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Minn. Stat. § 480A.08, subd. 3 (2006).*

**STATE OF MINNESOTA  
IN COURT OF APPEALS  
A07-1559**

State of Minnesota,  
Respondent,

vs.

Michael John Rice,  
Appellant.

**Filed September 30, 2008  
Affirmed  
Stoneburner, Judge**

Olmsted County District Court  
File No. 55CR066190

Lori Swanson, Attorney General, 1800 Bremer Tower, 445 Minnesota Street, St. Paul, MN 55101-2134; and

Mark A. Ostrem, Olmsted County Attorney, Julie L. Germann, Assistant County Attorney, 151 Southeast Fourth Street, Rochester, MN 55904 (for respondent)

Lawrence Hammerling, Chief Appellate Public Defender, Michael F. Cromett, Assistant Public Defender, Suite 300, 540 Fairview Avenue North, St. Paul, MN 55104 (for appellant)

Considered and decided by Shumaker, Presiding Judge; Stoneburner, Judge; and Huspeni, Judge.\*

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\* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

## UNPUBLISHED OPINION

**STONEBURNER**, Judge

Appellant challenges his conviction of theft by swindle, arguing that the evidence is insufficient because the victim did not rely on representations made by appellant. Because the statute does not require reliance by the victim and the evidence is sufficient to support appellant's conviction, we affirm.

### FACTS

On June 23, 2006, appellant Michael John Rice brought a van to Adamson's Motors in Rochester for repairs. Rice gave vehicle and contact information to Adamson's service advisor. The repair order reflects that Rice told the service advisor that his name was Dave Jensen and provided an address and phone number. Rice signed the repair order "Dave Jensen."

The repair order authorized Adamson's to provide an estimate of the cost of the requested repairs. After the estimate was completed, the service advisor, following customary practice, attempted to reach Jensen by telephone to give the estimate and obtain authorization for the repair. A woman who answered the telephone number provided authorized Adamson's to perform the repair work. Adamson's repaired the brakes for a total cost of \$964.48. After the repair was completed, the service advisor again called the telephone number provided, but he was unable to reach anyone. The van was placed in an outside parking lot with the doors locked.

A few days later, the van was missing from the lot. The key to the van and the repair bill were still in Adamson's cashier's office. Adamson's contacted the police. The

police investigation revealed that the van had a stolen license plate, the address listed on the repair order did not exist, and the phone number provided was for a woman named Jennifer Hunsley. Police discovered that the van was registered to Lance Christenson, who had an outstanding arrest warrant under the alias “Michael John Rice.”

The police found the van parked a short distance from the address listed on the van’s registration. The police determined that Christenson and Rice are separate individuals and that Rice had previously given Christenson’s name as his own at a traffic stop. The police put together a photographic lineup containing pictures of both Christenson and Rice and showed it to the service advisor at Adamson’s. The service advisor selected Rice’s photo as being the individual who brought in the van for repairs. Police officers were unable to locate Christenson or anyone named Dave Jensen. Rice was charged with theft by swindle, receiving stolen property, and unlawful use of altered plates.

At his bench trial, Rice testified that he had brought the van, which belonged to his friend Christenson, to the dealership for brake repairs because he and Christenson intended to start a handyman business and needed the van for the business. Rice testified that Jensen, whom he had met a week earlier, was going to pay for the repairs in return for handyman work that Rice had completed for him. Rice stated that he dropped the van off because Jensen had already returned to the Minneapolis area, and that Jensen disappeared and could not be found after the van was taken from the dealership. Rice testified that he told the service advisor that he was Michael Rice but signed the repair order as Jensen because Jensen was going to pay for the repairs.

The district court found Rice guilty of theft by swindle and not guilty of the remaining two charges. In support of its verdict, the district court found that Rice used another person's name, used a fictitious street address, used the phone number of another person, and signed the work order as Dave Jensen. The district court stated that it found Rice's testimony to be "incredible" and untruthful. Rice appealed, challenging the sufficiency of the evidence to support the conviction.

### **D E C I S I O N**

In reviewing a sufficiency of the evidence claim, this court's review is limited to a painstaking analysis of the record to determine whether the evidence, when viewed in the light most favorable to the conviction, is sufficient to allow the fact-finder to reach the verdict that it did. *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). This court should assume that the fact-finder believed the state's witnesses and disbelieved any evidence to the contrary. *State v. Thomas*, 590 N.W.2d 755, 757 (Minn. 1999).

While circumstantial evidence warrants stricter scrutiny, it is entitled to the same weight as other evidence. *State v. Bauer*, 598 N.W.2d 352, 370 (Minn. 1999). When reviewing a conviction based on circumstantial evidence, this court reviews whether the evidence "form[s] a complete chain which, in light of the evidence as a whole, leads so directly to the guilt of the accused as to exclude, beyond a reasonable doubt, any reasonable inference other than that of guilt." *State v. Schneider*, 597 N.W.2d 889, 895 (Minn. 1999) (quotation omitted).

Rice argues that the evidence is insufficient to support his conviction because Adamson's did not rely on his misrepresentation and would have performed the services regardless of what name or address he gave. Rice's argument is unpersuasive.

Theft by swindle occurs when one "by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person." Minn. Stat. § 609.52, subd. 2(4) (2006). Because the purpose of the statute is to prohibit an unwanted form of conduct, "[n]o single definition can cover the range of possibilities for the offense." *State v. Ruffin*, 280 Minn. 126, 130, 158 N.W.2d 202, 205 (1968) (citation omitted). "Theft by swindle requires the intent to defraud." *State v. Saybolt*, 461 N.W.2d 729, 735 (Minn. App. 1990), *review denied* (Minn. Dec. 17, 1990).

Rice contends that this court's decision in *State v. Ulvestad*, 414 N.W.2d 737 (Minn. App. 1987), *review denied* (Minn. Jan. 15, 1988) identifies reliance by the victim as an element of the theft by swindle crime. But, contrary to Rice's assertion, *Ulvestad* does not hold that reliance is an element of the offense of theft by swindle. In affirming Ulvestad's conviction of theft by swindle, this court noted that the evidence demonstrated that victims relied on false odometer readings in purchasing vehicles, but the opinion does not address whether such reliance is a required element of the offense because that issue was not raised. 414 N.W.2d at 740. *Ulvestad* states that "[g]enerally, the offense of swindling is cheating and defrauding an individual of his or her property by deliberate artifice." *Id.* (citing *State v. Wells*, 265 Minn. 212, 214, 121 N.W.2d 68, 69 (1963)).

"[T]he essence of a swindle is defrauding another person by an intentional misrepresentation or scheme." *State v. Flicek*, 657 N.W.2d 592, 598 (Minn. App. 2003).

It is not necessary “that any special confidence be reposed in the accused.” *State v. Cunningham*, 257 Minn. 31, 40, 99 N.W.2d 908, 914 (1959). It is sufficient if, in obtaining the victim’s property or services, a method is “used to dispel the victim’s normal suspicion or caution.” *Id.*; *see also State v. Lone*, 361 N.W.2d 854, 858-60 (Minn. 1985) (stating that defendant was guilty of theft by swindle because victims lost their ability to bargain based on true facts).

To prove that Rice committed theft by swindle, it was only necessary for the state to show that Rice obtained the services of another and, in doing so, employed some sort of trick to dispel the victim’s normal suspicion or caution. It is immaterial that Rice may have been able to obtain the repair services from Adamson’s without using a false name. The state presented evidence that Rice misrepresented the contact information as his own in order to dispel Adamson’s suspicion or caution about performing the repair. It is highly doubtful that Adamson’s would have completed the repair if Rice had told the service advisor that he was providing a name that was not his own, a fictitious address, and a number for a telephone that was not listed in his name.<sup>1</sup> Rice’s actions tricked Adamson into believing that it had obtained valid permission to perform the service.

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<sup>1</sup> Rice suggests that the services were performed because of the dealer’s inadequate repair-authorization method and not Rice’s misrepresentations. But the dealer’s repair-authorization method is irrelevant to the determination of whether Rice obtained services from Adamson’s based on artifice or trick because the prudence of the victim is not an element of the crime. *See* Minn. Stat. § 609.52, subd. 2(4); *State v. Hanson*, 285 N.W.2d 483, 486 (Minn. 1979) (stating that the theft by swindle statute protects against any fraudulent scheme or trick, and a jury instruction on prudence need not be given).

Adamson's performed the work and has not been paid. The evidence was sufficient to support Rice's conviction.

**Affirmed.**