

Circuit Court for Queen Anne's County
Case No. C-17CR-17-000691

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2354

September Term, 2017

GEORGE EDWARD KENNEDY, JR.,

v.

STATE OF MARYLAND

Reed,
Friedman,
Moylan, Charles E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 12, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

The State of Maryland (hereinafter “the State”) charged George Edward Kennedy, Jr. (hereinafter “Appellant”) with “acting as a home improvement contractor without a license and failing to perform a home improvement contract.” On January 17, 2018, Appellant was convicted of violating Md. Code, Business Regulation Article § 8-601(a) and Md. Code, Business Regulation Article § 8-605. The circuit court imposed consecutive sentences totaling twelve months’ incarceration and a \$2,000 fine.

Appellant timely filed this appeal and presents the following question for our review, which we have rephrased:¹

- I. Did the circuit court lack substantial evidence in convicting Appellant for violating Md. Code, Business Regulation Article § 8-601 and Md. Code, Business Regulation Article § 8-605?

For the following reasons, we reverse the judgment of the Circuit Court for Queen Anne’s County.

FACTUAL AND PROCEDURAL BACKGROUND

Mary Alice Jackson (hereinafter “Ms. Jackson”) owns a house and a small farm. Ms. Jackson also leases two large chicken houses (hereinafter “chicken houses”) that are about a quarter of a mile away from Ms. Jackson’s home. Appellant solicited Ms. Jackson, offering to paint Ms. Jackson’s chicken houses. Appellant gave Ms. Jackson an advertisement which had a hand-written notation that stated that the chickens had to be out

¹ Appellant presents the following question:

1. Was the evidence sufficient to sustain convictions for violating either of the statutes involved?

of the houses before Appellant began painting and that Appellant offered services to paint buildings and barns. On April 29, 2017, Ms. Jackson entered into a contract with Appellant to inspect and paint the roof of her chicken houses. Ms. Jackson issued a check to Appellant for \$3,100, which was one-third of the total amount due for Appellant’s services.

Appellant arrived at Ms. Jackson’s home with four individuals to perform the services for which Appellant was hired. Appellant partially painted the roof of one of the chicken houses and never returned to complete the services. Ms. Jackson and her son-in-law made several telephone calls to Appellant, which Appellant did not return. Ms. Jackson contacted the State’s Attorney’s office stating that Appellant did not complete the services that Ms. Jackson hired Appellant for and that Appellant did not return the \$3,100 check she gave him. The State charged Appellant with violating Md. Code, Business Regulation Article § 8-601(a), Md. Code, Business Regulation Article § 8-601(b), and Md. Code, Business Regulation Article § 8-605.

A bench trial was held and Appellant testified in his own defense. Appellant testified that he entered into a contract with Ms. Jackson, that he “received a one-third payment, and that he failed to finish the job.” During the trial, Appellant made a Motion for Judgment of Acquittal, arguing that the State failed to meet a common element in all three charges. Specifically, Appellant argued that the State failed to meet the definition of home improvement because the chicken houses were “separate from the actual property where the house is [located].” Appellant contended that the chicken houses are “farm buildings” that are “separate and distinct from the dwelling property.” Appellant argues that the services done on the chicken houses was not “a home improvement” because the “farm

buildings” were “separate and distinct from ... the dwelling property.” The State argued that chicken houses were ““chicken coop structures’ that are ‘adjacent to Ms. Jackson’s residence.’”

The circuit court denied Appellant’s motion stating that the statute states:

[H]ome improvement includes construction, improvement or replacement on land adjacent to the building of a driveway, fallout shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool, even shore erosion. So, you know, I think is [sic] meant to cover any structure that’s in any way adjacent to the property, so I’ll deny the motion.

T. 41-42.

Appellant was found guilty of violating Md. Code, Business Regulation Article § 8-601(a) and Md. Code, Business Regulation Article § 8-605 and found not guilty of violating Md. Code, Business Regulation Article § 8-601(b). Appellant was sentenced to 12 months in prison and was required to pay a \$2,000 fine. However, Appellant’s sentence was dismissed and his fine was reduced to \$500.

STANDARD OF REVIEW

The standard of review for determining whether sufficient evidence to support a conviction on appeal is whether “after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.” *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)); *see also Perry v. State*, 229 Md. App. 687, 696-97 (2016).

Our concern is not whether the verdict is in accord with what appears to be the weight of the evidence, “but rather is only with whether the verdicts were supported with

sufficient evidence – that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant’s guilt of the offenses charged beyond a reasonable doubt.” *State v. Albrecht*, 336 Md. 475, 479 (1994).

DISCUSSION

A. Parties’ Contentions

Appellant argues that the evidence fails to show Appellant had to have a home improvement contractor license to enter into a contract with Ms. Jackson. Specifically, Appellant contends that Md. Code, Business Regulation § 8-601(a) does not “apply to all types of contracting.” Appellant asserts that a contractor is only required to have a license “to perform a home improvement” and a license is not required for a “farm or business improvement.” Appellant contends that pursuant to Md. Code, Business Regulation § 8-101(g)(1)(i), home improvement means “*inter alia* ‘improvement’ or ‘repair’ of ‘a building ... that is designed to be used as a residence or dwelling place or a structure adjacent to that building.’”

Appellant asserts that the chicken houses “were never ‘designed to be used as a residence or dwelling place’ for a homeowner, or to be ‘adjacent’ to the owner’s ‘dwelling.’” Specifically, Appellant argues that the chicken houses are located “across [a] public road and a quarter mile ... from the owner’s home, on a separate parcel of property” and that the chicken houses were leased. Appellant contends that the State “incorrectly suggested that it was sufficient, under the statute for the chicken houses to be anywhere on a property” that is not adjacent to a dwelling. Moreover, Appellant argues that under the

statute home improvement involves work on “a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool” and that the statute clearly refers to features that are adjacent to the dwelling house itself. Appellant contends that the statute makes no mention of anything associated with farming and that the circuit court erred in interpreting the statute by stating that “home improvement is meant to cover any structure that [is] in any way adjacent to the property.”

Appellant asserts that the circuit court has abandoned any common sense definition of the term “adjacent.” To support its argument, Appellant relies on the United States Supreme Court decisions *Florida v. Jardines*² and *United States v. Dunn*^{3,4}. Appellant asserts that the Supreme Court has stated what objects are adjacent to a home. Appellant states that the Supreme Court noted that the “common law distinguished ‘open fields’ from the ‘curtilage’ the land immediately surrounding and associated with the home.” Lastly, Appellant argues that since the services provided by Appellant do not qualify as a home improvement the evidence at trial must also fail to show that Appellant was guilty of failure “to perform a home improvement contract.” Specifically Appellant asserts that the advertisement that was given to Ms. Jackson stated that Appellant offered services to paint structures that were barns and chicken houses not dwelling homes.

² 569 U.S. 1 (2013).

³ 466 U.S. 170 (1984).

⁴ Appellant also cites to *Oliver v. United States*, 466 U.S. 170 (1980); *Collins v. Virginia*, 138 S. Ct. 1663 (2018).

The State responds that they agree with all of the arguments set forth by Appellant. Specifically, the State requests that this Court reverse the judgment of the Circuit Court for Queen Anne’s County. We agree.

B. Analysis

1. Md. Code, Business Regulation

i. Md. Code, Business Regulation Article §8-601(a)

Appellant was convicted of violating Md. Code, Business Regulation Article §8-601(a). Maryland Code, Business Regulation Article §8-601(a) provides:

- (a) Except as otherwise provided in this title, a person may not act or offer to act as a contractor in the State unless the person has a *contractor* license.

(Emphasis added).

Appellant asserts that a contractor is only required to have a license “to perform a home improvement” and that a license is not required for a “farm or business improvement.” Md. Code, Business Regulation Article §8-101 defines *contractor*. Md. Code, Business Regulation Article §8-101 provides:

- (a) In this title the following words have the meanings indicated.

- (c) Contractor means a person, other than an employee of an owner, who performs or offers or agrees to perform a *home improvement* for an owner.

- (g)(1) Home improvement means:

- (i) the addition to or alteration, conversion, improvement, modernization, remodeling, repair, or replacement of a building or part of a building that is used or designed to be used as a residence or dwelling place or a structure *adjacent* to that building.

(Emphasis added).

Ms. Jackson’s chicken houses were about a quarter of a mile away from her home

and the property was leased for the purposes of a chicken farming business. The chicken houses were not “designed to be used as a residence or dwelling place or a structure adjacent” to Ms. Jackson’s home. In *Calvert Joint Venture # 140 v. Snider*⁵, the Maryland Court of Appeals cites to dictionary definitions for “adjacent.” *The Random House Dictionary of the English Language, the Unabridged Edition* 18 (J. Stein ed., Random House Inc. 1983) describes adjacent as “a synonym of adjoining” and defines adjacent as “bordering all mean near or close to something.” As noted above, the chicken houses were about a quarter of a mile away from Ms. Jackson’s home. The chicken houses were not “adjacent” to Ms. Jackson’s home because there were not “near or close” to her home.

Lastly, Maryland Code, Business Regulation Article § 8-101(g)(2) states:

(2) “Home improvement” includes:

- (i) construction, improvement, or replacement, on land adjacent to the building, of a driveway, fall-out shelter, fence, garage, landscaping, deck, pier, porch, or swimming pool;
- (ii) a shore erosion control project, as defined under § 8-1001 of the Natural Resources Article, for a residential property;
- (iii) connection, installation, or replacement, in the building or structure, of a dishwasher, disposal, or refrigerator with an icemaker to existing exposed household plumbing lines;
- (iv) installation, in the building or structure, of an awning, fire alarm, or storm window; and
- (v) work done on individual condominium units.

The examples listed above make reference to features that are adjacent to a dwelling house, not a barn full of chickens. Moreover, the statute makes no mention of any words that are commonly associated with farming. This Court must decide whether, after viewing the

⁵ 373 Md. 18, 28 n.6 (2003).

evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. Here, no rational trier of fact could find that a chicken house located a quarter of a mile away from Ms. Jackson’s home could be deemed as adjacent to her home. As such, the circuit court had insufficient facts and evidence to conclude that Appellant’s actions violated Md. Code, Business Regulation Article §8-601(a) beyond a reasonable doubt.

ii. Md. Code, Business Regulation Article § 8-605

Appellant was also convicted of violating Md. Code, Business Regulation Article §8-605. Md. Code, Business Regulation Article § 8-605 provides:

A contractor may not:

(1) abandon or *fail to perform*, without justification, *home improvement contract*; or

(2) deviate materially from plans or specification without the consent of the owner.

(Emphasis added).

Appellant argues that he cannot be convicted of “failing to perform a [home improvement] *contract under Business Regulations 8-605*” if the work done to Ms. Jackson’s chicken houses does not qualify as a home improvement. Md. Code, Business Regulation Article §8-605 states that “a contractor may not abandon or *fail to perform*, without justification, [a] *home improvement contract.*” As noted above, the work done on Ms. Jackson’s chicken houses does not qualify as a home improvement. Moreover, the advertisement that Appellant gave to Ms. Jackson stated that the services Appellant provided were painting buildings like “barns and chicken houses” and the contract did not refer to performing any services on a dwelling home. Accordingly, the circuit court had insufficient facts and

evidence to conclude that Appellant's actions violated Md. Code, Business Regulation Article §8-605. Based on the evidence relied on by the circuit court, no rational trier of fact could have found that Appellant failed to perform a home improvement contract beyond a reasonable doubt.

**JUDGMENT OF THE CIRCUIT COURT
FOR QUEEN ANNE'S COUNTY
REVERSED; COSTS TO BE PAID BY THE
QUEEN ANNE'S COUNTY.**