[Cite as *State v. Adams*, 2012-Ohio-5088.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

State of Ohio,	:	
Plaintiff-Appellee,	:	
		No. 12AP-83
v.	:	(C.P.C. No. 11CR-01-368)
Jonathan E. Adams, II,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on November 1, 2012

Ron O'Brien, Prosecuting Attorney, and *Michael P. Walton*, for appellee.

James R. Kingsley, for appellant.

APPEAL from the Franklin County Court of Common Pleas

SADLER, J.

{¶ 1} Defendant-appellant, Jonathan E. Adams, II, appeals from a judgment of the Franklin County Court of Common Pleas following a jury trial in which he was found guilty of five counts of rape and three counts of unlawful sexual conduct with a minor. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} In a 12-count indictment filed in January 2011, appellant was charged with counts of rape of a child under 13 and unlawful sexual conduct with a minor based on allegations he engaged in sexual conduct with his three younger cousins (hereinafter referred to as "Child 1," "Child 2," and "Child 3")—between 1998 and 2002. Counts 1 through 6 of the indictment alleged abuse relating to Child 1; Counts 7 and 8 of the

indictment related to Child 2; and Counts 9 through 12 related to Child 3. Appellant, who was born on April 27, 1983, was 15 at the time the pattern of abuse began.

{¶ 3} At a jury trial beginning on October 31, 2011, all three victims testified about being molested and raped by appellant for several years. First, Child 2 testified that he was between seven and eight years old when appellant began molesting him. Child 2 stated that the abuse occurred at family gatherings, either at appellant's parents' house in Pickaway County or at their grandfather's house in Franklin County. According to Child 2, the family gathered at their grandfather's house for weekly Sunday dinners, birthdays, sleepovers, and for several weeks during the summer.

{¶ 4} Child 2 described several instances where appellant molested him, Child 1, and Child 3 together in their grandfather's attic, or if everyone was sleeping, the living room. Eventually, the abuse began to involve fellatio; Child 2 testified that appellant performed oral sex on all three victims, and that each of the victims would also perform oral sex on appellant. Child 2 explained that appellant led the victims to believe that the molestation was "what older people did and what cousins did." (Tr. 52.) Child 2 said that the oral sex continued when he was 8, 9, 10, and 11 years old, until he stopped coming to family events and decided to no longer spend the night at his grandfather's house.

{¶ 5} Child 2 did not come forward about the abuse until some time around Thanksgiving of 2009. In the years that followed the abuse, Child 2 began experiencing nightmares and depression, causing him to use drugs as a coping mechanism. Child 2 became addicted to heroin, and stated that he hit the lowest point of his addiction around Thanksgiving of 2009. When his mother confronted him about his addiction and asked him why he had resorted to drugs, Child 2 told her about the years of abuse.

{¶ 6} Child 1 and Child 3 also described the rapes and molestation occurring at their grandfather's house. Child 3 testified that he was 11 and 12 when the abuse began. He estimated that between five and ten instances of abuse occurred at their grandfather's house. Child 3 recalled times when he was 11 and 12 where he and appellant would perform fellatio on each other. When asked why he agreed to engage in sexual conduct with appellant, Child 3 replied that appellant convinced him that it was normal behavior for cousins who loved each other. Child 3 said that, after the family learned of the abuse,

appellant called him and apologized for "everything that he did * * * ." (Tr. 106.) Child 3 stated that he would not have come forward if Child 2 remained silent about the abuse.

{¶ 7} Child 1 stated that the pattern of abuse began when he was between 11 and 12 years old. According to Child 1, appellant told him that he would get in trouble if he told anyone about the touching or fellatio. Child 1 had difficulty estimating the number of instances of abuse, but stated that he was abused in his grandfather's house "over 30 times, 40 times." (Tr. 145.) The abuse continued over the years, and, at age 14, Child 1 began engaging in anal intercourse with appellant. Child 1 did not stop until he was 18.

{¶ 8} The state's next witness was Donna, the mother of Child 1 and Child 2. Donna described her discovery of the abuse and subsequent confrontation with appellant. Donna stated that once she confronted appellant about the years of abuse, appellant apologized and told her that he had a "sexual addiction" and that he would kill himself if she told anyone. (Tr. 196.)

{¶ 9} Appellant testified on his own behalf. He denied the instances of molestation described by each victim and denied apologizing to Child 3 over the phone. When asked why he apologized to Donna about the abuse, appellant responded that he did so out of fear that he would be attacked by her family.

{¶ 10} After deliberations, the jury found appellant guilty of all counts except one rape count involving Child 1, and one rape count involving Child 2[1]. The trial court imposed a total aggregate sentence of 15 years in prison.

II. DISCUSSION

{¶ 11} In a timely appeal, appellant identifies the following nine assignments of error (phrased as questions) for our review:

> [I.] DID THE TRIAL COURT LACK SUBJECT MATTER JURISDICTION OVER ALL COUNTS OF RAPE FOR ALL THREE VICTIMS (COUNTS II, III, VIII, IX AND X)?
>
> [II.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT DENIED DEFENDANT'S MOTION TO DISMISS FOR PRE-INDICTMENT DELAY?
>
> [III.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT DENIED DEFENDANT'S MOTION TO

[1] Before trial, the state dismissed two counts of unlawful sexual conduct involving Child 3.

> DISMISS BECAUSE OF THE FAILURE TO STATE A SPECIFIC TIME FOR EACH OFFENSE?
>
> [IV.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT REFUSED TO CHARGE VENUE AS REQUESTED BY DEFENDANT?
>
> [V.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT REFUSED TO SEVER FOR TRIAL THE SEPARATE CRIMES FOR EACH OF THE THREE VICTIMS?
>
> [VI.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR AT TRIAL WHEN IT REFUSED TO PERMIT DEFENDANT TO IMPEACH EACH VICTIM AT TRIAL?
>
> [VII.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT FAILED TO CHARGE ON A LESSER INCLUDED OFFENSE?
>
> [VIII.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR IN SENTENCING?
>
> [IX.] DID THE TRIAL COURT COMMIT PREJUDICIAL ERROR WHEN IT FOUND DEFENDANT TO BE A SEXUALLY ORIENTED OFFENDER?

A. First Assignment of Error

{¶ 12} In his first assignment of error, appellant argues that the trial court lacked subject-matter jurisdiction over the five rape counts (Counts 2, 3, 8, 9, and 10 of the indictment) because appellant was a juvenile at the time of those offenses. Appellant concedes that R.C. 2151.23(I) and 2152.12(J) specifically vested the trial court with such jurisdiction but maintains that those statutes violate his right to a juvenile bindover proceeding under the state and federal constitution. As explained below, we disagree.

{¶ 13} Statutes enjoy a strong presumption of constitutionality and must be afforded a constitutional interpretation if one is reasonably available. *State v. Carswell*, 114 Ohio St.3d 210, 2007-Ohio-3723, ¶ 7; *State v. Thompson*, 92 Ohio St.3d 584, 586 (2001). A statute will be upheld as constitutional "unless proven beyond a reasonable doubt to be clearly unconstitutional." *State v. Tooley*, 114 Ohio St.3d 366, 2007-Ohio-3698, ¶ 29, *State v. Warner*, 55 Ohio St.3d 31, 43 (1990), *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142 (1955), paragraph one of the syllabus.

{¶ 14} The statutes at issue here first took effect in 1997 as the result of various amendments to R.C. Chapter 2151. *See* 1996 Am.Sub. H.B. No. 124 (effective 3-31-97). "These changes to the statutory scheme effectively removed anyone over 21 years of age from juvenile-court jurisdiction, regardless of the date on which the person allegedly committed the offense." *State v. Walls*, 96 Ohio St.3d 437, 2002-Ohio-5059, ¶ 14. For instance, current R.C. 2152.02(C)(3) excepts from the definition of child "[a]ny person who, while under eighteen years of age, commits an act that would be a felony if committed by an adult and who is not taken into custody or apprehended for that act until after the person attains twenty-one years of age * * *." Furthermore, R.C. 2151.23(I), which contains language similar to R.C. 2152.12(J), states the following with regard to the juvenile court's jurisdiction in such cases:

> If a person under eighteen years of age allegedly commits an act that would be a felony if committed by an adult and if the person is not taken into custody or apprehended for that act until after the person attains twenty-one years of age, *the juvenile court does not have jurisdiction to hear or determine any portion of the case charging the person with committing that act*. In those circumstances, * * * the case charging the person with committing the act shall be a criminal prosecution commenced and heard in the appropriate court having jurisdiction of the offense as if the person had been eighteen years of age or older when the person committed the act. *All proceedings pertaining to the act shall be within the jurisdiction of the court having jurisdiction of the offense*, and that court has all the authority and duties in the case as it has in other criminal cases in that court.

(Emphasis added.) R.C. 2151.23(I); *see also* R.C. 2152.12(J).

{¶ 15} Appellant acknowledges that these statutes required him to be prosecuted in the general division of the court of common pleas but argues that the statutes are unconstitutional as applied to him because they violate his right to a bindover under the state and federal constitution. Appellant does not identify any express right to be tried as a juvenile in the Ohio or United States Constitutions; instead, he seems to claim that such a right is impliedly created by due process guarantees of fundamental fairness. We disagree.

{¶ 16} In *Walls*, the Supreme Court of Ohio first addressed the constitutionality of the 1997 amendments to R.C. Chapter 2151, though it did so under the Retroactivity

Clause of the Ohio Constitution and the Ex Post Facto Clause of the United States Constitution. The defendant in that case, Walls, was indicted for an aggravated murder that occurred in 1985 when he was 15, and he was not indicted until 1998 when he was 29. *Id*. at ¶ 2, 4. Walls argued that the court of common pleas, general division, lacked subject matter jurisdiction to hear his case because the amended statutes were unconstitutionally retroactive as they violated his right to a bindover proceeding in juvenile court. *Id*. at ¶ 8.

{¶ 17} The Supreme Court of Ohio rejected Walls' jurisdictional arguments and found that the statutes requiring that he be tried as a juvenile withstood Walls' constitutional challenges. In rejecting Walls' retroactivity argument, the court determined that the statutes did not impair any substantive rights because Walls did not have a substantive right to a juvenile bindover proceeding under prior law: "Even under the law in effect in 1985, Walls was subject to criminal prosecution in the general division of a court of common pleas if the juvenile court made certain determinations specified by statute." *Id*. at ¶ 17, citing former R.C. 2151.26(A) and (E). Because either version of the law put Walls "on notice that the offense he allegedly committed could subject him to criminal prosecution as an adult in the general division of the court of common pleas," the court stated that "[t]he 1997 law merely removed the procedural prerequisite of a juvenile-court proceeding." *Id*.

{¶ 18} Six years later, the Supreme Court of Ohio was asked to determine whether R.C. 2152.02(C)(2), 2151.23(I), and 2152.12(J) violated due process and fundamental fairness in a case where the defendant was prosecuted as an adult and sentenced to life in prison for rape when he was 15 at the time of the offense. *State v. Warren*, 118 Ohio St.3d 200, 2008-Ohio-2011. In a lead opinion garnering three votes, the justices rejected the defendant's constitutional challenges by relying on the prior holding in *Walls*. *Warren* at ¶ 49. The justices determined that the application of R.C. 2152.02(C)(3), 2151.23(I), and 2152.12(J) did not affect a substantive right because "under either the 1985 bindover law or the 1997 law that was applied to him, Warren was on notice that the offense[s] he allegedly committed could subject him to criminal prosecution as an adult in the general division of the court of common pleas." *Id*. at ¶ 46, citing *Walls*.

{¶ 19} Ohio appellate districts have similarly relied on *Walls* in rejecting constitutional challenges nearly identical to those raised by appellant in the present case.

In *State v. Scharr*, 5th Dist. No. 2003CA00129, 2004-Ohio-1631, the defendant argued that his adult prosecution for gross sexual imposition violated constitutional guarantees of fundamental fairness, substantive due process, and equal protection because he was 17 at the time the crimes were alleged to have been committed. The Fifth District disagreed. In rejecting the defendant's claims that R.C. 2151.23(I) violated due process and fundamental fairness, the court relied on *Walls* and held that "changing the jurisdiction from the juvenile to the general division of the common pleas court did not involve any substantive right." *Schaar* at ¶ 27; *see also Warren* at ¶ 52 (citing *Schaar* with approval). The court also found no equal protection violation. *Id.* at ¶ 29. The court determined that there was a rational basis for R.C. 2151.23(I) in that the statute recognizes that persons who commit a crime as a juvenile but are not apprehended until after 21 are not likely to be amenable to the juvenile justice system. *Schaar* at ¶ 29. Likewise, in *State v. Fortson*, 11th Dist. No. 2011-P-0031, 2012-Ohio-3118, the Eleventh District rejected the defendant's claim that R.C. 2151.23(I) violated his fundamental right to be tried in juvenile court as well as his rights to due process and equal protection. The court found no authority supporting the view that the defendant had a fundamental right to be tried in juvenile court and stated that such a view would conflict with the holdings in *Walls*, *Schaar*, and *Warren*. *Id.* at ¶ 34, 43.

{¶ 20} We find the above authority to be particularly instructive in this case and reject appellant's claims that R.C. 2152.02(C)(2), 2151.23(I), and 2152.12(J) violated principles of due process and equal protection. While appellant asserts that the statutes violate his constitutional right to a bindover proceeding, the juvenile bindover procedure authorized by prior law was merely a "procedural prerequisite" rather than a substantive or fundamental right. *Walls* at ¶ 17; *Fortson* at ¶ 43; s*ee also State v. Washington*, 2nd Dist. No. 20226, 2005-Ohio-6546, ¶ 25 ("There is no constitutional right to be tried as a juvenile."). Thus, as stated in *Fortson*, we find that "due process and equal protection are not violated when a person in appellant's position is prosecuted in the general division pursuant to R.C. 2151.23(I)." *Fortson* at ¶ 34, citing *Warren*.

{¶ 21} Accordingly, appellant's first assignment of error is overruled.

B. Second and Third Assignments of Error

{¶ 22} Appellant's second and third assignments of error challenge the trial court's decision denying his motion to dismiss for preindictment delay. Courts engage in a two-step inquiry to determine whether a preindictment delay violates due process. First, the defendant must "produce evidence demonstrating that the delay has caused actual prejudice to his defense." *State v. Whiting*, 84 Ohio St.3d 215, 217, citing *State v. Luck*, 15 Ohio St.3d 150 (1984). If the defendant satisfies this burden, the state must then produce evidence of a justifiable reason for the delay. *Whiting* at 213, citing *Luck* at 158; *see also Walls* at ¶ 51; *United States v. Lovasco*, 431 U.S. 783, 790 (1977).

{¶ 23} Appellant claims that the delay created a "presumption of prejudice" because the juvenile court no longer had jurisdiction over his case. The concept of "presumptive prejudice," however, is inapplicable when assessing due process claims of preindictment delay. As stated by the Second District, "the notion of presumptive prejudice, applies only to postindictment delays which implicate the Sixth Amendment right to a speedy trial, and has no application to preindictment delays." *State v. Collins*, 118 Ohio App.3d 73, 77 (2nd Dist.1997); *see also State v. Schraishuhn*, 5th Dist. No. 2010-CA-00135, 2011-Ohio-3805, ¶ 31; *State v. Davis*, 7th Dist. No. 05 MA 235, 2007-Ohio-7216, ¶ 17. Appellant is required to prove that the delay caused him *actual* prejudice in presenting his defense. *Whiting* at 217; *Lovasco* at 789. Thus, his "contention that prejudice should be presumed is directly contradicted by Supreme Court precedent." *United States v. Schaffer*, 586 F.3d 414, 425 (6th Cir.2009).

{¶ 24} Appellant also argues that he was prejudiced because the time periods specified in the indictment were vague and prevented him from preparing a defense and filing a notice of alibi. This argument is unavailing for three reasons. First, an indictment need not specify the exact date of the offense charged, especially in cases involving child sex abuse committed over the span of several years. *In re Muth*, 10th Dist. No. 05AP-392, 2006-Ohio-1164, ¶ 7. Second, appellant fails to explain how the lack of specificity in the indictment was caused by the preindictment delay. Third, even if appellant could demonstrate actual prejudice, the record reveals a justifiable reason for the delay. It was undisputed that the victims did not come forward until Thanksgiving of 2009, and the case was reported to law enforcement in January 2010—only one year before the case was

presented to a grand jury. As the *Walls* court stated in rejecting a similar challenge to a preindictment delay of 13 years, "[t]his situation is distinctly different from cases in which the state has compiled evidence but simply fails, or refuses, to take action for a substantial period." *Walls* at ¶ 56; *see also State v. Shilling*, 9th Dist. No. 08CA0002, 2008-Ohio-4951, ¶ 14.

{¶ 25} Therefore, appellant's second and third assignments of error are overruled.

C. Fourth and Seventh Assignments of Error

{¶ 26} Appellant's fourth and seventh assignments of error challenge the trial court's refusal to give two instructions requested by appellant. First, appellant argues that the trial court erred by refusing to provide the jury with "an enhanced venue instruction." (Appellant's brief, at 23.) Although the trial court's venue instruction correctly informed the jury that the state was required to prove beyond a reasonable doubt that each crime was committed in Franklin County, appellant claims that the instruction was deficient because it did not refer to venue as a constitutional right. We disagree.

{¶ 27} We review a trial court's refusal to provide a requested jury instruction for an abuse of discretion. *State v. Wolons*, 44 Ohio St.3d 64, 68 (1989). Generally, "a trial court must fully and completely give the jury all instructions which are relevant and necessary for the jury to weigh evidence and discharge its duty as the fact finder." *State v. Comen*, 50 Ohio St.3d 206 (1990), paragraph two of the syllabus. "[I]f the law is clearly and fairly expressed, a reviewing court should not reverse a judgment." *State v. Adams*, 3rd Dist. No. 3-06-24, 2007-Ohio-4932, ¶ 27, citing *Margroff v. Cornwell Quality Tools, Inc.*, 81 Ohio App.3d 174, 177 (1991). Reversal is appropriate only if the instruction given in error is so misleading so as to prejudice the party seeking reversal. *State v. Harry*, 12th Dist. No. CA2008-01-0013, 2008-Ohio-6380, ¶ 34.

{¶ 28} In this case, we find that the venue instruction given by the trial court clearly and correctly informed the jury regarding the state's burden to prove venue beyond a reasonable doubt. While the trial court's instruction did not refer to venue as a constitutional right, appellant cites no authority requiring such language. "[T]he trial court is not required to give instructions in the exact language requested by the defendant." *Columbus v. Aleshire*, 187 Ohio App.3d 660, 2010-Ohio-2773, ¶ 56 (10th Dist.), citing *State v. Madrigal*, 87 Ohio St.3d 378, 394 (2000). Moreover, appellant does

not explain how the trial court's instruction would have resulted in prejudice. Any such claim would likely fail because appellant's counsel eventually gave the requested instruction anyway during closing arguments. (Tr. 306.) Accordingly, even appellant has not shown an abuse of discretion in the venue instruction provided by the trial court.

{¶ 29} Next, appellant presents a conclusory challenge to the trial court's refusal to instruct the jury as to the offense of contributing to the unruliness of a minor under R.C. 2919.24 as a lesser included offense of rape involving a child under 13 pursuant to R.C. 2907.02(A)(1)(b). Appellant offers no relevant authority supporting this position; he fails to apply or reference the standard for determining lesser included offenses; and he does not identify which subdivision in R.C. 2919.24, the contributing statute, he believes to be a lesser included offense.

{¶ 30} An offense may be a lesser included offense of another if "(i) the offense carries a lesser penalty than the other; (ii) the greater offense cannot, as statutorily defined, ever be committed without the lesser offense, as statutorily defined, also being committed; and (iii) some element of the greater offense is not required to prove the commission of the lesser offense." *State v. Deem*, 40 Ohio St.3d 205 (1988), paragraph three of the syllabus; *see also* R.C. 2945.74 and Crim.R. 31(C). "Even though an offense may be statutorily defined as a lesser included offense of another, a charge on such lesser included offense is required only where the evidence presented at trial would reasonably support both an acquittal on the crime charged and a conviction upon the lesser included offense." *State v. Thomas*, 40 Ohio St.3d 213 (1988), paragraph two of the syllabus.

{¶ 31} Appellant was indicted with rape in violation of R.C. 2907.02(A)(1)(b), which prohibits an individual from engaging in sexual conduct with another person, not his spouse, who "is less than thirteen years of age, whether or not the offender knows the age of the other person." In contrast, the statute defining the offense of contributing to the unruliness of a minor, R.C. 2919.24, prohibits an individual from doing any of the following:

> (1) Aid, abet, induce, cause, encourage, or contribute to a child or a ward of the juvenile court becoming an unruly child, as defined in section 2151.022 of the Revised Code, or a delinquent child, as defined in section 2152.02 of the Revised Code;

> (2) Act in a way tending to cause a child or a ward of the juvenile court to become an unruly child, as defined in section 2151.022 of the Revised Code, or a delinquent child, as defined in section 2152.02 of the Revised Code[.]

{¶ 32} Even if we were to assume that contributing to the unruliness of a minor is a lesser included offense of rape under R.C. 2907.02(A)(1)(b), appellant still fails to prove that the evidence presented at trial would reasonably support both an acquittal on the crime charged and a conviction upon the lesser included offense. *See Thomas* at paragraph 2 of the syllabus. Upon review of the record, there was no evidence adduced at trial that would have supported both an acquittal on the rape counts and a conviction for the offense of contributing to the unruliness of a minor. Therefore, we find no abuse of discretion in the trial court's refusal to give a lesser-included-offense instruction.

{¶ 33} Accordingly, appellant's fourth and seventh assignments of error are overruled.

D. Fifth Assignment of Error

{¶ 34} Appellant's fifth assignment of error challenges the trial court's denial of his motion to sever the charges for each of the three victims. According to appellant, the joinder of the charges prejudiced his defense because the witnesses were able to corroborate each other's testimony.

{¶ 35} To demonstrate a trial court's error in denying severance, a defendant must establish (1) that his rights were prejudiced, (2) that at the time of the motion to sever he provided the trial court with sufficient information so that it could weigh the considerations favoring joinder against the defendant's right to a fair trial, and (3) that given the information provided to the court, it abused its discretion in refusing to separate the charges for trial. *State v. Schaim*, 65 Ohio St.3d 51, 59 (1992); *State v. Torres*, 66 Ohio St.2d 340 (1981), syllabus.

{¶ 36} "The law favors joining multiple offenses in a single trial under Crim.R 8(A) if the offenses charged 'are of the same or similar character.' " *State v. Lott*, 51 Ohio St.3d 160, 163 (1990), quoting *Torres*. "Joinder conserves judicial and prosecutorial time, lessens the not inconsiderable expenses of multiple trials, diminishes inconvenience to witnesses, and minimizes the possibility of incongruous results in successive trials before different juries." *State v. Thomas*, 61 Ohio St.2d 223, 225 (1980). Nevertheless, Crim.R.

14 empowers a trial court to sever the trial of multiple offenses if the defendant can affirmatively demonstrate prejudice from joinder. *State v. Kring*, 10th Dist. No. 07AP-610, 2008-Ohio-3290, ¶ 62. To that end, the defendant "must furnish the trial court with sufficient information so that it can weigh the considerations favoring joinder against the defendant's right to a fair trial." *Lott* at 163, quoting *Torres* at syllabus.

{¶ 37} The state can negate a defendant's claim of prejudice in two ways. *State v. LaMar*, 95 Ohio St.3d 181, 2002-Ohio-2128, ¶ 50. First, if the state shows that evidence of one offense would be admissible at a separate trial of the other offense as "other acts" evidence under Evid.R. 404(B), then joinder of the offenses in the same trial cannot prejudice the defendant. *Id*. Second, a joinder cannot result in prejudice if the evidence of the offenses joined at trial is simple and direct, so that a jury is capable of segregating the proof required for each offense. *Id*. "These two tests are disjunctive, so that the satisfaction of one negates a defendant's claim of prejudice without having to consider the other test." *State v. Gravely*, 188 Ohio App.3d 825, 2010-Ohio-3379, ¶ 38 (10th Dist.).

{¶ 38} In this case, appellant offered no explanation in the trial court as to how joinder would result in prejudice, nor did he furnish the court with adequate information to support such a claim. Nevertheless, any claim would have been negated because the evidence of the offenses was simple and direct. *LaMar* at ¶ 50. The counts involved different victims and different witnesses, and the mere fact that the three witnesses may have corroborated each other's testimony did not necessarily render the jury incapable of segregating the proof required for each offense. In fact, the jury in this case arrived at not guilty verdicts for one count involving Child 2 and one count involving Child 1. Moreover, because the offense generally occurred when all three victims were present, the record indicates that each victim's testimony would be admissible in separate trials involving the other victims under Evid.R. 404(B). *See State v. Markwell*, 5th Dist. No. CT2011-0056, 2012-Ohio-3096, ¶ 48 (joinder of offenses involving separate child victims proper where victims were family members and stayed overnight with the defendant).

{¶ 39} Accordingly, appellant's fifth assignment of error is overruled.

E. Sixth Assignment of Error

{¶ 40} In his sixth assignment of error, appellant argues that the trial court erred in refusing to allow him to impeach each victim at trial by playing prior videotaped statements from each victim. Without relying on any particular rule of evidence, appellant seems to suggest that the videotapes contained prior inconsistent statements from the victims that cast doubt on their credibility. However, appellant never proffered the allegedly inconsistent statements in the trial court, and he does not identify any specific statements here on appeal. Upon review of the record, it appears that appellant did not attempt to introduce the videotapes until after the close of his case. Thus, to the extent appellant implies that the videotapes constituted extrinsic evidence of prior inconsistent statements under Evid.R. 613(B), appellant never actually attempted to impeach the witnesses as he now claims. Thus, appellant has failed to demonstrate an abuse of discretion. *See State v. Sage*, 31 Ohio St.3d 173, 182 (1987). Accordingly, his sixth assignment of error is overruled.

F. Eighth and Ninth Assignments of Error

{¶ 41} Appellant's eighth and ninth assignments of error challenge his sentence on several grounds, all of which are premised on his belief that he should have been treated as a juvenile at sentencing. Appellant argues (1) he was entitled to the "reverse bindover" procedure authorized for juveniles by R.C. 2152.121(B)(3); (2) he could not be incarcerated beyond his 21st birthday under R.C. 2151.16; and (3) the trial court was required to determine whether he was a juvenile offender registrant under R.C. 2152.83, rather than a sexually oriented offender.

{¶ 42} However, as explained in our discussion of appellant's first assignment of error, the juvenile court lacked jurisdiction "to hear or determine any portion of the case." R.C. 2151.23(I); R.C. 2152.12(J). Because appellant was not taken into custody or apprehended until after he achieved the age of 21, he was not a "child" subject to the jurisdiction of the juvenile court. R.C. 2152.02(C)(3). Therefore, to the extent appellant claims that the trial court was prohibited from imposing an adult sentence, his arguments lack merit.

{¶ 43} Appellant also asserts that, because the crimes were committed when he was a juvenile, his 15-year sentence violated his protection against cruel and unusual

punishment as guaranteed by the Eighth Amendment of the United States Constitution and Section 9, Article I, Ohio Constitution. However, "because appellant did not raise this constitutional challenge at sentencing, he failed to preserve the issue for appellate review." *State v. Tobin*, 10th Dist. No. 11AP-776, 2012-Ohio-1968, ¶ 10, citing *State v. Awan*, 22 Ohio St.3d 120 (1986), holding limited by *In re M.D.*, 38 Ohio St.3d 149 (1988) (constitutional arguments not raised at trial are generally deemed waived).

{¶ 44} Nevertheless, even if appellant's arguments were preserved for review, appellant fails to explain how his sentence constituted cruel and unusual punishment. " '[A]s a general rule, a sentence that falls within the terms of a valid statute cannot amount to a cruel and unusual punishment.' " *State v. Hairston*, 118 Ohio St.3d 289, 2008-Ohio-2338, ¶ 21, quoting *McDougle v. Maxwell*, 1 Ohio St.2d 68, 69 (1964). " '[C]ases in which cruel and unusual punishments have been found are limited to those involving sanctions which under the circumstances would be considered shocking to any reasonable person.' " *State v. Weitbrecht*, 86 Ohio St.3d 368, 371 (1999), quoting *McDougle* at 70. Furthermore, the penalty must be " 'so greatly disproportionate to the offense as to shock the sense of justice of the community.' " *Hairston* at ¶ 14, quoting *Weitbrecht* at 371.

{¶ 45} Based on the above, we find no merit to appellant's claims that his sentence was grossly disproportionate to that of what he describes as a similarly-situated juvenile. Like the defendant in *Warren*, appellant "is not 'similarly situated' to a juvenile who is charged with rape and not bound over for a trial; therefore, his sentence need not be proportionate to a sentence received by such an offender." *Warren* at ¶ 57.

{¶ 46} Therefore, appellant's eighth and ninth assignments of error are overruled.

III. CONCLUSION

{¶ 47} For the above reasons, we overrule appellant's nine assignments of error. Having overruled his assignments of error, we affirm the judgment of the Franklin County Court of Common Pleas.

Judgment affirmed.

KLATT and FRENCH, JJ., concur.