[Cite as *In re M.C.*, 2013-Ohio-2109.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

In re:	:	
		No. 12AP-618
M.C.,	:	(C.P.C. No. 10JU-04-04683)
(Appellant).	:	(REGULAR CALENDAR)

D E C I S I O N

Rendered on May 23, 2013

Steven Mathless, for appellant.

Ron O'Brien, Prosecuting Attorney, and *Katherine J. Press*, for appellee.

APPEAL from the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch.

SADLER, J.

{¶ 1} M.C., appellant, appeals from a judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, adjudicating him a delinquent minor for committing one count of rape and two counts of gross sexual imposition. For the following reasons, we affirm.

I. BACKGROUND

{¶ 2} The juvenile delinquency complaint, filed on April 6, 2010, alleged that, between June 2008 and February 2009, when appellant was 17 years old, he committed sexual acts on D.A., a child under 13 years old. Count 1 alleged that appellant committed rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony if committed by an adult, by having D.A. perform fellatio on him. The complaint also alleged appellant committed

three counts of gross sexual imposition in violation of R.C. 2907.05(A)(4), which are third-degree felonies if committed by an adult. In particular, Count 2 alleged that appellant committed gross sexual imposition by placing his penis on D.A.'s lips, Count 3 alleged that appellant touched D.A.'s penis with his hand, and Count 4 alleged that appellant placed his penis on D.A.'s buttocks.

{¶ 3} An adjudicatory hearing commenced before a magistrate on October 19, 2010, and the facts at the hearing were as follows. Ten-year old D.A. lived with his nine-year old brother, S.S., and their father, K.A. D.A. testified that his neighbor, T.C., who is appellant's mother, used to watch him and his brother while K.A. was at work. D.A. said appellant "touched [him] in inappropriate areas." (Oct. 19, 2010, Tr. 15.) D.A. testified that, when he was at T.C.'s house, appellant would remove D.A.'s shoes, pants, and underwear and lay on top of D.A. and put his penis in D.A.'s "butt." (Oct. 19, 2010, Tr. 26.) D.A. said that "pee" comes out of a "penis." (Oct. 19, 2010, Tr. 17-18.) D.A. further indicated that appellant would also use his penis to touch D.A.'s penis. According to D.A., appellant wanted D.A. to touch his penis, and D.A. said that he touched appellant's penis with his hand a few times, although he "[t]ried not to." (Oct. 19, 2010, Tr. 29.) D.A. could not stop appellant from molesting him because D.A. "was little" and "didn't know how to fight." (Oct. 19, 2010, Tr. 26.)

{¶ 4} D.A. next testified that a tube was placed up his buttocks by appellant in S.S.'s presence while they were in the bathroom when T.C. was not home. The tube was one and one-half foot long and as thick as D.A.'s pinkie finger, and appellant placed the whole tube in D.A.'s buttocks. At one end of the tube was a red ball, which was too big to fit in D.A.'s buttocks. D.A. screamed during the assault and left blood on the tube that was inserted in his buttocks.

{¶ 5} The first time appellant molested D.A. was when T.C. was at the food pantry. The other times occurred when T.C. was either away from the house or asleep in her room. D.A. testified that he was seven years old and appellant was 17 years old when the incidents occurred. According to D.A., the incidents occurred each day that he was at T.C.'s house. At one time, D.A. testified that T.C. watched him for four or five

weeks, but another time he said that he was not sure how many weeks or months she watched him. S.S. was present when appellant molested D.A., and appellant tried to molest S.S., but was unable to do so because S.S. would fight when appellant tried to get on top of him.

{¶ 6} D.A. claimed that appellant stopped molesting him after he told T.C. about the molestation. D.A. does not remember when he told his father about what appellant had done to him, but testified that he told his father about appellant because appellant would not stop molesting him. As a result, his father refused to leave D.A. and S.S. at T.C.'s house. D.A. testified that his family later moved in with M.B., and D.A. denied telling M.B. about appellant. D.A. also said that his "maw-maw" found out about what appellant did to him when K.A. told her. (Oct. 19, 2010, Tr. 40.)

{¶ 7} D.A. noted that he once went to the doctor after he disclosed appellant's conduct. Although he did not remember everything that he told the doctor, he testified he did not disclose appellant inserted a tube into his buttocks.

{¶ 8} D.A. admitted that he lies a lot about things like his grades and how his day is going. He said that his father told him that he had to tell the truth in front of a judge or else be put in jail. D.A. said his brother lied about stealing two balls from their after-school program and claimed that his father never lies because he is "perfect." (Oct. 19, 2010, Tr. 59.)

{¶ 9} On cross-examination, D.A. said that he did not know what the terms "inappropriate," "penis" or "molest" mean. (Oct. 19, 2010, Tr. 48, 49, 54.) He also denied telling anyone that appellant molested S.S. D.A. acknowledged that when T.C. was watching him, she would often take him with her when she went to places such as the food pantry. He further noted that there were about five different times that T.C. left him at her house with appellant. During those times, T.C. would be gone from an hour to half a day.

{¶ 10} D.A. denied that his father told him to disclose that appellant's penis went in his buttocks. D.A. also said that appellant's penis went in his buttocks "half the time," but he later acknowledged that he did not know if that statement was actually correct.

(Oct. 19, 2010, Tr. 72.) D.A. also indicated that it was not true when he testified that appellant stopped touching him when he told T.C., but reiterated that T.C. did not leave appellant alone with him after he told her that appellant molested him. D.A. further acknowledged that he did not tell T.C. about appellant inserting a tube into his buttocks. D.A. additionally said that, while living with M.B., he and his father would see M.B. ask for crack cocaine and money on the street after midnight or at 6:00 a.m. D.A. was unable to say what crack cocaine looked like.

{¶ 11} On redirect examination, D.A. testified that the term "molest" means to "do something nasty," and he claimed that appellant did "something nasty" to his "[p]enis and [b]utt." (Oct. 20, 2010, Tr. 19.) He also reiterated that appellant touched him in "inappropriate" places—his "penis" and "behind." (Oct. 20, 2010, Tr. 20.)

{¶ 12} S.S. was nine years old when he testified. Following a competency hearing, the magistrate found S.S. competent to testify. S.S. testified that he and appellant watched movies at T.C.'s house when T.C. was at work and that many of the movies showed people "[h]umping each other" with their clothes off. (Oct. 26, 2010, Tr. 12.) Appellant gave S.S. and D.A. "wedgies" by "pulling" up their underwear and dragging them on the floor. (Oct. 26, 2010, Tr. 14.) S.S. would get "carpet burn" on his face when appellant did this to him. (Oct. 26, 2010, Tr. 14.) Appellant once tried to get on top of S.S., but S.S. ran away. S.S. also saw appellant "hump" D.A. while D.A. had his pants off and was lying on his belly. According to S.S., humping means that their bodies were laying down and appellant's body was moving. Appellant would do this to D.A. "a lot." (Oct. 26, 2010, Tr. 29.) The first time it happened was when T.C. was at work. According to S.S., the humping also happened one time when T.C. was at home watching D.A. and S.S., and it happened many times when T.C. left appellant to watch D.A. and S.S.

{¶ 13} S.S. claims that D.A. does not lie very much, except for about "peeing on the toilet seat." (Oct. 26, 2010, Tr. 40.) S.S. has lied about breaking toys and about getting someone else named "Nick" in trouble. (Oct. 26, 2010, Tr. 41.) Lastly, S.S. said that his father never tells him to lie.

{¶ 14} On cross-examination, S.S. said that he does not know what the term "hump" means. (Oct. 26, 2010, Tr. 25.) S.S. testified that there were a lot of times that appellant touched D.A. when appellant was left alone to baby-sit, but that there was only one time that he saw appellant touch D.A. with his pants down when T.C. was babysitting them. S.S. later testified that appellant did not touch D.A. when T.C. was home. S.S. said that he never saw appellant touch D.A. in the bathroom. Finally, he testified that appellant touched him when he was taking a nap but did not specify where he was touched.

{¶ 15} On redirect examination, S.S. reiterated that, when he said he saw appellant "humping" D.A., he meant that D.A. and appellant were "[l]aying down" and appellant was "[m]oving." (Oct. 26, 2010, Tr. 48.)

{¶ 16} K.A. testified that T.C. baby-sat for D.A. and S.S. from June until almost Christmas 2008 and that K.A. had stopped using T.C. as a babysitter prior to him learning about his sons being sexually abused. K.A. did not give a date on when he learned about the sexual abuse, but he did indicate that he noticed that D.A. was "acting out" after the abuse. (Nov. 9, 2010, Tr. 24.) K.A. reported appellant to the police on the same day he learned about the sexual abuse. Approximately two or three weeks after K.A. contacted the police, he claimed he was confronted at his house by appellant and appellant's brother and cousin. K.A. admitted owning one pornographic movie that he believes that appellant took.

{¶ 17} On cross-examination, K.A. said that he lived with M.B. in 2009, and denied letting his sons stay up until midnight or watching activity on the street with them. K.A. further denied having 30 pornographic movies before living with M.B. and denied having a conversation with M.B. in which she told him he had to get rid of those movies.

{¶ 18} Also on cross-examination, K.A. said that he and his sons lived with a woman he used to date named R.P. and her brother, V.P., and mother, D.S., for about four months in 2004 or 2005. K.A. denied telling T.C. that V.P. abused his children. He claimed that he told T.C. that V.P. "had a sexual behavior problem." (Nov. 9, 2010, Tr.

7.) K.A. also denied telling anyone from Youth Advocate Services that his children had been abused prior to appellant's conduct. The prosecution's objection to these questions pertaining to D.A. and S.S. being sexually abused by anyone other than appellant was overruled. Lastly, K.A. denied sexually abusing D.A.

{¶ 19} At the conclusion of K.A.'s testimony, the magistrate reversed her decision overruling the prosecution's objection to the questions regarding sexual allegations against V.P. and struck the testimony on that subject on the basis that the testimony was barred under the rape shield law.

{¶ 20} Diane Lampkins, a forensic interviewer at the Center for Child and Family Advocacy ("CCFA"), was declared an expert in interviewing child victims. She testified that she interviewed D.A. and S.S. on August 28, 2009. The prosecution played a video recording of the interviews.

{¶ 21} The video revealed that, at the time of the interview, D.A. initially denied being sexually abused by anyone. When asked whether he told his mother or father about being sexually abused, D.A. said that he did not remember. D.A. eventually stated that he and S.S. had been sexually abused by appellant while at T.C.'s house. D.A. said that he was eight years old when the abuse occurred. D.A. discussed having a tube inserted in his bottom by appellant and asserted that appellant put his "private part" in D.A.'s bottom and mouth. D.A. claimed appellant wanted his "private part" to be touched by D.A., but D.A. refused. D.A. said that he was sexually abused by appellant everyday when he was at T.C.'s house and that S.S. was present during the abuse. According to D.A., S.S. laughed once when appellant inserted his penis in D.A.'s bottom. D.A. said that appellant would put his "private part" in S.S.'s bottom and that both he and S.S. were present when appellant watched movies showing naked boys and girls. D.A. lastly said that appellant threatened to kill D.A.'s father if D.A. told anyone about the sexual abuse.

{¶ 22} In S.S.'s interview with Lampkins, he told her that appellant touched D.A.'s "privates." Lampkins pointed to the buttocks on a drawing of a boy and asked S.S. if someone would be correct by saying that appellant stuck a "private part" there,

and S.S. said yes. He did not explain what he meant specifically and, throughout the interview, denied being sexually abused by appellant. S.S. said that he was present when appellant watched movies showing naked people.

{¶ 23} Lampkins testified that although D.A. and S.S.'s statements were inconsistent with each other, she saw no indications that either of the boys had been coached on their statements. Lampkins testified about her experiences with interviewing children, in general, and indicated that a child "might not be ready to disclose" sexual abuse because he may be afraid he would get into trouble or was threatened by his abuser not to say anything. (Nov. 17, 2010, Tr. 36.) Lampkins also said the child might be embarrassed or feel he allowed the abuse to happen. Lampkins further noted that a child might say he does not remember anything because it is difficult to talk about sexual abuse.

{¶ 24} Gail Horner, a pediatric nurse practitioner at CCFA, testified during a voir dire examination on her qualifications as follows. Horner has a Master's Degree in Nursing and has been a pediatric nurse at CCFA for 16 years. As part of her duties, she coordinates the pediatric sexual assault nurse examiner program for the Children's Hospital Emergency Department. She testified that she has experience examining children who are sexual abuse victims and that this experience includes examining the child's anus "for trauma" and that she has testified multiple times on child sexual abuse and has testified as an expert "regarding anal penetration as it relates to physical findings." (Nov. 18, 2010, Tr. 23, 26.) She said that she does not consider herself to be an expert in "determining whether or not there are interior tears to the anus if there are no exterior tears." (Nov. 18, 2010, Tr. 28.) She explained that if a child being examined "is bleeding out of their rectum and you can't see an external tear, then there could be a need for an internal exam. But that is certainly not the norm." (Nov. 18, 2010, Tr. 28-29.) And, she said that she is aware that "there are times when a child can have acute injury, meaning bruising, bleeding, an acute laceration, swelling. It would let us know that most likely penetration has occurred acutely within three or four days." (Nov. 18,

2010, Tr. 29.) The magistrate qualified Horner as an expert in conducting examinations of child sexual abuse victims.

{¶ 25} Horner testified that she conducted physical exams on D.A. and S.S. on August 28, 2009. Horner testified that both exams revealed no physical abnormalities and that 96 to 98 percent of children "who are giving history that ranges from fondling to a penis going in their vagina or a penis going in their anus, they have normal exams." (Nov. 18, 2010, Tr. 47.)

{¶ 26} D.A. told Horner that he was anally penetrated by a tube. Horner acknowledged that injury to a person's large intestine could occur if an 18-inch hard object was inserted in his anus. Horner testified that she did not perform an internal examination on D.A. because he was not exhibiting symptoms, such as bleeding or pain, that would indicate "that there was any type of internal injury" and that she was not aware that D.A. was bleeding after the tube was inserted in his rectum. (Nov. 18, 2010, Tr. 49.) Horner said that "[l]ess than four percent of children who are sexually abused and examined beyond the 72 hour point will have a physical finding that's consistent with either vaginal penetration or anal penetration." (Nov. 18, 2010, Tr. 48.) She indicated that a child could have been bleeding after an object was inserted in his anus, but two or three weeks later that child would exhibit no symptoms of an internal injury.

{¶ 27} D.S. testified that she is called "maw-maw" by D.A. and S.S., although her daughter, R.P., is not the mother of the boys. (Nov. 19, 2010, Tr. 6.) In April 2009, D.A. told her that appellant put his penis in D.A.'s mouth and butt. D.A. also told her that appellant did something to S.S., but he did not go into details. D.S. took D.A. to his father and then D.A. told K.A. about appellant molesting him.

{¶ 28} On cross-examination, the prosecution objected to the defense's attempt to elicit testimony from D.S. regarding allegations of sexual abuse by V.P. The magistrate sustained the objection. The defense proffered testimony from D.S. for the record, which indicated that, although V.P. was accused of sexually abusing a young girl by inappropriately touching her, he was never charged. D.S. testified that K.A. told her that he caught V.P. lying next to D.A. and S.S. when the boys and K.A. lived with V.P. and

R.P., but that K.A. was unsure if V.P. was going to sexually assault the boys. D.S. further acknowledged that V.P. was molested when he was nine years old and that he has received "sexual offender" treatment since that time. (Nov. 19, 2010, Tr. 20.) D.S. explained that V.P. was in the treatment program because she put him there and not because charges were filed against him.

{¶ 29} The prosecution rested its case-in-chief, and appellant's defense counsel asked the magistrate to reconsider her decision to not allow K.A. and D.S.'s testimony regarding allegations of V.P.'s sexual history. Defense counsel claimed that he is establishing that V.P. sexually abused D.A. and S.S. and that this information is relevant because it may explain the young boys' knowledge about sexual acts. The magistrate responded, "even though there's an indication that the Court should have allowed it for purposes of showing that the sexual knowledge could be attributable to another person's misconduct, then * * * I will allow * * * the prior testimony to stand." The magistrate also said, "I will, at some point * * * listen to the proffered testimony, and determine at the end of the trial if there is clear proof to the Court that prior acts occurred, and then of course we go to step number two of whether that affected the child's sexual knowledge, and if so, did it affect it to the point where the Court feels that there's no other proof that would be sufficient." The magistrate likewise said she would consider "whatever else" the defense plans to provide on the matter. (Nov. 23, 2010, Tr. 11-12.)

{¶ 30} Pursuant to Crim.R. 29, appellant moved for an acquittal on Counts 1 and 2 on grounds that the evidence failed to show that D.A. performed fellatio on appellant. The prosecution stated that, if the magistrate concludes that fellatio did not occur, she should amend the complaint to assert that appellant engaged in anal penetration with D.A. The magistrate overruled appellant's Crim.R. 29 motion and concluded there was sufficient evidence of the act of fellatio to withstand the motion. The magistrate indicated that the prosecution could request an amendment of the complaint, but the prosecution did not do so. Appellant next moved for an acquittal on all counts on grounds that the prosecution's witnesses were not credible because they provided inconsistent testimony. The magistrate denied the motion.

{¶ 31} Amy Davis, a social worker employed with the National Youth Advocate Program, testified on appellant's behalf and stated that she scheduled counseling appointments for D.A. and S.S. in February 2008 because K.A. told her that the boys had been sexually abused. K.A. did not give a timeframe for when the sexual abuse occurred and did not identify the abuser. The prosecution's objection to the testimony on grounds that it violated the rape shield law was overruled by the magistrate.

{¶ 32} T.C. also testified on behalf of appellant. She acknowledged that she baby-sat for D.A. and S.S. for six to seven months preceding February 2008, but later testified that she stopped babysitting in February 2009. She explained that she took D.A. and S.S. with her wherever she went except that on two occasions she left appellant alone with the boys for 15 to 20 minutes while she was at the food pantry. T.C. denied owning an object with a red ball and plastic tube. She testified that appellant's television in his bedroom did not have access to cable, but that he could watch movies on a DVD player. According to T.C., D.A. and S.S. never complained to her that appellant was touching them inappropriately and that she never heard or observed anything which caused her to believe that they were being abused. T.C. also denied K.A. telling her that appellant sexually abused D.A. and S.S.

{¶ 33} Defense counsel asked T.C. if K.A. told her that his sons had previously been sexually abused before she baby-sat for them. The prosecution objected, and the magistrate sustained the objection after concluding that K.A. was never asked whether that conversation occurred. The magistrate allowed defense counsel to make a proffer for the record, but noted that she would disregard the proffer because she sustained the prosecution's objection. During the proffer, T.C. testified that K.A. told her that V.P. had molested D.A. and S.S. when K.A. and his sons lived with R.P. and V.P. T.C. noted that K.A. did not say specifically what V.P. did to the boys.

{¶ 34} Appellant testified on his own behalf that he did not touch D.A. or S.S. with his penis, did not insert a tube in D.A.'s bottom, did not watch pornographic movies with those boys, and did not injure or cause rug burns to the boys. Appellant admitted that T.C. left him alone with D.A. and S.S. on two separate occasions, and he

denied that anything inappropriate happened at the time. Appellant acknowledged that he had a television in his room, but he said it was not "hooked up" and that he did not watch anything on it. (Nov. 29, 2010, Tr. 99.) He admitted that he once told detectives investigating his case that he watched television and movies in his bedroom, but said he was not being truthful at that time. He further admitted that he, his brother, and a man named R.K. approached K.A. on April 23, 2009 about the charges levied against him, and they left when K.A. pulled a knife on them. Appellant also testified that K.A. had over 20 pornographic DVDs at his house, but admitted that he did not relate that fact to the detectives investigating his case.

{¶ 35} M.B. testified on appellant's behalf that she met K.A. through T.C. and that K.A. and his sons lived with her from summer 2009 to the end of November 2009. She noted that K.A. had 30 to 50 pornographic DVDs and that she would not allow them in her home. She also indicated that she did not have a drug problem when K.A. and his sons moved in with her. According to M.B., before K.A. and his sons moved in with her, K.A. told her that appellant had abused D.A. and S.S. S.S. had also indicated that appellant abused D.A., but denied any abuse directed toward him. She also testified that D.A. told her in early November 2009 that K.A. wanted him to accuse appellant of sexual abuse. M.B. told children services about her conversation with D.A. soon after it occurred, and she also testified that she mentioned the conversation to the investigating detective in March 2010.

{¶ 36} Defense counsel sought to elicit testimony from M.B. regarding K.A. telling her that V.P. molested D.A. and S.S., but the prosecution objected. The magistrate sustained the objection on grounds that K.A. was not asked about that conversation. The magistrate instead allowed defense counsel to proffer that testimony for the record. As part of that proffer, M.B. indicated that the molestation occurred before the time appellant was to have abused K.A.'s sons, but K.A. did not give her details of what V.P. did to his sons.

{¶ 37} Defense counsel also sought to elicit testimony from M.B. regarding D.A. telling her, during their conversation in early November 2009, that K.A. sexually abused

him. The prosecution objected, and the magistrate sustained the objection on grounds that defense counsel did not question D.A. about this allegation. Therefore, defense counsel proffered the testimony for the record. M.B. mentioned during the proffer that one time, when D.A. and his family were living with her, she had checked on him while he was taking a bath, and he told her to have K.A. stay out of the bathroom because K.A. "had put his finger in his rear end and it hurt him." (Dec. 9, 2010, Tr. 28.) When M.B. asked K.A. about it, he said that "when he washed [D.A.'s] rear end * * * his finger might have * * * slipped * * * but not as him putting his finger in [D.A.'s] rear end." (Dec. 9, 2010, Tr. 29.)

{¶ 38} The proffer of M.B.'s testimony also indicated that, sometime in early November 2009, D.A. told her that K.A. "would make" D.A. perform oral sex on S.S.; however, M.B. did not state precisely when that sexual conduct occurred. (Dec. 9, 2010, Tr. 28.) She testified that she had caught D.A. and S.S. performing oral sex on one another while they were living with her.

{¶ 39} After appellant rested his case, the prosecution moved to amend Count 1 of the complaint "to reflect penetration with an object instead of * * * fellatio." (Jan. 4, 2011, Tr. 12.) The prosecution also moved to add charges of rape by anal penetration with a penis and rape by fellatio. Over appellant's objections, the magistrate granted the motion to amend Count 1, but denied the motion to add the additional charges. As amended, Count 1 alleged that appellant committed rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony if committed by an adult, the same statutory violation charged in the original juvenile delinquency complaint.

{¶ 40} By oral decision rendered on January 13, 2011, the magistrate found appellant a delinquent minor for having committed rape, as alleged in the amended Count 1, and gross sexual imposition, as alleged in Counts 3 and 4. The magistrate dismissed Count 2. On January 25, 2011, the magistrate issued its decision in writing. At a dispositional hearing held on March 24, 2011, the magistrate placed appellant on probation until April 24, 2012. Pursuant to R.C. 2152.83(A)(1), the magistrate classified appellant a juvenile sex offender registrant, and it allowed the parties to address which

tier of sex offenders it should classify appellant. The prosecution requested that the magistrate classify appellant as a Tier III sex offender, which contains lifetime registration requirements under R.C. 2950.07(B)(1). Appellant requested that he be classified "the least tier possible." (March 24, 2011, Tr. 12.) The magistrate found appellant to be a Tier I juvenile sex offender registrant and ultimately informed him of his duty to report and register with the local sheriff for ten years.

{¶ 41} On April 4, 2011, appellant filed objections to the magistrate's decision challenging the juvenile delinquency finding on Counts 1, 3, and 4. On August 12, 2011, appellant filed supplemental objections challenging the magistrate's decision to strike testimony concerning prior sexual abuse of S.S. and D.A. Appellant also challenged the magistrate's decision prohibiting him from eliciting testimony on that prior sexual abuse. Appellant further challenged the magistrate's decision to amend Count 1, and he contended that the juvenile delinquency findings are against the manifest weight of the evidence. On April 5, 2012, appellant filed another supplemental objection claiming that the sex offender reporting and registration requirements are unconstitutional. On July 12, 2012, the trial court issued a written decision overruling appellant's objections to the magistrate's decision and "affirmed" the magistrate's decision.[1]

II. ASSIGNMENTS OF ERROR

{¶ 42} Appellant filed a timely notice of appeal and assigns the following as error:

1. The trial court erred in permitting the State to amend the complaint after the close of the evidence over Appellant's objection to a charge of anal rape from a charge of oral rape.

2. Appellant's convictions for anal rape in Count One of the Complaint, and for Gross Sexual Imposition on Counts Three and Four of the Complaint was against the manifest weight of the evidence.

[1] Neither party disputes that the trial court's July 12, 2012 decision constitutes an adoption of the magistrate's decision pursuant to Civ.R. 53(D)(4)(a). We have reviewed the trial court's decision and determined it to constitute a proper adoption of the magistrate's decision. *See In re Estate of Knowlton*, 1st Dist. No. C-050728, 2006-Ohio-4905; *In re Adoption of S.R.A.*, 189 Ohio App.3d 363, 2010-Ohio-4435 (10th Dist.).

3. The trial court erred and violated Appellant's constitutional right to present evidence as grounded in the Confrontation and Compulsory Process Clauses of Section 10, Article I of the Ohio Constitution and the Sixth Amendment to the United States Constitution in striking evidence and refusing to admit evidence of prior sexual abuse of D.A. and S.[S.] which would explain their unusual knowledge of sexual activity.

4. M.C.'s conviction for anal rape was a material variance from the complaint which charged him with oral rape and violated Appellant's federal and state due process right to fair notice, due process, and a right to a fair trial.

5. M.C.'s sex offender reporting requirements and registration are unconstitutional.

III. DISCUSSION

A. First and Fourth Assignments of Error

{¶ 43} Because they concern similar issues, we begin by addressing appellant's first and fourth assignments of error, in which appellant argues that the trial court, through the magistrate, erred by amending Count 1 of the complaint from rape by fellatio to rape by anal penetration. We disagree.

{¶ 44} The Rules of Juvenile Procedure apply to the proceedings in which appellant's sex offenses were tried. *In re Spann*, 10th Dist. No. 98AP-839 (June 3, 1999). Juv.R. 22(B) governs the amendments of complaints in juvenile court and states, in relevant part:

> Any pleading may be amended at any time prior to the adjudicatory hearing. After the commencement of the adjudicatory hearing, a pleading may be amended upon agreement of the parties or, if the interests of justice require, upon order of the court. A complaint charging an act of delinquency may not be amended unless agreed by the parties, if the proposed amendment would change the name or identity of the specific violation of law so that it would be considered a change of the crime charged if committed by an adult.

{¶ 45} The trial court's decision to amend a juvenile delinquency complaint will not be reversed absent an abuse of discretion. *In re Felton*, 124 Ohio App.3d 500, 503 (3d Dist.1997). An abuse of discretion connotes more than an error of law or judgment; it implies that the court's attitude is unreasonable, arbitrary or unconscionable. *Blakemore v. Blakemore*, 5 Ohio St.3d 217, 219 (1983).

{¶ 46} To support his challenge to the trial court's decision to amend Count 1, appellant relies on *In re Reed*, 147 Ohio App.3d 182, ¶ 33 (8th Dist.2002), in which the court concluded that it was improper for the trial court to sua sponte amend a juvenile delinquency complaint at the end of an adjudicatory hearing from attempted felonious assault count to felonious assault by means of deadly weapon count. The court stated that a charge in a juvenile delinquency complaint can only be amended after the commencement of an adjudicatory hearing if the amended charge is a lesser-included offense of the original charge. *Id.* at ¶ 21. The court concluded that the amendment to the complaint under review was improper because that amended charge was not a lesser-included offense of the original charge. *Id.* at ¶ 21-33.

{¶ 47} Appellant also relies on *In re C.A.*, 8th Dist. No. 93525, 2010-Ohio-3508, ¶ 12, in which the court concluded that the trial court improperly sua sponte amended a charge in a juvenile delinquency complaint at the conclusion of an adjudicatory hearing because the amended charge of rape by substantial impairment is not a lesser-included offense of the original charge of forcible rape. Lastly, appellant relies on *In re Hutchison*, 7th Dist. No. 07-BE-28, 2008-Ohio-3237, ¶ 9-34, in which the court concluded that the trial court improperly sua sponte amended a charge in a juvenile delinquency complaint at the conclusion of an adjudicatory hearing because the amended charge of possessing a deadly weapon in a school safety zone was not a lesser-included offense of the original charge of attempted possession of a weapon in a school safety zone.

{¶ 48} In each of the cases cited by appellant, the courts based their decision on the Staff Notes to Juv.R. 22(B), which states that the 1994 revision to that rule "prohibits the amendment of a pleading after the commencement or termination of the

adjudicatory hearing unless the amendment conforms to the evidence presented and also amounts to a lesser included offense of the crime charged." Although the Staff Notes to Juv.R. 22(B) appear to restrict amendments to juvenile delinquency complaints after commencement of an adjudicatory hearing to situations when the amendment involves a lesser-included offense to the original offense, the staff notes to a procedural rule are not binding. *Freeman v. Beech Aircraft Corp.*, 12th Dist. No. 80-11-0119 (Sept. 30, 1983).

{¶ 49} The Supreme Court of Ohio has indicated that rules of court must be interpreted in conformity with their plain text. *State v. Silverman*, 121 Ohio St.3d 581, 2009-Ohio-1576, ¶ 20-26. In *In re B.M.*, 8th Dist. No. 80909, 2003-Ohio-870, the court allowed a juvenile delinquency complaint to be amended even though the amendment did not involve a lesser-included offense. Specifically, the court upheld the trial court's decision to amend a count in a juvenile delinquency complaint at the dispositional hearing from murder by a purposeful killing, in violation of R.C. 2903.02(A), to murder by felonious assault, in violation of R.C. 2903.02(B). *Id.* at ¶ 27-30. While the court noted that the appellant technically forfeited the issue by failing to object to the amendment, the court went on to state that the amendment was proper because "amending the specific paragraph section of the murder charge, from R.C. 2903.02(A) to R.C. 2903.02(B), to conform to the evidence did not change the name or identity of the offense; the offense remained murder." *Id.* at ¶ 30. The court noted that " 'Juv.R. 22(B) permits the court to amend a pleading, on its own order, after the commencement of the adjudicatory hearing. The court needs permission to amend a complaint alleging delinquency only if the amendment would change the name or identity of the offense.' " *Id.* at ¶ 29, quoting *In re Smith*, 142 Ohio App.3d 16, 24 (8th Dist.2001).

{¶ 50} Likewise, in *In re M.P.*, 8th Dist. No. 93152, 2010-Ohio-2216, ¶ 16, the court concluded that a trial court was authorized to amend a juvenile delinquency complaint after the evidence was presented at an adjudicatory hearing from a count of rape to a count of attempted rape. The court noted that "attempted rape is not a lesser included offense of rape," but indicated that the amendment was proper because "Juv.R.

22 clearly allows the trial court to amend the complaint to conform to the evidence." *Id.* at ¶ 13, 16.

{¶ 51} In our view, the analysis contained in *In re M.P.* and *In re B.M.* conform with the plain text of Juv.R. 22(B), which makes no mention of an amendment to a juvenile delinquency complaint being limited to lesser-included offenses. Therefore, we agree with their rationale and apply the plain text of Juv.R. 22(B) to determine whether the trial court abused its discretion when it amended the juvenile delinquency complaint in this case.

{¶ 52} As above, after the commencement of an adjudicatory hearing, Juv.R. 22(B) authorizes the amendment of a juvenile delinquency complaint, in the interest of justice, when the amendment does not change the name or identity of the offense. This court has held that amending a rape count from one type of sexual conduct to another type does not change the name or identity of the rape offense. *State v. Martin*, 10th Dist. No. 05AP-818, 2006-Ohio-2749, ¶ 9. Although *Martin* concerned the amendment of an indictment against an adult, pursuant to Crim.R. 7(D), we may properly look to cases applying that rule when considering an amendment made, pursuant to Juv.R. 22(B), because "Juv.R. 22(B) essentially corresponds to Crim.R. 7(D)." *In re B.M.* at ¶ 29. Therefore, we conclude that the trial court did not change the name or identity of the rape offense alleged in Count 1 when it amended it from rape by fellatio to rape by anal penetration.

{¶ 53} Appellant next contends that he was prejudiced by the amended count because the amendment was made after the close of evidence, and, therefore, he never had proper notice before the adjudicatory hearing of the true nature of the rape count and that this violated his right to due process and a fair trial. Appellant asserts that he could not be adjudicated a delinquent on the amended count because of the prejudice he suffered from the amendment. In *In re M.P.* and *In re B.M.*, the appellate court allowed the trial court to amend the juvenile delinquency complaint after all evidence had been presented. Although those cases did not address the issue of whether the juvenile was prejudiced by the amendment, we find no prejudice to appellant here. Appellant's

defense during the adjudicatory hearing was that he did not engage in any sexual conduct with D.A., and the amendment of Count 1 did not deprive him of his ability to assert that defense. In addition, after D.A. testified about being raped by anal penetration with a tube, appellant cross-examined him about that allegation and attempted to discredit the claim through his questioning of T.C. on whether she owned such a tube and his questioning of Horner regarding whether her physical examination of D.A. revealed signs that he was anally penetrated.

{¶ 54} Therefore, contrary to appellant's assertions, he had notice that D.A. was alleging rape by anal penetration at the adjudicatory hearing, and he took advantage of the opportunity to defend against that specific accusation.

{¶ 55} For all these reasons, we conclude that the trial court did not abuse its discretion when it amended Count 1 from oral rape by fellatio to rape by anal penetration. We overrule appellant's first and fourth assignments of error.

B. Third Assignment of Error

{¶ 56} For ease of analysis, we next address appellant's third assignment of error, in which he argues that the trial court erred by excluding evidence of prior sexual abuse suffered by D.A. and S.S. We disagree.

{¶ 57} This court reviews a trial court's decision to exclude evidence under an abuse of discretion standard. *State v. Jells*, 53 Ohio St.3d 22, 30 (1990). Although the trial court changed its decision on the matter several times, there was a point in the trial whereby it allowed testimony about K.A. alleging that his sons were previously abused before the time period that appellant was to have abused D.A. Consequently, despite appellant's assertion to the contrary, the court had evidence to consider regarding whether it believed that D.A. and S.S. had a history of being sexually abused.

{¶ 58} We first address the trial court's decision as it pertains to T.C. and M.B.'s proffered testimony that K.A. told them that D.A. was previously sexually abused. The trial court disallowed the testimony on grounds that defense counsel failed to ask K.A. whether he made that statement to those witnesses. While the record shows that defense counsel did ask K.A. whether he made the statement to T.C., we conclude, for

the following reasons, that the trial court correctly disallowed the proffered testimony from both T.C. and M.B. as it relates to D.A.

{¶ 59} R.C. 2907.02(D) and 2907.05(E) govern the introduction of evidence pertaining to a victim's sexual history. Although the statutes are identically worded, R.C. 2907.02(D) applies to rape prosecutions, and R.C. 2907.05(E) applies to gross sexual imposition prosecutions. *State v. Kenney*, 10th Dist. No. 09AP-231, 2010-Ohio-3740, ¶ 18. The statutes are commonly referred to as "Ohio's rape shield laws." *Id.*

{¶ 60} Pursuant to both statutes:

> Evidence of specific instances of the victim's sexual activity, opinion evidence of the victim's sexual activity, and reputation evidence of the victim's sexual activity shall not be admitted under this section unless it involves evidence of the origin of semen, pregnancy, or disease, or the victim's past sexual activity with the offender, and only to the extent that the court finds that the evidence is material to a fact at issue in the case and that its inflammatory or prejudicial nature does not outweigh its probative value.

R.C. 2907.02(D) and 2907.05(E).

{¶ 61} Those statutes are "not always applied literally, as in some instances, it might infringe upon a defendant's constitutional right to confront witnesses." (Citations omitted.) *State v. N.D.C.*, 10th Dist. No. 06AP-790, 2007-Ohio-5088, ¶ 21. This court has recognized that, despite the language in R.C. 2907.02(D) and 2907.05(E), evidence of prior sexual abuse to a victim, who is a child of tender years, may be admissible for the defense to show the source for the child's sexual knowledge. *Kenney* at ¶ 20. That evidence attempts to "dissuade" a factfinder "from concluding that a defendant must be guilty of sex offenses being prosecuted, given the extraordinary sexual knowledge of a child victim of tender years." *Id.*, citing *N.D.C.* at ¶ 35. "Through the evidence of a child's prior sex abuse, the defendant attempts to exonerate himself by showing that the child's sexual knowledge was attributable to another person's misconduct." *Id.*

{¶ 62} Appellant contends that the trial court abused its discretion by not allowing the testimony from T.C. and M.B. regarding K.A.'s statement to them that D.A. had been previously sexually abused because the testimony would explain the source for

the sexual knowledge of D.A., who was only ten years old when he testified. In *N.D.C.*, this court recognized the probative value of evidence establishing a young victim's prior sexual abuse when the evidence shows more than " 'prior *general* sexual activity' " between the victim and another, but instead shows the abuse was " '*identical* to that which he claims to have been abused' " by the defendant on trial. (Emphasis sic.) *Id.* at ¶ 30, quoting *In re Michael*, 119 Ohio App.3d 112, 120 (2d Dist.1997).

{¶ 63} In *State v. Young*, 8th Dist. No. 92127, 2009-Ohio-5354, ¶ 2, a defendant was being tried for raping a victim under the age of ten. The defendant sought to introduce evidence that the victim was previously sexually abused when a man made the victim hold his penis. *Id.* at ¶ 28. The defense claimed that evidence of the prior sexual abuse would establish an alternate source for the victim's sexual knowledge in order to rebut an inference that the victim "would not otherwise have knowledge of sexual activity" unless the defendant was guilty. *Id.* at ¶ 11. The trial court concluded that the evidence was inadmissible under the rape shield law. *Id.* On appeal, the appellate court recognized that evidence of the victim's prior sexual abuse must be relevant to the issues in the defendant's trial. *Id.* at ¶ 33. The court recognized that, under Evid.R. 401, relevant evidence means " 'evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' " *Id.* at ¶ 37, quoting Evid.R. 401. The court noted that " '[w]hen evidence is offered to show a child's knowledge of sexual acts, its relevance * * * depends on whether the prior abuse closely resembles the acts in question.' " *Id.* at ¶ 33, quoting *State v. Budis*, 593 A.2d 784, 790 (N.J.1991). " 'The reason for requiring similarity between the acts is that prior acts are more likely to affect the child's ability to describe the acts in question if they closely resemble the previous ones.' " *Id.*, quoting *Budis* at 790. The court then concluded that, because evidence of the victim's prior sexual abuse was not similar to the rape allegations made against the defendant, the evidence was irrelevant and, therefore, inadmissible. *Id.* at ¶ 37.

{¶ 64} Here, the proffered evidence from T.C. and M.B. indicated that D.A. was the victim of prior sexual abuse, but they did not give specifics on what type of abuse

occurred. On the authority of *N.D.C.* and *Young*, we conclude that T.C. and M.B.'s proffered evidence lacked sufficient specificity to establish that D.A. was the victim of prior sexual abuse that closely resembled appellant's conduct and, therefore, the evidence was of insufficient probative value toward indicating an alternate source for D.A.'s sexual knowledge of the conduct appellant was accused of engaging in. Accordingly, the proffered evidence was irrelevant, and the trial court did not abuse its discretion by determining that it was inadmissible.

{¶ 65} The proffered evidence from T.C. and M.B. also indicated that S.S. was the victim of prior sexual abuse, but, like the proffered testimony set forth above, the proffered evidence did not contain specifics on the type of abuse that had occurred. The analysis of *N.D.C.* and *Young* is pertinent because they examine the relevancy of evidence regarding whether a young child's prior sexual abuse indicates an alternate source for his sexual knowledge, and, here, appellant contended that the prior sexual abuse of the young S.S. establishes an alternate source for his knowledge about the sexual terms he was using at trial when he implicated appellant in the sexual abuse of D.A. *N.D.C.* and *Young* indicated that evidence of a child's prior sexual abuse does not establish an alternate source for his sexual knowledge when the prior sexual abuse is not similar to the sex acts he describes when testifying in a sex offense trial.

{¶ 66} As above, both T.C. and M.B.'s proffered evidence lacked sufficient specificity to establish that S.S. was the victim of prior sexual abuse that closely resembled appellant's conduct, and, therefore, the evidence was of insufficient probative value toward indicating an alternate source for S.S.'s sexual knowledge of the conduct appellant was accused of engaging in. Accordingly, the proffered evidence was irrelevant, and the trial court did not abuse its discretion by determining that it was inadmissible.

{¶ 67} M.B. also proffered evidence indicating that D.A. told her that K.A. inserted his finger in D.A.'s buttocks and that K.A. made D.A. perform oral sex on S.S. That type of sexual conduct is similar to the type of conduct appellant was accused of engaging in, i.e., appellant engaging in anal penetration of D.A. and placing his penis on

D.A.'s lips. But we cannot say that the conduct pertaining to K.A. with D.A. and S.S. was relevant toward explaining an alternate source for the children's sexual knowledge because the record indicates that K.A. inserted his finger in D.A.'s rectum after the specific allegations against appellant first came out in April 2009 by D.A., and there is nothing in the record to indicate that K.A. was making S.S. and D.A. engage in oral sex before D.A. revealed the allegations against appellant in April 2009 or even before S.S.'s August 28, 2009 conversation with Lampkins at CCFA, in which S.S. discussed appellant's sexual conduct with D.A. In fact, despite appellant's broadly worded third assignment of error, he does not even argue that the trial court should have admitted M.B.'s proffered testimony pertaining to K.A.'s conduct with S.S. and D.A. Accordingly, we conclude that the trial court did not abuse its discretion by refusing to admit that proffered testimony into evidence.

{¶ 68} Having concluded that the trial court properly refused to admit the proffered evidence previously discussed, we need not determine whether that evidence, if permitted, would violate the rape shield law. Therefore, to summarize, we conclude that the trial court did not abuse its discretion by excluding evidence of prior sexual abuse suffered by D.A. and S.S. Accordingly, we overrule appellant's third assignment of error.

C. Second Assignment of Error

{¶ 69} In his second assignment of error, appellant challenges the decision of the trial court, through the magistrate, finding that he is a juvenile delinquent for having committed one count of rape and two counts of gross sexual imposition. Appellant contends that those findings are against the manifest weight of the evidence. We disagree.

{¶ 70} Our review of the manifest weight of the evidence in a juvenile delinquency adjudication is the same as for criminal defendants. *In re C.S.*, 10th Dist. No. 11AP-667, 2012-Ohio-2988, ¶ 23. In determining whether a verdict is against the manifest weight of the evidence, the appellate court acts as a "thirteenth juror." *Id.* at ¶ 26. Under this standard of review, the appellate court weighs the evidence in order to

determine whether the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." *State v. Thompkins*, 78 Ohio St.3d 380, 387 (1997). The appellate court must bear in mind the factfinder's superior, first-hand perspective in judging the demeanor and credibility of witnesses. *In re C.S.* at ¶ 26. The power to reverse on manifest-weight grounds should only be used in exceptional circumstances when " 'the evidence weighs heavily against the conviction.' " *Thompkins* at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983).

{¶ 71} A defendant is not entitled to a reversal on manifest-weight grounds merely because inconsistent evidence was offered at trial. *In re C.S.* at ¶ 27. The trier of fact is free to believe or disbelieve any or all of the testimony presented. *Id.* The trier of fact is in the best position to take into account the inconsistencies in the evidence, as well as the demeanor and manner of the witnesses, and to determine which witnesses are more credible. *Id.* Consequently, although an appellate court must sit as a "thirteenth juror" when considering a manifest weight argument, it must also give great deference to the trier of fact's determination on the credibility of the witnesses. *Id.*

{¶ 72} Appellant was accused of, and found delinquent for, committing rape in violation of R.C. 2907.02(A)(1)(b), which provides, in relevant part, that "[n]o person shall engage in sexual conduct with another who is not the spouse of the offender * * * when * * * [t]he other person is less than thirteen years of age, whether or not the offender knows the age of the other person." Appellant was also accused of, and found delinquent for, committing gross sexual imposition, in violation of R.C. 2907.05(A)(4), which provides, in relevant part, that "[n]o person shall have sexual contact with another, not the spouse of the offender * * * when * * * [t]he other person * * * is less than thirteen years of age, whether or not the offender knows the age of that person."

{¶ 73} Appellant contends that the juvenile delinquency findings are against the manifest weight of the evidence because there was no physical evidence connecting him to the sex offenses. We reject appellant's assertion because there is no requirement that

a defendant's conviction for a sex offense be based on physical evidence. *State v. Johnson*, 112 Ohio St.3d 210, 2006-Ohio-6404, ¶ 53.

{¶ 74} Appellant next contends that the trial court lost its way by believing the prosecution's witnesses because their testimony contained inconsistencies and was refuted by witnesses for the defense. " '[W]here a factual issue depends solely upon a determination of which witnesses to believe, that is the credibility of witnesses, a reviewing court will not, except upon extremely extraordinary circumstances, reverse a factual finding either as being against the manifest weight of the evidence or contrary to law.' " *In re L.J.*, 10th Dist. No. 11AP-495, 2012-Ohio-1414, ¶ 21, quoting *In re Johnson*, 10th Dist. No. 04AP-1136, 2005-Ohio-4389, ¶ 26.

{¶ 75} D.A. indicated at trial that appellant raped him by inserting a tube into his buttocks and that appellant committed gross sexual imposition by touching D.A.'s penis and placing his penis on D.A.'s buttocks. Other witnesses for the prosecution verified that D.A. reported the sexual abuse to them, and S.S. indicated at trial that appellant "humped" D.A. while D.A. had his pants off, and S.S. indicated in his interview with Lampkins that he saw appellant place his "private part" in D.A.'s buttocks.

{¶ 76} The trial court, as trier of fact, was in the best position to consider the discrepancies in the evidence offered, as well as the demeanor and manner of the witnesses, and to determine which of those witnesses were more credible. The trial court accepted evidence proving that appellant committed rape, as alleged in Count 1, and gross sexual imposition, as alleged in Counts 3 and 4, and we cannot say that this was one of the rare cases in which the trier of fact clearly lost its way such that a miscarriage of justice requiring reversal of appellant's juvenile delinquency findings has occurred. Consequently, the trial court's finding appellant to be a delinquent minor for having committed one count of rape and two counts of gross sexual imposition are not against the manifest weight of the evidence. Accordingly, we overrule appellant's second assignment of error.

D. Fifth Assignment of Error

{¶ 77} Appellant's fifth assignment of error concerns his reporting and registration requirements imposed pursuant to his classification as a Tier I juvenile sex offender registrant. Appellant argues that the requirements cannot stand because they are unconstitutional. We disagree.

{¶ 78} Appellant was classified as a Tier I juvenile sex offender registrant under S.B. No. 10, which was implemented in response to the federal Adam Walsh Act. *State v. Young*, 10th Dist. No. 10AP-911, 2011-Ohio-2374, ¶ 3. S.B. No. 10 establishes a three-tiered classification, and an offender's duty to report and register depends on his classification. *State v. Bodyke*, 126 Ohio St.3d 266, 2010-Ohio-2424, ¶ 21-23. As we have already recognized, appellant was classified as a Tier I juvenile sex offender registrant under R.C. 2152.83. Pursuant to R.C. 2950.07(B)(3), appellant had a duty to report and register for ten years due to his Tier I classification.

{¶ 79} Appellant argues that the reporting and registration requirements are unconstitutional pursuant to *In re C.P.*, 131 Ohio St.3d 513, 2012-Ohio-1446. In that case, the Supreme Court of Ohio decided whether R.C. 2152.86 violated the Cruel and Unusual Punishment Clause of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment to the United States Constitution. *Id.* at ¶ 1. Pursuant to R.C. 2152.86, juveniles are public-registry-qualified juvenile-offender registrants if they (1) were 14 through 17 years old when the offense was committed, (2) have been adjudicated a delinquent child for committing certain specified sexually-oriented offenses, and (3) have had a court impose on them a serious youthful offender dispositional sentence. *Id.* at ¶ 13. These offenders are to be classified under Tier III. *Id.* at ¶ 85-86. Therefore, the offenders "are automatically subject to mandatory, lifetime sex-offender registration and notification requirements" because they are automatically labeled Tier III offenders *Id.* at ¶ 1. The court held that R.C. 2152.86 violated the Cruel and Unusual Punishment Clause of the Eighth Amendment and the Due Process Clause of the Fourteenth Amendment because it "imposes automatic, lifelong registration and notification requirements on juvenile sex offenders tried within

the juvenile system." *Id.* at syllabus. The court contrasted R.C. 2152.86 with sex offender classifications made "through a traditional juvenile disposition," which provides the trial court with more discretion in the imposition of the reporting and registration requirements because "the court holds a hearing to determine [the offender's] tier classification." *Id.* at ¶ 20.

{¶ 80} Appellant was not labeled a sex offender under R.C. 2152.86, the statute deemed unconstitutional in *In re C.P.* In addition, appellant's classification does not trigger the requirements that the court in *In re C.P.* found invalid. As we have already recognized, *In re C.P.* concerned lifetime duties under S.B. No. 10 that were automatically imposed on a juvenile. Here, the trial court had discretion in determining which tier classification applied to appellant, and, based on the court classifying appellant as a Tier I offender, appellant's duty was to report and register as a sex offender for ten years.

{¶ 81} In *In re A.H.*, 10th Dist. No. 09AP-186, 2010-Ohio-5434, ¶ 10-13, this court has previously held that the Cruel and Unusual Punishment Clause of the Eighth Amendment does not bar reporting and registration requirements imposed on a juvenile pursuant to the trial court exercising its discretion in determining the juvenile's tier classification. Likewise, in *In re I.A.*, 2d Dist. No. 25078, 2012-Ohio-4973, ¶ 3-7, the court determined that the Fourteenth Amendment Due Process Clause did not bar reporting and registration requirements imposed on a juvenile pursuant to the trial court exercising its discretion in determining the juvenile's tier classification. The court noted that *In re C.P.* was distinguishable because that case involved lifetime reporting and notification requirements that were automatically imposed on a juvenile. *In re I.A.* at ¶ 6, fn. 5.

{¶ 82} For all these reasons, we conclude that appellant's reporting and registration requirements under S.B. No. 10 do not violate the Eighth Amendment Cruel and Unusual Punishment Clause or the Fourteenth Amendment Due Process Clause. Accordingly, we overrule appellant's fifth assignment of error.

IV. CONCLUSION

{¶ 83} Having overruled appellant's five assignments of error, the judgment of the Franklin County Court of Common Pleas, Division of Domestic Relations, Juvenile Branch, is hereby affirmed.

Judgment affirmed.

KLATT, P.J., and DORRIAN, J., concur.
