2026 PA Super 247

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF PENNSYLVANIA
v.	:	
RASHEED SIMS	:	
Appellant	:	No. 1605 MDA 2025

Appeal from the Judgment of Sentence Entered June 25, 2025
In the Court of Common Pleas of Berks County Criminal Division at
No(s): CP-06-CR-0003633-2023

BEFORE: LAZARUS, P.J., STABILE, J., and BENDER, P.J.E.

OPINION BY BENDER, P.J.E.: **FILED: NOVEMBER 3, 2026**

Rasheed Sims ("Appellant") appeals from the judgment of sentence imposed following his conviction for home improvement fraud, 73 P.S. § 517.8(a)(2). Appellant's sufficiency claim requires us to determine whether the statutory term "contract" requires a written contract. After careful review, we conclude that it does not and affirm.

The trial court provided the facts of this case as follows:

> In fall of 2022, Michael Hermany (age 61) and his paramour Michelle Rothermel, of … Muhlenberg Township, Berks County, Pennsylvania, met with [Appellant] to discuss having some work done on their property, specifically the pool area and gazebo. Over approximately a dozen visits, [Appellant] looked over the property and made suggestions for improvements. On some occasions, [Appellant] was accompanied by an employee named Mike, who seemed more experienced in the work to be done. The major project was the pool which included replumbing and installation of a return line, moving the filter and lines to a secure pad and filling in the old area with cement along with a new cement deck around the pool. There were also improvements to

be done around the hot tub and the gazebo. A retaining wall was also to be built. A Proposal for Services (Commonwealth Exhibit 1) was provided by [Appellant] with the initial portion of the project to take approximately two weeks with the pool work to be finished in the spring. The pool work was to be delayed to allow for an inquiry to see if the original pool installer would pay for the work that needed to be done.[fn1]

[fn1] The original installer ultimately filed for bankruptcy and did not pay for any repairs to the pool.

The estimated cost of the project was $25,000, reduced by one thousand dollars if cash was used. No other written contract was provided and there are no original signatures on the Proposal. In early November 2022, Michelle [Rothermel[1]] gave [Appellant] $7,000 in cash and a $6,000 check for a total of $13,000 toward work on the discussed plan. No receipt was provided for the $13,000. Mr. Hermany indicated he was to receive receipts for materials purchased. He received no receipts showing the purchase of materials.

In November 2022, [Appellant] (and Mike) placed the cement slab for pool filter and started the retaining wall. The work on the retaining wall was never completed as it still required topping of the cinder blocks and landscaping. (See Commonwealth Exhibit 2). The gazebo was not moved, nor was any portion of the hot tub project begun. Text messages (Commonwealth Exhibit 3) went back and forth between [Appellant] and [Mr.] Hermany, and separately between [Appellant] and Michelle [Rothermel].

Many of the texts included scheduling of times to complete tasks followed by explanations for why work had not been completed or started. At some point, [Appellant] indicated that there were issues with Mike (his employee)[fn2] and that [Appellant] was willing to return at least some money.

[fn2] Mike (the employee) separately came to the property and did complete (and was separately paid for) the hot tub work. The following testimony was elicited and was considered by the [c]ourt, not for the truth of the matter asserted, but to explain why the victims were suspicious

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[1] Although the trial court sometimes calls the witness "Michelle Hermany," she identified herself at trial as "Michelle Rothermel" and we use this designation herein. ***See*** N.T. Bench Trial, 4/22/25, at 57.

> that [Appellant] was not being forthcoming with them. While Mike (the employee) was there to do the work, he disclosed that at least a portion of the money paid to [Appellant] had been spent on [Appellant's] truck and [Appellant's] handling of money was why Mike was no longer working with/for him.
>
> [Mr.] Hermany was in agreement. No money was returned. [Appellant] primarily indicated the delay was Mike (the employee's) fault as he had been given a substantial amount of the deposit money ($8000) to purchase materials. [Appellant] was unable to explain where the remaining $5000 was spent, as the purported value of the supplies and work competed was not valued at $13,000. In April 2023, [Appellant] brought some plywood and taped off the area of what was to be the pool deck. This was the last visit by [Appellant] to the Hermany home. While the Hermany family appeared frustrated, as of July 2023, the text messages indicate that they still anticipated being repaid by [Appellant]. On July 24, 2023, a text was sent by [Mr.] Hermany indicating that [Appellant] had been reported to the State Attorney General's office and if no money was returned by the end of the week, that the District Attorney's Office and the Muhlenberg Police would be contacted about theft. When no money was returned, the police were contacted. [Appellant's] final text response was about the police and that the issue would be handled in the Courts.

Trial Court Opinion ("TCO"), 3/3/26, at 2-4.

Appellant was convicted following a bench trial on April 22, 2025. The trial court sentenced Appellant on June 25, 2025, to seven years' probation, with the first 12 months to be served on electronic monitoring. Appellant was also ordered to pay $13,000 in restitution. Appellant filed a timely post-sentence motion, and, following a hearing, the motion was denied on October 16, 2025.

Appellant filed a timely notice of appeal on November 14, 2025, and a Rule 1925(b) concise statement on November 20, 2025. The trial court filed its opinion in this matter on March 3, 2026.

On appeal, Appellant raises the following claim:

> Whether the evidence presented by the Commonwealth was sufficient to establish beyond a reasonable doubt that [Appellant] committed the offense of home improvement fraud when the Commonwealth failed to prove [Appellant] entered into a contract as specified under the Home Improvement Consumer Protection Act ["HICPA"].

Brief for Appellant at 5 (footnote omitted).

Appellant challenges the sufficiency of the evidence presented to support his conviction. Our standard of review for a sufficiency claim is well-established:

> Because a determination of the sufficiency of the evidence presents a question of law, our standard of review is *de novo* and our scope of review is plenary. Further, we analyze this issue under the following guidelines:
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> > When reviewing challenges to the sufficiency of the evidence, we evaluate the record in the light most favorable to the Commonwealth as the verdict winner, giving the prosecution the benefit of all reasonable inferences to be drawn from the evidence. Evidence will be deemed sufficient to support the verdict when it establishes each material element of the crime charged and the commission thereof by the accused, beyond a reasonable doubt. However, the Commonwealth need not establish guilt to a mathematical certainty, and it may sustain its burden by means of wholly circumstantial evidence. Moreover, this Court may not substitute its judgment for that of the factfinder, and where the record contains support for the convictions, they may not be disturbed. Lastly, we note that the finder of fact is free to believe some, all, or none of the evidence presented.

Commonwealth v. Henck, 342 A.3d 726, 731–32 (Pa. Super. 2025) (internal citations and quotation marks omitted).

Appellant was convicted of committing home improvement fraud under 73 P.S. § 517.8(a)(2). The statute provides:

> **§ 517.8. Home improvement fraud**
>
> **(a) Offense defined.**--A person commits the offense of home improvement fraud if, with intent to defraud or injure anyone or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:
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> * * *
>
> (2) receives any advance payment for performing home improvement services or providing home improvement materials and fails to perform or provide such services or materials when specified in the contract taking into account any *force majeure* or unforeseen labor strike that would extend the time frame or unless extended by agreement with the owner and fails to return the payment received for such services or materials which were not provided by that date[.]

73 P.S. § 517.8 (a)(2).

Caselaw instructs that the required elements of the crime of home improvement fraud are proven when a contractor,

> (1) with intent to defraud or injure anyone or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone; (2) when performing home improvement services or providing home improvement materials; (3) fails to perform or provide such services or materials; (4) receives any advance payment; and (5) fails to return the payment received for such services or materials which were not provided. ***See*** 73 P.S. § 517.8(a)(2).

Commonwealth v. Hill, 140 A.3d 713, 718 (Pa. Super. 2016). Proof of home improvement fraud requires either that a defendant act with the intent to

defraud or cause injury or that they act with the knowledge that they are facilitating such fraud or injury. ***Id.***

Herein, Appellant challenges the sufficiency of the evidence by asserting that the parties never entered into a contract for home improvement services. Appellant argues that "[w]hile an informal agreement may have been arranged, this does not rise to the level of a contractual agreement as established under the [HICPA]." Brief for Appellant at 10 (footnote omitted).[2]

Appellant's sufficiency argument turns on the meaning of the word "contract" in Section 517.8(a). Thus, our review calls for a statutory analysis. We apply the following principles.

> Although [Appellant] states [the] issue as challenging the sufficiency of the evidence, the argument is couched in terms of statutory construction.
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> Where reviewing a claim that raises an issue of statutory construction, our standard of review is plenary. We recognize:
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> > Our task is guided by the sound and settled principles set forth in the Statutory Construction Act, including the primary maxim that the object of statutory construction is to ascertain and effectuate legislative intent. 1 Pa.C.S. § 1921(a). In pursuing that end, we are mindful that "[w]hen the words of a statute are clear and free from all ambiguity, the letter of it is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b). Indeed, "[a]s a general rule, the best indication of legislative intent is the plain language of a statute." In reading the plain

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[2] In his Brief to this Court, Appellant primarily relies upon a Westmoreland County Court of Common Pleas decision, ***Commonwealth v. Jessee***, 2012 Pa. Dist. & Cnty. Dec. LEXIS 48, to support his assertion that a written contract is required under Subsection (a)(2). Yet, it is well-settled that decisions of the Courts of Common Pleas are not binding precedent. ***Rudalavage v. PPL Electric Utilities Corp.***, 268 A.3d 470, 479 n.8 (Pa. Super. 2022).

> language, "[w]ords and phrases shall be construed according to rules of grammar and according to their common and approved usage," while any words or phrases that have acquired a "peculiar and appropriate meaning" must be construed according to that meaning. 1 Pa.C.S. § 1903(a).
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> However, when interpreting non-explicit statutory text, legislative intent may be gleaned from a variety of factors, including, *inter alia*: the occasion and necessity for the statute; the mischief to be remedied; the object to be attained; the consequences of a particular interpretation; and the contemporaneous legislative history. 1 Pa.C.S. § 1921(c). Moreover, while statutes generally should be construed liberally, penal statutes are always to be construed strictly, 1 Pa.C.S. § 1928(b)(1), and any ambiguity in a penal statute should be interpreted in favor of the defendant.

Int. of T.Q.B., 286 A.3d 270, 275 (Pa. Super. 2022) (paragraph break added), *aff'd*, 311 A.3d 1009 (Pa. 2024).

Appellant was convicted under Section 517.8(a)(2). For ease of reference, we repeat the statutory text:

> **§ 517.8. Home improvement fraud**
>
> **(a) Offense defined.**--A person commits the offense of home improvement fraud if, with intent to defraud or injure anyone or with knowledge that he is facilitating a fraud or injury to be perpetrated by anyone, the actor:
>
> * * *
>
> (2) receives any advance payment for performing home improvement services or providing home improvement materials and fails to perform or provide such services or materials when specified in the contract taking into account any *force majeure* or unforeseen labor strike that would extend the time frame or unless extended by agreement with the owner and fails to return the payment received for such services or materials which were not provided by that date[.]

73 P.S. § 517.8 (a)(2).

The term "contract" is not defined by the definitions section of the HICPA. We thus look to the common and approved usages of the term. Black's Law Dictionary defines "contract" in multiple ways, as an agreement between two or more persons which creates an obligation to do or not to do a particular thing, and also as the actual written document which contains the parties' agreement. *Contract,* Black's Law Dictionary (12th ed. 2024). A standard dictionary contains these same definitions: a contract is either the binding agreement between various parties or the document that describes the terms of a contract. *See, Contract,* Merriam-Webster's Collegiate Dictionary, merriam-webster.com (last visited September 28, 2026). Thus, the term "contract" is susceptible to at least two different, equally reasonable, meanings. It may refer to the written instrument memorializing an agreement, or the agreement itself. Pennsylvania law recognizes this distinction, and will uphold both oral and written contracts in the appropriate situation. ***See, e.g., Mackay v. Mackay***, 984 A.2d 529, 534-35 (Pa. Super. 2009) (recognizing that an oral contract may be enforceable if the essential terms and conditions of the parties' agreement are sufficiently proven).

Accordingly, the provision "when specified in the contract" from subsection 517.8(a)(2) could reasonably refer to an oral agreement between the parties or a written contract reflecting the relevant matter in dispute. Because either meaning is reasonable, we must consider other factors to ascertain legislative intent. ***T.Q.B.***, 286 A.3d at 275.

We conclude that an analysis of other provisions of the HICPA establish that the General Assembly did not intend that the Commonwealth had to prove that Appellant and the homeowners executed a written contract. That context demonstrates that the General Assembly did not intend "contract" as employed in Section 517.8(a)(2), to be limited to a written instrument. Indeed, elsewhere in Section 517.8, the legislature specifically contemplated "written or oral" agreements for home improvement services. 73 P.S. § 517.8(a)(1), (a)(4). Thus, construing "contract" in subsection (a)(2) to mean the parties' agreement, rather than solely a written memorialization of that agreement, harmonizes subsection (a)(2) with the remainder of the home improvement fraud statute. ***See also Commonwealth v. Roncase***, 797 MDA 2019, 2020 WL 838444, *4 (Pa. Super. filed February 20, 2020) (unpublished memorandum) (rejecting a categorical writing requirement under subsection (a)(2)).[3]

Appellant's argument does not address the statutory meaning of the term "contract." Instead, he focuses upon the definition of "home improvement contract" found in HICPA's definitional section, section 517.2. That section provides:

> "Home improvement contract." An agreement between a contractor, subcontractor or salesperson and an owner for the performance of a home improvement which includes all

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[3] We cite to unpublished memoranda from the Superior Court filed after May 1, 2019, for their persuasive value. Pa.R.A.P. 126(b).

> agreements for labor, services and materials to be furnished and performed under the contract.

73 P.S. § 517.2. Appellant emphasizes the definition's reference to performance occurring "under the contract." He also refers to Section 517.7(a) of HICPA, which provides that no home improvement contract is valid or enforceable against an owner unless it is in writing, signed by the parties, and contains specified information. 73 P.S. § 517.7(a)(1)-(13). Thus, Appellant concludes, a written instrument is required to support his conviction.

We decline Appellant's invitation to interpret the criminal sanction contained in 73 P.S. § 517.8(a)(2) as requiring a written contract between the parties. First, Section 517.7(a) states, in pertinent part:

> **(a) Requirements.--**No home improvement contract shall be valid or enforceable against an owner unless it:
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> > (1) Is in writing and legible and contains the home improvement contractor registration number of the performing contractor.

73 P.S. § 517.7(a)(1).

"[A]s a matter of statutory interpretation, although one is admonished to listen attentively to what a statute says[;] [o]ne must also listen attentively to what it does not say." ***Wunderly v. Saint Luke's Hosp. of Bethlehem***, 345 A.3d 692, 701–02 (Pa. 2025) (alterations in original; citation omitted). That the General Assembly specifically stated that a "home improvement contract" for purposes of this section must be in writing to be enforceable against a homeowner indicates that the failure to include a similar requirement under Section 517.8 was deliberate. ***See id.***

Relatedly, Appellant's argument fails to account for the overall purpose of the HICPA. As our Supreme Court recently stated in a case discussing the interaction of HICPA and the Unfair Trade Practices and Consumer Protection Law:

> The "mischief to be remedied" or the "object to be attained" by a statute can be useful indications of the statute's meaning, even if the "the letter of [a statute] is not to be disregarded under the pretext of pursuing its spirit." 1 Pa.C.S. § 1921(b), (c)(3)-(4). It is well-established that a "textually permissible interpretation that furthers rather than obstructs [a statute's] purpose should be favored."

Commonwealth v. Gillece Servs., L.P., 358 A.3d 1247, 1255 (Pa. 2026). The Court approvingly quoted the Commonwealth Court's description of HICPA's purpose: "HICPA was enacted in 2008 with the purpose of protecting consumers from a variety of fraudulent and deceptive practices by home improvement contractors." ***Id.*** (quoting ***Mid-Atl. Sys. of WPA, Inc. v. Tax Off. of the Municipality of Monroeville***, 204 A.3d 579, 588 (Pa. Cmwlth. 2019)).

The requirement of a written contract in Section 517.7(a) advances the statute's protective purpose by shielding homeowners from the enforcement of non-compliant home improvement contracts procured by unscrupulous contractors. Correspondingly, not requiring a written document under Section § 517.8(a)(2) furthers the same legislative purpose by ensuring that an unscrupulous contractor is not shielded from criminal liability due to the absence of a written contract. Thus, we conclude that the General Assembly

did not intend the term "contract" in subsection 517(a)(2) to require proof of a written instrument.

Furthermore, we note that while Section 517.7(a) restricts the enforcement of noncompliant contracts against a homeowner, it does not declare that the parties had made no agreement at all. Nor does Section 517.8(a)(2) make civil enforceability of a contract against the homeowner an element of the offense. Rather, HICPA's definition of "home improvement contract" begins with "an agreement" between a contractor and an owner for home improvement, without specifying a writing. 73 P.S. § 517.2.

Enforcing criminal sanctions as in the case at bar based upon the oral agreement between the homeowners and the contractor provides critical protection to homeowners against unscrupulous contractors. In practice, treating an oral agreement between a contractor and homeowner as categorically outside subsection (a)(2) would allow the unscrupulous contractor to deliberately fail to comply with the writing requirement in order to shield himself from being arrested and charged for this form of home improvement fraud. We do not read the owner-protective requirement of a writing in Section 517.7(a) to produce that unreasonable result. ***See*** 1 Pa.C.S. §§ 1921(a), 1922(1)-(2).

We recognize, as well, that Section 517.8(a)(2) is a penal provision and, as such, must be strictly construed. ***See*** 1 Pa.C.S. § 1928(b)(1). Yet, strict construction does not require the narrowest conceivable reading of a statute, nor does it permit us to disregard legislative intent; the rule of lenity only

applies if serious uncertainty remains after the ordinary tools of statutory interpretation have been exhausted. ***See Commonwealth v. Nevels,*** 235 A.3d 1101, 1105 (Pa. 2020) (stating that the rule of lenity "has its limits" and does not require the narrowest interpretation possible of a penal statute). Reading HICPA as a whole resolves the initial ambiguity; "contract" in Section 517.8(a)(2) includes an oral agreement for home improvement services even when the agreement is not enforceable against the homeowner under Section 517.7(a). No unresolved ambiguity calls for application of the rule of lenity here.

Thus, now that we have resolved whether the failure to perform under an oral contract may support a conviction for home improvement fraud, we still must determine whether the parties in this case entered into an oral contract. The Commonwealth must prove the elements set out in Section 517.8(a)(2), including the receipt of an advance payment for home improvement services, the failure to perform or to return the payment for services not provided, and the requisite fraudulent intent or knowledge.

The interpretation of a contract is a question of law, for which this Court's standard of review is *de novo* and our scope of review is plenary. ***Vinculum, Inc., v. Goli Technologies, LLC***, 310 A.3d 231, 242 (Pa. 2024). Formation of a contract ordinarily requires an offer, acceptance, and consideration or a meeting of the minds. ***See Glover v. Junior***, 333 A.3d 323, 339 (Pa. 2025); ***Duffy v. Tatum***, 354 A.3d 14, 23 (Pa. Super. 2026).

An agreement and its terms may be shown through the parties' words and conduct. ***Boyle v. Steiman***, 631 A.2d 1025, 1033 (Pa. Super. 1993).

Viewed in the light most favorable to the Commonwealth as the verdict winner, the evidence herein established an agreement for home improvement services. The Commonwealth was required to present sufficient evidence to enable the fact-finder to conclude, beyond a reasonable doubt, that the parties entered into a contract. The evidence readily met that standard. Appellant prepared a written Proposal for Services that described the scope of the home improvements that Appellant agreed to provide,[4] and the total cost was estimated at $25,000. The proposal listed a start date for the project, September 30, 2022, and the evidence established that the parties understood that the initial portion of the work would take approximately two weeks to complete, with the remaining pool repairs completed in the spring. The parties did not discuss a further extension. The Hermany/Rothermel family provided the $13,000 down payment for the work in November. Appellant accepted the payment, placed a cement slab, and began a retaining wall. That Appellant began work at all is, in our view, sufficient to establish that a contract existed. The additional evidence, including multiple text messages between the parties, amply support the trial court's finding that the parties reached an agreement about the work, price, and timing. ***See*** TCO at 2-4, 5-

[4] While the description of the work to be performed in the Proposal for Services is rather sparse, the proposal identified the required tasks as "build[ing] a wall" and "add[ing] on to [the] sidewalk," as well as "move valve" and "fix around pool." Brief for Appellant at 8, *citing* Commonwealth Exhibit 1.

8.

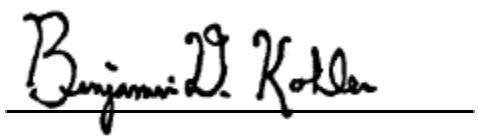
By July 2023, the work on the retaining wall and the pool area remained substantially unfinished. The homeowners had allowed time for the pool installer's potential contribution to the needed repairs, and continued to seek performance or repayment of the deposit from Appellant, but the record does not establish an agreed extension beyond that point. Appellant neither completed the promised work nor returned any portion of the advanced payment for the services not provided. His limited work does not defeat the charge; the court also properly credited evidence of repeated missed commitments, excuses, the absence of receipts accounting for the advance money, and an unfulfilled promise to refund the advance. ***See Hill, supra***, 140 A.3d at 718.

Accordingly, we conclude that the absence of a signed contract does not preclude criminal liability under Section 517.8(a)(2), and the Commonwealth presented sufficient evidence to support Appellant's conviction for home improvement fraud. ***See Roncase, supra*** (finding evidence was sufficient for home improvement fraud conviction where defendant provided written estimate of $31,500 for renovation work, received $1,000 "to start;" the defendant began demolition yet performed only perfunctory work, multiple installations were missing from the property, defendant failed to obtain building permits and became unresponsive to the homeowner after many months – performance of the contract was not reasonable and did not demonstrate good faith and fair dealing); ***see also Commonwealth v.***

Rivera, 1006 EDA 2023, 2024 WL 4235421 (Pa. Super. filed Sept. 19, 2024) (unpublished memorandum) (finding sufficient evidence to support home improvement fraud conviction where defendant received thousands of dollars to complete a home renovation, he demolished the interior of the home and never returned to complete work despite his continued promises to do so, and refused to return the homeowner's payments). We thus affirm the judgment of sentence imposed.

Judgment of sentence affirmed.

Judgment Entered.



Benjamin D. Kohler, Esq.
Prothonotary

Date: 11/03/2026