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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A20-0055**

State of Minnesota,
Respondent,

vs.

Roy Biggs Henline,
Appellant.

**Filed March 15, 2021
Affirmed
Johnson, Judge**

Hennepin County District Court
File No. 27-CR-18-9683

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Michael O. Freeman, Hennepin County Attorney, Brittany D. Lawonn, Assistant County Attorney, Minneapolis, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Jenna Yauch-Erickson, Assistant Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Johnson, Judge; and Larkin, Judge.

NONPRECEDENTIAL OPINION

JOHNSON, Judge

Roy Biggs Henline III, while a licensed attorney in private practice, was appointed trustee of a trust that had been established by a single woman who was dying of cancer for the benefit of her three children. Over a period of approximately seven years, Henline

surreptitiously stole approximately \$180,000 from the trust. He made multiple transfers of money from the trust's accounts to his own accounts, and he used those funds to make personal expenditures. He concealed his crime by not giving the deceased woman's children information about trust assets, by avoiding their requests for information or distributions, and by giving excuses for his non-responsiveness. Henline eventually was removed as trustee but not until trust assets were reduced to approximately one-tenth of their original value. Henline distributed less than a third of the original value of the trust to the deceased woman's children before he was removed.

After a court trial on stipulated facts, a Hennepin County judge found Henline guilty of theft by swindle of property valued at more than \$35,000. On appeal, Henline challenges the timeliness of the prosecution and the legal sufficiency of the state's evidence. We conclude that the state commenced the prosecution within the applicable statute of limitations. We also conclude that the evidence is sufficient to prove that Henline committed a theft by swindle, as that term is used in the applicable statute. And we conclude that the evidence is not insufficient on the ground that Henline transferred or spent more than \$35,000 during periods longer than six months. Therefore, we affirm.

FACTS

The relevant facts are contained in a 21-page, 110-paragraph stipulation of facts and in 80 exhibits, which include numerous financial records and compilations of financial records. Neither party introduced any additional evidence.

In 2005, D.M.K., who had been married and divorced, was diagnosed with cancer. Before she passed away in February 2009, she established a trust for the benefit of her three

children, who then were 18, 17, and 10 years old. The trust agreement provided that each child would receive discretionary distributions of net income and principal before reaching 25 years of age and then would be entitled to a mandatory distribution of his or her share of principal. D.M.K.'s eldest child declined to serve as trustee, as did an identified successor trustee, who contacted Henline, apparently because he previously had prepared income tax returns for D.M.K. Henline became successor trustee in March 2009. The trust was funded primarily with the proceeds of a life insurance policy in the amount of approximately \$377,500, which Henline received in May 2009.

After Henline's appointment as trustee, D.M.K.'s children generally lacked information about the value of trust assets. They and the adults assisting them consistently experienced difficulty in communicating with Henline, obtaining information from him about the trust, and receiving responses to their requests for information or distributions from the trust. The children often had to make multiple inquiries by telephone and e-mail before Henline responded. Henline sometimes justified his delays by saying that he had been on vacation or that his computer had broken down. For example, between 2010 and 2013, the children received only six statements with values of trust assets, each of which appeared to have been created by Henline with a word-processing program. In late 2015, D.M.K.'s former husband contacted Henline multiple times over a 10-week period requesting distributions for educational expenses for the youngest child, but Henline did not distribute funds despite promising to do so. In early 2016, D.M.K.'s eldest child contacted Henline with four e-mail messages, one letter, and three telephone calls to request a distribution of her share of trust principal upon reaching 25 years of age. In

March 2016, Henline responded by stating that he would give her information after receiving first-quarter account statements, but he did not do so. The eldest child wrote a follow-up e-mail message on April 10, 2016. As far as the record reveals, Henline did not respond.

In mid-2016, D.M.K.'s children hired an attorney, who wrote to Henline to request his resignation and his complete file. Henline did not resign and did not provide any documents. In December 2016, the Hennepin County District Court removed Henline as trustee and appointed D.M.K.'s eldest child as successor trustee. In doing so, the district court ordered Henline to give the trust's files and an accounting to the successor trustee. Henline never did so. The successor trustee obtained some financial statements from financial institutions. Those statements showed many transfers of funds from the trust's accounts to accounts belonging to Henline. The children filed a complaint with the office of lawyers professional responsibility and with law enforcement.

Further investigation revealed that, between August 3, 2009 and November 11, 2016, Henline transferred a total of \$224,044 from trust accounts to his personal and law-firm accounts. After subtracting permissible trustee fees and the amounts that Henline transferred back to the trust, investigators determined that, between August 2009 and November 2016, Henline improperly transferred \$180,586 from the trust to himself. Investigators also determined that, during the same period of time, Henline used his personal and law-firm accounts to make expenditures in excess of his income, including many expenditures at restaurants, bars, and liquor stores in Minnesota, as well as expenditures on trips to places such as New York, Florida, California, and Las Vegas,

where Henline was married in 2010. During the same period, D.M.K.'s children received distributions from the trust totaling approximately \$113,000. For his conduct with respect to D.M.K.'s trust and for other reasons, Henline was disbarred. *See In re Disciplinary Action Against Henline*, 908 N.W.2d 344 (Minn. 2018).

In April 2018, the state charged Henline with one count of felony theft by swindle of property valued at more than \$35,000, in violation of Minn. Stat. § 609.52, subds. 2(a)(4), 3(1) (2016).

In October 2018, Henline moved to dismiss the complaint on two grounds. First, he argued that the state had improperly aggregated amounts of money that Henline had transferred from trust accounts to his own accounts more than six months apart, in violation of the statute under which he was charged. Second, he argued that, in light of the applicable five-year statute of limitations, the state should be barred from alleging transfers from the trust to Henline that occurred more than five years before the complaint was filed. The district court denied the motion.

In July 2019, the parties agreed to a court trial on stipulated facts, stipulated evidence, and written closing arguments. *See* Minn. R. Crim. P. 26.01, subd. 3. In September 2019, the district court filed a 10-page order in which it found Henline guilty. The district court imposed a 21-month sentence but stayed execution of the sentence for five years and placed Henline on probation, ordered him to serve 365 days in the workhouse, imposed a \$10,000 fine, and ordered restitution in the amount of \$6,136. Henline appeals.

DECISION

I. Swindle

Henline first argues that the evidence is insufficient to prove that he committed theft by swindle.

The statute setting forth the offense of theft by swindle states that a person “commits theft” if he or she, “by swindling, whether by artifice, trick, device, or any other means, obtains property or services from another person.” Minn. Stat. § 609.52, subds. 2(a), 2(a)(4). The supreme court has identified three essential elements of theft by swindle: “(i) the owner of the property gave up possession of the property due to the swindle; (ii) the defendant intended to obtain for himself or someone else possession of the property; and (iii) the defendant’s act was a swindle.” *State v. Pratt*, 813 N.W.2d 868, 873 (Minn. 2012) (citing Minn. Stat. § 609.52, subd. 2(4) (2010), and 10 Minn. Dist. Judges Ass’n, *Minnesota Practice—Jury Instruction Guides, Criminal*, CRIMJIG 16.10 (5th ed. 2006)).

Henline argues that the evidence is insufficient because it does not satisfy the first element of the offense, but his argument implicates both the first element and the third element. He asserts that, because he was the trustee of the trust, he was the owner of trust assets. For that reason, he contends that the evidence does not establish that “the owner” of the stolen property “gave up possession” of the stolen property to him or that any such giving up of possession was “due to the swindle.” He also contends that there was no “swindle” because he did not deploy any “trick.”

In any appeal in which an appellant challenges the sufficiency of the evidence, this court is required to conduct “a painstaking analysis of the record to determine whether the

evidence, when viewed in a light most favorable to the conviction, was sufficient to permit the jurors to reach the verdict which they did.” *State v. Webb*, 440 N.W.2d 426, 430 (Minn. 1989). In this case, Henline’s argument does not focus on the quantity or the strength of the evidence but, rather, on the quality or nature of the evidence in light of the elements of the offense. To the extent that Henline’s arguments implicate “the meaning of the statute under which a defendant has been convicted, we are presented with a question of statutory interpretation” and, thus, apply a *de novo* standard of review. *State v. Bowen*, 921 N.W.2d 763, 765 (Minn. 2019) (quotation omitted).

Before the 1963 recodification of Minnesota’s criminal code, the statute that criminalized swindling provided as follows:

Every person who, by means of three-card monte, so-called, or of any other form or device, sleight of hand, or other means, by use of cards or instruments of like character, or by any other instrument, trick, or device, obtains from another person any money or other property of any description, shall be guilty of the crime of swindling.

Minn. Stat. § 614.11 (1961). The supreme court later “observed that the gist of the offense [set forth in the former swindling statute] is the cheating and defrauding of another by deliberate artifice.” *State v. Ruffin*, 158 N.W.2d 202, 205 (Minn. 1968) (citing *State v. Hodge*, 123 N.W.2d 323 (Minn. 1963); *State v. Wells*, 121 N.W.2d 68, 69 (Minn. 1963); and *State v. Yurkiewicz*, 292 N.W. 782, 784 (Minn. 1940)). The former statute “was intended to reach cheats and swindlers of all kinds and descriptions.” *Wells*, 121 N.W.2d at 69. “No single definition can cover the range of possibilities for the offense.” *Ruffin*, 158 N.W.2d at 205.

In 1963 the legislature enacted the theft-by-swindle statute that applies to this case. 1963 Minn. Laws ch. 753, art. 1, § 609.52, subd. 2(4), at 1217. Soon after its enactment, the supreme court described the purpose of the new statute as “the prohibition of an undesirable form of conduct rather than a specific act.” *Ruffin*, 158 N.W.2d at 205. The supreme court also commented that the new statute “was intended to protect ‘[g]ullible people [who] need as much, if not more, protection against swindlers than do others endowed with greater caution.’” *Id.* at 205-06 (quoting Maynard E. Pirsig, *Proposed Revision of the Minnesota Criminal Code*, 47 Minn. L. Rev. 417, 437 (1963)).

In arguing for a narrow interpretation of the statute, Henline cites several opinions interpreting the former swindling statute. *See, e.g., State v. Brooks*, 187 N.W. 607, 608 (Minn. 1922) (swindling victim into betting on fake horse race); *State v. Smith*, 85 N.W. 12, 12-13 (Minn. 1901) (swindling ticket seller to give too much change); *State v. Wilson*, 75 N.W. 715, 716 (Minn. 1898) (swindling victim into placing bet on rigged game). Those opinions have limited value today because the former statute included a specific example of a swindle (“three-card monte”) and provided other descriptions of swindling (“sleight of hand”), which might have indicated that a swindle must include elaborate means of deceit. But, as the supreme court explained in *Ruffin*, the statute was not actually so narrowly defined. *See* 158 N.W.2d at 205.

In any event, the 1963 enactment omitted some of that limiting language and substituted broader language. The current version of the statute provides that a person may engage in swindling “by artifice, trick, device, *or any other means.*” Minn. Stat. § 609.52, subd. 2(a)(4) (emphasis added). In *State v. Hanson*, 285 N.W.2d 483 (Minn. 1979), the

supreme court described the modern statute as one that “punishes any fraudulent scheme, trick, or device whereby the wrongdoer deprives the victim of his money or property by deceit or betrayal of confidence.” *Id.* at 486 (quoting *Ruffin*, 158 N.W.2d at 205). The supreme court in *Hanson* affirmed a jury instruction that stated that a swindle “can be accomplished by false representation as to both past and future facts” and “may include a trick or a scheme consisting of mere words and actions, and it does not require the use of some mechanical device or something like that.” *Id.* The supreme court also commented, “The modern approach to theft focuses on protecting citizens in a comprehensive way from theft,” which “eliminates the need to draw fine distinctions between swindling and other types of theft.” *Id.* In light of this caselaw, Henline’s conduct is within the definition of swindling, which is the third element of the offense. As described above, Henline withheld information from the children, avoided their communications, and gave them excuses for his non-responsiveness.

Having determined that Henline engaged in swindling, we turn to Henline’s argument that the evidence is insufficient to prove the first element of the offense, that “the owner of the property gave up possession of the property due to the swindle.” *See Pratt*, 813 N.W.2d at 873. As stated above, this argument is based on Henline’s assertion that, as trustee, he had lawful ownership of trust assets such that D.M.K.’s children “cannot be deemed the ‘owners’ of the trust funds at the time Henline allegedly took them.” It is true that a trustee has an ownership interest in trust assets, but that interest is only a legal interest; the beneficiaries of a trust have an equitable interest in trust assets, which allows the beneficiaries “to receive whatever benefits [they are] entitled to therefrom by the terms

of the trust” as well as “the right to enforce in equity performance of the trust.” *Farmers State Bank v. Sig Ellingson & Co.*, 16 N.W.2d 319, 322 (Minn. 1944); *see also Security Bank & Trust Co. v. Larkin, Hoffman, Daly & Lindgren, Ltd.*, 916 N.W.2d 491, 501 (Minn. 2018). Accordingly, this court has concluded that a trustee committed the offense of theft by temporary control when she gambled and lost trust assets, reasoning that the trustee “had no claim of right” to trust assets and had no right “to use that money in any way for her personal benefit.” *State v. Franklin*, 692 N.W.2d 82, 85-86 (Minn. App. 2005), *review denied* (Minn. Apr. 19, 2005); *see also State v. O’Hagan*, 474 N.W.2d 613, 618-19 (Minn. App. 1991) (affirming conviction of theft by temporary control of attorney who used trust assets for personal purposes but later replenished trust accounts), *review denied* (Minn. Sept. 25, 1991). When Henline transferred money from the trust’s accounts to his own accounts and used the money to make personal expenditures, he effectively disposed of the equitable interests that belonged to D.M.K.’s children. In essence, Henline’s own actions as trustee caused the children to give up possession of their equitable interests. Henline cannot avoid criminal liability by relying on his legal interest in trust assets when he wrongfully disposed of the beneficiaries’ equitable interests in trust assets.

Thus, the evidence is sufficient to prove each of the elements of the offense of theft by swindle.

II. Timeliness

Henline also argues that the district court erred by denying his pre-trial motion to dismiss the complaint on the ground that it alleged conduct occurring beyond the applicable five-year statute of limitations.

A charge of theft by swindle of property valued at more than \$35,000 “shall be . . . made and filed in the proper court within five years after the commission of the offense.” Minn. Stat. § 628.26(h) (2016). To resolve Henline’s argument, we must determine when the offense was committed. *See id.* In denying Henline’s motion to dismiss, the district court determined that the offense of theft by swindle is a continuing offense and that Henline’s commission of the offense was not complete until he was removed as trustee, which occurred in December 2016, approximately 16 months before the complaint was filed in April 2018. On appeal, Henline contends that theft by swindle is not a continuing offense because “the act of obtaining property points to a singular moment in time rather than an extended period.”

Neither the supreme court nor this court has considered whether theft by swindle in violation of section 609.52, subdivision 2(a)(4), is or may be a continuing offense. But the supreme court has considered whether a similar charge based on substantially similar facts was barred by a three-year statute of limitations. In *State v. Thang*, 246 N.W. 891 (Minn. 1933), the appellant was a court-appointed guardian of funds held for the benefit of an incompetent person. *Id.* at 891-92. Two years after his appointment, the appellant represented to the probate court that he was in possession of the funds. *Id.* at 892. Two years after that representation, when the probate court requested an inventory and an accounting, the appellant did not respond, and it was discovered that \$1,000 was missing. *Id.* After his conviction of grand larceny, the appellant argued on appeal that the prosecution was barred by the three-year statute of limitations. *Id.* The supreme court rejected the argument, primarily because the appellant had represented during the three-

year period that he was in possession of the funds. *Id.* This court later described the reasoning of *Thang* by stating that “the statute of limitations did not run until the court’s discovery of the crime.” *State v. Danielski*, 348 N.W.2d 352, 357 (Minn. App. 1984), *review denied* (Minn. July 26, 1984).

In light of *Thang* and *Danielski*, the five-year statute of limitations applicable to Henline’s offense of theft by swindle, which resembles the grand-larceny offense in *Thang*, did not begin to run until Henline’s theft of trust assets was discovered. That discovery occurred sometime after December 2016, when Henline was removed as trustee, which allowed the successor trustee and law enforcement to gather information and investigate. The state filed its one-count complaint against Henline in April 2018. Thus, consistent with *Thang* and *Danielski*, the state commenced this prosecution within five years after the theft by swindle was committed. This conclusion does not depend on whether theft by swindle is a continuing offense.

If we were to consider whether theft by swindle is or may be a continuing offense, we would reach the same conclusion—that the prosecution is not barred by the five-year statute of limitations. As a general rule, “a crime is not continuing in nature if not clearly so indicated by the legislature.” *State v. Lawrence*, 312 N.W.2d 251, 253 (Minn. 1981) (citing *Toussie v. United States*, 397 U.S. 112, 115, 90 S. Ct. 858, 860 (1970)). Furthermore, a “particular offense should not be construed as a continuing one ‘unless the explicit language of the substantive criminal statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing one.’” *Danielski*, 348 N.W.2d at 355 (quoting *Toussie*, 397 U.S. at

115, 90 S. Ct. at 860). In applying this test, this court independently considers each element of the offense and also considers the particular facts of the case. *See id.*

In *Danielski*, the offense at issue was first-degree criminal sexual conduct of a child by a person in a position of authority over the victim. 348 N.W.2d at 354. This court reasoned that the first element (engaging in sexual penetration) was complete when the two appellants engaged in acts of penetration but that the third and fourth elements (being in a position of authority over the victim and using that authority to coerce the victim to submit) did not cease at the time of penetration. *Id.* at 355-56. We reasoned that the appellants “were able to maintain sufficient control over their daughter to prevent outside intervention for eight years” and that their “success in maintaining this control over the victim should not bar the state’s subsequent prosecution.” *Id.* at 356. We also noted that in *Thang* and other cases, “the defendants prevented discovery of the offense.” *Id.* at 357. Accordingly, we determined that the *Danielski* defendants’ actions “made the offense a continuing one.” *Id.*

As stated above, a person commits theft by swindle if he or she commits a theft “by swindling, by artifice, trick, device, or any other means.” Minn. Stat. § 609.52, subd. 2(a)(4). We already have described the meaning of the word “swindling,” as used in the statute. *See supra* part I. The elements of the offense are “(i) the owner of the property gave up possession of the property due to the swindle; (ii) the defendant intended to obtain for himself or someone else possession of the property; and (iii) the defendant’s act was a swindle.” *Pratt*, 813 N.W.2d at 73. By its nature, a swindle can consist of “any fraudulent scheme, trick, or device whereby the wrongdoer deprives the victim of his money or

property by deceit or betrayal of confidence.” *Hanson*, 285 N.W.2d at 486 (quoting *Ruffin*, 158 N.W.2d at 205). Furthermore, a swindle “can be accomplished by false representation as to both past and future facts.” *Id.* So understood, a theft by swindle can occur both before and after the swindler obtains property from the victim. Accordingly, the offense of theft by swindle may be a continuing offense, depending on the manner in which it is committed. *See Danielski*, 348 N.W.2d at 357.

In this case, the district court determined that Henline’s actions delayed the discovery of his theft and that he used misrepresentations about his past and future actions to continue to defraud D.M.K.’s children. The district court reasoned that Henline’s continuing offense “was only complete when he was forcibly removed by the courts as trustee.” The record (which, at the time of the pre-trial ruling, consisted primarily of the complaint, which includes an extensive narrative statement of probable cause) supports the district court’s determination that Henline’s offense was a continuing offense. Henline concealed his theft for seven years, practically the entire period of time in which he was trustee. He continued to conceal his criminal conduct even after he was removed as trustee in December 2016 by not complying with the successor trustee’s request for his files and records. Accordingly, Henline’s theft by swindle was a continuing offense that continued until at least December 2016, which means that his “commission of the offense” occurred within five years of the filing of the complaint in April 2018.

Thus, the district court did not err by denying Henline’s pre-trial motion to dismiss the complaint on the ground that it alleged conduct occurring beyond the applicable five-year statute of limitations.

III. Aggregation

Henline also argues that the evidence is insufficient to prove that he stole more than \$35,000 within a six-month period.

The theft statute authorizes five different maximum sentences, depending on the value of property that was stolen. *See* Minn. Stat. § 609.52, subd. 3. If the state charges a defendant with theft of property worth more than the minimum amount of \$500, the value of the stolen property is incorporated into the essential elements of the offense. *See State v. Matousek*, 178 N.W.2d 604, 609 (Minn. 1970); *State v. Saybolt*, 461 N.W.2d 729, 733-35 (Minn. App. 1990), *review denied* (Minn. Dec. 17, 1990). In this case, the state charged Henline with one count of the most serious form of theft, which requires proof that “the value of the property or services stolen is more than \$35,000.” Minn. Stat. § 609.52, subd. 3(1).

In prosecutions for some types of theft, including theft by swindle, “the value of the money or property or services received by the defendant in violation of [the applicable statute] within any six-month period may be aggregated and the defendant charged accordingly.” *Id.*, subd. 3(5). The statute gives the prosecutor some measure of “discretion to either prosecute seriatim or aggregate the offenses,” *Hanson*, 285 N.W.2d at 485, and also “provide[s] a limit of 6 months on the aggregating period,” *State v. Glidden*, 455 N.W.2d 744, 746 (Minn. 1990). The supreme court commented in *Glidden* that “it is often in the defendant’s best interests for the prosecutor to aggregate all the various takings over a period longer than 6 months into a single felony theft charge” because limiting

aggregation to six-month periods may result in multiple convictions and greater criminal-history scores. *Id.* at 746.

In this case, the state alleged in the narrative section of the complaint that Henline transferred the following amounts from the trust's accounts to his own accounts: more than \$70,000 in 2009, approximately \$70,000 in 2010, more than \$30,000 in 2011, more than \$20,000 in 2012, approximately \$3,000 in 2013, \$1,000 in 2014, \$1,402 in 2015, and \$4,400 in 2016. Before trial, Henline moved to dismiss on the ground that the one-count complaint aggregated the amounts of alleged transfers that had occurred more than six months apart. The district court rejected Henline's argument and denied the motion. The district court reasoned that the state was not required to divide its allegations into six-month periods because the aggregation statute is permissive, not mandatory, and because Henline's offense consisted of a single continuous theft by swindle rather than multiple individual thefts.

On appeal, Henline does not directly challenge that pre-trial ruling. He makes an argument that contradicts the district court's pre-trial ruling, but he presents it to this court as a challenge to the sufficiency of the evidence at trial. He argues that the evidence is insufficient to prove that he stole more than \$35,000 in a six-month period. In essence, he does not argue that the state failed to prove the applicable threshold dollar amount (\$35,000) but, rather, that the state did not prove the limitation on the applicable time period (six months) with respect to such an amount. In response, the state argues that subdivision 3(5) of section 609.52 is permissive, not mandatory, because it uses the word "may" and

that the statute does not restrict prosecutorial discretion because Henline's offense was a continuing offense.

Before considering the parties' arguments, we question whether Henline's argument is reviewable on appeal from a conviction. In *State v. Belfry*, 353 N.W.2d 224 (Minn. App. 1984), *review denied* (Minn. Oct. 30, 1984), the appellant was convicted of theft by swindle of more than \$2,500 based on evidence that he cheated eight persons out of money over a 12-month period. *Id.* at 225-26. On appeal, this court noted the appellant's argument that it was inappropriate for the state to aggregate the eight thefts into one charge. *Id.* at 226. But we did not consider the merits of the argument because we determined that he had waived it by not objecting in the district court. *Id.* at 227. In this case, Henline noted in his pre-trial motion, citing *Belfry*, that "he needs to challenge the complaint's method of aggregation now or he waives the issue." Because Henline does not challenge the district court's adverse pre-trial ruling, it is questionable whether he may challenge the sufficiency of the evidence that was presented at trial.

In any event, Henline's argument is without merit. As explained above in part II, Henline's commission of theft by swindle was a continuing offense. His offense consisted of multiple transfers of funds between trust accounts and his own accounts, multiple purchases using commingled funds for personal purposes, and multiple deceptive communications with D.M.K.'s children and others over a period of approximately seven years. The facts of this particular case make Henline's commission of theft by swindle a single continuing offense, not a series of individual thefts. For that reason, the six-month limitation on the aggregation of values does not apply. In light of that conclusion, we need

not consider the state's argument that the six-month limitation is merely permissive instead of mandatory.

Thus, the evidence is not insufficient on the ground that the state did not prove that Henline stole more than \$35,000 within any particular six-month period.

Affirmed.

A handwritten signature in cursive script, appearing to read "Matthew Johnson".