[Cite as *In re J.M.P.*, 2025-Ohio-2441.]

IN THE COURT OF APPEALS OF OHIO
FOURTH APPELLATE DISTRICT
ATHENS COUNTY

In Re J.M.P.,	:	
	:	
Adjudicated Delinquent Child.	:	Case No. 25CA2
	:	
	:	
	:	DECISION AND JUDGMENT ENTRY
	:	
	:	

APPEARANCES:

Christopher Bazeley, Cincinnati, Ohio, for appellant.

Timothy L. Warren, Athens County Assistant Prosecuting Attorney, Athens, Ohio, for appellee.

Smith, P.J.

{¶1} Appellant, J.M.P., appeals the trial court's judgment that (1) adjudicated him a delinquent child for committing multiple sexually oriented offenses that would be felonies if an adult committed them and (2) committed him to the Department of Youth Services (DYS). First, appellant asserts that sufficient evidence does not support the trial court's judgment adjudicating him delinquent for committing rape and gross sexual imposition and that its judgment is against the manifest weight of the evidence. Next, appellant contends that the trial court erred as a matter of law by classifying him a juvenile offender registrant. Last, appellant argues that the trial court erred by failing to merge the adjudications

involving rape and gross sexual imposition. After our review, we do not find any merit to appellant's assignments of error. Accordingly, we overrule appellant's assignments of error and affirm the trial court's judgment.

FACTS

{¶2} In March 2022, law enforcement officers learned that appellant's cell phone may contain photographs of nude, female minors. Additional investigation revealed that appellant's phone contained a video recording that showed a young female engaging in oral and manual stimulation of a male's penis. The recording showed that the female "was visibly crying in the video." Law enforcement officers subsequently identified the male as appellant and the female victim as C.J.

{¶3} On February 14, 2023, a complaint was filed that alleged that appellant was a delinquent child for committing multiple sexually oriented offenses that would constitute felonies if an adult had committed them: (1) rape, in violation of R.C. 2907.02(A)(2); (2) seven counts of pandering sexually oriented matter involving a minor or impaired person, in violation of R.C. 2907.322(A)(1); (3) two counts of gross sexual imposition, in violation of R.C. 2907.05(A)(1); and (4) four counts of illegal use of a minor or impaired person in nudity-oriented material or performance, in violation of R.C. 2907.323(A)(1).

{¶4} Appellant later agreed to enter admissions to seven counts of pandering sexually oriented matter involving a minor or impaired person and to

four counts of illegal use of a minor or impaired person in nudity-oriented material or performance.[1] The court held an adjudication hearing regarding the remaining delinquency counts: (1) one count of rape; and (2) two counts of gross sexual imposition.

{¶5} At the adjudication hearing, the State presented the following evidence. In February 2022, the victim and appellant had been dating, and they went to a movie theater. Shortly after arriving, appellant asked the victim to go into the bathroom with him to vape and "to give him heads [sic] and stuff." The victim informed appellant that she was not "prepared for . . . that." With the intention to vape, the victim then accompanied appellant to the bathroom.

{¶6} After the victim and appellant entered one of the bathroom stalls, appellant kept telling her that if she wished to continue being his girlfriend, then she would need to "at least do something to him." The victim told appellant that she "wasn't ready." Appellant nevertheless "forced" the victim to the ground by "push[ing] her shoulders down." The victim sat on the ground and looked up at appellant. She informed him that she did not "want to do this today" and reiterated that she was "not ready." The victim kept telling appellant that he was making her "uncomfortable," and "then he just kind of put [his penis] in [her mouth]."

[1] The court did not enter a separate adjudication entry for the counts to which appellant admitted. However, the court's dispositional entry recites that the court adjudicated appellant delinquent for committing these offenses.

{¶7} Appellant also coaxed the victim into rubbing his penis by placing his hand over her hand. He then moved her hand in a back-and-forth motion over his penis. The victim stated that appellant had to move her hands for her because she was not "going to move them." At one point, appellant asked the victim if she thought that she would be able to move her hand back and forth on her own, and she replied, "no."

{¶8} The victim indicated that she did not further resist because she did not "want [appellant] to break up with [her]." After the incident, she told appellant that "what happened was not consensual." Appellant stated that no one would believe her.

{¶9} Appellant testified and stated that the victim consented to performing fellatio. He denied that the victim was upset or crying while performing the act. Appellant further denied that he used force or threatened to use force. He agreed, however, that he placed his hand on top of the victim's hand as she touched his penis. Appellant also admitted that he asked the victim if she thought that she could "do it on [her] own," and she replied, "no."

{¶10} On September 24, 2024, the trial court adjudicated appellant a delinquent child for committing one count of rape and one count of gross sexual imposition. The court found that appellant purposely compelled the victim to perform fellatio and to manually stimulate his penis by force or threat of force.

The court rejected appellant's assertion that the sexual interaction was consensual. The court noted that the victim's testimony and her demeanor displayed in the video recording of the incident established that appellant used force to compel the victim to engage in the conduct. The court noted that (1) the victim informed appellant that "she was not ready," (2) the victim cried during the encounter, and (3) appellant controlled the victim's hand to make her rub his penis.

{¶11} The court also found that the victim's will was overcome by fear and duress. The court explained that before the incident, appellant commented "on the victim's "lack of 'easy access' clothes," compared the victim to photos of other girls, and negatively commented upon the victim. The court further observed that appellant "is considerably bigger than the [v]ictim" and that the victim testified that she was afraid of appellant. The court thus found that appellant committed rape and one count of gross sexual imposition. The court dismissed the remaining count of gross sexual imposition.

{¶12} On February 14, 2025, the trial court noted that it had adjudicated appellant a delinquent child for engaging in conduct that would constitute the following criminal offenses, if committed by an adult: (1) rape, in violation of R.C. 2907.02(A)(2); (2) seven counts of pandering sexually oriented matter involving a minor or impaired person, in violation of R.C. 2907.322(A)(1); (3) gross sexual imposition, in violation of R.C. 2907.05(A)(1); and (4) four counts of illegal use of

minor or impaired person in nudity-oriented material or performance, in violation of R.C. 2907.323(A)(1). The court committed appellant to DYS's custody for an indefinite term consisting of concurrent, minimum terms of one year and maximum terms not to exceed appellant's 21st birthday. The court also classified appellant a tier I juvenile offender registrant. This appeal followed.

ASSIGNMENTS OF ERROR

I. THE TRIAL COURT'S DECISION ADJUDICATING J.P. DELINQUENT ON THE CHARGES OF RAPE AND [GROSS SEXUAL IMPOSITION] FOR THE FEBRUARY 14, 2022 INCIDENT ARE AGAINST THE WEIGHT OF THE EVIDENCE AND NOT SUPPORTED BY LEGALLY SUFFICIENT EVIDENCE.

II. THE TRIAL COURT ERRED AS A MATTER OF LAW WHEN IT ORDERED J.P. TO REGISTER AS A JUVENILE SEX OFFENDER.

III. THE TRIAL COURT ERRED WHEN IT FAILED TO MERGE J.P.'S DELINQUENCY ADJUDICATIONS FOR THE RAPE AND [GROSS SEXUAL IMPOSITION] CHARGES THAT BOTH AROSE FROM THE INCIDENT ON FEBRUARY 14, 2022.

I

{¶13} In his first assignment of error, appellant asserts that (1) the record does not contain sufficient evidence to support the trial court's judgment adjudicating him a delinquent child for committing rape and gross sexual imposition, and (2) the court's judgment is against the manifest weight of the

evidence. More specifically, appellant contends that the evidence fails to show that he used force or the threat of force to purposely compel the victim to engage in sexual conduct or contact with him.

A

{¶14} Initially, we observe that "sufficiency" and "manifest weight" present two distinct legal concepts.[2] *Eastley v. Volkman*, 2012-Ohio-2179, ¶ 23 ("sufficiency of the evidence is quantitatively and qualitatively different from the weight of the evidence"); *State v. Thompkins*, 78 Ohio St.3d 380 (1997), syllabus; *accord State v. Jordan*, 2023-Ohio-3800, ¶ 15 (lead opinion). A claim of insufficient evidence invokes a due process concern and raises the question whether the evidence is legally sufficient to support the delinquency adjudication as a matter of law. *Thompkins*, 78 Ohio St.3d at 386. When reviewing the sufficiency of the evidence, an appellate court's inquiry focuses primarily upon the adequacy of the evidence; that is, whether the evidence, if believed, reasonably could support a finding of delinquency beyond a reasonable doubt. *Id.* at syllabus. The "critical inquiry" on appeal is whether, after viewing the probative evidence and inferences reasonably drawn therefrom "in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the

[2] The same sufficiency and manifest-weight standards that apply in criminal and civil cases also apply to juvenile adjudications. *See In re Watson*, 47 Ohio St.3d 86, 91-92 (1989) (applying the same sufficiency and manifest-weight standards that apply in criminal and civil cases to a juvenile adjudication); *accord In re Sekulich*, 65 Ohio St.2d 13, 16 (1981) (applying the manifest-weight standard when reviewing a delinquency adjudication).

[offense] beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 318, 319 (1979); *e.g., State v. Jenks*, 61 Ohio St.3d 259, 273 (1991); *accord* R.C. 2151.35(A)(1) ("If the court at the adjudicatory hearing finds beyond a reasonable doubt that the child is a delinquent or unruly child or a juvenile traffic offender, the court shall proceed immediately . . . to hear the evidence as to the proper disposition to be made . . ."). Furthermore, a reviewing court is not to assess "whether the state's evidence is to be believed, but whether, if believed, the evidence against a defendant would support" the delinquency adjudication. *Thompkins*, 78 Ohio St.3d at 390 (Cook, J., concurring).

{¶15} Thus, when reviewing a sufficiency of the evidence claim, an appellate court must construe the evidence in a light most favorable to the prosecution. *E.g., State v. Hill*, 75 Ohio St.3d 195, 205 (1996); *State v. Grant*, 67 Ohio St.3d 465, 477 (1993). A reviewing court will not overturn a delinquency adjudication on a sufficiency-of-the-evidence claim unless reasonable minds could not reach the conclusion that the trier of fact did. *State v. Tibbetts*, 92 Ohio St.3d 146, 162 (2001); *State v. Treesh*, 90 Ohio St.3d 460, 484 (2001).

{¶16} "Although a court of appeals may determine that a judgment of a trial court is sustained by sufficient evidence, that court may nevertheless conclude that the judgment is against the weight of the evidence." *Thompkins*, 78 Ohio St.3d at 387. "The question to be answered when a manifest-weight issue is raised is

whether 'there is substantial evidence upon which a [trier of fact] could reasonably conclude that all the elements have been proved beyond a reasonable doubt.' " (Emphasis omitted.) *State v. Leonard*, 2004-Ohio-6235, ¶ 81, quoting *State v. Getsy*, 84 Ohio St.3d 180, 193-194 (1998), citing *State v. Eley*, 56 Ohio St.2d 169 (1978), syllabus.

{¶17} A court that is considering a manifest-weight challenge must " 'review the entire record, weigh the evidence and all reasonable inferences, and consider the credibility of witnesses.' " *State v. Beasley*, 2018-Ohio-493, ¶ 208, quoting *State v. McKelton*, 2016-Ohio-5735, ¶ 328. The reviewing court must bear in mind, however, that credibility generally is an issue for the trier of fact to resolve. *State v. Issa*, 93 Ohio St.3d 49, 67 (2001); *State v. Murphy*, 2008-Ohio-1744, ¶ 31 (4th Dist.). " 'Because the trier of fact sees and hears the witnesses and is particularly competent to decide "whether, and to what extent, to credit the testimony of particular witnesses," we must afford substantial deference to its determinations of credibility.' " *Barberton v. Jenney*, 2010-Ohio-2420, ¶ 20, quoting *State v. Konya*, 2006-Ohio-6312, ¶ 6 (2d Dist.), quoting *State v. Lawson*, 1997 WL 476684 (2d Dist. Aug. 22, 1997). As the *Eastley* court explained:

> " '[I]n determining whether the judgment below is manifestly against the weight of the evidence, every reasonable intendment must be made in favor of the judgment and the finding of facts. * * *

> If the evidence is susceptible of more than one construction, the reviewing court is bound to give it that interpretation which is consistent with the verdict and judgment, most favorable to sustaining the verdict and judgment.' "

Id. at ¶ 21, quoting *Seasons Coal Co., Inc. v. Cleveland*, 10 Ohio St.3d 77, 80, fn.3 (1984), quoting 5 Ohio Jurisprudence 3d, Appellate Review, § 60, at 191-192 (1978). Thus, an appellate court will leave the issues of weight and credibility of the evidence to the fact finder, as long as a rational basis exists in the record for its decision. *State v. Picklesimer*, 2012-Ohio-1282, ¶ 24 (4th Dist.); *accord State v. Howard*, 2007-Ohio-6331, ¶ 6 (4th Dist.) ("We will not intercede as long as the trier of fact has some factual and rational basis for its determination of credibility and weight.").

{¶18} Accordingly, if the prosecution presented substantial, credible evidence upon which the trier of fact reasonably could conclude, beyond a reasonable doubt, that the essential elements of the offense had been established, a delinquency adjudication is not against the manifest weight of the evidence. *E.g., Eastley* at ¶ 12, quoting *Thompkins*, 78 Ohio St.3d at 387, quoting *Black's Law Dictionary* 1594 (6th ed.1990) (judgment is not against the manifest weight of the evidence when " ' "the greater amount of credible evidence" ' " supports it). A court may reverse a delinquency adjudication only if it appears that the fact finder, when it resolved the conflicts in evidence, " 'clearly lost its way and created such a manifest miscarriage of justice that the [delinquency adjudication] must be

reversed and a new trial ordered.' " *Thompkins*, 78 Ohio St.3d at 387, quoting *State v. Martin*, 20 Ohio App.3d 172, 175 (1st Dist.1983). A reviewing court should find a delinquency adjudication against the manifest weight of the evidence only in the " 'exceptional case in which the evidence weighs heavily against the [adjudication].' " *Thompkins*, 78 Ohio St.3d at 387, quoting *Martin*, 20 Ohio App.3d at 175; *accord State v. Clinton*, 2017-Ohio-9423, ¶ 166; *State v. Lindsey*, 87 Ohio St.3d 479, 483 (2000).

{¶19} We also observe that a conclusion that a delinquency adjudication is not against the manifest weight of the evidence necessarily includes a conclusion that sufficient evidence supports the adjudication, i.e., both require a finding that the record contains evidence to establish the essential elements of the offense beyond a reasonable doubt. Thus, a determination that a delinquency adjudication is not against the manifest weight of the evidence also is dispositive of an insufficient-evidence claim. *See State v. Sims*, 2023-Ohio-1179, ¶ 120 (4th Dist.).

B

{¶20} R.C. 2907.02(A)(2) sets forth the essential elements of rape as alleged in appellant's delinquency complaint. The statute reads, "No person shall engage in sexual conduct with another when the offender purposely compels the other person to submit by force or threat of force." *Id.* "Sexual conduct" includes fellatio. R.C. 2907.01(A).

{¶21} R.C. 2907.05(A)(1) contains the essential elements of gross sexual imposition as alleged in appellant's complaint and provides as follows: "No person shall have sexual contact with another . . . when any of the following applies: (1) The offender purposely compels the other person . . . to submit by force or threat of force." " 'Sexual contact' means any touching of an erogenous zone of another, including without limitation the thigh, genitals, buttock, pubic region, or, if the person is a female, a breast, for the purpose of sexually arousing or gratifying either person.' " R.C. 2907.01(B).

{¶22} Both rape and gross sexual imposition, as charged in the case at bar, require the State to establish that the offender purposely compelled the other person to submit by force or threat of force. " 'Force' means *any* violence, compulsion, or constraint physically exerted by any means upon or against a person or thing.' " (Emphasis added.) R.C. 2901.01(A)(1). The word "any" indicates that the statute "requires only that minimal force or threat of force be used in the commission of the rape." *State v. Dye*, 82 Ohio St.3d 323, 328 (1998), citing *State v. Eskridge*, 38 Ohio St.3d 56, 58 (1988); *see also United States v. Gonzales*, 520 U.S. 1, 5 (1997) (the word "any' has an expansive meaning"); *State ex rel. Purdy v. Clermont Cty. Bd. of Elections*, 77 Ohio St.3d 338, 340 (1997), quoting *Webster's Third New International Dictionary* (1971) (the word "any" means " 'one or some indiscriminately of whatever kind' ").

{¶23} Moreover, the statutory definition of "force" indicates that the force used " 'need not be overt and physically brutal, but can be subtle and psychological,' " *Eskridge,* 38 Ohio St.3d at 58-59, quoting *State v. Fowler*, 27 Ohio App.3d 149, 154 (8th Dist. 1985); *accord Dye* at 327-328; *see Black's Law Dictionary* (12th ed. 2024) ("violence" generally means "[a] violent physical action; physical compulsion or constraint of someone or something"); https://www.merriam-webster.com/dictionary/compulsion (last visited May 2, 2025) ("compulsion" means "an act of compelling,", with "compelling" meaning "to drive or urge forcefully or irresistibly" or "to cause to do or occur by overwhelming pressure," https://www.merriam-webster.com/dictionary/compel); https://www.merriam-webster.com/dictionary/constraint ("constraint" means "the state of being checked, restricted, or compelled to avoid or perform some action"); https://www.merriam-webster.com/dictionary/physically ("physically" means "in a physical manner"). Thus, *any* amount of violence, compulsion, or constraint physically exerted, or threat thereof, "however slight," satisfies the force or threat-of-force element for rape and gross sexual imposition. S*ee State v. Heiney*, 2018-Ohio-3408, ¶ 122 (6th Dist.).

{¶24} In the case at bar, appellant asserts that the State did not present sufficient evidence to establish that he compelled the victim to submit by force or threat of force and that the trial court's conclusion that he did is against the

manifest weight of the evidence. He contends that the evidence fails to show that the victim "was in fear for her safety" and that her only fear was that appellant would end their relationship if she did not engage in sexual conduct or contact with him.

{¶25} We do not agree with appellant that the force or threat-of-force element required the State to prove that the victim feared for her safety if she did not engage in sexual conduct or contact with appellant. The definitions set forth above indicate that any amount of compulsion or constraint physically exerted satisfies the force element. Here, the video recording shows appellant physically constraining the victim's hand to force her to manually stimulate his penis. Appellant placed his hand over the victim's hand and moved the victim's hand in a back-and-forth motion to stimulate his penis. Appellant asked the victim if she thought that she could "do it on [her] own," and she stated, "no." This evidence is more than substantial evidence that appellant purposely compelled the victim to engage in sexual contact with him by the use of force. *See In re J.W.*, 2020-Ohio-4065, ¶ 14 (8th Dist.) (sufficient evidence of force to support gross sexual imposition when the evidence showed that the victim "did not place her hand on [the offender] of her own volition" and that "her hand only contacted [the offender]'s "erogenous zone because he forced her hand there"); *State v. Salti*, 2019-Ohio-149, ¶ 130 (8th Dist.) (taking the victim's hand and moving it to the

defendant's groin was an act of physical constraint that sufficiently established force to support a conviction for gross sexual imposition).

{¶26} Furthermore, the victim testified that appellant forced her to the ground by pushing her shoulders. The video recording depicts the victim sitting on the ground and resisting appellant's efforts by turning her head away. Appellant can be heard urging the victim to "put it in [her] mouth." The victim kept hiding her face and did not want to look at appellant. She wiped tears from her eyes and uttered, "no." At one point, appellant lifts up the victim's chin as he asks her to place his penis in her mouth. The victim shakes her head to indicate that she did not want to engage in that conduct; shortly thereafter, appellant placed his penis in the victim's mouth. This evidence establishes, beyond a reasonable doubt, that appellant purposely compelled the victim to perform fellatio by the use of force. *See State v. Jones*, 2013-Ohio-150, ¶ 27-28 (12th Dist.) (defendant's placement of his hands on the victim's head during the act of fellatio was a "physical constraint" sufficient to prove that the defendant used force); *State v. Ball*, 2008-Ohio-337, ¶ 27 (4th Dist.) (the jury could have reasonably concluded that the defendant had sexual contact with the victim through the use of force "when he pushed her head down to his penis causing his penis to touch her mouth"); *In re N.K.*, 2003-Ohio-7059, ¶ 17 (8th Dist.) (delinquent child's act of pushing 5-year-old victim's head down to perform oral sex act was sufficient to prove force). The State thus

presented more than ample evidence to establish that appellant compelled the victim to submit by the use of force.

{¶27} Even if appellant's conduct was not physically violent, he still engaged in acts that demonstrate compulsion and constraint physically exerted upon the victim. By placing his hands over the victim's hands to stimulate his penis and moving them against her will, appellant physically constrained the victim. Appellant physically compelled the victim to perform fellatio because she stated that she did not want to engage in that conduct, yet appellant pushed her shoulders down and placed his penis in her mouth. The video recording shows that the victim was terribly distraught and did not want to engage in the conduct. Appellant may not have used brute force, but the video recording shows that he exercised a degree of force sufficient to satisfy the force element for the offenses of rape and gross sexual imposition. As the above case law makes clear, any amount of compulsion or constraint physically exerted on the victim satisfies the force element. We therefore do not agree with appellant that the State failed to present sufficient evidence to support his adjudications for rape and gross sexual imposition or that his adjudications are against the manifest weight of the evidence.

{¶28} Accordingly, based upon the foregoing reasons, we overrule appellant's first assignment of error.

II

{¶29} In his second assignment of error, appellant contends that the trial court erred by classifying him a juvenile offender registrant. Appellant asserts that R.C. 2152.83(A) does not allow a trial court to classify a delinquent child a juvenile offender registrant unless the delinquent child was 16 or 17 years of age at the time of the offense. Appellant states that, at the time of the offense, he was only 15 years of age. He thus contends that the trial court erred as a matter of law when it ordered him to register as a juvenile offender registrant.

{¶30} The State argues that appellant's argument fails to recognize that the trial court classified him a juvenile offender registrant under R.C. 2152.83(B)(1), the discretionary registration provision that applies to offenders who were 14 or 15 years of age at the time of the offense, and not under R.C. 2152.83(A), the mandatory registration provision that applies to offenders who were 16 or 17 years of age at the time of the offense.

A

{¶31} We initially note that, during the classification hearing, appellant did not object to the trial court's pronouncement that classified him a juvenile offender registrant. A well-established rule of appellate procedure is that a party may not raise any new issues or legal theories for the first time on appeal. *See Independence v. Office of the Cuyahoga Cty. Executive*, 2014-Ohio-4650, ¶ 30 (stating that "an appellant generally may not raise an argument on appeal that the

appellant has not raised in the lower courts"); *accord State ex rel. White v. Aveni*, 2024-Ohio-1614, ¶ 22; *Stores Realty Co. v. Cleveland*, 41 Ohio St.2d 41, 43 (1975). Thus, a litigant who fails to raise an argument before the trial court forfeits the right to raise that issue on appeal. *See In re T.D.S.*, 2024-Ohio-595, ¶ 32 (juvenile forfeited an argument that the juvenile did not raise during the trial court proceedings); *see also State v. Quarterman*, 2014-Ohio-4034, ¶ 21 (explaining that the defendant forfeited his constitutional challenge by failing to raise it during the trial court proceedings).

{¶32} When a juvenile "forfeits the right to assert an error on appeal by failing to bring it to the trial court's attention in the first instance, an appellate court applies plain-error review." *State v. Jones*, 2020-Ohio-3051, ¶ 17, citing *State v. Rogers*, 2015-Ohio-2459, ¶ 21-22; *see State v. Morgan*, 2017-Ohio-7565, ¶ 49 (determining that criminal plain error standard also applies to juvenile delinquency appeals); *accord In re D.E.*, 2024-Ohio-1796, ¶ 10 (4th Dist.). Under the plain error standard of review, an appellant must demonstrate each of the following: (1) an error occurred; (2) the error was " 'an "obvious" defect in the trial proceedings' "; and (3) the error affected the appellant's substantial rights, *i.e.*, a reasonable probability exists that the error affected the outcome of the trial court proceedings. *State v. Kirkland*, 2020-Ohio-4079, ¶ 71, ¶ 72, quoting *State v. Barnes*, 94 Ohio St.3d 21, 27 (2002) (stating that a "plain" error is an "obvious"

error); *Rogers* at ¶ 22 (concluding that an error affects a defendant's substantial rights when a reasonable probability exists that the error affected the outcome of the trial court proceedings); *see also State v. LaRosa*, 2021-Ohio-4060, ¶ 40 (noting that under the criminal plain error standard, the defendant bears the burden to demonstrate plain error).

{¶33} In the case at bar, appellant cannot establish that the trial court committed any error—obvious or otherwise—by classifying him a juvenile offender registrant.

B

{¶34} "The age of a delinquent child at the time the offense was committed determines whether and how the child may be classified as a sex offender." *In re D.S.*, 2016-Ohio-1027, ¶ 13. If a 14 or 15-year-old delinquent child commits "a sexually oriented offense or a child-victim oriented offense," the trial court has discretion to classify the delinquent child a juvenile offender registrant, as long as the juvenile is not a repeat offender or a serious youth offender. *See id.* at ¶ 14, citing R.C. 2152.83(B) and *In re I.A.*, 2014-Ohio-3155, ¶ 6. Before classifying a delinquent child a juvenile offender registrant, the court must conduct "a hearing to consider certain statutory factors and determine whether the child should be labeled a juvenile-offender registrant." *Id.*; *see* R.C. 2152.83(B)(2). If the court decides to classify a delinquent child a juvenile offender registrant, the court also

"must conduct a tier-classification hearing to determine whether the child should be classified as a Tier I, II, or III sex offender." *Id.*, citing R.C. 2152.83(C) and 2152.831.

{¶35} In contrast to the discretionary provision contained in R.C. 2152.83(B), R.C. 2152.83(A)(1) requires a trial court to classify a delinquent child a juvenile offender registrant if the child was 16 or 17 years of age at the time of committing "a sexually oriented offense or a child-victim oriented offense," and the delinquent child is not a repeat offender or a serious youth offender. *See In re D.F.*, 2022-Ohio-3436, ¶ 7 (4th Dist.) (stating that R.C. 2152.83(A)(1) requires a trial court to classify a delinquent child a juvenile offender registrant if the specified conditions exist).

{¶36} Thus, if a delinquent child was 14 or 15 years of age at the time of the offense, classification is discretionary. R.C. 2152.83(B). If, however, a delinquent child was 16 or 17 years of age at the time of the offense, classification is mandatory, if the other specified conditions exist. R.C. 2152.83(A)

{¶37} In the case before us, appellant was 15 years of age at the time of the offenses. R.C. 2152.83(B) thus gave the trial court discretion to classify appellant a juvenile offender registrant, and appellant's reliance on R.C. 2152.83(A) is misplaced. Nothing suggests that the trial court classified appellant a juvenile offender registrant under R.C. 2152.83(A). The State even noted at the

classification hearing that appellant was 15 years of age at the time of the offense and that classification was discretionary. The prosecutor stated that "the sex offender registration obviously [is] discretionary . . . due to the age of the juvenile." Consequently, we do not agree with appellant that the trial court erred as a matter of law by classifying him a juvenile offender registrant.

{¶38} Accordingly, based upon the foregoing reasons, we overrule appellant's second assignment of error.

III

{¶39} In his third assignment of error, appellant argues that the trial court erred by failing to merge his rape and gross sexual imposition adjudications.

{¶40} The State contends that appellant committed the distinct act of rape by forcibly compelling the victim to perform fellatio and that he committed the distinct act of gross sexual imposition by forcing the victim to manually stimulate his penis.

A

{¶41} Appellant did not raise the merger issue during the trial court proceeding. He therefore forfeited all but plain error. *See Rogers*, 2015-Ohio-2459, at ¶ 28 ("the failure to raise the allied offense issue at the time of sentencing forfeits all but plain error").

B

{¶42} The United States and Ohio Constitutions protect a child's right against double jeopardy in juvenile delinquency proceedings. *See In re A.G.*, 2016-Ohio-3306, ¶ 9 ("both the federal and Ohio Constitutions protect juveniles subject to delinquency proceedings from double jeopardy in the same fashion as they do adults"). The Double Jeopardy Clause of the Fifth Amendment to the United States Constitution provides that no person shall "be subject for the same offence to be twice put in jeopardy of life or limb." "This protection applies to Ohio citizens through the Fourteenth Amendment to the United States Constitution . . . and is additionally guaranteed by the Ohio Constitution, Article I, Section 10." *Ruff* at ¶ 10. "Regarding multiple punishments for the same offense, the Double Jeopardy Clause prohibits 'the sentencing court from prescribing greater punishment than the legislature intended.' " *State v. Pendleton*, 2020-Ohio-6833, ¶ 8, quoting *Missouri v. Hunter*, 459 U.S. 359, 366 (1983).

{¶43} R.C. 2941.25 specifies when a defendant may be convicted of multiple counts under the same indictment or information. The statute provides:

> (A) Where the same conduct by defendant can be construed to constitute two or more allied offenses of similar import, the indictment or information may contain counts for all such offenses, but the defendant may be convicted of only one.
>
> (B) Where the defendant's conduct constitutes two or more offenses of dissimilar import, or where his conduct results in two or more offenses of the same or similar kind committed separately or with a separate animus as to each, the indictment or information may contain

> counts for all such offenses, and the defendant may be convicted of all of them.

{¶44} The Ohio Supreme Court has "consistently recognized that the purpose of R.C. 2941.25 is to prevent shotgun convictions, that is, multiple findings of guilt and corresponding punishments heaped on a defendant for closely related offenses arising from the same occurrence." *State v. Johnson*, 2010-Ohio-6314, ¶ 43, citing *Maumee v. Geiger*, 45 Ohio St.2d 238, 242 (1976). R.C. 2941.25(A) thus allows only a single conviction when the same conduct constitutes allied offenses of similar import.

{¶45} Courts that are determining whether offenses are allied offenses of similar import within the meaning of R.C. 2941.25 must answer three essential questions: "(1) Were the offenses dissimilar in import or significance? (2) Were they committed separately? and (3) Were they committed with separate animus or motivation?" *State v. Earley*, 2015-Ohio-4615, ¶ 12, citing *Ruff*, 2015-Ohio-995, at ¶ 31 and paragraphs one, two, and three of the syllabus; *see also A.G.* at ¶ 15 (courts apply "the merger analysis set forth in *State v. Ruff*, 143 Ohio St.3d 114, 2015-Ohio-995, 34 N.E.3d 892 . . . to juvenile-delinquency proceedings"). "An affirmative answer to any of the above will permit separate [delinquency adjudications]." *Id.*

{¶46} Offenses are of dissimilar import "if they are not alike in their significance and their resulting harm." *Ruff* at ¶ 21. Additionally, "a defendant's

conduct that constitutes two or more offenses against a single victim can support multiple [delinquency adjudications] if the harm that results from each offense is separate and identifiable from the harm of the other offense." *Id.* at ¶ 26. Thus, "two or more offenses of dissimilar import exist within the meaning of R.C. 2941.25(B) when the defendant's conduct constitutes offenses involving separate victims or if the harm that results from each offense is separate and identifiable." *Id.* at ¶ 23.

{¶47} Different types of rape, such as "vaginal intercourse, cunnilingus, and digital penetration," committed within the same sexual assault "each constitutes a separate crime with a separate animus," and thus, "they do not constitute allied offenses of similar import." *State v. Nicholas*, 66 Ohio St.3d 431, 435 (1993); *accord State v. Stites*, 2020-Ohio-4281, ¶ 87 (1st Dist.) ("Different sexual acts are considered separate offenses."); *State v. Townsend*, 2019-Ohio-1134, ¶ 70 (8th Dist.) ("rape involving different types of sexual activity, such as vaginal intercourse, digital penetration, and oral intercourse, arise from distinct conduct and are not considered allied offenses, even when committed during the same sexual assault"); *State v. Prince*, 2021-Ohio-4475, ¶ 15 (3rd Dist.) (the defendant's "act of forcing the victim to perform fellatio on him followed by his act of forcing the victim to have intercourse (with him) demonstrates distinct and separate acts that occurred in a close proximity of time during an extended assault on the

victim."); *State v. Miller*, 2017-Ohio-7986, ¶ 46 (6th Dist.) ("vaginal rape and anal rape may form the basis for two separate rape convictions"); *see State v. Jones*, 2010-Ohio-2243 (5th Dist.) (unlawful sexual conduct with a minor by digital penetration and cunnilingus were not allied offenses of similar import even when committed in a short time span).

{¶48} Likewise, gross sexual imposition that involves different types of sexual contact committed within the course of the same sexual assault constitute separate crimes with separate animus. *See State v. Hughes*, 2025-Ohio-894, ¶ 29 (4th Dist.) (rape involving digital vaginal penetration and gross sexual imposition involving touching the victim's breasts constituted distinct, separate offenses); *State v. Peace*, 2018-Ohio-3742, ¶ 29 (11th Dist.) (kissing a bruise on a child's hip is a distinct act from inserting tongue in child's vagina); *State v. St. John*, 2017-Ohio-4043, ¶ 23 (11th Dist.) (rape and gross sexual imposition convictions were separate acts that did not merge for sentencing purposes when rape involved fellatio and gross sexual imposition involved physical stimulation of the defendant's penis); *State v. Brindley*, 2002-Ohio-2425, ¶ 11, 13 (10th Dist.) (touching the victim's breast, "sucking" the victim's breast, and touching the victim's vaginal area supported three convictions for gross sexual imposition).

{¶49} In the case at bar, the record shows that appellant committed separate and distinct acts of rape and gross sexual imposition. The rape occurred when he

forced the victim to perform fellatio. Appellant committed gross sexual imposition when he forced the victim to manually stimulate his penis with her hand. Even though the two offenses occurred within the same period of time, each nonetheless was a separate and distinct offense that caused separate harm. *See St. John*, 2017-Ohio-4043, at ¶ 23. We therefore do not believe that the trial court erred, plainly or otherwise, by failing to merge the two offenses for purposes of disposition.

{¶50} Accordingly, based upon the foregoing reasons, we overrule appellant's third assignment of error.

Conclusion

{¶51} Accordingly, based upon the foregoing reasons, we overrule appellant's three assignments of error and affirm the trial court's judgment.

JUDGMENT AFFIRMED.

JUDGMENT ENTRY

It is ordered that the JUDGMENT BE AFFIRMED and costs be assessed to Appellant.

The Court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this Court directing the Athens County Common Pleas Court, Probate Juvenile Division to carry this judgment into execution.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

Abele, J. and Wilkin, J. concur in Judgment and Opinion.

For the Court,

_____

Jason P. Smith
Presiding Judge

NOTICE TO COUNSEL

Pursuant to Local Rule No. 14, this document constitutes a final judgment entry and the time period for further appeal commences from the date of filing with the clerk.