STATE OF VERMONT

SUPERIOR COURT
FRANKLIN UNIT

CRIMINAL DIVISION
Dkt. No. 23-CR-10185

State of Vermont,

v.

Ryan Eaton,
Defendant.

OPINION AND ORDER
Re: Defendant's Motion to Dismiss the Charge Due to the Unconstitutionality of the Charged Crime (No. 1)

The State has charged Defendant Ryan Eaton with one count of home improvement fraud, in violation of 13 V.S.A. § 2029(b)(1). *See* Information (filed Oct. 13, 2023). Before the Court now is Defendant's Motion to Dismiss the Charge Due to the Unconstitutionality of the Charged Crime (No. 1) (filed Feb. 20, 2025). In it, Defendant makes a facial challenge to the constitutionality of the statute he is charged with. The State opposes the motion. *See* State's Response In Opposition to Defendant's Motion to Dismiss (filed May 18, 2025).

On May 19, 2025, the Court held a brief hearing on the motion. The State was present remotely through Deputy State's Attorney Dollash. Defendant was present in person and represented by Attorney Chase. At the hearing, the parties requested the Court rely on their pleadings in resolving the motion. At the conclusion of the hearing, the Court took the motion under advisement.

In consideration of the parties' respective briefs, Defendant's Motion to Dismiss the Charge Due to the Unconstitutionality of the Charged Crime (No. 1) is *granted.*

Relevant Background

The affidavit of probable cause in this case alleges that in September 2021, Debra Patinka hired Defendant to complete a renovation project on her home starting in October 2021. Affidavit of Probable Cause (filed Oct. 13, 2023) at ¶ 1. In September 2021, Defendant allegedly signed a proposal and was given check for $3,200. *Id.*, at ¶ 2. In December 2021, Defendant was then paid $6,114, in January, 2022, $5,516.60, in February, $2,795, and in June, $1,334.10, totaling $18,959.70. *Id.*

The renovations under the contract purportedly commenced in October 2021. The last time Defendant is alleged to have been at Ms. Patinka's home was in April 2022. *Id.*, at ¶ 4. And although Defendant is alleged to have been paid for several items of labor, he is alleged to have not completed a number of them. *Id.*, at ¶ 3(a)–(e) (including exterior trim, siding on chimneys, and exterior deck labor). Ms. Patinka allegedly attempted to contact Defendant to request the completion of the work for several months thereafter, but was unsuccessful. *Id.*, at ¶ 4. She also allegedly unsuccessfully pursued a claim against Defendant regarding the failed renovations in small claims court. *Id.*

Conclusions of Law

In a facial challenge to a statute, a litigant has to establish "that no set of circumstances exists under which a statute or regulation could be valid." *State v. VanBuren*, 2018 VT 95, ¶ 19, 210 Vt. 293 (quoting *United States v. Stevens*, 559 U.S. 460, 472 (2010)). "The remedy in a successful facial challenge is that a court will invalidate the contested law." *In re Mountain Top Inn & Resort*, 2020 VT 57, ¶ 22, 212 Vt. 554. A litigant's burden in a proposed constitutional challenge, however, is "very weighty," as "[s]tatutes are presumed constitutional and reasonable." *A.B. v. S.U.*, 2023 VT 32, ¶ 8, 218 Vt. 123 (citing *Badgley v. Walton*, 2010 VT 68, 188 Vt. 367).

Defendant here argues that Vermont's home improvement statute, 13 V.S.A. § 2029(b), "is unconstitutional and violates Chapter II, Section 40 of the Vermont Constitution, as well as 12 V.S.A. § 3521 and Chapter I, Article 1 of the Vermont Constitution and the Thirteenth Amendment of the United States Constitution." Motion to Dismiss at 1. In support of this position, Defendant cites a string of cases that have held various statutes as violative of the constitutional prohibition of involuntary servitude. Motion to Dismiss at 3–4 (citing *United States v. Kozminski*, 487 U.S. 931, 943 (1988); *Pollock v. Williams*, 322 U.S. 4 (1944); *Taylor v. Georgia*, 315 U.S. 25 (1942); *Bailey v. Alabama*, 219 U.S. 219 (1911); and *State v. Brownson*, 459 N.W.2d 877, 880 (Wis. Ct. App. 1990)).

No Vermont Supreme Court decision has before addressed the constitutionality of section 2029(b). Though, in a recent, well-reasoned decision the Washington Criminal Division has. *See State v. Martin*, 23-CR-2816, Entry Regarding Motion to Dismiss (Vt. Super. Ct. Mar. 24, 2025) (Harris, J.). The Court in *Martin* faced a factually similar, and conceptually identical situation to the instant one. Indeed, crucially, just like Defendant here, the *Martin* defendant, in three separate instances, was (1) paid for labor under a contract, (2) failed to complete said labor, either fully or to the victim's satisfaction, and (3) ultimately stopped communicating with the victim. *See State v. Martin*, 23-CR-2816, slip op. at 1–3. And just like here, the defendant in *Martin* challenged section 2029(b) as unconstitutional, though "both on its face, and as applied to Defendant[,] … under the U.S. and Vermont constitutions." *Id.*, at 5.

The *Martin* Court commenced its analysis of the defendant's claims by first observing that Article 1 of Chapter I of the Vermont Constitution is "'functionally identical' to the Thirteenth Amendment to the United States Constitution[.]" *Id. And compare* U.S. Const. amend. XIII, § 1 *with* Vt. Const. ch. I, art. 1. The Court then went on to refract the Thirteenth Amendment through the prism of relevant U.S. Supreme Court jurisprudence on forced labor, or peonage; coincidentally also jurisprudence that Defendant here relies on. *Id.*, at 6–9 (reviewing *Bailey v. Alabama*, 219 U.S. 219 (1911); *Taylor v. Georgia*, 315 U.S. 25 (1942); and *Pollock v. Williams*, 322 U.S. 4 (1944)). Upon its review, it concluded that "these precedents 'clearly define a Thirteenth Amendment prohibition of involuntary servitude enforced by the use or threatened use of physical or legal coercion.'" *State v. Martin*, 23-CR-02816, slip op. at 9 (quoting *Kozminski*, 487 U.S. at 942–44).

The Court then reviewed two important home improvement decisions from New York and Wisconsin: *People v. Lavender*, 398 N.E.2d 530 (N.Y. 1979) and *State v. Brownson*, 459 N.W.2d 877 (Wis. Ct. App. 1990). The Court concluded that those cases confirm that although "*Bailey*, *Taylor*, and *Pollock* were decided in the first half of the last century, they are still good law[.]" *State v. Martin*, 23-CR-02816, slip op. at 11. They are still good law, the Court

explained, in that they stand for the proposition that laws that purport to criminalize a breach of a labor contract, in the absence of any finding of fraudulent intent, violate the Thirteenth Amendment prohibition of involuntary servitude. *See id.*

The Court then analyzed section 2029(b) itself. It compared the current version of the statute, which provides in pertinent part:

> [a] person commits the offense of home improvement fraud when he or she enters into a contract or agreement, written or oral, for $500.00 or more, with an owner for home improvement, or into several contracts or agreements for $2,500.00 or more in the aggregate, with more than one owner for home improvement, and he or she knowingly:
>
> (1)(A) fails to perform the contract or agreement, in whole or in part; and
>
> (B) when the owner requests performance or a refund of payment made, the person fails to either:
>
> (i) refund the payment; or
>
> (ii) make and comply with a definite plan for completion of the work that is agreed to by the owner ....

13 V.S.A. § 2029(b)(1), with a pre-2015 version:

> (b) A person commits the offense of home improvement fraud when he or she *knowingly* enters into a contract or agreement, written or oral, for $500.00 or more, with an owner for home improvement, or into several contracts or agreements for $2,500.00 or more in the aggregate, with more than one owner for home improvement, and he or she *knowingly*:
>
> (1) *promises performance that he or she does not intend to perform or knows will not be performed, in whole or in part*;
>
> ....
>
> (c) It shall be a permissive inference that the person acted knowingly under subdivision (b)(1) of this section if the person fails to perform the contract or agreement and, when the owner requests performance of the contract or agreement or a refund of payments made, the person fails to:
>
> (1) return the payments or deliver the materials or make and comply with a reasonable written repayment plan for the return of the payments; or
>
> (2) make and comply with a reasonable written plan for completion of the contract or agreement.

2003, No. 51, § 1 (emphasis added). It then observed that in *State v. Rounds*, the Vermont Supreme Court Court emphasized that under the pre-2015 version of the statute, "[t]he central component of the home-improvement-fraud charge was the mental element: that defendant entered into the contract and knowingly promised performance he did not intend to provide." *State v. Martin*, 23-CR-02816, slip op. at 14 (quoting 2011 VT 39, ¶ 33, 189 Vt. 447). But

following *Rounds*, the Legislature removed the mental element in the statute: "'knowingly' entering into contract, and the element of the promises of future performance that the promisor did not intend to perform or knew would not be performed." *State v. Martin*, 23-CR-02816, slip op. at 14. This, according to the *Martin* Court, "was a specifically intended change in the statute." (citing 2015, No. 153, § 1 (Act Summary)).

The Court then, at length, engaged with the removal of the mental element from the Vermont statute, in light of relevant Thirteenth Amendment jurisprudence. In so doing, the Court made a number of critical observations.

First,

> under the 2015 amendments, the legislature created an amended crime not premised on a showing of intent at the contract's (or contracts') inception. Instead: "a contractor's failure to perform work upon request of the homeowner, together with the contractor's failure to refund the homeowner's money or make a plan for completion of the work is a criminal violation."

State v. Martin, 23-CR-02816, slip op. at 14 (quoting 2015, No. 153, § 1 Act Summary).

Second, as a result, under the post-2015 amendment version of the statute,

> [t]he contractor who knowingly fails to perform the contract after the owner demands refund or performance becomes criminally liable if the contractor either fails to pay a refund or make and comply with a definite plan for completion of the work that is agreed to by the owner. For contractors who are unable to pay a refund, the statute requires them to perform further requested services and labor for their customer as a route to avoid criminal liability.

Id., at 15.

Third, then "[i]n effect, the current statute calls for strict liability for non-completion of the contract if the statutorily described knowing failure to make refund or perform a under a work completion plan occurs after the owner made a demand for refund or work completion." *Id.* Fourth,

> [i]n the *Bailey*, *Taylor*, and *Pollock* cases, the U.S. Supreme Court, in its Thirteenth Amendment analysis, noted the view that to qualify as criminal fraud under the statutes considered in those cases, the intent to defraud must exist at the time the contract was entered into. … Those statutory schemes which included the requirement that the contractor perform labor, or have the failure to do so allow for a presumption of fraud and conviction, were found to conflict with and violated the Thirteenth Amendment.

Id., at 15.

Finally, the Court summarized in a passage worth quoting in full as follows:

> The post-2015 amended version of § 2029(b)(1) creates strict criminal liability for a contractor, regardless of his or her actual intent at the contract conception, who upon contract non-completion, and following owner demand for payment or contract completion knowingly does not pay a refund or engage in a work

completion plan at the owner's approval. In creating this post-2015 Amendment version of the statute, the legislature incorporated a statutory provision that substantively makes the failure to provide labor in discharge of the debt "part of the crime." The contractor's refusal or failure to agree to or participate in such a requested completion plan of services exposes the contractor to criminal liability. Use of this criminal law structure creates and serves as a State coercive inducement to require such labor in discharge of the incomplete contract to evade criminal exposure for all contractors, not just those who cannot provide a refund. Like the invalidated presumption in *Bailey*, the inclusion of this kind of provision in the criminal statute supports the conclusion that

> althought [sic] the statute in terms is to punish fraud, still its natural and inevitable effect is to expose to conviction for crime those who simply fail or refuse to perform contracts for personal service in liquidation of a debt; and judging its purpose by its effect, that it seeks in this way to provide the means of compulsion through which performance of such service may be secured.

219 U.S. at 238. Similar to the case in *Taylor*, the Vermont provision has the "natural consequence" that a contractor who received an advance on a contract for services which he is unable to repay is "by threat of penal sanction" pressured to resume the work until the debt has been discharged. With no needed showing of knowing fraud at the contract inception, the Vermont statute's substantive terms indirectly command or coerce involuntary servitude if the defendant otherwise fails to provide additional labor in discharge of the debt when unable to pay a refund.

Id., at 16–17 (footnote omitted and alteration in original).

The factual situation and the challenges presented in this case are indistinguishable from those in *Martin*. And although not strictly binding, the Court is persuaded by the reasons given by the *Martin* Court. *See e.g.*, *Vermont Mut. Ins. v. Bradley*, 2021 WL 4303970, at *4 (Vt. Super. Ct. Jan. 11, 2021) (finding analyses of courts of concurrent jurisdiction compelling and adopting them for purposes of the case); *State v. Bradford Oil Co., Inc.*, No. 2012 WL 5379897 (Vt. Super. Ct. Oct 2012) (same); *Whitaker v. Vermont Information Technology Leaders, Inc.*, 2016 WL 8260068, at *2 (Vt. Super. Ct. Oct. 28, 2016) (same). The Court therefore adopts the *Martin* reasoning and concludes that the post-2015 Amendment version of 13 V.S.A. § 2029(b)(1) facially violates the Thirteen Amendment's prohibition against involuntary servitude.

Order

Defendant's Motion to Dismiss the Charge Due to the Unconstitutionality of the Charged Crime (No. 1) is *granted*.

So Ordered.

Dated in St Albans, County of Franklin, Vermont, this 6th day of June, 2025

Hon. Alison Sheppard Arms
Superior Court Judge