittimus corrected to reflect proper presentence custody credit.

¶ 1 Following a bench trial, defendant Demetrius Daniels was found guilty of first-degree murder in the death of his three-month-old daughter Tayana Daniels who died from injuries consistent with shaken-baby syndrome. Defendant was sentenced to 20 years' imprisonment and he appealed.

¶ 2 On appeal, we found defendant was arrested without probable cause. *People v. Demetrius Daniels*, No. 1-08-1099 (2010) (unpublished order under Supreme Court Rule 23). We reversed his conviction and remanded the cause to the trial court to conduct a hearing to determine whether defendant's inculpatory statements to police were sufficiently attenuated from his illegal arrest to be admissible. We remanded the cause because the record was not sufficient to allow us to review the matter.

¶ 3 We directed the trial court to suppress the statements if the court found they were not sufficiently attenuated. However, if the trial court found the statements were sufficiently attenuated to render them admissible then the court was directed to reinstate defendant's conviction. Finally, we held there was no double jeopardy bar to retrying defendant because the State had presented sufficient evidence for a rational trier of fact to find him guilty of first-degree murder beyond a reasonable doubt. Our supreme court subsequently denied the State's petition for leave to appeal. *People v. Daniels*, 239 Ill. 2d 562 (2011).

¶ 4 On remand, the trial court conducted an attenuation hearing, and following a motion to reconsider filed by the State, concluded that based on evidence not previously submitted at the hearing on the motion to quash arrest and suppress evidence, not only were defendant's statements sufficiently attenuated from his arrest to be admitted, but that police had probable cause to arrest defendant when they took him into custody. As a result of these findings, and

pursuant to our mandate, the trial court entered an order reinstating defendant's conviction and sentence.

¶ 5 Defendant now appeals. For the reasons that follow, we affirm.

¶ 6 The underlying facts in this case are sufficiently set forth in the decision of this court on the previous appeal. Therefore, we discuss only those facts necessary to resolve the issues raised in this appeal.

¶ 7 ANALYSIS

¶ 8 "A trial court's finding under the attenuation doctrine will not be overturned unless manifestly erroneous." *People v. Simmons*, 372 Ill. App. 3d 735, 742 (2007). A decision is manifestly erroneous only if the error is " ' clearly evident, plain, and indisputable.' " *People v. Frieberg*, 305 Ill. App. 3d 840, 847 (1999) (quoting *People v. Ruiz*, 177 Ill. 2d 368, 384-85 (1997)).

¶ 9 In *Wong Sun v. United States*, 371 U.S. 471 (1963), the United States Supreme Court held that a criminal confession obtained as a direct result of an illegal arrest made without probable cause should be suppressed. As a result, when the State seeks to admit a statement made by the defendant following an illegal arrest, it must establish that the statement was an exercise of the defendant's free will, independent of any taint of the arrest. *People v. Pierson*, 166 Ill. App. 3d 558, 563 (1988). A confession made after an illegal arrest is admissible if it is not obtained by exploitation of the arrest. *People v. Bates*, 267 Ill. App. 3d 503, 504 (1994). The United States Supreme Court has identified four factors used in assessing whether the taint of an illegal arrest was sufficiently attenuated from an inculpatory statement such that the statement could be admitted despite the illegality of the underlying arrest. See *Brown v. Illinois*, 422 U.S.

590, 603-04 (1975). These factors are: (1) whether defendant was given *Miranda* warnings; (2) the temporal proximity of the statements to the arrest; (3) the presence of intervening circumstances; and (4) the purpose and flagrancy of the police misconduct. *Id.* See also *People v. Foskey*, 136 Ill. 2d 66, 85-86 (1990).

¶ 10 "The flagrancy of police misconduct, or lack thereof, and the presence or absence of intervening circumstances have emerged as the key factors in determining whether a statement obtained subsequent to an illegal arrest is sufficiently purged of the taint of that arrest to be admissible." *People v. Ollie*, 333 Ill. App. 3d 971, 986 (2002). The State bears the burden of showing sufficient attenuation by clear and convincing evidence. *Brown*, 422 U.S. at 604; *Foskey*, 136 Ill. 2d at 86; *People v. Watson*, 315 Ill. App. 3d 866, 881 (2000).

¶ 11 In this case, during opening arguments of the attenuation hearing on remand, the State proclaimed to the trial court that the court would "hear testimony that was not presented or elicited in the original motion to quash arrest and, therefore, not available to the Appellate Court when they decided the case." The State told the trial court it would hear testimony that initially "[t]he baby is fine, crying, the mom goes to the fix the bottle, leaves the baby with the defendant, when she comes back the baby has suffered some type of trauma while it was left solely in the hands of the defendant. That didn't come out in the original hearing."

¶ 12 The State then called Detective Nicholas Cikulin. The detective testified that the baby's mother, Andrea Marshall, told him that in the early morning hours of April 7, 2004, "the baby was crying, and she woke up to make the baby a bottle, and she had left the room, and when she returned that [defendant] was holding the baby, and when she took the baby from him, she noticed that the baby was shaking and that his eyes were rolling in his head." According to the

State, the detective's testimony implied that "the defendant did something to the child while the mother was preparing the bottle," thereby establishing probable cause for his arrest.

¶ 13 The trial court initially found that defendant's inculpatory statements were inadmissible primarily based on its finding that there was no "sufficient intervening circumstance to offset the taint of the illegal arrest." The State filed a motion to reconsider along with a supporting memorandum of law.

¶ 14 At the hearing on the motion to reconsider, the State argued that Detective Cikulin's testimony established that the "defendant was actually alone with the child at the time that the child first manifested its injuries." The State claimed that if this evidence had been elicited at the original hearing on defendant's motion to quash arrest and suppress evidence, then our court would have found there was probable cause to arrest defendant in the previous appeal.

¶ 15 After further consideration of the parties' respective arguments and proffered case law, the trial court reversed itself on the attenuation issue, stating "[b]ased upon the information testified to by the detective at the attenuation hearing, the Court finds that the defendant's inculpatory statements were not obtained by exploiting his unlawful arrest as to render the statements inadmissible. In fact, the evidence adduced at the hearing clearly established the sufficient basis for the defendant to be taken into custody."

¶ 16 Defendant now contends that since we determined, in the previous appeal, that the police lacked probable cause to arrest him, the law of the case doctrine and our mandate precluded the trial court from reconsidering our probable cause determination at the attenuation hearing. We disagree.

¶ 17 The law of the case doctrine provides that an issue of law decided on a previous appeal is binding on the circuit court on remand as well as the appellate court on a subsequent appeal. *People v. McDonald*, 366 Ill. App. 3d 243, 247 (2006). Since the applicability of the doctrine is primarily a matter of law, we review the trial court's ruling under a *de novo* standard. See *In re Christopher K.*, 217 Ill. 2d 348, 363-64 (2005).

¶ 18 The rationale behind the law of the case doctrine is to avoid indefinite relitigation of the same issues, to obtain consistent results in the same litigation, and to ensure that lower courts follow the decisions of appellate courts. In re Christopher K., 217 Ill. 2d at 365. "The doctrine, however, merely expresses the practice of courts generally to refuse to reopen what has been decided; it is not a limit on their power." *People v. Patterson*, 154 Ill. 2d 414, 468-69 (1992). The doctrine will not be applied if the facts in the case do not remain the same. See *Patterson*, 154 Ill. 2d at 468 ("Under the law-of-the-case doctrine, generally, a rule established as controlling in a particular case will continue to be the law of the case, as long as the facts remain the same"); *People v. Young*, 263 Ill. App. 3d 627, 633 (1994) ("Under this doctrine, a court is bound by its prior rulings of law *** unless the facts require a different interpretation").

¶ 19 Here, the law of the case doctrine did not apply to preclude the trial court from reconsidering our probable cause determination because the State presented the trial court with new facts and evidence at the attenuation hearing which were not presented to us when we first the reviewed case. In addition, the doctrine does not apply to rulings revisited before entry of a final judgment. See *Patterson*, 154 Ill. 2d at 469 ("a finding of a final judgment is required to sustain application of the doctrine"). Our prior ruling remanding the cause to the trial court to conduct a hearing to determine whether defendant's statements were sufficiently attenuated from

his illegal arrest to be admissible was not a final judgment. See *Wilkey v. Illinois Racing Bd.*, 96 Ill. 2d 245, 249 (1983) (where a cause is remanded for further proceedings involving disputed questions of law or fact, the judgment of the appellate court is not final).

¶ 20 Having found that the State's contention that probable cause existed was properly before the trial court, and is properly before our court, we address the merits of the issue. "While we review determinations of probable cause *de novo*, we will not disturb the trial court's findings of fact unless they are against the manifest weight of the evidence. *** We will also give due weight to the inferences the trial court has drawn from those facts." *People v. Ollie*, 333 Ill. App. 3d 971, 980 (2002). "Whether or not probable cause for an arrest exists in a particular case depends upon the totality of the facts and circumstances known to the officers when the arrest was made." *People v. Clay*, 55 Ill. 2d 501, 504 (1973). Probable cause exists where the facts and circumstances known to the officers at the time of the arrest are sufficient to warrant a person of reasonable caution to believe the suspect committed the offense. *People v. Sims*, 192 Ill. 2d 592, 614 (2000). Although probable cause requires more than mere suspicion, it does not require proof beyond a reasonable doubt. *People v. Arnold*, 349 Ill. App. 3d 668, 671-72 (2004). The existence of probable cause involves commonsense considerations and assessing the probability of criminal activity rather than proof beyond a reasonable doubt of such criminal activity. *People v. Grant*, 2013 IL 112734, ¶ 11.

¶ 21 The following facts were presented at the attenuation hearing. On April 7, 2004, the Chicago Police Department received a call over its child abuse hot-line that a two-month-old child had been admitted to the University of Chicago Hospital with multiple injuries. After speaking with Doctor Jill Glick, Detective Cikulin and his partner went to the hospital to

investigate. Detective Cikulin spoke with Dr. Glick, and with nurse Eve Edstrom, the coordinator of child protection services at the hospital. The child's parents and other family members were not present at the hospital.

¶ 22 Dr. Glick told the detective that baby Tayana suffered from various injuries including acute and chronic subdural hematomas, multiple rib fractures, bucket-handle fractures to her legs, and a lacerated liver. The doctor opined that the injuries were consistent with shaken-baby syndrome. Nurse Edstrom told the detective that Tayana's injuries were not consistent with the history provided by the parents.

¶ 23 Detective Cikulin went to an address provided by nurse Edstrom where he interviewed the child's mother, Andrea Marshall, and the child's maternal grandmother, Ms. Mary Marshall. The women told the detective that defendant did not live with them, he lived with his grandmother. After the interviews, the detective returned to the police station and obtained a picture of defendant along with an address. The detective went to the address and spoke with a woman who identified herself as defendant's grandmother. The woman told Detective Cikulin she had not seen defendant in over four months and believed he lived with his girlfriend. The woman added she heard the girlfriend had a baby, but she had not seen the baby yet.

¶ 24 Shortly thereafter, in the early morning hours of April 8, 2004, Detective Cikulin returned to the police station where he reinterviewed Andrea Marshall and Ms. Mary Marshall. During the interviews, the women confessed they had lied about defendant living with his grandmother and that he actually lived with them. Andrea Marshall told the detective that defendant cared for the child during the day while she attended school.

¶ 25 Detective Cikulin then asked Andrea Marshall about when she first noticed the child had been injured. According to the detective, Andrea Marshall responded that "in the early morning hours of the 7th that the baby was crying, and she woke up to make the baby a bottle, and she had left the room, and when she left the room to make a bottle and when she returned that [defendant] was holding the baby, and when she took the baby from him, she noticed that the baby was shaking and that his eyes were rolling in his head."

¶ 26 After the interviews, Detective Cikulin and his partner took Andrea Marshall and Ms. Mary Marshall back to their home, where the women allowed the detectives to search for defendant. Upon failing to locate defendant, Detective Cikulin went home as his shift had ended. The detective believed defendant was attempting to evade speaking with investigators about Tayana's injuries. When Detective Cikulin arrived back at work on the afternoon of April 8, 2004, he learned that defendant had been located at the hospital and that a squad car had been dispatched to detain him.

¶ 27 Taking all of the foregoing into consideration, we conclude that, based on the totality of the circumstances, the trial court's finding that there was probable cause for defendant's arrest was not against the manifest weight of the evidence. By the time defendant was arrested, hospital personnel had informed police that the child had sustained multiple serious injuries consistent with shaken-baby syndrome. Detectives also knew that defendant was the last person to have contact with the child, he was alone with the child and was holding the child just before Andrea Marshall noticed that the child was seizing and her eyes were rolling back in her head. This information provided probable cause to take defendant into custody. "Where officers are working together in investigating a crime, the knowledge of each constitutes the knowledge of

all, and probable cause can be established from all the information collectively received by the officers." *People v. Ortiz*, 355 Ill. App. 3d 1056, 1065 (2005).

¶ 28 Defendant maintains that the evidence concerning him being alone with the child was not new evidence because it was previously established that he cared for the baby during the day while Andrea Marshall was at school. Defendant fails to recognize that the new evidence was not who cared for the child and when, but rather, that it was defendant who was the last person to have contact with the child before she began seizing and her eyes rolled back in her head. These facts were not elicited at the original motion to quash arrest and suppress evidence, and they were wholly relevant to the probable cause determination as well as the attenuation analysis. See *People v. Wilberton*, 348 Ill. App. 3d 82, 87 (2004) (noting that intervening acquisition of probable cause can be an important factor in the attenuation analysis).

¶ 29 Even assuming, *arguendo*, that defendant's arrest was without probable cause, exclusion of his subsequent incriminating statements was not required. In regard to the attenuation analysis set forth in *Brown v. Illinois*, all of the *Brown* factors weigh in favor of attenuation.

¶ 30 In the instant case, defendant was advised of his *Miranda* warnings each and every time police made any attempts to speak with him. There is ample evidence in the record showing defendant was given *Miranda* warnings multiple times before he gave his first statements to police. In addition, Assistant State's Attorney (ASA) Scheck gave defendant *Miranda* warnings at least three times prior to memorializing his statements. This factor weighs in favor of attenuation.

¶ 31 In regard to intervening circumstances, the State argues that the testimony of Detective Cikulin as to Andrea Marshall's statement about defendant having the last contact with the child,

provided independent, intervening probable cause for defendant's arrest. Assuming, *arguendo*, that defendant was arrested without probable cause, the development of intervening probable cause would have occurred almost simultaneously with his arrest, independent of any illegal police action. See, *e.g.*, *People v. Morris*, 209 Ill. 2d 137, 158 (2004) ("the development of intervening probable cause occurred almost simultaneously with defendant's illegal detention"), *overruled in part on other grounds by People v. Pitman*, 211 Ill. 2d 502, 513 (2004). By the time defendant was arrested, police had been informed by hospital personnel that the child sustained multiple serious injuries consistent with shaken-baby syndrome. Detectives had also been informed by the child's mother that defendant was the last person to have contact with the child, had been alone with the child, and was holding the child before she began shaking and seizing and her eyes rolled back in her head. This information, which was obtained independent of defendant's arrest, provided police with probable cause to take defendant into custody. Therefore, even if defendant was illegally detained at the hospital, probable cause existed simultaneously to the arrest and existed before the inculpatory statements.

¶ 32 Next, we consider the proximity in time between defendant's arrest and subsequent statements to police. Defendant was taken into custody at about 4:30 in the afternoon and gave his first inculpatory statements around 9:45 p.m. Therefore, approximately five hours of lawful custody passed before defendant gave his first statements to police. "A lapse of time may dissipate the taint of an illegal arrest by allowing the accused to reflect on his situation." *Wilberton*, 348 Ill. App. 3d at 86. To "the extent that the passage of time itself impelled defendant's confession, that passage of time – since it was almost entirely during a period of lawful custody – must be viewed as a factor which weighs in favor of finding that the illegality

of defendant's arrest had been purged by the time he gave his statements to the police." *Morris*, 209 Ill. 2d at 161, *overruled in part on other grounds by People v. Pitman*, 211 Ill. 2d 502, 513 (2004).

¶ 33 The final factor to consider under the *Brown* analysis is the purpose and flagrancy of the police conduct in arresting the defendant. Courts have found police conduct purposeful and flagrant where a defendant is arrested for investigation and without probable cause in the hope that detaining him will yield evidence of a crime. *Brown*, 422 U.S. at 605; see also *People v. Simmons*, 372 Ill. App. 3d 735, 745-46 (2007) (defendant's arrest and detention evidenced purposeful and flagrant police misconduct where they "rounded up defendant and then conducted a fishing expedition in order to establish probable cause"); *People v. Jackson*, 374 Ill. App. 3d 93, 107-08 (2007) (finding flagrant and purposeful police misconduct where defendant's unlawful detention was investigatory in nature and a "fishing expedition").

¶ 34 In this case, there is no evidence the police unlawfully detained defendant without probable cause in the hope that detaining him would yield evidence of a crime. By the time defendant was arrested, police had probable cause to arrest him. Assuming, *arguendo*, that defendant was arrested without probable cause, we would still find that under the totality of the circumstances, the taint of his illegal arrest was purged by the time he gave his statements. Defendant's statements were not the fruit of an illegal arrest but instead were attenuated from that arrest. Accordingly, the trial court's finding of attenuation between defendant's arrest and his subsequent statements to police was not manifestly erroneous.

¶ 35 Defendant next contends he was not proven guilty beyond a reasonable doubt because there was strong reason to believe his statements were not true; there was strong reason to

believe that, even if the statements were true, his actions did not cause the fatal injuries; and no evidence was presented that he knew his acts created a strong probability of death or great bodily harm. We have already determined that the evidence presented at trial was sufficient to sustain defendant's convictions. Nevertheless, we briefly address this issue.

¶ 36 A criminal conviction will not be set aside on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there remains a reasonable doubt of the defendant's guilt. *People v. Jimerson*, 127 Ill. 2d 12, 43 (1989). The standard to be applied in considering the sufficiency of the evidence is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Perez*, 189 Ill. 2d 254, 265-66 (2000); *People v. Taylor*, 186 Ill. 2d 439, 445 (1999).

¶ 37 In Illinois, "a person who kills an individual without lawful justification commits first degree murder if, in performing the acts which cause death * * * he knows that such acts create a strong probability of death or great bodily harm to that individual * * *." 720 ILCS 5/9-1 (West 1992). In the present case, defendant's confession, together with the physical evidence, expert testimony, and other testimony, are sufficient to support his conviction for first-degree murder of the three-month-old child.

¶ 38 Defendant claims there was insufficient evidence showing that he knowingly or intentionally hurt his infant daughter. Again, we note that defendant was the only person with child at the time she sustained her injuries. Knowledge and intent involve an awareness of the harm that will result from one's act. *People v. Flores*, 168 Ill. App. 3d 284, 289 (1988); *People v. Herr*, 87 Ill. App. 3d 819, 822 (1980). A person is held to have acted knowingly when he is

consciously aware that his conduct is practically certain to cause the result. *People v. Hall*, 273 Ill. App. 3d 838, 842 (1995).

¶ 39 For purposes of showing criminal intent, knowledge, due to its very nature, is ordinarily proven by circumstantial evidence, rather than by direct proof. *People v. Lind*, 307 Ill. App. 3d 727, 735 (1999). In this regard, the nature and extent of a victim's injuries are relevant circumstances in ascertaining whether a defendant possessed the necessary mental state. *People v. Tye*, 141 Ill. 2d 1, 15-16 (1990).

¶ 40 In this case, aside from defendant's confession, the nature and extent of the child's injuries indicate they resulted from knowing or intentional conduct rather than accidental conduct. Dr. Glick testified that baby Tayana suffered from various injuries including acute and chronic subdural hematomas, multiple rib fractures, bucket-handle fractures to her legs, and a lacerated liver. The doctor opined that the injuries were consistent with shaken-baby syndrome. Doctor Mitra Kalelkar, who reviewed the autopsy protocol, opined that the child's subdural hematomas and bucket-handle fractures were the result of being shaken violently.

¶ 41 Based on our review of the record, we conclude that a rational trier of fact could have reasonably found that defendant acted intentionally and knowingly in violently shaking the infant and that therefore, the evidence viewed as a whole and in a light most favorable to the State is sufficient to sustain his conviction for first-degree murder.

¶ 42 Finally, defendant contends, and the State agrees, that the mittimus should be corrected to reflect that defendant is entitled to 1,439 days of pre-sentencing custody credit. A defendant is entitled to credit against his sentence for time spent in custody prior to sentencing. 730 ILCS 5/5-

8-7(b) (West 2002). The record shows defendant's custody began when he was arrested on April 8, 2004, and he was sentenced on March 17, 2008, a total of 1,439 days.

¶ 43 It is unnecessary to remand this matter to the trial court, since pursuant to Supreme Court Rule 615(b)(1) (134 Ill. 2d R. 615(b)(1)), we have the authority to directly order the clerk of the circuit court to make the necessary correction. *People v. Brown*, 255 Ill. App. 3d 425, 438-39 (1993); *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995). Therefore, we direct the clerk of the circuit court to amend the mittimus to reflect that defendant is entitled to 1,439 days credit.

¶ 44 Accordingly, for the foregoing reasons, defendant's conviction is affirmed.

¶ 45 Affirmed, mittimus corrected.

¶46 JUSTICE LAMPKIN, dissenting:

¶47 In defendant's first appeal, this court reviewed the evidence presented at both the hearing on the motion to quash arrest and suppress evidence (motion to quash) and the trial and ruled that the police did not possess probable cause to arrest defendant. Specifically, we held:

> "Defendant's alleged evasiveness coupled with the circumstances surrounding Tayana's injuries may have given officers reasonable suspicion warranting further investigation, but these factors alone did not provide police with probable cause to arrest defendant.
>
> 'The circumstances indicate that the officers interrogated the defendant in the hope of obtaining sufficient information upon which to predicate the probable cause necessary for an arrest.' *People v. Townes*, 91 Ill. 2d 32, 37-38 *** (1982). '[P]olice act with an improper purpose when they arrest persons as part of an expedition in the hope of developing probable cause.' *People v. Clay*, 349 Ill. App. 3d 517, 525 *** (2004)." *People v. Daniels*, No. 1-08-1099, at 6 (2010) (unpublished order under Supreme Court Rule 23).

¶48 Accordingly, we reversed defendant's conviction and remanded this case to the trial court for an attenuation hearing regarding defendant's inculpatory statements. We directed the trial court to reinstate defendant's conviction if the trial court found his statements sufficiently attenuated from his unlawful arrest. However, if the trial court found that defendant's inculpatory statements were obtained by exploiting his unlawful arrest so as to render the statements inadmissible, then we directed the trial court to suppress the statements and to conduct further proceedings consistent with our order. *Daniels*, No. 1-08-1099, at 8.

¶49 Instead of following our mandate at the attenuation hearing, the trial court gave the State a second bite at the apple by allowing the State to, in effect, reopen the motion to quash and present evidence that the State was aware of prior to both the hearing on the motion to quash and the trial. Although the State characterized the evidence as "new," it was merely evidence the State had failed to present at the hearing on the motion to quash and the trial. After the attenuation hearing, the trial court initially ruled that the police lacked probable cause to arrest defendant and there were no intervening factors sufficient to purge the taint of the illegal arrest. However, after the State filed a motion to reconsider, the trial court reversed its position and found probable cause to arrest defendant. The trial court never specifically ruled on the defense argument regarding preclusion pursuant to the law-of-the-case doctrine.

¶50 Assuming, *arguendo*, that the trial court was correct in allowing the introduction of the State's "new" evidence, the State still failed to establish the police had probable cause to arrest defendant. Furthermore, the State failed to show by clear and convincing evidence that defendant's inculpatory statement was independent of any taint of his illegal arrest. See *People v. Wilberton*, 348 Ill. App. 3d 82, 85 (2004). As I will set forth below, the State has failed to meet its burden to show that any sufficient intervening circumstances existed to purge the taint of the illegal arrest.

¶51 Although Detective Cirkulin's testimony from the motion to quash was summarized in this court's decision in the previous appeal, I believe it is necessary to set out his testimony in detail in order to fully appreciate the fact that the "new" evidence presented at the attenuation hearing did not rise to the level of probable cause.

¶52 2005 Motion to Quash Testimony

¶53 At the motion to quash hearing, Detective Cirkulin testified that on April 7, 2004, at about 5:30 p.m., he arrived at the University of Chicago Hospital in response to a hotline call of child abuse; none of Tayana's family members were at the hospital at that time. Detective Cirkulin spoke with Dr. Glick and Nurse Eve Edstrom. Dr. Glick told him that Tayana had acute and chronic subdural hematomas, multiple rib fractures that were 7 to 10 days old, bucket-handle fractures to her legs, and a lacerated liver. Nurse Edstrom told him that she had spoken with Tayana's parents: Andrea Marshall, who was 15 years old, and defendant, who was 18 years old. Nurse Edstrom said the history they provided was inconsistent with Tayana's injuries. Nurse Edstrom also said she had spoken to Mary Marshall, who was Tayana's maternal grandmother, and learned the parents were the primary caretakers of Tayana. Detective Cirkulin then attempted to locate Andrea and defendant.

¶54 Later that evening, Detective Cirkulin located Andrea and Mary, and they came to Area 2. Andrea said defendant took care of Tayana during the day while Andrea attended school, and she took care of Tayana at night. Mary said she helped out with Tayana sometimes but very rarely and did not observe anyone do anything to Tayana. Andrea and Mary also said they never saw defendant strike or shake Tayana, and denied ever striking or intentionally hurting her themselves. Both Andrea and Mary agreed to take a polygraph test that evening, but Detective Cirkulin was not able to schedule one. He took Andrea and Mary home after the interviews concluded. Also after the interviews, Andrea and Mary indicated defendant was staying with them at 7829 South Muskegon Avenue. They allowed Detective Cirkulin to search their home to look for defendant, but he was not there. Detective Cirkulin testified he felt that defendant was

avoiding him. Detective Cirkulin did not continue to look for defendant that evening of April 7th or in the early morning hours of April 8th because he went off duty.

¶55 When Detective Cirkulin went back on duty around 4:00 p.m. on April 8, 2004, he learned that defendant was at the hospital and a beat car had been dispatched to "detain" him. Detective Cirkulin went to the hospital and learned defendant had been brought back to Area 2 at approximately 4:30 p.m. He believed two police officers from Beat 2113 took defendant into custody and brought him back to Area 2. Detective Cirkulin was not at the hospital when defendant was arrested and did not know whether defendant was *Mirandized* by the beat officers.

¶56 Detective Cirkulin first met with defendant at 7:30 p.m. in an interview room at Area 2. It was an 8-by-10 foot room with a bench and a ring on the wall. When asked how long defendant had been cuffed to the wall, Detective Cirkulin said "presumably for at least three hours." He believed defendant was 17 years old at the time. He uncuffed defendant and informed him he was in custody for an investigation of child abuse. He said that defendant was *Mirandized* from the "FOP" book, Detective Pierce was also present, and defendant denied doing anything to hurt Tayana. Notably and critically, in both the motion to quash hearing and the attenuation hearing, Detective Cirkulin never testified about the specific *Miranda* warnings he gave defendant, nor did Detective Cirkulin say whether defendant indicated that he understood those warnings. The interview lasted 45 minutes.

¶57 Detective Cirkulin said that he asked defendant to take a polygraph and defendant agreed. At this point in his testimony, the trial court questioned whether any further testimony was relevant to the motion to quash, and the State did not present any further evidence.

¶58 2012 Attenuation Hearing Testimony

¶59 In this summary of Detective Cirkulin's testimony at the attenuation hearing after the remand, the "new" evidence the majority relies upon to establish probable cause to arrest defendant is italicized below.

¶60 At the attenuation hearing after the remand, Detective Cirkulin testified that when he arrived at the hospital on April 7, 2004, the parents were not there. Nurse Edstrom told him the mother lived at 7829 South Muskegon Avenue, but nurse Edstrom did not have a direct address for defendant. Nurse Edstrom was not sure of the address based on the inconsistent information provided by Andrea and defendant. Nurse Edstrom said she was given a couple of different addresses. Detective Cirkulin then went to 7829 South Muskegon Avenue and interviewed Andrea and Mary. After speaking with them, Detective Cirkulin believed he had an address to locate defendant.

¶61 Detective Cirkulin relocated back to Area 2, obtained a photograph of defendant and learned of an address of 10006 South Wallace Street. At that address, Detective Cirkulin spoke to Jocie Liuevert, defendant's grandmother, who said she had not seen defendant in over four months and thought he was living with his girlfriend at 7829 South Muskegon Avenue. Liuevert heard the girlfriend had a baby, whom Liuevert had not seen yet. Detective Cirkulin returned to Area 2 and interviewed Andrea and Mary again. This occurred about midnight, *i.e.*, the early morning hours of April 8, 2004.

¶62 According to Detective Cirkulin, *Andrea admitted that she had lied about whether defendant lived at her house and that he did, in fact, stay with them.* Andrea said that she and defendant were Tayana's primary caretakers. Defendant took care of Tayana during the day while Andrea attended school, and she took care of Tayana in the evening. *Furthermore, Andrea*

said that in the early morning hours of April 7th, Tayana was crying and Andrea woke up to make a bottle for her. Andrea left the room, and when she returned, defendant was holding Tayana. When Andrea took Tayana from defendant, she noticed Tayana was shaking and her eyes were rolling in her head. This is the sum and substance of the "new" evidence.

¶63 Detective Cirkulin testified that this interview occurred toward the end of his shift; he worked 4:00 p.m. to midnight. After the interview, he transported Andrea and Mary back to their home and then searched their home to see if defendant was there. Detective Cirkulin then went off duty.

¶64 Detective Cirkulin returned to work at 4:00 p.m. on April 8, 2004. He learned that defendant went to the hospital, "they" had dispatched a car to detain him, and defendant was brought to Area 2 at 4:30 p.m. Detective Cirkulin began talking to defendant at 7:30 p.m. He read the *Miranda* warnings from the "FOP" handbook and then talked to defendant for about 45 minutes. He asked defendant if he would take a polygraph, and defendant agreed.

¶65 The polygraph was conducted at 1819 West Pershing Road, and Detective Cirkulin scheduled it for 9:00 p.m., which was about 45 minutes after his conversation with defendant. At 9:00 p.m., Officer Bartik *Mirandized* defendant. Officer Bartik removed defendant from the room occupied by Detective Cirkulin and placed defendant in a room to conduct the polygraph. Shortly afterward, Officer Bartik came out and said that during his pre-test interview defendant admitted shaking the victim. Detective Cirkulin and Officer Bartik then went into the room, readvised defendant of the *Miranda* warnings, and interviewed him.

¶66 Subsequently, defendant was returned to Area 2. Also at Area 2, Mary, Andrea, defendant's brother, and defendant's grandmother were questioned by Detective Pierce and the assistant State's Attorney. Handwritten statements were taken from Andrea and Mary, although

Detective Cirkulin was not present for them. Detective Cirkulin testified that maybe a half hour after Andrea's and Mary's handwritten statements were taken, "we" took defendant's statement. This is the end of the testimony presented at the attenuation hearing.

¶67 Probable Cause

¶68 I believe the police lacked probable cause to arrest defendant and that his inculpatory statements should have been suppressed. In defendant's first appeal, we held that he was the subject of an illegal arrest. Specifically, we held that his alleged evasiveness coupled with the circumstances surrounding Tayana's injuries may have given officers reasonable suspicion to warrant further investigation, but those factors did not provide police with probable cause to arrest defendant.

¶69 In my opinion, the "new" facts do not rise to the level of probable cause. An arrest executed without a warrant is valid only if it is supported by probable cause. *Id*. Probable cause to arrest exists when the facts known to the officer at the time of the arrest are sufficient to lead a reasonably cautious person to believe that the arrestee has committed a crime. *Id*. In other words, the existence of probable cause depends upon the totality of the circumstances at the time of the arrest. *Id*.

¶70 There is no dispute that defendant was under arrest and not free to leave once he was taken into custody at the hospital. The issue is whether probable cause existed at that point. The majority says yes. I cannot agree, having examined the totality of the circumstances known to the police at the time defendant was arrested. The police knew that two-month-old Tayana, who had been born two or three months premature, was back in the hospital with acute and chronic subdural hematomas, multiple rib fractures that were 7 to 10 days old, a lacerated liver, and bucket-handle leg fractures. From that information, the police knew that some of Tayana's

injuries had been inflicted *prior* to the early morning of April 7, 2004 by some unknown person or persons because the fractures were 7 to 10 days old and at least some of the subdural hematomas were chronic, *i.e.*, persisting for a long time. The police also knew that Tayana lived with Andrea and defendant in an apartment with Andrea's mother, defendant's mother, defendant's brother and other family members—as many as 17 people in total. Furthermore, the police knew that Andrea and Mary initially had lied about where defendant resided and admitted they had lied after Detective Cirkulin confronted them with what he had learned from defendant's grandmother. Mary explained to Detective Cirkulin that she lied due to her concerns about "DCFS."

¶71 Although Detective Cirkulin felt that defendant was avoiding him, there was no evidence introduced in this case to support that assertion. Detective Cirkulin never testified that he called Andrea's home to let her know he was coming. He did not testify that he left messages for defendant with Andrea, Mary, or anyone else to have defendant call him. He did not testify that he told defendant's grandmother to try to get in touch with defendant and tell him to contact the police. There was no testimony that Detective Cirkulin left his contact information with anyone. If defendant was trying to avoid the police, he would not have gone to the hospital on April 8, 2004, to visit his daughter.

¶72 All of the above evidence was considered by this court when we initially found there was no probable cause to arrest defendant. Now, the majority finds that when the "new" facts are added to the evidence, it rises to the level of probable cause to arrest. I do not agree.

¶73 The "new" facts indicate that Andrea woke up because Tayana was crying; Andrea left the room to get a bottle and when she returned, defendant was holding Tayana, who was shaking and her eyes were rolling in her head. That is it. These additional facts do not lead a reasonable

person to believe defendant injured Tayana while Andrea was making a bottle. Just because the severe injuries to Tayana manifested themselves while defendant was holding her when Andrea returned to the room does not provide the police with a reasonable suspicion that *defendant* had committed a crime.

¶74 Certainly, this additional information would cause a reasonable police officer to investigate further and want to question defendant about what he possibly knew about Tayana's injuries. It could cause suspicion that defendant might be the offender, but no more so than Andrea and Mary, who had lied to the police and the nurse. Although Andrea's and Mary's conduct was at least as suspicious, if not more so, than defendant's, neither Andrea nor Mary was arrested. Defendant, like Andrea and Mary, should have been on a list of possible suspects, but nothing pointed to defendant as *the* offender or *an* offender.

¶75 In short, the facts known to the police at the time of defendant's arrest were not sufficient to lead a reasonably cautious person to believe defendant had committed a crime anymore than anyone else that lived in that household.

¶76 Intervening Circumstances

¶77 After the testimony at the attenuation hearing was completed, the trial court noted this appellate court's previous ruling that there was no probable cause to arrest defendant. In conducting its attenuation analysis, the trial court relied on the following facts: that defendant was taken into custody at 4:00 p.m.; he was advised of his *Miranda* warnings at 7:30 p.m. and denied any knowledge of how Tayana had sustained her injuries; his first interrogation by Detective Cirkulin ended at 8:15 p.m.; a polygraph was scheduled for 9:00 p.m.; Officer Bartik was preparing defendant for the polygraph when defendant admitted to shaking Tayana; and during the 9:45 p.m. interrogation by Detective Cirkulin, defendant admitted to shaking Tayana.

The trial court went on to address, pursuant to *Brown v. Illinois*, 422 U.S. 590 (1975), the four factors used to determine whether defendant's inculpatory statement was purged of the taint of his unlawful arrest.

¶78 The trial court made no finding regarding the relevance of the *Brown* factor concerning the proximity in time between the arrest and the first inculpatory statement defendant made to Officer Bartik.

¶79 Concerning a second *Brown* factor—the presence of intervening circumstances—the trial court said the only possible intervening circumstance was the agreement to take the polygraph exam but the law was clear that a polygraph could not constitute a sufficient intervening circumstance to offset the taint of the illegal arrest. The trial court could not find any other independent probable cause during the intervening period of time to attenuate the taint of the illegal arrest prior to the inculpatory statement.

¶80 As to a third *Brown* factor—the flagrancy of the police misconduct—the trial court stated that "at best I could say there was a lack of communication between whoever ordered that the defendant be taken into custody—when they learned he was at the hospital, certainly—Investigator Cirkulin was not aware of the fact that the defendant had been taken into custody until he arrived at the area, which is around 7 or 7:30 that evening." I note that the trial judge's statement that Detective Cirkulin was not aware of defendant's arrest until 7:00 or 7:30 is inaccurate. Detective Cirkulin testified consistently throughout the hearings that he was aware of the defendant's arrest by 4:30 p.m.

¶81 As to the fourth *Brown* factor—the giving of *Miranda* warnings—the trial court found that *Miranda* warnings were given by Detective Cirkulin at the 7:30 p.m. and 9:45 p.m.

interrogations. The trial court was silent as to whether he credited Officer Bartik with *Mirandizing* defendant.

¶82 The trial court concluded that there was no attenuation and ordered that defendant's inculpatory statements were suppressed based upon his illegal arrest.

¶83 However, after hearing argument on the State's motion to reconsider, the trial court found there was sufficient attenuation based upon the information the police had *before* defendant was taken into custody. In explaining this statement, the trial court went on to find that "defendant's inculpatory statements were not obtained by exploiting his unlawful arrest as to render the statements inadmissible. In fact, the evidence adduced at the hearing established sufficient basis for defendant to be taken into custody."

¶84 In this appeal, the majority finds that, even if there was no probable cause to arrest defendant, "in regard to the attenuation analysis set forth in *Brown v. Illinois*, all of the *Brown* factors weigh in favor of attenuation." Addressing the *Miranda* warnings factor, the majority states that "defendant was advised of his *Miranda* warnings each and every time police made any attempt to speak with him. There is ample evidence in the record showing defendant was given *Miranda* warnings multiple times before he gave his first statements to police." *Supra*, ¶30. The majority states that the assistant State's Attorney gave defendant *Miranda* warnings at least three times prior to memorializing his statements. The majority finds that the *Miranda Brown* factor weighs in favor of attenuation. I cannot agree.

¶85 The majority ignores the fact that defendant was arrested at the hospital around 4:00 p.m. and transported to Area 2, where he was cuffed to a ring on a wall for 3 1/2 hours before he was first *Mirandized* by Detective Cirkulin at 7:30 p.m. The record is devoid of any evidence about how defendant was arrested, how he was treated, how he was transported, whether he ever was

Mirandized or *questioned* by the first police officers who transported him, or how he was placed in the interview room at Area 2. I believe this evidence, or the lack thereof, relates to all four *Brown* factors, as I will explain more fully below.

¶86 I disagree with the majority's characterization of the facts as showing that defendant was *Mirandized* "multiple times" before he made his first inculpatory statement to the police. This issue is dispositive of the attenuation analysis. According to the record, defendant was *Mirandized* only twice during the time from his unlawful arrest at about 4:00 p.m. to when he made his first inculpatory statement to Officer Bartik shortly after 9:00 p.m. The first time defendant was *Mirandized* occurred at 7:30 p.m., which was 3 1/2 hours after his unlawful arrest. There was no testimony whatsoever concerning which specific *Miranda* warnings were given to defendant or whether he was asked if he understood the *Miranda* rights. Defendant was questioned for 45 minutes, denied harming Tayana, and was asked and agreed to take a polygraph. He was transported from Area 2 to 1819 West Pershing Road and presumably *Mirandized* by Officer Bartik. It is then that defendant is alleged to have given Office Bartik an inculpatory statement. Therefore, the evidence is that defendant was only *Mirandized*, at most, twice, within a 1 1/2 hour period that included 45 minutes of continuous questioning and transportation from one police station to another before he gave his first statement. This *Brown* factor does not weigh in favor of attenuation. I believe the first statement to Officer Bartik was tainted and the statements that followed to Detective Cirkulin and the assistant State's Attorney were also tainted because there were no intervening circumstances between the first statement and the successive statements.

¶87 The majority then states that assuming, *arguendo*, that defendant was arrested at the hospital without probable cause, "the development of intervening probable cause would have

occurred almost simultaneously with his arrest, independent of any illegal police action." *Supra*, ¶ 31. According to the majority, Andrea's statement to the police about defendant being the last person to hold Tayana before she began to seize somehow serves as an intervening circumstance between the time of defendant's unlawful arrest and his inculpatory statement even though Andrea made that statement to the police about 16 hours before defendant's unlawful arrest. Notwithstanding my firm position, discussed in detail above, that Andrea's statement did not constitute probable cause to arrest defendant, I do not understand how the majority can characterize Andrea's statement as an intervening circumstance or as existing almost simultaneous to the arrest. Andrea made that statement to the police around midnight or in the early morning hours of April 8, 2004. Defendant was not arrested until 4:00 p.m. on April 8, 2004, some 16 hours later. Therefore, it is impossible for the evidence of Andrea's statement to be intervening or simultaneous.

¶88 In addition, there was no testimony that Detective Cirkulin or any other police officer ever confronted defendant with Andrea's statement. "Circumstances under which courts have found attenuation based on intervening events include the defendant being confronted with legally seized evidence, seeing his girlfriend at the police station and being told she was cooperating with the police and being confronted with sketches which resembled himself made prior to his arrest." *People v. Graham*, 214 Ill. App. 3d 798, 814 (1991) (citing *People v. Foskey*, 136 Ill. 2d 66, 87-88 (1990)). The events in this case followed directly from the illegal arrest; there was no break in the chain of causation from the illegal arrest to the later statements.

¶89 The trial court was correct when it found that the only possible intervening circumstance in this case between defendant's unlawful arrest at 4:00 p.m. and his first inculpatory statement a little after 9:00 p.m. would have been the polygraph examination. The trial court also correctly

ruled that our supreme court has addressed this issue of whether a polygraph can be considered an attenuating intervening factor and resolved it against the State, finding that a polygraph examination conducted as a consequence of an illegal detention is itself tainted. See *People v. Franklin*, 157 Ill. 2d 328, 334 (1987). Therefore, the polygraph examination was not an intervening circumstance that dissipated the taint of defendant's unlawful arrest from his inculpatory statements. This factor weighs against attenuation.

¶90 Next, the majority considered the proximity in time between defendant's arrest and his inculpatory statements to police. The majority reasons that defendant was in "lawful custody" between 4:30 p.m. and his first inculpatory statement was made around 9:45 p.m. Their premise, however, is faulty. First, it is inaccurate because defendant's first inculpatory statement was made to Officer Bartik shortly after 9:00 p.m. Second, if the custody at issue here was lawful, then there would be no need for any analysis of the lapse of time to dissipate the taint of an *illegal* arrest. Quoting *People v. Morris*, 209 Ill. 2d 137, 161 (2004), the majority states that "to 'the extent that the passage of time itself impelled defendant's confession, that passage of time—since it was almost entirely during a period of lawful custody—must be viewed as a factor which weighs in favor of finding that the illegality of defendant's arrest had been purged by the time he gave his statements to the police.' " *Supra*, ¶ 32. The majority does not explain how the passage of time here was almost entirely during a period of lawful custody. Without any meaningful analysis, the majority simply concludes that this *Brown* factor favors attenuation.

¶91 The passage of time does not operate as a factor supporting attenuation. Defendant was 18 years old when he was arrested at the hospital while visiting his child. The arrest occurred sometime around 4:00 p.m. by unknown officers, and defendant was brought to a room at Area 2 beginning around 4:30 p.m. For at least three hours, defendant was cuffed to a ring on the wall.

The room measured about 8-by-10 feet and had a bench. We do not know if defendant was *Mirandized* at that time. We do not know if anyone ever told him why he was in custody or checked on him to offer him the use of the restroom, water, food, the opportunity to call someone, *etc*. We do know that when Detective Cirkulin came into the room at 7:30 p.m., defendant was still cuffed, and the State would like this court to presume that Detective Cirkulin gave him the correct Miranda warnings despite the absence in the record of any testimony concerning the substance of the warnings given. After defendant was questioned for 45 minutes and denied any involvement in injuring Tayana, he was transported to another police station and subjected to a polygraph that began within 45 minutes of the conclusion of his first interrogation. He then gave his *first* inculpatory statement to Officer Bartik shortly after 9:00 p.m. Then, Detective Cirkulin conducted his second interrogation of defendant. Defendant's detention, while cuffed to a ring for three hours, was a continuing violation which was followed by two nearly continuous interrogations. Under these circumstances, the temporal proximity between the arrest and the confessions weighs against attenuation. See *Dunaway v. New York*, 442 U.S. 200, 218 (1979) (quoting *Brown*, 422 U.S. at 604) ("In the 'less than two hours' that elapsed between the arrest and the confession 'there was no intervening event of significance whatsoever.' ").

¶92 The fourth *Brown* factor to consider is the presence of purposeful and flagrant police misconduct.

> "[A]ttenuation is less likely to be found where the police misconduct in bringing about the illegal arrest is flagrant. Police action is flagrant where the investigation was carried out in such a manner to cause surprise, fear, and confusion, or where it otherwise has a 'quality of purposefulness,' i.e., where the police embark upon

> a course of illegal conduct in hope that some incriminating evidence (such as the very statement obtained) might be found." *People v. Jennings*, 296 Ill. App. 3d 761, 765 (1998).

¶93 I believe the conduct of the police weighs against attenuation between the time of the illegal arrest and the subsequent confessions. Here, defendant was only one of several possible suspects. The record indicates that Detective Cirkulin obviously did not believe he had probable cause to arrest defendant. Even though he was the lead detective in this case, he was not aware that some police officers had sent a beat car to take defendant into custody at the hospital. Defendant was arrested at the hospital while visiting his critically ill daughter. As there was no evidence that defendant was aware the police were looking for him, his arrest appears to have been a calculated effort by someone in the police department to cause surprise, fear and confusion and was done with the hope that some incriminating evidence might be found.

¶94 Of paramount concern to me is that this court is left with far too many unanswered questions that are critical to an evaluation of the flagrancy of the police misconduct. For instance, we do not know how many officers arrested defendant; whether he was with his daughter at the time; whether the officers' guns were drawn; what the officers said to defendant; whether defendant was *Mirandized* by those officers; how defendant was transported; whether he was advised of the reason for his detention; how defendant was handcuffed, transported and placed in a room at Area 2; whether the doors to the room were locked; whether anyone ever entered the room during the three hours defendant was handcuffed there to let him know what was going on; whether defendant was offered restroom use and something to drink or eat.

¶95 I have rarely seen a record like this, which leaves so many critical questions unanswered, and I cannot assume that the officers' actions toward defendant during the relevant time period

were all in accordance with the law. It is the State's burden to prove attenuation by clear and convincing evidence. The State must demonstrate that the inculpatory statements defendant made after his illegal arrest were the product of his free will, independent of any taint of his illegal arrest. See *Wilberton*, 348 Ill. App. 3d at 85. The State, however, has failed to meet its burden.

¶96 Furthermore, even though Detective Cirkulin learned by 4:30 p.m. that defendant was being held at Area 2, Detective Cirkulin waited until 7:30 p.m. to question defendant. Detective Cirkulin testified that defendant "presumably" was cuffed to a ring on the wall in an 8-by-10 foot room for at least three hours. Detective Cirkulin never testified that he asked anyone to check on defendant or tell defendant what was happening. Clearly, defendant could not move about freely during that three hour time period. These circumstances were hardly conducive to freely reflecting on one's situation.

¶97 When Detective Cirkulin entered the room where defendant was cuffed, there was no testimony concerning what he said to defendant other than *Mirandizing* him. Detective Cirkulin said that he talked to defendant for 45 minutes, defendant denied hurting Tayana and, upon request, agreed to take a polygraph. Then, Detective Cirkulin transported defendant to the Pershing Road station for a polygraph. During the polygraph test, defendant made his first inculpatory statement. This evidence supports the conclusion that the purpose of the police conduct was to investigate and gather incriminating evidence regarding defendant's involvement in Tayana's abuse and that, in my estimation, amounted to a purposeful exploitation of defendant's illegal detention.

¶98 There was no probable cause to arrest defendant, and his inculpatory statements following his illegal arrest are presumed to be the product of the illegality. Moreover, the State

has failed to meet its burden of establishing by clear and convincing evidence that defendant's post-arrest inculpatory statements were sufficiently attenuated from his illegal arrest so as to be purged of its taint. I would reverse the trial court's finding of attenuation and remand this matter for a new trial in which defendant's inculpatory statements are suppressed.