



March 6 – March 19, 2025

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Criminal Topics

Court Activity:

Possession of Metallic Knuckles – Second Amendment Challenge

“Metallic knuckles, more commonly referred to as brass knuckles, . . . are generally known to be a set of metal finger rings or guards attached to a transverse piece and worn over the front of the doubled fist for use as a weapon.” *People v Dummer*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). MCL 750.224(1)(d) “prohibits the possession of [metallic knuckles] by any one, other than an excepted person, in private as well as in public, in the home or elsewhere, and whatever the purpose and contemplated use.” *Dummer*, ___ Mich App at ___ (quotation marks and citation omitted). In this case, defendant moved to dismiss the charge of possession of metallic knuckles on the basis “that the criminalization of the mere possession of metallic knuckles violates the Second Amendment.” *Id.* at ___. “[W]hen addressing challenges to government regulation of arms as violative of the Second Amendment,” “courts must first determine whether the plain language of the Second Amendment protects the conduct

which the government regulation prohibits”—“[h]ere, that conduct is possession of metallic knuckles.” *Id.* at _____. “If the amendment does protect the challenged conduct, it is then the government’s burden to establish that the particular regulation of that protected conduct is nonetheless permissible pursuant to our national historical tradition of weapon regulation.” *Id.* at _____. While “defendant’s conduct of bearing metallic knuckles was an activity covered by the plain text of the Second Amendment, and therefore is presumptively constitutionally protected conduct,” “MCL 750.224(1)(d)’s ban on the possession of metallic knuckles falls within the historical tradition of prohibiting the concealed carry of metallic knuckles as a dangerous and unusual weapon.” *Dummer*, ____ Mich App at _____. Accordingly, “defendant’s facial challenge to MCL 750.224(1)(d)’s prohibition of possessing metallic knuckles[] fails” “because there is an application of the statute that is constitutional under the Second Amendment.” *Dummer*, ____ Mich App at _____.

Sex Offenders Registration Act (SORA) – Substantially Similar Offense, Full Faith and Credit, Cruel or Unusual Punishment, and Equal Protection

Substantially Similar Offense. “The prosecution may secure a conviction under MCL 750.145a by proving that the defendant (1) accosted, enticed, or solicited (2) a child (or an individual whom the defendant believed to be a child) (3) with the intent to induce or force that child to commit (4) a proscribed act.” *In re Harder*, ____ Mich App ____, ____ (2025) (quotation marks and citation omitted). “[T]he Iowa Supreme Court set forth the elements of [Iowa Code] § 709.8(3) as: (1) the defendant, with or without consent, solicited the victim to engage in a sex act; (2) the defendant intended to arouse or satisfy sexual desires; (3) the defendant was at least of the statutorily specified age (now 16 years); (4) the victim was under the statutorily specified age (now simply ‘a child’); and (5) the defendant and victim were not presently married.” *Harder*, ____ Mich App at _____. In this case, petitioner “was convicted by an Iowa court of committing lascivious acts with a child, contrary to Iowa Code § 709.8,” and “[t]his case presents the question of whether respondent’s release from registry requirements in Iowa comes with a corresponding requirement that respondent be relieved of his registry requirements in Michigan.” *Harder*, ____ Mich App at _____. “The statutes are substantially similar because all of the material elements of the crimes correspond”— “[t]he elements of solicitation common to the two offenses are similar, as are the elements that the victim be a child and the defendant an adult.” *Id.* at _____. “That the solicitation must be to engage in a sex act under the Iowa Code also corresponds to solicitation of ‘an immoral act,’ ‘an act of sexual intercourse,’ ‘an act of gross indecency,’ or ‘any other act of depravity or delinquency’ under MCL 750.145a.” *Harder*, ____ Mich App at _____. “Therefore, the elements are substantially similar for purposes of SORA.” *Id.* at _____. Accordingly, “a person such as petitioner who is convicted of lascivious acts with a child under Iowa Code § 709.8 is subject to sex offender registration requirements as a Tier-II offender in Michigan, and the trial court did not err when it determined that Iowa’s statute concerning lascivious acts with a child, Iowa Code § 709.8(3), and Michigan’s accosting a minor for immoral purposes, MCL 750.145a, are substantially similar.” *Harder*, ____ Mich App at ____ (declining to adopt a strict categorial approach to comparing crimes “to determine whether an out-of-state conviction is substantially similar to a Michigan offense for purposes of SORA registration”).

Full Faith and Credit. “The Full Faith and Credit Clause of the United States Constitution requires the courts of each state to honor the actions of another state’s courts,” and “Michigan has codified the requirements of the Full Faith and Credit Clause under the Uniform Enforcement of Foreign Judgments Act.” *In re Harder*, ____ Mich App ____, ____ (2025) (citation omitted). In this case, “petitioner argues that he should be removed from the Michigan sex offender registry under the Full Faith and Credit Clause and the Uniform Enforcement of Foreign Judgments Act”— “[a]ccording to petitioner, once the Iowa courts ordered him removed from the Iowa sex offender registry, those constitutional and statutory provisions required that he be removed from the Michigan registry as well.” *Id.* at _____. However, “the two registration requirements are independent of one another”— “petitioner’s sex offender registration requirement in Michigan stems from his *Iowa conviction* and not his *Iowa registration requirement*.” *Id.* at _____. “Despite that both registration requirements stemmed from the Iowa conviction, petitioner faced separate registration requirements in each state.” *Id.* at _____. “A Michigan court must, absent a jurisdictional defect, recognize as valid the Iowa criminal judgment entered against petitioner” as well as “the Iowa order removing petitioner from that state’s sex offender registry.” *Id.* at _____. “Moreover, under the Full Faith and Credit Clause, a Michigan court may not modify a determination of an Iowa court regarding that state’s sex offender registry requirements, just as an Iowa court may not modify a determination of a Michigan court regarding this state’s sex offender registry.” *Id.* at _____. “The Iowa judgment against petitioner and his registry obligation in that state followed

him into Michigan"; however, "Iowa may not force Michigan to conform to that state's laws regarding the enforcement of that judgment." *Id.* at ___. "As a result of his Iowa conviction, Michigan's SORA independently requires petitioner to register with the sex offender registry of this state." *Id.* at ___. "An Iowa court may not modify the terms or application of Michigan's SORA through a decision regarding the enforcement of Iowa's sex offender registry laws." *Id.* at ___. "Therefore, the trial court did not err when it denied the petition on the basis of the Full Faith and Credit Clause." *Id.* at ___.

Cruel or Unusual Punishment. "The determination whether a statute imposes a cruel or unusual punishment involves a two-step inquiry"—"the first assesses whether the statute imposes a criminal punishment as opposed to some civil regulatory burden," and "[t]he latter inquiry concerns whether the punishment is so grossly disproportionate that it is unconstitutional." *In re Harder*, ___ Mich App ___, ___ (2025) (quotation marks and citations omitted). In this case, petitioner "argues that requiring him to remain subject to Michigan's SORA requirements violates the prohibition against cruel or unusual punishment," and "that requiring him to report as a sex offender is excessively harsh considering the gravity of the offense and fails to advance the goals of rehabilitation." *Id.* at ___. However, "[p]etitioner's challenge fails at the first step of the inquiry" because Michigan's sex offender registration "does not impose a criminal punishment on sex offenders." *Id.* at ___. Accordingly, "petitioner's registration under SORA does not constitute cruel or unusual punishment, and the trial court did not err when it denied the petition on the basis that SORA imposed cruel or unusual punishment on petitioner." *Id.* at ___ (citation omitted).

Equal Protection. "The Equal Protection Clauses of the United States and Michigan Constitutions provide that no person shall be denied the equal protection of the law." *In re Harder*, ___ Mich App ___, ___ (2025) (quotation marks and citation omitted). In this case, petitioner "challenges his reporting requirements under SORA as a violation of his right to equal protection," "contend[ing] that he has a constitutional right to travel among the states, and the sex offender registration requirement infringes on his right to travel." *Id.* at ___. However, "[u]nder the circumstances, the record does not show that Michigan's sex offender registration requirements ever affected petitioner's interstate travel" and "[a]ny potential equal-protection violations regarding how SORA might infringe on the right to travel are only [a] matter of speculation"; "[a]ccordingly, petitioner is not entitled to relief on this basis." *Id.* at ___. Petitioner also "argues that his equal-protection rights were violated because he did not have a statutory right to directly petition for removal from the sex offender registry"; however, "petitioner has not shown that SORA's petition process presents an equal-protection violation, and the trial court did not err when it denied petitioner's request to be removed from SORA's reporting regime." *Id.* at ___.

Legislative Activity:

No activity.
