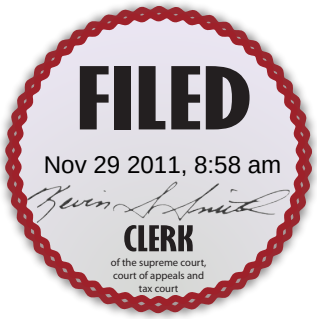

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IN THE
COURT OF APPEALS OF INDIANA

KEVIN SCAIFE,	)	
	)	
Appellant-Defendant,	)	
	)	
vs.	)	No. 49A02-1102-CR-172
	)	
STATE OF INDIANA,	)	
	)	
Appellee-Plaintiff.	)	

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable Marc T. Rothenberg, Judge
Cause No. 49F09-0807-FD-167459

November 29, 2011

MEMORANDUM DECISION - NOT FOR PUBLICATION

NAJAM, Judge

STATEMENT OF THE CASE

Kevin Scaife appeals his conviction for theft, as a Class D felony, following a jury trial. He presents the following issues for our review:

1. Whether the evidence is sufficient to support his conviction.

2. Whether the trial court abused its discretion when it admitted into evidence the fact that he had been convicted of theft more than ten years prior to the date of the jury trial.

3. Whether the trial court abused its discretion when it limited his cross-examination of an investigating officer.

4. Whether the trial court violated his equal protection rights when it overruled his Batson challenge to the peremptory strike of an African-American prospective juror.

We affirm.

FACTS AND PROCEDURAL HISTORY

On June 17, 2008, David Cross, a service technician for a heating and cooling company, was servicing air conditioning units at the Shadeland Court Apartments in Indianapolis. At one point, while he was working in an attic, he left a bag of tools valued at approximately $1000 unattended on the ground outside. Cross was only in the attic for approximately three or four minutes, and when he climbed back down to the ground, he found that his tool bag was gone. Within minutes, at approximately 3:25 p.m., Cross telephoned police to report the stolen tool bag. Officer Kevin Kern with the Indianapolis Metropolitan Police Department ("IMPD") arrived at the scene, and Cross gave him a statement, including a description of the stolen items.

At 4:55 p.m., Scaife took Cross' tool bag to the Cash America Pawn Shop, located 2.6 miles south of the Shadeland Court Apartments.[1] Scaife used the tool bag to obtain a $50 loan from the pawn shop. In order to obtain the loan, Scaife was required to show valid identification and give a thumb print.

On June 24, a detective with the IMPD Pawn Unit contacted the manager at the Cash America Pawn shop, which was the pawn shop located in closest proximity to the Shadeland Court Apartments. The manager told the detective that he had a tool bag matching the description of the one stolen from Cross. On June 27, Detective David Yancey met Cross at the pawn shop, and Cross identified the tool bag as the one that had been stolen from him on June 17.

The State charged Scaife with theft. At trial, Scaife testified that on June 17 he had stopped at a yard sale on the east side of Indianapolis. There, he had expressed interest in buying a lawnmower and chainsaw, but the prices for those items were too high. According to Scaife, the seller had offered to include the bag of tools for free if he bought the lawnmower and chainsaw. Scaife had agreed, and he had immediately pawned the tool bag because he did not need it. The jury found Scaife guilty as charged. The trial court entered judgment and sentence accordingly. This appeal ensued.

DISCUSSION AND DECISION

Issue One: Sufficiency of the Evidence

Scaife first contends that the State presented insufficient evidence to support his conviction. When the sufficiency of the evidence to support a conviction is challenged,

[1] Neither party cites to the record in support of this information. However, because Scaife represents this as a fact in his own brief, we will rely on it for purposes of this appeal.

we neither reweigh the evidence nor judge the credibility of the witnesses, and we affirm if there is substantial evidence of probative value supporting each element of the crime from which a reasonable trier of fact could have found the defendant guilty beyond a reasonable doubt. Wright v. State, 828 N.E.2d 904, 905-06 (Ind. 2005). It is the job of the fact-finder to determine whether the evidence in a particular case sufficiently proves each element of an offense, and we consider conflicting evidence most favorably to the trial court's ruling. Id. at 906.

To prove theft, the State was required to show that Scaife knowingly or intentionally exerted unauthorized control over Cross' tool bag with intent to deprive Cross of any part of its value or use. See Ind. Code § 35-43-4-2. The State presented evidence that ninety minutes after Cross' tool bag was stolen, Scaife had used the tool bag to obtain a $50 loan from a pawn shop located a mere 2.6 miles from the scene of the crime. Scaife testified that he had purchased the tool bag at a yard sale that day, but the jury did not find that story credible.

Scaife maintains that the only evidence of his guilt is his possession of the recently stolen tool bag which, he contends, is insufficient to support his conviction. In support, Scaife cites to our supreme court's opinion in Fortson v. State, 919 N.E.2d 1136, 1143 (Ind. 2010), where the court stated that the mere unexplained possession of recently stolen property, without more, is insufficient to "automatically" support a theft conviction.[2] But Scaife over-simplifies the holding in Fortson. The court held that

[2] Fortson involved a conviction for receiving stolen property, but our supreme court stated that "the same conclusion would obtain had Fortson been charged with theft as opposed to receiving stolen property." 919 N.E.2d at 1144.

> such possession is to be considered along with the other evidence in a case, such as how recent or distant in time was the possession from the moment the item was stolen, and what are the circumstances of the possession (say, possessing right next door as opposed to many miles away). In essence, the fact of possession and all the surrounding evidence about the possession must be assessed to determine whether any rational juror could find the defendant guilty beyond a reasonable doubt.

Id.

Here, given the timing of Scaife's possession of the tool bag, and the proximity of the crime scene to the pawn shop, the evidence supports a reasonable inference that Scaife stole the tool bag. Further, the jurors were justified in disbelieving Scaife's version of events given his vague description of the location of the yard sale, his assertion that the seller included the tool bag with his other purchases even though he did not need it, and the fact that the yard sale was supposedly held on a Tuesday, instead of a more conventional setting of a weekend day. The State presented sufficient evidence to support Scaife's theft conviction.

Issue Two: Evidence of Prior Conviction

Scaife contends that the trial court abused its discretion when it admitted evidence that he had been convicted of theft in March 2000. The State had proffered the evidence in an attempt to impeach Scaife's credibility at the trial, which was held in May 2011. Evidence Rule 609 governs impeachment by evidence of conviction of a crime and provides in relevant part:

> Evidence of a conviction under this rule is not admissible if a period of more than ten years has elapsed since the date of the conviction or, if the conviction resulted in confinement of the witness then the date of the release of the witness from the confinement unless the court determines, in the interests of justice, that the probative value of the conviction supported by specific facts and circumstances substantially outweighs its prejudicial

> effect. However, evidence of a conviction more than ten years old as calculated herein is not admissible unless the proponent gives to the adverse party sufficient advance written notice of intent to use such evidence to provide the adverse party with a fair opportunity to contest the use of such evidence.

We review a trial court's decision regarding whether to admit a conviction over ten years old under an abuse of discretion standard. Giles v. State, 699 N.E.2d 294, 297 (Ind. Ct. App. 1998).

In effect, Rule 609(b) creates a rebuttable presumption that convictions greater than ten years old are inadmissible for impeachment purposes. Id. at 298. The party seeking to overcome the presumption of exclusion must support its probative value argument with specific facts and circumstances upon which the trial court may base a finding of admissibility. Hall v. State, 769 N.E.2d 250, 253 (Ind. Ct. App. 2002). In making its determination whether to admit the evidence, the trial court is to consider the following five factors: (1) the impeachment value of the prior crime; (2) the point in time of the conviction and the witness's subsequent history; (3) the similarity between the past crime and the charged crimes; (4) the importance of the defendant's testimony; and (5) the centrality of the credibility issue. Scalissi v. State, 759 N.E.2d 618, 625 (Ind. 2001).

Here, Scaife alleges that the State "did not present any evidence or argument regarding the probative value of Scaife's prior theft conviction." Brief of Appellant at 14. The State concedes that there is no record of "the prior hearing" where, it alleges, it had supported its proffer of the Rule 609 evidence "with persuasive argument that the probative effect of the evidence substantially outweighed whatever prejudicial effect it might carry." Brief of Appellee at 9. But the State maintains that "it is evident from the

context of the [following] exchange that the State had [met its burden to rebut the presumption of exclusion:]"

> As to the issue of the prior conviction [it] should be an Ashton.[3] Under the circumstances I am going to allow questioning for the purpose of impeachment on that, even though it is outside the ten years. Primarily, because it's not outside of the ten years of the offense date or the alleged offense date in this particular matter.
>
> * * *
>
> Defense Counsel: [J]ust for the record, we would again object to [the evidence of the prior conviction under Evidence Rule] 609. It's outside the ten[-]year period and the only deviation, in our opinion, under 609, it says if it falls outside the ten[-]year period, it says unless the court determines in the interest of justice that the probative value of the conviction [is] supported by specific circumstances [and] substantially outweighs the prejudicial effect.
>
> Court: And I do in this matter.
>
> Defense Counsel: That's fine.
>
> Court: The fact is the nature of the offense, which is the Ashton, has a probative value. If it were something that were twenty years ago, that'd be something different. This was [sic] the alleged offense occurred in 2008, which would have been within ten years of the offense.

Transcript at 3-5.

We cannot agree with the State that that exchange indicates that the State had, in a prior hearing, offered argument "with specific facts and circumstances" in support of

[3] In Ashton v. Anderson, 258 Ind. 51, 279 N.E.2d 210 (1972), our supreme court held that only two classes of conviction could be used for impeachment purposes: (1) those involving dishonesty or false statement; and, pursuant to statute, (2) those for "infamous crimes" which would have rendered the witness incompetent to testify under prior Indiana law. Here, then, the trial court was merely noting that Scaife's prior conviction for theft should be admissible under Ashton.

admissibility. See Hall, 769 N.E.2d at 253. To the contrary, the court appears to have ruled on the Rule 609 question based solely on the nature of the prior conviction and the fact that it was not much outside the ten-year timeframe for admissibility.[4] Here, not only is it apparent from the record that the State did not make the requisite showing in support of admitting the evidence, but the trial court did not engage in the requisite balancing test on the record. See Giles, 699 N.E.2d at 299 (holding trial court must engage in a balancing test on the record before the admission of a stale conviction is permitted). We hold that the trial court abused its discretion when it admitted the evidence of Scaife's 2000 theft conviction. See id. (holding error to admit stale conviction where State offered no argument on probative value and trial court did not engage in required balancing analysis on the record).

Nonetheless, the State argues that because "the evidence was only ever used to impeach [Scaife's] credibility" and because the jury was instructed to consider the evidence only for that purpose, any error in its admission was harmless. Brief of Appellee at 11. It is well established that a claim of error in the admission or exclusion of evidence will not prevail on appeal " 'unless a substantial right of the party is affected.' " Pruitt v. State, 834 N.E.2d 90, 117 (Ind. 2005) (quoting Ind. Evidence Rule 103(a)), cert. denied, 548 U.S. 910 (2006). That is, even if the trial court had committed the error complained of on appeal, we will "disregard any error or defect which does not affect the substantial rights of the parties." Bass v. State, 797 N.E.2d 303, 307 (Ind. Ct.

[4] Indeed, the trial court appears to have misunderstood the appropriate calculation of the ten years, which is ten years from the more recent of the conviction or the witness' release from confinement for that conviction to the date of the testimony to be impeached. See 13 Robert Lowell Miller, Jr., Indiana Practice § 609.201 at 199-200 (2007).

App. 2003). "The improper admission of evidence is harmless error when the conviction is supported by such substantial evidence of guilt as to satisfy the reviewing court that there is no substantial likelihood that the questioned evidence contributed to the conviction." Id.

Here, Scaife testified at trial that on June 17, 2008, a Tuesday, he stopped at a yard sale and bought a chainsaw and lawnmower, and the seller asked Scaife to take the tool bag as part of the deal. Scaife further testified that because he did not need the tool bag, he took it to the pawn shop to obtain a $50 loan. On cross-examination, after asking Scaife to clarify these details, the prosecutor briefly mentioned his previous theft conviction as follows:

Q: And you have been convicted of theft before, correct?
A: Yes.
Q: And this is a dishonest crime, correct?
A: Yep. Yes it is.

Transcript at 141. Then, on redirect examination, defense counsel questioned Scaife about the details of that prior theft conviction. Scaife explained that he was a young man and that he and some friends had been drinking at a bar and he got caught stealing money from a tip jar.

During her closing argument, the prosecutor mentioned the previous conviction as follows:

> I don't want to go into the defendant's . . . [sic] that he was convicted of a theft, but the fact of the matter is he was convicted of a theft in 2000 and not 1997 so he wasn't almost twenty-four . . . [he was] twenty-seven. The only evidence that we have that there was a yard sale because [sic] the defense counsel took [unintelligible]. My co-counsel calls this garage sale [sic] was because the person has been convicted of a dishonest crime of a theft said that there was a yard sale going on.

Id. at 197. And the trial court instructed the jury as follows:

> The fact that a witness has previously been convicted of a felony, or a crime involving dishonesty or false statement, is a factor you may consider in weighing the credibility of that witness. The fact of such a conviction does not necessarily destroy the witness' credibility, but is one of the circumstances you may take into account in determining the weight to be given to his/her testimony.

Appellant's App. at 91.

Given the evidence, namely, that the tool bag was stolen and was used to obtain a loan at a nearby pawn shop ninety minutes later, and in light of the limiting instruction, we hold that there is no substantial likelihood that the evidence of Scaife's previous theft conviction contributed to the conviction here. See Bass, 797 N.E.2d at 307. Again, while Scaife is correct that the mere possession of recently stolen property, without more, is insufficient to "automatically" support a theft conviction, see Fortson, 919 N.E.2d at 1143, the evidence, as a whole, supports a reasonable inference of Scaife's guilt. Here, the jury reasonably concluded that Scaife's story did not add up, and we hold that the admission of Scaife's previous theft conviction was harmless error.

Issue Three: Cross-examination

Scaife next contends that the trial court abused its discretion when it limited his cross-examination of Officer Kevin Kern regarding his investigation. In particular, Scaife sought to question Officer Kern regarding a suspect named Michael Turman who was listed on the CAD[5] report. On appeal, Scaife maintains that the trial court should not

[5] The parties do not explain what a CAD report is, but it appears to be a report that is made by someone in the police department which provides details of a crime as it is initially reported to the department.

have precluded him from asking Officer Kern "how he identified the suspect or the course of his investigation as it related to the suspect." Brief of Appellant at 15.

The right to cross-examine witnesses is guaranteed by the Sixth Amendment to the United States Constitution and is one of the fundamental rights of our criminal justice system. Washington v. State, 840 N.E.2d 873, 886 (Ind. Ct. App. 2006), trans. denied. However, this right is subject to reasonable limitations imposed at the discretion of the trial judge. Id. Trial judges retain wide latitude to impose reasonable limits on the right to cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant. Id. We will find an abuse of discretion when the trial court controls the scope of cross-examination to the extent that a restriction substantially affects the defendant's rights. Id.

Here, Scaife cites to this court's opinion in Bowlds v. State, 834 N.E.2d 669, 676 (Ind. Ct. App. 2005), where we held that the defendant had been denied a fair trial where the State had failed to disclose three police reports containing potentially exculpatory information. But Bowlds is inapposite here, where there is no allegation that the State failed to disclose exculpatory information. Rather, Scaife complains only that his cross-examination of Officer Kern was improperly limited.

Scaife made an offer to prove at trial regarding the substance of Officer Kern's anticipated testimony on cross-examination. An offer to prove is "an 'offer' from counsel regarding what a witness would say if he was allowed to testify." Roach v. State, 695 N.E.2d 934, 939 (Ind. 1998). While such an offer need not be "formal," it must

contain the following three elements: it must make the substance of the excluded evidence or testimony clear to the court; it must identify the grounds for admission of the testimony; and it must identify the relevance of the testimony. Arhelger v. State, 714 N.E.2d 659, 666 (Ind. Ct. App. 1999) (citing Roach, 695 N.E.2d at 939).

Rather than questioning Officer Kern during her offer to prove, Scaife's defense counsel merely summarized the nature of her questions and his anticipated responses, based upon her interview with Officer Kern prior to trial. In essence, defense counsel stated that Officer Kern had admitted to her that his report detailing his investigation "was not the very best report." Transcript at 109. She anticipated questioning him whether he knew who Turman was and whether he had investigated a suspicious vehicle that was listed on the CAD report. In short, defense counsel wanted to show the jury that Officer Kern's investigation was inadequate and to create a reasonable inference that Turman was the one who had stolen the tool bag.

We cannot say that the trial court abused its discretion when it precluded Scaife from cross-examining Officer Kern about his investigation into the other suspect. First, to the extent that Scaife contends that that line of questioning would have shown that Turman was the one who had stolen the tool bag, that contention is pure speculation. There is no indication in Officer Kern's testimony or the offer to prove that Officer Kern had any knowledge of why Turman was initially named or whether a more thorough investigation would have implicated Turman. Second, Scaife was permitted to question Officer Kern about Turman and the vehicle listed on the CAD report, and he was able to clarify that Turman was the only named suspect prior to Scaife's arrest. Scaife has not

demonstrated that the limitation of his cross-examination of Officer Kern substantially affected his rights. The trial court did not abuse its discretion.

Issue Four: Batson

Finally, Scaife contends that the State struck a juror, "Juror 2," based on race in violation of Batson v. Kentucky, 476 U.S. 79 (1986), thus violating his equal protection rights. Our supreme court has explained the Batson rule as follows:

> In Batson v. Kentucky, 476 U.S. 79 (1986), modified by Powers v. Ohio, 499 U.S. 400, 405-06, 111 S. Ct. 1364, 113 L. Ed. 2d 411 (1991) (applying Batson where the defendant and the excluded juror were of different races), the United States Supreme Court determined that the prosecutor's use of a peremptory challenge to strike a potential juror solely on the basis of race violated the Equal Protection Clause of the Fourteenth Amendment. The Court has extended the reach of Batson to include criminal defendants as well. "We hold that the Constitution prohibits a criminal defendant from engaging in purposeful discrimination on the ground of race in the exercise of peremptory challenges." Georgia v. McCollum, 505 U.S. 42, 59, 112 S. Ct. 2348, 120 L. Ed. 2d 33 (1992).
>
> The Batson Court developed a three-step test to determine whether a peremptory challenge has been used improperly to disqualify a potential juror on the basis of race. First, the party contesting the peremptory challenge must make a prima facie showing of discrimination on the basis of race. Batson, 476 U.S. at 96. Second, after the contesting party makes a prima facie showing of discrimination, the burden shifts to the party exercising its peremptory challenge to present a race-neutral explanation for using the challenge. Id. at 97. Third, if a race-neutral explanation is proffered, the trial court must then decide whether the challenger has carried its burden of proving purposeful discrimination. Id. at 98.

Jeter v. State, 888 N.E.2d 1257, 1262-63 (Ind. 2008), cert. denied, 555 U.S. 1055 (2008). Upon appellate review, a trial court's decision concerning whether a peremptory challenge is discriminatory is given great deference and will be set aside only if found to be clearly erroneous. Forrest v. State, 757 N.E.2d 1003, 1004 (Ind. 2001).

The State concedes that we need not address whether Scaife made a prima facie showing of discrimination based on race. See Batson, 476 U.S. at 96. "Once the proponent 'has offered a race-neutral explanation for the peremptory challenges and the trial court has ruled on the ultimate question of intentional discrimination, the preliminary issue of whether the [opponent of the challenge] had made a prima facie showing becomes moot." Jeter, 888 N.E.2d at 1264 (internal quotation marks omitted, citation omitted, alteration in original). Here, following Scaife's objection under Batson, the State provided race-neutral explanations for striking Juror 2, and the trial court then determined there was no racial discrimination. Thus, we need not consider whether Scaife made a prima facie showing of discrimination. See id.

" 'The second step of this process does not demand an explanation that is persuasive, or even plausible.' " Jeter, 888 N.E.2d at 1264 (quoting Purkett v. Elem, 514 U.S. 765, 767-68 (1995) (per curiam)). At this second step of the inquiry, the issue is simply the facial validity of the prosecutor's explanation. Id. " 'Unless a discriminatory intent is inherent in the prosecutor's explanation, the reason offered will be deemed race neutral.' " Id. (quoting Purkett, 514 U.S. at 768). A "neutral explanation" is one that provides a "clear and reasonably specific" explanation of "legitimate reasons" for exercising the challenges related to the case to be tried. Batson, 476 U.S. at 89, 98 n.20. "What is meant by a 'legitimate reason' is not a reason that makes sense, but a reason that does not deny equal protection." Purkett, 514 U.S. at 769.

If the State proffers a facially neutral reason for the peremptory strike, then the court must proceed to the third step to determine whether the objecting party established

discriminatory intent. Jeter, 888 N.E.2d at 1263. A trial court's determination in step three is a finding of fact. See Batson, 476 U.S. at 98 n.21 (citation omitted). "Since the trial judge's findings in the context under consideration . . . largely turn on evaluation of credibility, a reviewing court ordinarily should give those findings great deference." Id. (citation omitted).

Here, Scaife describes the State's reasons for striking Juror 2 as follows:

> 1) the State's assisting witness Detective Yancey thought Juror 2 was "uninterested" and "wasn't paying attention" to the prosecutor during voir dire; 2) Juror 2 stated that he did not believe in circumstantial evidence; and 3) in response to a hypothetical involving whether a child took a cookie out of a cookie jar, Juror 2 gave a response the State did not like.

Brief of Appellant at 21. Scaife contends that those reasons are invalid and that the State's peremptory challenge of Juror 2 was "the result of purposeful discrimination." Id. In particular,

> [f]irst, the trial court did not make a specific finding regarding whether Juror 2 was "uninterested" or "wasn't paying attention" during the voir dire process. Therefore, this Court should give no weight to this claim. See Snyder[v. Louisiana, 552 U.S. 472, 479 (2008)]; Killebrew[v. State, 925 N.E.2d 399, 402-03 (Ind. Ct. App. 2010)]. Second, the State's claim that Juror 2 stated he did not believe in circumstantial evidence was false. A review of the voir dire transcript reveals that Juror 2 made no such statements. Finally, the State's third and final reason fails because Juror 8, who was not an African-American, gave a similar response and was not struck by the State.

Id. at 21-22 (citations to transcript omitted). We address each of these contentions in turn.

Initially, we disagree with Scaife that the State gave three reasons for striking Juror 2. Instead, we read the transcript as indicating only two reasons for the strike.

After explaining that Juror 2's inattention during voir dire was the first reason for the strike, the prosecutor stated:

> And also, when I questioned [Juror 2] he said he didn't believe in circumstantial evidence. Despite all the information I was giving he still believed, when I used my cookie example that the other daughter was . . . I'm sorry, the son was involved and so I struck him for that.

Transcript at 18. While the prosecutor did not have a discussion with Juror 2 about circumstantial evidence, per se, the questions to Juror 2 regarding the cookie hypothetical were aimed at discerning Juror 2's understanding of circumstantial evidence. We hold that the State concluded from Juror 2's responses to the hypothetical scenario that he did not understand the concept of circumstantial evidence. That said, we first address the issue of Juror 2's alleged inattentiveness during voir dire.

In Snyder, the United States Supreme Court addressed set out our standard of review with regard to a Batson challenge based in part on a potential juror's demeanor:

> The trial court has a pivotal role in evaluating Batson claims. Step three of the Batson inquiry involves an evaluation of the prosecutor's credibility, see 476 U.S. at 98, and "the best evidence [of discriminatory intent] often will be the demeanor of the attorney who exercises the challenge," Hernandez[v. New York, 500 U.S. 352, 365 (1991)] (plurality opinion). In addition, race-neutral reasons for peremptory challenges often invoke a juror's demeanor (e.g., nervousness, inattention), making the trial court's first-hand observations of even greater importance. In this situation, the trial court must evaluate not only whether the prosecutor's demeanor belies a discriminatory intent, but also whether the juror's demeanor can credibly be said to have exhibited the basis for the strike attributed to the juror by the prosecutor. We have recognized that these determinations of credibility and demeanor lie " 'peculiarly within a trial judge's province,' " id. (quoting Wainwright v. Witt, 469 U.S. 412 (1985)), and we have stated that "in the absence of exceptional circumstances, we would defer to [the trial court]." [Id.] at 366.

552 U.S. at 477 (emphasis added). And, in Snyder,

> The trial judge was given two explanations for the strike. Rather than making a specific finding on the record concerning Mr. Brooks' demeanor, the trial judge simply allowed the challenge without explanation. It is possible that the judge did not have any impression one way or the other concerning Mr. Brooks' demeanor. Mr. Brooks was not challenged until the day after he was questioned, and by that time dozens of other jurors had been questioned. Thus, the trial judge may not have recalled Mr. Brooks' demeanor. Or, the trial judge may have found it unnecessary to consider Mr. Brooks' demeanor, instead basing his ruling completely on the second proffered justification for the strike. For these reasons, we cannot presume that the trial judge credited the prosecutor's assertion that Mr. Brooks was nervous.

Id. at 479 (emphases added).

We find the facts and circumstances in Snyder distinguishable from those in this case. Here, the State gave its reasons for striking Juror 2 immediately at the close of voir dire, which did not involve the questioning of "dozens of other jurors." See id. And, while the trial court could have been more specific in its ruling, the court gave an explanation for allowing the strike based on the reasons proffered by the State. The trial court stated in relevant part:

> [O]nce a prima facie case of a Batson challenge has been raised it's up to the State to rebut that prima facie case or challenge to demonstrate neutrality regarding the reasons for an exclusion. I don't think that necessarily requires the State to be as detailed as they were [sic], but this court did notice from the moment that the jurors [sic] and it's not simply African-American jurors, it's all the jurors that they excluded actually, have reasons as to why they were excluded. And it's in this court's mind that those reasons do rebut the prima facie case presented by the defense for the purposes of the Batson challenge and at this point I will deny the Batson challenge as to the jury make-up. It should be noted that peremptory challenges again [sic] the law in the State of Indiana and the United States of America allows peremptory challenges for any reason whatsoever aside from discriminatory reasons. . . . As I said, I believe the State has adequately rebutted as per Indiana law and per United States law the Batson challenge in this particular matter.

Transcript at 19-20 (emphasis added). In other words, having just observed voir dire, the trial court ruled that the State had presented valid reasons for striking the jurors, including the inattentiveness of Juror 2, to overcome Scaife's Batson challenge. When the trial court found that the reasons given by the State "do rebut the prima face case presented by the defense," the court found that all of the reasons proffered by the State for the strike, including Juror 2's demeanor, adequately stated a race-neutral basis for striking that juror. Such is an adequate statement of the trial court's reason for sustaining the strike.

Finally, Scaife maintains that the second reason given for striking Juror 2 is invalid. During voir dire, the prosecutor gave the prospective jurors a hypothetical scenario where two children, Adam and Elliott, were unsupervised and six cookies had been eaten. The prosecutor asked whether the prospective jurors could explain how they might determine which child ate the cookies. Juror 8, who was not African-American, was the first to be questioned on this hypothetical, and she responded that she would "start by looking first at the evidence, maybe crumbs on the child's shirt or maybe a little chocolate on the face." Voir Dire Transcript at 8. Juror 8 agreed that there was no direct evidence because "nobody actually saw who ate the cookie." Id. And that led to a discussion about circumstantial evidence.

At one point, Juror 8 stated that "[m]ost of the evidence points to the one child" but she opined that maybe both children ate the cookies and only one child got rid of the evidence by brushing his teeth or cleaning his face. Id. at 13. Juror 2 then stated that if

one of the children had just brushed his teeth, he would suspect that child as "the one that ate the cookie." Id. at 13. Then the prosecutor added facts to the scenario as follows:

> Let's assume Adam didn't brush his teeth. He hasn't changed clothes. He's still wearing the same clothes. He's still hungry. He wants to eat. He's starving. He comes like Mommy [sic] where is the food? I'm so hungry I want to eat, or Daddy, where is the food, I want to eat and he's starving. He wants to eat [and] there are no crumbs in the area, nothing of his physical appearance has changed. Do you still think that the two of them might have eaten a cookie?

Id. at 14. Juror 2 responded, "Could just be a clean eater. You know what I'm saying, he's cleaning up his mess though you know." Id. And Juror 2 reiterated that he thought that both children could have been guilty of eating the cookies. Juror 2 finished by saying, "I just say . . . that most of the time, if one kid eating [sic], another kid gonna eat it too, both of them eating, you know what I'm saying?" Id. at 15.

On appeal, Scaife contends that the State did not have a valid reason to strike Juror 2 based upon his responses to the hypothetical since Juror 8, who gave similar responses, was impaneled to the jury. But our review of the voir dire transcript reveals differences in the jurors warranting the different treatment by the State. Juror 8 explained the difference between direct evidence and circumstantial evidence, demonstrating knowledge of both concepts. And while Juror 8 initially stated that both children could have eaten the cookies despite the evidence pointing to one child, the record does not show whether she continued to hold that belief after the hypothetical changed and one of the children was "starving" after the cookies had been eaten. Id. at 14. Juror 2, on the other hand, still held the belief that both children ate the cookies despite that evidence. The State's case relied heavily on circumstantial evidence to prove Scaife's guilt. Given

Juror 2's apparent struggle to grasp the concept of circumstantial evidence, the State was justified in striking Juror 2. We cannot say that the trial court erred when it found the State's reasons for striking Juror 2 valid under the Batson analysis.

Conclusion

The State presented sufficient evidence to support Scaife's theft conviction. Any error in the admission of evidence that Scaife had previously been convicted of theft was harmless. Scaife has not demonstrated that the trial court abused its discretion when it limited his cross-examination of Officer Kern. And Scaife has not shown that the State's use of a peremptory challenge to strike Juror 2 violated the Batson rule.

Affirmed.

RILEY, J., and MAY, J., concur.