

IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

STATE OF DELAWARE,)
)
) Plaintiff,)
)
) v.)
)
) **DAVID DIFILIPPO,**)
)
) Defendants.)

**Case Nos.: 2502008133
2510007225**

Submitted: March 13, 2026
Decided: April 27, 2026

OPINION AND ORDER

On Defendant's Motion to Sever Charges Pursuant to Rule 14

GRANTED

*Amanda Buckworth, Esquire, Deputy Attorney General, Attorney General's Office,
820 N. French Street, 7th floor, Wilmington, Delaware, Attorney for Plaintiff.*

*Brian J. Chapman, Esquire, Law Offices of Brian J. Chapman, 300 Creek View
Road, Newark, DE 19711, Attorney for Defendant.*

Jones, J.

On December 8, 2025, David Difilippo (“Defendant”) was re-indicted by a Grand Jury in two cases: Case #2502008133 and Case #2510007225. The charges included for both cases were combined into one indictment. Counts 1 through Count 6 involve allegations against Defendant that were alleged to have occurred on or between September 27, 2023, and February 28, 2024, with “I.C.” as the listed victim. It is alleged that I.C. was younger than 16 at the time of the offense. The affidavit of probable cause alleges that Counts 1 through 6 involve unlawful sexual contact between Defendant and the victim while Defendant was a middle school teacher at Kirk Middle School and I.C. was a student. Counts 7 and 8 of the re-indictment charge Defendant with violation of privacy and dealing in child pornography. These events are alleged to have occurred in October and December of 2021, respectively. Counts 9 through 13 involved allegations against Defendant that occurred on or between September 1, 2014, and November 30, 2014, with “V.L.” as the listed victim. Counts 9 through 13 deal with allegations involving unlawful sexual contact between Defendant and the victim while Defendant was a teacher at Cab Calloway School of the Arts and V.L. was a student.

Defendant has moved to sever seeking three separate trials: one trial would include Count 1 through 6, another trial would include Count 9 through Count 13, and the third trial would include Counts 7 and 8. The State opposes. This is the Court’s decision on Defendant’s motion to sever.

LEGAL STANDARD

Under Superior Court Criminal Procedure Rule 8, two or more offenses may be joined in the same indictment “if the offenses charged are of the same or similar character or are based on the same act or transaction or on two or more acts or transactions connected together or constituting parts of a common scheme or plan.”¹ “The rule of joinder ‘is designed to promote judicial economy and efficiency, provided that the realization of those objectives is consistent with the rights of the accused.’”² To that end, Superior Court Criminal Procedure Rule 14 provides that the Court may order separate trials if it appears that a Defendant is prejudiced by joinder of offenses in an indictment, even though the offenses were properly joined.³

A motion to sever is addressed to the sound discretion of the trial court.⁴ The Defendant bears the burden of demonstrating that prejudice will result from denial of a motion to sever.⁵ Mere hypothetical prejudice is insufficient to meet the Defendant's burden.⁶ There are three types of prejudice a Defendant may suffer from joinder of offenses:

- 1) the jury may cumulate the evidence of the various crimes charged and find guilt when, if considered separately, it would not so find;
- 2) the jury may use the evidence of one of the crimes to infer a general criminal disposition of the Defendant

¹ Del. Super. Ct. Crim. R. 8(a).

² *Weist v. State*, 542 A.2d 1193, 1195 (Del. 1988) (quoting *Mayer v. State*, 320 A.2d 713, 717 (Del. 1974)).

³ Del. Super Ct. Crim. R. 14; see also *Wiest*, 542 A.2d at 1195.

⁴ *Wiest*, 542 A.2d at 1195; *State v. Goldsborough*, 2000 WL 706791, at *1 (Del. Super. Mar. 21, 2000); *State v. Boughner*, 1995 WL 1920095 (Del. Super. July 13, 1995).

⁵ *Wiest*, 542 A.2d at 1195 (citing *Bates v. State*, 386 A.2d 1139, 1141 (Del. 1978)).

⁶ *Bates v. State*, 386 A.2d 1139, 1142 (Del. 1978).

in order to find guilt of the other crime or crimes; and 3) the Defendant may be subject to embarrassment or confusion in presenting different and separate defenses to different charges.⁷

An important factor to consider in ruling on a motion to sever is whether evidence of one crime would be admissible in trial of the other. If so, “there would be no unfair prejudice in having a joint trial.”⁸

In determining if evidence of one crime is admissible in the trial of another, the analysis set forth in *Getz v. State*⁹ must be followed:

- (1) The evidence of other crimes must be material to an issue or ultimate fact in dispute in the case. If the State elects to present such evidence in its case-in-chief it must demonstrate the existence, or reasonable anticipation, of such a material issue.
- (2) The evidence of other crimes must be introduced for a purpose sanctioned by Rule 404(b)¹⁰ or any other purpose not inconsistent with the basic prohibition against evidence of bad character or criminal disposition.
- (3) The other crimes must be proved by evidence which is “plain, clear and conclusive.”
- (4) The other crimes must not be too remote in time from the charged offense.

⁷ *Weist*, 542 A.2d at 1195.

⁸ *Monroe v. State*, 28 A.3d 418, 426 (Del. 2011).

⁹ *Getz v. State*, 538 A.2d 726, 734 (Del. 1988).

¹⁰ Delaware Rules of Evidence, Rule 404 provides the following:

(a) Character Evidence.

- (1) Prohibited Uses. Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

...

(b) Crimes, Wrongs, or Other Acts.

- (1) Prohibited Uses. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.
- (2) Permitted Uses; Notice in a Criminal Case. This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

(5) The Court must balance the probative value of such evidence against its unfairly prejudicial effect, as required by D.R.E. 403.

(6) Because such evidence is admitted for a limited purpose, the jury should be instructed concerning the purpose for its admission as required by D.R.E. 105.

The threshold test is relevancy: the “misconduct must be logically related to the material facts of consequence in the case.”¹¹

ANALYSIS

The instant case involves three separate points in time. Counts 9 through 13 involve conduct from 2010 through 2014. In 2010 or 2011, Defendant began having contact with the underage victim. Defendant was this victim’s middle school teacher. They would talk online and in person where the victim would skip classes to hide in his classroom. The relationship progressed to sexual intercourse in September 2014 when the victim was 17 years old. It is alleged that Defendant had multiple sexual encounters while the victim was 17 years old, one of which Defendant video recorded, without her knowledge, and emailed to her a few days later. The victim further recounted that, at Defendant’s request, she sent him nude photos while she was still 17. Finally, this victim reported that she left several pairs of underwear with the Defendant after their sexual encounters which she believed he still possessed.

¹¹ *Getz*, 538 A.2d at 731 (citation omitted).

Counts 1 through 6 involve incidents while the Defendant was that victim's middle school teacher. The alleged incidents occurred in 2023 and 2024 while the victim was under 16. It is alleged that Defendant had sexually explicit dialogue with the victim both in person and online. The victim also reported that the Defendant attempted to kiss her and, on at least one occasion, made physical contact with her.

Counts 7 and 8 involve conduct in 2021 and the charges are dealing in child pornography and violation of privacy.

Defendant claims that all three prongs of prejudice are present in the instant case. In analyzing the prejudice of joining these cases, an examination of the *Getz* factors is required. The critical factor to be considered is whether evidence of one crime would be admissible in the trial of the other crime. There is little, if any, overlap in the presentation of evidence or independent logical relevance among the three sets of offenses. These alleged offenses all happened at different times and do not share common victims or witnesses. It is difficult to comprehend how evidence from any one set of offense would necessarily come into evidence in a trial in any of the other set of offenses.

Applying the *Getz* factors, the three sets of charges should be severed. First, the evidence of the other crimes is not material to an issue or ultimate fact in dispute with respect to the other charges. Second, there is no purpose under Rule 404 (b) which would allow the other set of crimes to be admissible in a trial of the other

crimes. Third, the three separate sets of crimes are remote in time to each other. Finally, the prejudicial effect of allowing the jury to hear these three sets of charges in one trial far outweighs any probative value of trying the cases together.

This is not entirely a late reported child abuse case that justifies joinder as explained in this Court's *State v Saylor*¹² and *State v Boughner*¹³ decisions. Rather, this case is more akin to the decisions in *State v Williams*¹⁴ and *State v Conaway*¹⁵ where, in sexual assault cases, the Court concluded that a proposed joint trial presented a likelihood that a jury would use the evidence for one of the improper purposes which requires severance.

Defendant's Motion to Sever Charges Pursuant to Rule 14 is hereby **GRANTED**. Counts 1-6 will be tried together. Counts 7 and 8 will be tried together. Counts 9-13 will be tried together. The order of the three trials is an issue for another day.

IT IS SO ORDERED.

/s/ Francis J. Jones, Jr.
Francis J. Jones, Jr., Judge

cc: Original to Prothonotary

¹² *State v. Saylor*, 2023 WL 5943413 (Del. Super. Ct. Sept. 12, 2023).

¹³ *State v. Boughner*, 1995 WL 1920095 (Del. Super. Ct. July 13, 1995).

¹⁴ *State v. Williams*, 2025 WL 3216814 (Del. Super. Ct. Nov. 14, 2025).

¹⁵ *State v. Conaway*, 2019 WL 3431594 (Del. Super. Ct. July 30, 2019).