SECOND DIVISION
September 17, 2013

No. 1-11-2468

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 13374
	)	
RAMON CARREON,	)	Honorable
	)	James M. Obbish,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Quinn specially concurred.
Justice Simon concurred in the judgment.

O R D E R

¶ 1 *Held*: Defendant's conviction for possession of a stolen motor vehicle is affirmed where his challenge to the trial court's comment is forfeited due to his failure to object at trial, and the *Sprinkle* doctrine does not apply.

¶ 2 Following a jury trial, defendant Ramon Carreon was convicted of possession of a stolen motor vehicle and sentenced to three years' imprisonment. On appeal, defendant solely contends he was denied his right to a fair and impartial jury trial when the trial court stated in front of the

jury that it was reasonable to infer defendant covered his hands with his shirt to prevent leaving fingerprints on the vehicle, which lent undue credence to the State's argument. We affirm.

¶ 3 At trial, Chicago police officer John Dalcason testified that he was a member of the bait car team, which places specially equipped vehicles owned by the police department in areas known for high levels of automobile theft. The police monitor the bait vehicle, and if the vehicle is breached or moved, the officers arrest the offender. On July 7, 2010, the team was using a 2002 silver Ford Explorer that was equipped with video and audio monitoring, sensors on the doors and windows, and a GPS system. By using a laptop from a nearby squad car, the police could monitor the vehicle, track its location, turn off the engine and lock the doors.

¶ 4 At 8:10 p.m., the bait team staged a traffic stop at the intersection of Albany Avenue and Cermak Road. Five or six people were standing near the intersection at that time, including defendant, who was standing on the northwest corner. Dressed as a civilian, Officer Cornelious drove the Ford Explorer to the intersection and was stopped by Officers Dalcason and Rogus, who were in a marked squad car with the lights and siren activated. Officers Dalcason and Rogus pulled Officer Cornelious from the bait vehicle, handcuffed him, and placed him in the back seat of their squad car. The arrest lasted about five minutes. Officer Dalcason then radioed Officer Sheetz, who was operating the computer, and instructed him to arm the bait vehicle. The officers drove to a nearby location and left the Ford Explorer at the intersection unattended with the doors unlocked, the windows halfway down, and the keys inside the center console.

¶ 5 About 8:23 p.m., Officer Tovar, who was conducting surveillance of the bait vehicle, indicated that someone had gotten into the driver's seat and turned on the ignition. Officer Dalcason then returned to the intersection and saw the vehicle being driven into an alley. Officer Dalcason followed the bait vehicle into the alley, then instructed Officer Sheetz to turn off the vehicle's engine and lock the doors via the computer. The Ford Explorer stopped, and Officer Dalcason approached the vehicle and saw defendant sitting in the driver's seat. No one else was

inside the vehicle. Officer Dalcason testified that defendant was never given permission to be in possession of the Ford Explorer.

¶ 6 Chicago police officer Melissa Tovar testified that she began her surveillance shortly after 8 p.m. from a covert vehicle parked on Albany Avenue less than 90 feet from the intersection. When she arrived at the location, defendant was standing on the northwest corner of the intersection, and he was not speaking with anyone. At 8:10 p.m., Officer Tovar observed the staged traffic stop and saw her fellow officers drive away, leaving the bait vehicle unattended. At 8:17 p.m., defendant approached the passenger side of the bait vehicle, reached inside and opened the door, then entered the vehicle for less than a minute. Defendant quickly exited the vehicle, closed the door, and walked back to the corner where he stood alone.

¶ 7 At 8:23 p.m., defendant ran to the driver's side of the bait vehicle, jumped into the driver's seat and started the car. Defendant then drove the Ford Explorer less than 20 feet on Albany Avenue and made a sharp left turn into an alley. Officer Tovar reported her observations over her police radio and immediately thereafter saw Officers Dalcason and Rogus follow defendant into the alley in their marked squad car. Throughout the duration of her surveillance, Officer Tovar never lost sight of defendant and never saw him speak with anyone.

¶ 8 Chicago police officer Kevin Sheetz testified that he was in an unmarked police car in a nearby parking lot using a laptop computer to control the equipment installed inside the bait vehicle. At 8:23 p.m., Officer Sheetz received a notification on his computer that the bait vehicle's door had been opened, the ignition started, and the vehicle was in motion. Moments later, Officer Sheetz disabled the bait vehicle's ignition and locked the doors using his computer. The officer then drove to the alley adjacent to Albany Avenue and saw defendant in custody. At the police station, Officer Sheetz transferred the video recorded inside the bait car to his computer, recorded that video onto a disc, and gave the disc to Officer Cornelious, who inventoried the evidence. The video was played for the jury.

¶ 9 Defendant testified that he is a self-employed automobile mechanic who primarily speaks Spanish, but can understand enough English to do business as a mechanic. Defendant had been waiting with a friend at the intersection for one of his regular clients, but the client never came. While he was waiting, an unknown African-American man whom defendant had never met asked defendant to look at his vehicle because it would not start. Defendant said it is common for him to make business arrangements on the street in this manner. The man pointed out his vehicle, a silver Ford Explorer, and told defendant the keys were inside the console. Defendant identified the State's photograph of the police bait car as the man's vehicle. The man agreed to pay defendant $50 to look at his vehicle, but no money was ever exchanged. The men further agreed that they would meet at a school about three blocks away after defendant looked at the vehicle. The man then left defendant alone with his car and began walking towards the school. Defendant walked to the vehicle and removed the keys from the center console, then went to a store and bought a soda. Defendant explained that he did not try to start the vehicle at that time because, in his experience, when the system in a Ford truck becomes hot, the vehicle will not start and you must allow the starter to cool down to start the vehicle.

¶ 10 Several minutes later, defendant returned to the Ford, started the engine, and began driving to the school where the man was waiting. As he drove through an alley, defendant was stopped by police, and he parked the vehicle. Defendant testified that the Ford Explorer was already parked on the street when he arrived at the corner, and he never saw the man drive or park the vehicle. Defendant denied seeing the police car with its lights flashing, and denied seeing the traffic stop and arrest.

¶ 11 Defendant acknowledged that it was him in the State's video recording and photographs taken from inside the vehicle. Defense counsel noted that the photographs showed defendant with his shirt sleeves pulled over his hands on the steering wheel. Defendant explained that he covered his hands with his sleeves so he would not get dirt on the steering wheel.

¶ 12 During closing arguments, the prosecutor showed the jury a photograph of defendant sitting inside the vehicle. The following colloquy then occurred:

> "[THE STATE:] Look at the defendant's hands. He's got his hands covered. Why? Because he doesn't want to leave fingerprints on the car that he is about to steal.
>
> [DEFENSE COUNSEL]: Objection. Facts not in evidence.
>
> THE COURT: Overruled. It's a reasonable inference from the evidence.
>
> [THE STATE]: He doesn't want to leave fingerprints on the door. He doesn't want to leave fingerprints on the steering wheel. And in a later clip, you can clearly see him holding the key. He doesn't want to leave fingerprints even on the key. And finally, the defendant holding the steering wheel, two hands on top of the steering wheel, both covered by his shirt.
>
> This is not a man worried about getting a car dirty."

Shortly thereafter, defense counsel argued as follows:

> "You are right and Ramon didn't want to get fingerprints on the car, didn't want to get greasy mechanic oily hands, fingerprints all over this guy's car. So what does he do? He does the polite thing and wraps his hands up over the wheel so he didn't get fingerprints all over the car.
>
> You have all been to a car shop. Guys often they throw mats on the ground so they don't get dirt on the carpet or something over the seats when they are test driving. He is being polite. He covered up his hands to not get any prints on the car."

¶ 13 Following 45 minutes of deliberations, the jury found defendant guilty of possession of a stolen motor vehicle and burglary. In denying defendant's motion for a new trial, the trial court stated that the evidence in this case was overwhelming and supported the jury's verdict. The trial court then merged the two convictions and sentenced defendant to three years' imprisonment for possession of a stolen motor vehicle.

¶ 14 On appeal, defendant solely contends he was denied his right to a fair and impartial jury trial when the trial court announced to the jury that it was reasonable to infer defendant covered his hands with his shirt to prevent leaving fingerprints on the vehicle because the court's statement lent undue credence to the State's argument. Specifically, defendant is challenging the court's response when it overruled defense counsel's objection during the State's closing argument and stated "[i]t's a reasonable inference from the evidence." Defendant acknowledges that the trial court correctly referenced the standard for closing argument which allows counsel to make reasonable inferences from the evidence. Defendant states that he is not objecting to the law as stated by the court, but only to the effect the court's comment had on the jury. Defendant further acknowledges that he did not object to the court's statement at trial, but argues that under the *Sprinkle* doctrine he was excused from doing so because such an objection would have fallen on deaf ears or highlighted the court's bias in the presence of the jury.

¶ 15 The State argues that the issue is forfeited because defendant failed to preserve it for appeal when he did not object to the comment at trial and did not raise the issue in his posttrial motion. The State further argues that the *Sprinkle* doctrine does not apply here to circumvent the forfeiture because defendant failed to demonstrate that the trial court would have ignored his objection. Alternatively, the State argues that the trial court's comment did not endorse the State's theory of the case to the jury, but instead, merely explained its ruling to defense counsel.

¶ 16 It is uncontested that defendant did not object to the trial court's statement at trial, and he did not raise the issue in his posttrial motion. Consequently, defendant has forfeited this issue on appeal. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 17 The *Sprinkle* doctrine provides a basis for relaxing the forfeiture rule when the issue arises from judicial misconduct. *People v. Sprinkle*, 27 Ill. 2d 398, 400-01 (1963). The primary concern of the *Sprinkle* doctrine is to ensure that the defendant has a fair trial. *People v. McLaurin*, 235 Ill. 2d 478, 487 (2009). In *McLaurin*, our supreme court emphasized the limited application of the *Sprinkle* doctrine and the importance of preserving issues for appeal:

> "We stress, however, that trial counsel has an obligation to raise contemporaneous objections and to properly preserve those objections for review. Failure to raise claims of error before the trial court denies the court the opportunity to correct the error immediately and grant a new trial if one is warranted, wasting time and judicial resources. *Enoch*, 122 Ill. 2d at 185-87, citing *People v. Caballero*, 102 Ill. 2d 23, 31-32 (1984). This failure can be excused only under extraordinary circumstances, such as when a trial judge makes inappropriate remarks to a jury [citation] or relies on social commentary, rather than evidence, in sentencing a defendant to death [citation]. That we have seldom applied *Sprinkle* to noncapital cases further underscores the importance of uniform application of the forfeiture rule except in the most compelling of situations." *McLaurin*, 235 Ill. 2d at 488.

¶ 18 We find that this case does not present the extraordinary circumstances required to apply the *Sprinkle* doctrine. Defendant's challenge arises from the following exchange:

> "[THE STATE:] Look at the defendant's hands. He's got his hands covered. Why? Because he doesn't want to leave fingerprints on the car that he is about to steal.
>
> [DEFENSE COUNSEL]: Objection. Facts not in evidence.
>
> THE COURT: Overruled. It's a reasonable inference from the evidence."

Similar to the defendant in *McLaurin*, here, defendant does not claim that the trial court overstepped its authority in front of the jury, nor does he argue that counsel was practically prevented from objecting to the court's comment. See *McLaurin*, 235 Ill. 2d at 488. Instead, defendant expressly acknowledges that the trial court correctly referenced the standard for closing argument which allows counsel to make reasonable inferences from the evidence. Defendant merely argues, in a conclusory manner, that because he is challenging a comment made by the trial court, his failure to object is excused. Defendant is incorrect.

¶ 19 In his brief, defendant quotes *Sprinkle* in asserting "[t]he prototypical example of such error is where the trial court makes improper 'comments ... before a jury ... influencing the jurors to any extent.' " We find, however, that defendant's omissions from the quotation takes our supreme court's holding out of context. The *Sprinkle* court stated "[i]t is particularly incumbent upon the trial judge to exercise a higher degree of care in his comments regarding, or interrogations of, witnesses before a jury in order to avoid influencing the jurors to any extent[.]" *Sprinkle*, 27 Ill. 2d at 401. In *Sprinkle*, the record was replete with numerous examples of questions and comments by the trial court that reflected the court's opinion regarding the credibility of the witnesses and the facts in the case. See *Sprinkle*, 27 Ill. 2d at 401-02. Our supreme court found that the trial court's questions and comments were improper because they were "unnecessary to the conduct of the trial." *Sprinkle*, 27 Ill. 2d at 403.

¶ 20 In this case, there is nothing in the record to indicate that counsel was prevented from objecting at any point during the closing arguments, or that any such objection would have fallen on "deaf ears." In fact, the record reveals the opposite. Defense counsel objected to the State's argument, specifying "[f]acts not in evidence." In overruling that objection, the trial court explained *to counsel* "[i]t's a reasonable inference from the evidence." Counsel made an objection with a basis, and the trial court answered with its basis. Contrary to defendant's assertion, the trial court did not make an "announcement to the jurors" that it was reasonable to infer that defendant covered his hands with his shirt to prevent leaving fingerprints in the car.

¶ 21 The record shows that defense counsel objected six times during the State's closing and rebuttal arguments. The trial court sustained one of those objections, stated its reasons for overruling several others, advised the prosecutor once "be careful how you argue," and explained to the jury that the State's argument that the police deemed the area a "high theft zone" was not evidence against defendant. The record thus demonstrates that the trial court was open to hearing objections from counsel and counsel was allowed every opportunity to raise objections.

¶ 22 In addition, the record shows that during his closing argument, defense counsel asserted "[y]ou are right and Ramon didn't want to get fingerprints on the car, didn't want to get greasy mechanic oily hands, fingerprints all over this guy's car." Consequently, we find that, rather than objecting to the State's inference, counsel's strategy was to agree with that inference, and he attempted to use it in defendant's favor by connecting it to defendant's testimony that he did not want to get dirt on the steering wheel.

¶ 23 Based on this record, we find that defendant has not presented any extraordinary or compelling reason to relax the forfeiture rule in this case. Accordingly, the *Sprinkle* doctrine does not apply.

¶ 24 For these reasons, we affirm the judgment of the circuit court of Cook County.

¶ 25 Affirmed.

¶ 26 PRESIDING JUSTICE QUINN, specially concurring.

¶ 27 I completely concur in the majority's analysis and result. I write separately to express my criticism of the practice by the Chicago Police Department of leaving "bait" cars on city streets to entice imbeciles to enter them and drive away. The procedure utilized involves having a bogus traffic stop of a motor vehicle in front of a crowd of young males. The police remove an undercover police officer who was driving the "bait" car and place him in a squad car. The police leave the scene after making sure that the nearby young males have observed them leave the car doors unlocked. As the police realize that only a person without the intellectual capacity to hot-wire a car would be stupid enough to enter the car, the police leave the keys in the car [albeit not in the ignition] so he can drive it away. Other police officers wait in hiding, observing the car. After a miscreant goes in the car, finds the key, and drives away, the police pounce and take this simpleton into custody. The Cook County State's Attorney's Office then charges the arrestee with possession of a stolen motor vehicle, a Class 1 felony, for which the arrestee may be sentenced to a term of probation or up to 15 years in prison, if the arrestee has no prior criminal history. If the arrestee has a prior conviction for a Class 2offense, he is ineligible for probation. If the arrestee has a prior conviction for a Class 1 or greater offense, he is eligible to be sentenced to 30 years in prison.

¶ 28 I am not saying that the legal defense of entrapment applies to these cases. I am saying that the procedure employed is designed to apprehend dimwitted people who act impulsively in a classic crime of opportunity. The practice of using "bait" cars under the circumstances present in this case is counter productive to apprehending actual criminals and it should be stopped.