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**STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0257**

State of Minnesota,
Respondent,

vs.

Phillip Wayne Stewart, II,
Appellant.

**Filed December 31, 2018
Affirmed
Reyes, Judge**

Hennepin County District Court
File No. 27-CR-17-7184

Lori Swanson, Minnesota Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Kelly O'Neill Moller, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Sara L. Martin, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Larkin, Presiding Judge; Connolly, Judge; and Reyes, Judge.

UNPUBLISHED OPINION

REYES, Judge

Appellant argues on appeal that the state produced insufficient evidence to support his conviction of theft by swindle. We affirm.

FACTS

J.G. frequently purchases cell phones off of Craigslist to sell to family and friends when she visits them in Brazil. J.G. responded to an ad that appellant Phillip Wayne Stewart II, had placed on Craigslist in which he offered to sell iPhones. They negotiated a deal, and after driving from Duluth to meet appellant in Bloomington, J.G. purchased two iPhones from him.

After J.G. left, appellant sent her a text message stating that if she wanted to purchase more iPhones from him, he could get more to sell her. She agreed to purchase three more iPhones for \$1,450 later that evening. After driving to Cloquet to meet her husband to get additional cash, she returned to Bloomington that evening to meet appellant for a second transaction. On the way back to Bloomington, she exchanged more text messages with appellant in which they ultimately agreed that appellant would sell her six more iPhones for \$2,000.

When they met for the second time, J.G. handed appellant the money, and he gave her a bag that she believed contained the iPhones. As appellant was leaving, J.G. noticed that there were no iPhones in the bag; instead, the bag contained cleaning supplies and an empty phone box. J.G. called the police and informed them of what had happened.

Officers arrested appellant later that night. The next day, an officer interviewed appellant, and he admitted that, after he agreed to sell J.G. four additional iPhones,¹ he took \$2,000 from her and, in exchange, gave her a bag that did not contain any iPhones.

The state charged appellant with one count of theft by swindle under Minn. Stat. § 609.52, subds. 2(a)(4) and 3(3)(a) (2016).² A jury found appellant guilty of theft by swindle in an amount between \$1,000 and \$5,000. This appeal follows.

D E C I S I O N

Appellant argues that the state presented insufficient evidence at trial to prove that he swindled J.G. because he did not have \$2,000 on his person when officers arrested him and officers did not seize the bag containing cleaning supplies from J.G. We are not persuaded.

In considering a claim of insufficient evidence, a reviewing court will not disturb the verdict if the jury, acting with due regard for the presumption of innocence and the requirement of proof beyond a reasonable doubt, could reasonably conclude that the defendant was guilty of the charged offense. *State v. Alton*, 432 N.W.2d 754, 756 (Minn. 1988). A reviewing court must assume “the jury believed the state’s witnesses and disbelieved any evidence to the contrary.” *State v. Moore*, 438 N.W.2d 101, 108 (Minn. 1989). When reviewing a sufficiency-of-the-evidence claim, this court must resolve all

¹ There appears to have been some confusion as to whether appellant had agreed to sell four or six additional iPhones. Nonetheless, appellant admitted that he agreed to sell at least four additional iPhones for \$2,000.

² The state also charged appellant with one count of damage to property pursuant to Minn. Stat. § 609.595, subd. 1(1) (2016), but dismissed that count before trial.

inconsistencies in the evidence in favor of the state. *State v. Budreau*, 641 N.W.2d 919, 929 (Minn. 2002).

When an element of an offense is supported by direct evidence, 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 verdict, is sufficient to support the jury's verdict. *State v. Horst*, 880 N.W.2d 24, 40 (Minn. 2016). A confession is direct evidence of guilt. *State v. Weber*, 137 N.W.2d 527, 535 (Minn. 1965). Evidence based on personal knowledge or observation that, if true, proves a fact without inference or presumption is also direct evidence. *Bernhardt v. State*, 684 N.W.2d 465, 477 n.11 (Minn. 2004) (quoting *Black's Law Dictionary* 596 (8th ed. 2004)).

Under Minnesota law, a theft by swindle occurs when a person "by artifice, trick, device, or any other means, obtains property or services from another person." Minn. Stat. § 609.52, subd. 2(a)(4). The statute punishes any wrongdoer who deprives the victim of his money or property by deceit or betrayal of confidence. *State v. Ruffin*, 158 N.W.2d 202, 205 (Minn. 1968).

Here, the jury heard direct evidence in the form of J.G.'s testimony and a recording of appellant's interview, during which he admitted that he had negotiated a deal with J.G., in which he was going to sell four additional iPhones for \$2,000. When asked what happened, appellant said he "gave her the bag of accessories and stuff and she gave [him] the two grand." He said there were no iPhones in the bag but acknowledged that there should have been. When asked why he did it, he used the term "money hungry." Appellant informed the officer that the money was in his dresser drawer at home, which officers later

seized. The jury also heard J.G.'s testimony that she had negotiated a second deal with appellant. She testified that when they met for the second time, she gave appellant \$2,000 but did not receive the iPhones in exchange. This direct evidence testimony is sufficient to support the jury's verdict.

Appellant urges this court to conclude that the jury should have believed his version of events. But the jury heard appellant's story when he testified at trial and rejected it. We assume the jury believed the state's witnesses and disbelieved appellant's contrary version of events. Furthermore, appellant's own admission to police and J.G.'s testimony contradicted his trial testimony, and this court resolves all inconsistencies in favor of the state. Appellant's argument fails.

Affirmed.