

NON-PRECEDENTIAL DECISION - SEE SUPERIOR COURT O.P. 65.37

COMMONWEALTH OF PENNSYLVANIA	:	IN THE SUPERIOR COURT OF
	:	PENNSYLVANIA
	:	
v.	:	
	:	
	:	
JOHN TAYLOR HOVATTER	:	
	:	
Appellant	:	No. 2304 EDA 2025

Appeal from the Judgment of Sentence Entered June 9, 2019
In the Court of Common Pleas of Bucks County Criminal Division at
No(s): CP-09-CR-0003051-2019

BEFORE: PANELLA, P.J.E., NICHOLS, J., and NEUMAN, J.

MEMORANDUM BY NEUMAN, J.:

FILED OCTOBER 8, 2026

This case returns to us after being remanded from our Supreme Court to this Court, and then from this Court to the trial court for further proceedings, which have now been completed. Appellant, John Taylor Hovatter, contends his lifetime registration requirement under Subchapter H of the Sexual Offender Registration and Notification Act (SORNA II)¹ is unconstitutional as applied to him. After careful review, we affirm.

¹ **See** 42 Pa.C.S. §§ 9799.10-9799.42. In a prior case, we briefly explained the legislative history of SORNA II as follows:

We observe that SORNA was originally enacted on December 20, 2011, effective December 20, 2012. **See** Act of Dec. 20, 2011, P.L. 446, No. 111, § 12, effective in one year or Dec. 20, 2012 (Act 11 of 2011). Act 11 was amended on July 5, 2012, also effective December 20, 2012, **see** Act of July 5, 2012, P.L. 880, No. 91, effective Dec. 20, 2012 (Act 91 of 2012), and amended on February 21, 2018, effective immediately, known as Act 10 of
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This Court previously summarized the facts of Appellant's case, as follows:

On April 6, 2019, Appellant, then an 81-year-old man,¹ was arrested and charged by the Middletown Township Police Department with aggravated indecent assault of a child, 18 Pa.C.S.[] § 3125(b); unlawful contact with a minor -- sexual offense, 18 Pa.C.S.[] § 6318(a)(1); aggravated indecent assault -- complainant less than 13 years old, 18 Pa.C.S.[] § 3125(a)(7); corruption of minors -- defendant age 18 or above, 18 Pa.C.S.[] § 6301(a)(1)(ii); and indecent assault of [a] person less than 13 years of age, 18 Pa.C.S.[] § 3126(a)(7).

¹ Appellant's date of birth is May 6, 1937. He was 82 years of age when he pled guilty and is currently 8[9] years old.

The aforementioned charges arose as a result of a report received on January 16, 2019, from a nine-year-old female victim that she had been sexually assaulted by Appellant in her home. Appellant, who had befriended the victim's family through his church in 2015,

2018, **see** Act of Feb. 21, 2018, P.L. 27, No. 10, §§ 1-20, effective Feb. 21, 2018 (Act 10 of 2018), and, lastly, reenacted and amended on June 12, 2018, P.L. 140, No. 29, §§ 1-23, effective June 12, 2018 (Act 29 of 2018). Acts 10 and 29 of 2018 are generally referred to collectively as SORNA II. Through Act 10, as amended in Act 29, the General Assembly split SORNA's former Subchapter H into a Revised Subchapter H and Subchapter I. Subchapter I addresses sexual offenders who committed an offense on or after April 22, 1996, but before December 20, 2012. **See** 42 Pa.C.S.[] §§ 9799.51-9799.75. Subchapter I contains less stringent reporting requirements than Revised Subchapter H, which applies to offenders who[, like Appellant,] committed an offense on or after December 20, 2012. **See** 42 Pa.C.S.[] §§ 9799.10-9799.42.

Commonwealth v. Spitko, No. 737 EDA 2023, unpublished memorandum at 1 n.2 (Pa. Super. filed Oct. 18, 2024) (cleaned up). **See also** Pa.R.A.P. 126(b) (providing unpublished, non-precedential decisions of the Superior Court filed after May 1, 2019, may be cited for their persuasive value).

began to visit the victim's parents frequently and often watched television alone with the victim during those visits.

In January of 2019, the victim became distressed and disclosed to her parents that Appellant "had touched her private parts, making a hand motion over her genitals." Following a forensic interview, the victim confirmed that at times when she had been alone in the living room with Appellant, he would ask her to sit on his lap or next to him on the couch, and he would touch her on her vagina and anus. Appellant admitted he "did put [his] hand on the young lady over her clothes," but he stressed there was no penetration.

Commonwealth v. Hovatter, No. 1368 EDA 2020, unpublished memorandum at 1-2 (Pa. Super. filed Sept. 15, 2021) (footnote, unnecessary capitalization, and record citations omitted).

On December 10, 2019, Appellant entered a negotiated plea of guilty to one count of indecent assault of a person less than 13 years of age. The trial court granted the Commonwealth's request to *nolle pros* all remaining counts, and also agreed not to invoke the 25-year mandatory-minimum sentence applicable to the offense due to Appellant's prior conviction in 1986 for indecent assault, which also involved a child victim.

On June 9, 2020, Appellant was sentenced to the negotiated term of 2 to 5 years' incarceration. He was also notified he is a Tier III offender subject to a lifetime registration requirement under Revised Subchapter H of SORNA II. Appellant filed a timely notice of appeal to this Court, raising several constitutional claims regarding his registration requirements under SORNA II. **See id.** at 5-6. In a decision filed on September 15, 2021, we concluded Appellant's constitutional claims were waived, as he was presenting them for

the first time on appeal. **Id.** at 10. Thus, we affirmed his judgment of sentence. **See id.**

However, on December 1, 2022, our Supreme Court vacated our decision and remanded for reconsideration in light of **Commonwealth v. Thorne**, 276 A.3d 1192 (Pa. 2022), which held that constitutional challenges to Revised Subchapter H of SORNA II implicate the legality of sentence and cannot be waived. **Id.** at 1197-98. On remand to this Court, we determined it was necessary to further remand Appellant's case to the trial court for additional proceedings, explaining:

[T]he crux of Appellant's appeal is a challenge that [Revised] Subchapter H of ... (SORNA [II]) ... constitutes undue punishment both facially and as applied. In this regard, he alleges Revised Subchapter H unconstitutionally relies upon an irrebuttable presumption that all sexual offenders are dangerous and pose a high risk of committing additional sexual offenses. Because Appellant has raised his issues for the first time on appeal, and they implicate the legality of sentencing and, thus, cannot be waived, we follow the guidance of **Commonwealth v. Torsilieri**, 232 A.3d 567 (Pa. 2020)[(**Torsilieri I**),²] and remand "to allow

² As this Court has explained,

In **Torsilieri I**, a divided majority of our Supreme Court vacated the portion of the trial court's order declaring the registration and notification requirements of Revised Subchapter H unconstitutional. While the High Court found that the defendant's evidence raised a colorable argument to debunk the settled view of sexual offender recidivation rates and the effectiveness of tier-based sexual offender registration systems underlying the General Assembly's findings as well as various decisions of the High Court and the United States Supreme Court, the **Torsilieri I** Court noted the lack of opposing science in the record, as well as the fact that the record did not, at that time, provide a sufficient basis to

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the parties to address whether a consensus has developed to call into question the relevant legislative policy decisions impacting offenders' constitutional rights." **Id.** at 595.

Unlike the defendant in **Torsilieri [I]**, however, Appellant has not offered any specific scientific evidence or learned testimony in support of his position. **Cf. id.** at 596 ("[I]t will be a rare situation where a court would reevaluate a legislative policy determination, which can only be justified in a case involving the infringement of constitutional rights and a consensus of scientific evidence undermining the legislative determination.").

This Court has held that cases raising arguments in conformity with **Torsilieri [I]** are entitled to remand to the trial court for an evidentiary hearing where the claims have been raised for the first time on appeal, thereby precluding the creation of an adequate factual record. **See Commonwealth v. Boyd**, [287] A.3d [957] ... (Pa. Super. ... 2022); **Commonwealth v. Thorne**, 285 A.3d 908 ... (Pa. Super. ... 2022) [(unpublished memorandum)]; **Commonwealth v. Snyder**, [292 A.3d 1106] (Pa. Super. ... 2023) [(unpublished memorandum)].

Thus, in accordance with the Supreme Court's jurisprudence in **Thorne** and **Torsilieri [I]**, we remand to the trial court for an evidentiary hearing and an opportunity for Appellant to supplement his arguments with scientific evidence.

Commonwealth v. Hovatter, No. 1368 EDA 2020, unpublished judgment order at 2-4 (Pa. Super. filed Mar. 7, 2023) (footnote omitted).

overturn the legislative presumption. Hence, the **Torsilieri I** Court remanded the matter to the trial court for further evidentiary proceedings. Specifically, the **Torsilieri I** Court directed the trial court to consider whether the registration and notification requirements applicable to sexual offenders constituted criminal punishment, and in doing so, to address five of the seven factors set in **Kennedy v. Mendoza-Martinez**, 372 U.S. 144 (1963).

Spitko, No. 737 EDA 2023, unpublished memorandum at 4 n.5.

In its Pa.R.A.P. 1925(a) opinion, the trial court explained what occurred on remand, as follows:

At a hearing on April 4, 2023, the Commonwealth and defense counsel[,] Jerome M. Brown, Esquire, agreed to “stay th[e] matter pending the outcome of the Supreme Court’s decision in [**Commonwealth v. Torsilieri**], 316 A.3d 77 (Pa. 2024) (**Torsilieri II**)... , as that may decide the case for us anyway and make this a moot point.” N.T.[,] 4/4/23, [at] 4. Attorney Brown clarified that the issue of “whether or not the statute is unconstitutional as applied to [Appellant]” would also be continued. **Id.** The case was thereafter continued in ninety (90) day status listings until the outcome of **Torsilieri II**.

The Pennsylvania Supreme Court decided ... [] **Torsilieri II** [] on May 31, 2024. The Pennsylvania Supreme Court held that: [(1)] [the] General Assembly’s presumption that adult sex offenders posed [a] higher risk of recidivism did not violate due process, and [(2)] SORNA [II]’s notification and registration requirements [are] not punitive in nature.

The present case was listed for a status hearing on July 23, 2024, however, defense counsel was not ready to proceed.

There were numerous attempts to re-list the case.

Defense counsel submitted a Memorandum of Law on March 26, 2025, as well as [] a “Certification of Malcolm Taylor,” Appellant’s nephew. Appellant’s nephew was in Kentucky and counsel requested that he appear by video at the scheduled March 31, 2025 [] hearing to testify to Appellant’s living arrangements and Appellant’s mental state. The Commonwealth objected to the witness testifying by video. Appellant was not brought down from the prison because the Sheriff’s Office was unable to secure a wheelchair accessible van.

The next listing was on May 28, 2025; Appellant again could not be brought to court. The parties agreed to continue the hearing until after Appellant was released from custody on July 15, 2025. Counsel had written that he would seek an expert evaluation of Appellant. The court agreed to continue the hearing to July 30, 2025.

On July 22, 2025, counsel requested a continuance [of] the July 30, 2025[,] hearing because his expert witness, Kelly Chamberlain, Psy.D., was not able to complete her report on Appellant without additional records. The Commonwealth objected to this continuance because defense counsel had numerous listings to obtain a report, defense counsel had only recently approached Dr. Chamberlain for a report, and defense counsel had maintained at prior listings that he was ready to proceed in this case[,], but for the lack of a wheelchair transport for Appellant from the prison.^[3]

At 9:29 a.m. on the morning of the scheduled 1:30 p.m. hearing on July 30, 2025, counsel emailed Dr. Chamberlain's report to the court.

At the 1:30 p.m. hearing, ... defense counsel informed the court that Dr. Chamberlain was not present for the hearing because she had been up all night typing the Forensic Psychological Evaluation. This court denied counsel's request to continue the hearing.

Defense counsel then requested to call a witness[, Patrick Bowers,] who defense counsel offered as Appellant's current caretaker to testify to Appellant's "physical disabilities" and "mental challenges." The request was denied both because there was no notice to the court or the Commonwealth that this witness would be called at the hearing[,], and the witness' testimony was not relevant to any finding that "Revised Subchapter H[']s] ... irrebuttable presumption that all sexual offenders are dangerous and pose a high risk of committing additional sexual offenses" was unconstitutional "as-applied" to Appellant. **See ... Hovatter**, [No. 1368 EDA 2020, unpublished judgment order at 3].

This court then denied Appellant's "as-applied" constitutional challenge to SORNA [II]'s irrebuttable presumption.

Trial Court Opinion (TCO), 10/22/25, at 7-10 (some quotation marks omitted).

On August 25, 2025, Appellant filed a motion for reconsideration, but it does not appear from the trial court's docket that it ruled on the motion.

³ This continuance request, and the ruling thereon, is not listed on the trial court's docket. However, we presume the court denied this continuance request.

Appellant filed a timely notice of appeal on August 29, 2025. According to the trial court, “[o]n September 16, 2025, Appellant was ordered to file a [Pa.R.A.P. 1925(b)] concise statement of errors he wished to raise on appeal within twenty-one (21) days of the [o]rder.” ***Id.*** at 10. However, the certified record does not contain the court’s Rule 1925(b) order, and the docket does not show an entry for that order. Nevertheless, Appellant timely filed his concise statement, and the court filed its Rule 1925(a) opinion on October 22, 2025.

Herein, Appellant states one issue for our review:

[I.] Did the [trial] court err in sustaining an objection to scientific/medical evidence that ... Appellant’s advanced age (...89 years), his physical handicap (essentially wheelchair bound and requiring daily home health care), and his failing mental state (approaching Alzheimer’s disease or senility), were irrelevant considerations in determining whether all obligations under SORNA [II], including the notification provision and reporting requirement[,] were unconstitutional as applied to him?

Appellant’s Brief at 2.

Although Appellant states only one issue in his “Statement of the Questions Involved,” he sets forth the following six sub-claims in his “Argument” section, which we reorder for ease of disposition:

[1.] The [trial] court ... did not permit the full factual record that this Court instructed[.]

[2.] Evolving standards of decency compel that ... SORNA not apply to [Appellant.]

[3.] The current version of the SORNA statute is ... unconstitutional as applied to [Appellant.]

[4.] Act 29 creates a flawed irrebuttable presumption that [Appellant] is forever a sexually violent predator[.]

[5.] Appellant is not such a high risk of reoffending[.]

[6.] Reasonable alternative means exist to identify offender risk and protect the community.

Id. at 15, 18, 22, 24, 26, 28.

First, Appellant contends the trial court violated this Court's remand order "for the development of a full factual record concerning Appellant's constitutional challenges that implicate the legality of his sentence" by not permitting him to call Patrick Bowers at the hearing on remand. ***Id.*** at 18 (quoting ***Hovatter***, No. 1368 EDA 2020, unpublished judgment order at 2). Appellant notes "[t]he trial court excluded Bower's [*sic*] testimony due to the lack of notice" and because it concluded "the testimony about Appellant's mental and physical issues was irrelevant to the as[-]applied [constitutional] challenge." ***Id.*** Appellant argues the court's decision to preclude Bowers' testimony on these grounds was error, as "the lack of notice was never mentioned by either the [trial] court or the Commonwealth[,]" and "[e]vidence of Appellant's current physical and mental condition is directly relevant to whether he, individually, poses a high risk of sexual recidivism." ***Id.*** at 19. More specifically, Appellant insists Bowers' testimony is relevant to proving he is physically and mentally incapable of reoffending and that, therefore, SORNA II's irrebuttable presumption that sexual offenders pose a high risk of recidivism is unconstitutional as applied to him.

No relief is due. Initially, we recognize:

The standard of review employed when faced with a challenge to the trial court's decision as to whether or not to admit evidence is well settled. Questions concerning the admissibility of evidence

lie within the sound discretion of the trial court, and a reviewing court will not reverse the trial court's decision absent a clear abuse of discretion. Abuse of discretion is not merely an error of judgment, but rather where the judgment is manifestly unreasonable or where the law is not applied or where the record shows that the action is a result of partiality, prejudice, bias or ill will.

Commonwealth v. Young, 989 A.2d 920, 924 (Pa. Super. 2010) (cleaned up).

Here, we discern no abuse of discretion in the trial court's decision to preclude Bowers' testimony on the basis it is irrelevant to whether SORNA II can be constitutionally applied to Appellant following our Supreme Court's decision in ***Torsilieri II***.⁴ As this Court has elucidated,

[i]n ***Torsilieri II***, the Court initially considered "whether the General Assembly's determination, in [SORNA II], that individuals who commit sexual offenses pose a high risk of committing additional sexual offenses constitutes an unconstitutional irrebuttable presumption violative of due process, because it impairs the right to reputation under the Pennsylvania Constitution." ***Torsilieri II***, 316 A.3d []at 79. The Court explained:

[T]he first issue before us concerns a presumption which largely undergirds the criminal justice system's treatment of sex offenders: that those who commit sexual offenses pose a high risk to reoffend. The General Assembly has memorialized this presumption in its legislative findings: "Sexual offenders pose a high risk of committing additional sexual offenses and protection of the public from this type of offender is a paramount governmental interest." 42 Pa.C.S. § 9799.11(a)(4). To challenge such assumptions under the irrebuttable presumption doctrine, a challenging party must demonstrate: (1) an interest protected by the

⁴ As such, we need not discuss whether the court abused its discretion by precluding this evidence due to Appellant's failure to notify the court or the Commonwealth that he planned to call Bowers to testify.

due process clause; (2) utilization of a presumption that is not universally true; and (3) the existence of a reasonable alternative means to ascertain the presumed fact.

Id. at 79-80 (some internal citations omitted).

The parties in ***Torsilieri II*** did not contest the first prong of the irrebuttable presumption doctrine, which posits that “the right to reputation is protected by the due process clause and that the designation as a sexual offender, based upon a presumption of posing a high risk of recidivism, impacts one’s reputation.” ***Id.*** at 97 n.13. Under the second prong, however, the Court concluded that “to meet his heavy burden of establishing that the General Assembly’s presumption was not universally true, Torsilieri was required to establish that there exists a scientific consensus that sexual offenders pose no greater risk of committing additional sexual crimes than other groups not subject to similar registration laws.” ***Id.*** at 98-99. In rejecting Torsilieri’s position, the Supreme Court observed:

Here, Torsilieri’s own experts concede that adult sexual offenders reoffend at a rate of at least three times higher than other individuals convicted of non-sexual offenses. Accordingly, rather than refuting it, the evidence supports the legislative presumption; the evidence validates the statutory underpinnings of [Revised] Subchapter H. We need go no further. Having reviewed the arguments and the evidence presented before the trial court, we find that the evidence does not demonstrate a consensus that the presumption at issue is not universally true. Thus, we hold that Torsilieri has failed to meet his heavy burden to demonstrate that the irrebuttable presumption at issue was constitutionally infirm.

Id. at 99-100 (internal citations and footnote omitted, emphasis in original). Because Torsilieri did not prevail on the second prong of his irrebuttable presumption claim, the Court did not proceed further.

Commonwealth v. Frick, No. 236 MDA 2024, unpublished memorandum at 6-7 (Pa. Super. filed Feb. 19, 2025) (cleaned up). The ***Torsilieri II*** Court also concluded that Revised Subchapter H is not punitive in nature and, thus, Torsilieri’s remaining constitutional challenges based upon separation of

powers, the prohibition on cruel and unusual punishment, and the right to trial by jury lacked merit. **Torsilieri II**, 316 A.3d at 102-10.

Following **Torsilieri II**, this Court addressed a claim that SORNA II is unconstitutional as applied to the appellant in **Commonwealth v. Nunez**, No. 1929 EDA 2023, unpublished memorandum at 25 (Pa. Super. filed Jan. 10, 2025). We concluded Nunez's as-applied challenge to the statute failed under **Torsilieri II**, reasoning:

While Nunez also claims that the statute's irrebuttable presumption is unconstitutional as applied to him, his argument is based upon nothing more than his own expert's testimony at sentencing as to his low risk of recidivism, which our Supreme Court held in **Torsilieri [II]** was insufficient by itself to overcome the presumption. **See Torsilieri [II]**, 316 A.3d at 99 (rejecting Torsilieri's focus on "individualized recidivism risk" and finding that statistics showing likelihood of sexual offenders to reoffend when looked at as a whole were enough to support the legislative presumption underlying [Revised] Subchapter H); **cf. [Commonwealth v.] Muhammad**, 241 A.3d [1149,] ... 1157-60 [(Pa. Super. 2020)] (sustaining [an] as[-]applied challenge to [Revised] Subchapter H registration based upon [the] fact that defendant was convicted only of interference with custody of children with no sexual intent, had no prior record, and other factors). [Nunez] is therefore not entitled to relief on his SORNA [II] constitutional challenge.

Id. at 26-27.

Under **Torsilieri II** and **Nunez**, Appellant's argument that Bowers' testimony was relevant to his as-applied challenge to SORNA II fails. Bowers' proposed testimony spoke only to Appellant's **individual** risk of recidivism due to his age, mental infirmities, and physical disabilities. This is the same type of evidence found insufficient in **Nunez** to sustain an as-applied challenge to SORNA II, based on our Supreme Court's decision in **Torsilieri II**.

Moreover, Bowers' testimony was not relevant to the specific issue on which we remanded this case. As the Commonwealth aptly argues, this "Court remanded the matter to the trial court for one purpose: 'to allow the parties to address whether a consensus has developed to call into question the relevant legislative policy decisions impacting offenders' constitutional rights.'" Commonwealth's Brief at 13-14 (quoting **Hovatter**, No. 1368 EDA 2020, unpublished memorandum at 3 (citation omitted)). Thus, "[t]he only facts of consequence following this ... Court's remand order was whether 'scientific or learned testimony' exists which undermined the 'irrebuttable presumption that all sexual offenders are dangerous and pose a high risk of committing additional sexual offenses.'" **Id.** at 14 (quoting **Hovatter**, No. 1368 EDA 2020, unpublished memorandum at 3). Because Bowers' proposed testimony was not scientific, and pertained only to Appellant's individual characteristics that will allegedly make it difficult for him to reoffend, we discern no abuse of discretion in the trial court's decision that his testimony was irrelevant to the issue for which we remanded. **See** TCO at 17 (stating Bowers "was a lay witness whose testimony was not scientific evidence that would challenge the presumption contained in the SORNA [II] statute").

Appellant also argues, in his second sub-claim, that Bowers' testimony was relevant to proving that SORNA II's application to Appellant violates the "evolving standards of decency" underlying the Eighth Amendment. Appellant's Brief at 15. **See also Commonwealth v. Hairston**, 249 A.3d 1046, 1055 (Pa. 2021) ("The prohibition against 'cruel and unusual

punishments,' like other expansive language in the Constitution, must be interpreted according to its text, by considering history, tradition, and precedent, and with due regard for its purpose and function in the constitutional design. To implement this framework[,] we have established the propriety and affirmed the necessity of referring to 'the evolving standards of decency that mark the progress of a maturing society' to determine which punishments are so disproportionate as to be cruel and unusual.") (quoting **Roper v. Simmons**, 543 U.S. 551, 560-61 (2005)). However, Appellant concedes **Torsilieiri II** "held that the SORNA [II] reporting requirement is nonpunitive" and, therefore, not a criminal punishment. Appellant's Brief at 16. **See also Torsilier II**, 316 A.3d at 109-10 (concluding Torsilier failed to "meet his heavy burden, by the clearest of evidence, to rebut the General Assembly's stated non-punitive purpose" for Revised Subchapter H of SORNA II). Although Appellant nevertheless insists the "evolving standards of decency should not be left at the door especially where SORNA [II] is involved[,] he does not develop this claim or cite any legal authority to support it. Appellant's Brief at 16. Thus, he has not demonstrated this Eighth Amendment principle applies to a non-punitive consequence of his conviction. **See Torsilier II**, 316 A.3d at 110 (concluding, because Subchapter H is non-punitive, Torsilier's claim it "constitutes cruel and unusual punishment under the Eighth Amendment" necessarily fails).

In Appellant's third through sixth subclaims, he contends SORNA II's irrebuttable presumption is unconstitutional as-applied to him because his

age, mental infirmities, and physical disabilities make it unlikely — if not impossible — for him to reoffend.⁵ In support of his argument, Appellant discusses each prong of the test for challenging an irrebuttable presumption, set forth in ***Torsilieri II, supra***. ***See*** Appellant’s Brief at 22-31. Regarding the second prong of the test, Appellant insists SORNA II “presumes that registrants are dangerous and provides no opportunity to challenge this presumption, which is neither ‘universally true’ nor unknowable.” ***Id.*** at 24 (citations omitted). He contends “[t]he second prong of the irrebuttable presumption test calls for analysis [of] whether SORNA [II]’s presumption that sexual offenders present a high risk of recidivating is true as to [Appellant].” ***Id.*** at 26. He then argues that, “[d]ue to his deteriorating mental and physical condition, and advanced age[,] he is not at a high risk of reoffending. Indeed,

⁵ Appellant’s constitutional challenge is a question of law for which our standard of review is *de novo* and our scope of review is plenary. ***Muhammad***, 241 A.3d at 1154 (cleaned up). Moreover, constitutional challenges can be either facial or as-applied. ***Id.*** at 1155.

A facial attack tests a law’s constitutionality based on its text alone without considering the facts or circumstances of a particular case. The court does not look beyond the statute’s explicit requirements or speculate about hypothetical or imaginary cases. An as-applied attack on a statute is more limited. It does not contend that a law is unconstitutional as written, but that its application to a particular person under particular circumstances deprives that person of a constitutional right. While as-applied challenges require application of the ordinance to be ripe, facial challenges are different, and ripe upon mere enactment of the ordinance. It is permissible to raise both facial and as-applied challenges to a statute.

Id. (cleaned up).

given his circumstances, he is probably at no risk for reoffending.” **Id.** As such, he maintains “the second prong of the test has been met.” **Id.** at 28.

Appellant’s argument fails, as he incorrectly focuses on his individualized recidivism risk. The **Torsilieri II** Court held that to meet the second prong of the irrebuttable presumption test, one must “establish that there exists a scientific consensus that sexual offenders pose no greater risk of committing additional sexual crimes than other groups not subject to similar registration laws.” **Torsilieri**, 316 A.3d at 98-99; **see also id.** at 99 (stating “a ‘consensus’ is a generally accepted opinion or general agreement regarding a proposition”). Appellant presented no evidence to meet this “heavy burden....” **Id.** at 98. Instead, he only presented evidence that he, individually, does not pose a risk of recidivism similar to “those convicted of sexual offenses[,] and submits that Subchapter H is unconstitutional because it fails to take into account individualized recidivism risk.” **Id.** at 99. Under **Torsilieri II**, this type of evidence and argument is inadequate to demonstrate the irrebuttable presumption is unconstitutional. **See id.** (“To overturn the legislative presumption that sex offenders are more likely as a group to commit new sex offenses, we must conclude there is a **universal consensus** that this presumption is wrong.”) (emphasis added).

In his reply brief, Appellant essentially contends **Torsilieri II** held only that the irrebuttable presumption of SORNA II is **facially** constitutional, but that decision has no bearing on Appellant’s claim the irrebuttable presumption is unconstitutional **as applied to him**. **See** Appellant’s Reply Brief at 4.

Appellant's argument is meritless. Our Court recently rejected this same argument in ***Commonwealth v. Shapiro***, --- A.3d ----, 2026 WL 2526306, at *3 (Pa. Super. filed Aug. 27, 2026) (declining Shapiro's request that "this Court ... treat ***Torsilieri II*** as an examination on the facial constitutionality of the SORNA presumption, and consider [his] as-applied claims, in support of which he produced evidence that his own likelihood of reoffending is minimal"). We reasoned:

Nowhere did the ***Torsilieri II*** Court style the constitutional challenge before it as "facial" and thus leave open the possibility of future "as[-]applied" challenges. In upholding SORNA's presumption, our Supreme Court considered evidence pertaining to sexual offenders "as a group," or "as a class." [***Torsilieri II***, 316 A.3d] at 98-99. Due to the lack of scientific consensus that the presumption was inaccurate as applied to the class, SORNA's irrebuttable passed constitutional muster.

The Supreme Court arrived at this conclusion despite its recognition that no presumption is true without exception. ***Id.*** at 98. But this recognition of individual differences amongst the class of persons subject to the presumption did not open the door to case-by-case challenges on an as[-]applied basis. To the contrary, the ***Torsilieri II*** Court was not persuaded by [Torsilieri's] individualized evidence—*i.e.*[,] that only 5 to 20% of sexual offenders get arrested for a subsequent sexual offense. ***Id.*** ... As the trial court in the instant matter correctly recognized, "individual dangerousness is not relevant to the statutory scheme." Trial Court Opinion, 3/19/25, at 4.

Given the foregoing, we conclude that the ***Torsilieri II*** Court's decision to uphold SORNA against an irrebuttable presumption challenge forecloses any subsequent as[-]applied challenge whose aim is to rebut the presumption. This is true regardless of whether [an a]ppellant styles his as[-]applied challenge as one of substantive or procedural due process because ... the ***Torsilieri II*** Court declined to pigeonhole the irrebuttable presumption

doctrine as either. **Id.** at 82, 91-92.^[6] And regarding procedural due process, an irrebuttable presumption, by definition, forecloses any rebuttal procedure. To conclude otherwise would both disregard the clear import of our Supreme Court's decision in **Torsilieri II** and render the statutory presumption meaningless—effectively opening it to case-by-case as applied challenges. In short, the word “irrebuttable” means what it says.

Id. at *3-4. Accordingly, pursuant to **Torsilieri II** and **Shapiro**, Appellant's as-applied challenge fails.

Additionally, the two cases Appellant cites to support his argument are distinguishable. First, in **In re J.B.**, 107 A.3d 1 (Pa. 2014),

several juvenile offenders argued that SORNA violated their due process rights by including an irrebuttable presumption that all juvenile offenders “pose a high risk of committing additional sexual offenses,” the same language that Appellant challenges here. The Court agreed. It held that SORNA's presumption impinges upon the juvenile offenders' right to reputation embodied within Article I, Section 1 of the Pennsylvania Constitution without giving them a meaningful opportunity to challenge the presumption. **Id.** at 16. Next, based on research credited by the trial court, **the Court concluded that the presumption was not universally true. Id.** at 19. Finally, the Court observed that SORNA already provides for individualized assessment of adult sexual offenders as sexually violent predators and juvenile offenders as sexually violent delinquent children. **Id.** Thus, it was possible to use a similar individualized assessment process to consider whether juvenile sexual offenders posed a high risk of recidivating.

Muhammad, 241 A.3d at 1155–56 (emphasis added). The **Torsilieri II** Court explained that it came to a “contrary conclusion” in **In re J.B.** because

⁶ **See Torsilieri II**, 316 A.3d at 81 (noting it has refused to “‘pigeonhole’ the irrebuttable presumption doctrine into either procedural or substantive due process categories, and, rather, [it has] addressed such challenges ‘simply as an irrebuttable presumption challenge’”) (quoting **Torsilieri I**, 232 A.3d at 581).

“the statistical evidence showed that juvenile sex offenders were no more likely to commit subsequent sexual offenses than juveniles who committed non-sexual offenses. In that case, the evidence was clear, based upon a demonstrated consensus, that the presumption was not justified.” **Torsilieri II**, 316 A.3d at 99 n.14. Again, Appellant in this case presented no scientific evidence to demonstrate there is a **consensus** that **adult** sexual offenders are no more likely to reoffend than individuals convicted of non-sexual crimes. Thus, **In re J.B.** is distinguishable.

Appellant also relies on **Muhammad**. There, Muhammad was subject to Subchapter H of SORNA II based on her convictions for interference with custody of children and conspiracy to commit that offense. **Muhammad**, 241 A.3d at 1151. On appeal, we found Muhammad was entitled to relief under the second prong of the irrebuttable presumption test, as she had no criminal history and there was “no evidence ... [she] committed or intended to commit any acts of a sexual nature.” **Id.** at 1158. Thus, we concluded that, “[a]lthough [Muhammad] did not submit any expert or scientific testimony concerning her risk to reoffend, it [was] clear, from the absence of any sexual misconduct in this case along with [Muhammad’s] otherwise spotless record, that she [was] not a high risk to commit additional (or any) sexual offenses.” **Id.** at 1159. Accordingly, we determined SORNA II’s “provision that sexual offenders pose a high risk of recidivating is an irrebuttable presumption that clearly, palpably, and plainly violates [Muhammad’s] constitutional right to reputation.” **Id.**

Appellant now contends that

Muhammad's holding rested on a broader principle: the irrebuttable presumption was unconstitutional as applied because it was factually untrue as to that particular defendant. **Id.** at 1158. The same principle applies when physical and mental incapacity and age — rather than the nature of the underlying offense — makes the presumption untrue.

Appellant's Brief at 21. However, Appellant ignores that **Muhammad** was decided several years before **Torsilieri II**, which clearly rejected a focus on "individualized recidivism risk." **Torsilieri II**, 316 A.3d at 99. **See also Shapiro, supra**. Thus, **Muhammad** does not support Appellant's argument. **See Shapiro, supra**, at *4 (concluding "**Muhammad** does not salvage the claims [Shapiro] raises herein").⁷

In sum, Appellant has failed to meet the second prong of the irrebuttable presumption test. Accordingly, his challenge to the constitutionality of SORNA II as applied to him fails, and we need not discuss the other two prongs. **See Torsilieri II**, 316 A.3d at 99 (finding no need to address the other two prongs of the irrebuttable presumption test where Torsilieri failed to meet the second prong).

Judgment of sentence affirmed.

⁷ We also note the **Shapiro** panel found its analysis consistent with **Nunez. Shapiro, supra**, at *4.

Judgment Entered.

Benjamin D. Kohler

Benjamin D. Kohler, Esq.
Prothonotary

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