

Count I of the Indictment (Rape 1st Degree), Count II (Possession of a Deadly Weapon During the Commission of a Felony) and Count III (Robbery 1st Degree) allege crimes against “Victim A” occurring on June 17, 2014. The Indictment states that Defendant offered Victim A money to perform oral sex. When Victim A stopped oral sex, Defendant violently assaulted her and she fled from the vehicle. Defendant chased Victim A and upon catching her, Defendant anally raped her, stole money, and threw her cell phone into water. Victim A was able to recall a vehicle license plate number. Victim A later identified Defendant in a photographic lineup.

Count VI (Rape 2nd Degree) and Count VII (Robbery 2nd Degree) allege crimes against “Victim B” occurring on June 16, 2014. The State contends that Defendant paid Victim B to engage in vaginal sex. Defendant violently assaulted Victim B during sexual intercourse, stole money and her cell phone, and ejected her from a vehicle wearing only a pair of socks. Victim B described her assailant as a person matching Defendant’s appearance.

Count IV (Robbery First Degree) alleges a crime against “Victim C” occurring on June 15, 2014. Victim C stated that she performed fellatio on Defendant in exchange for money. Following the sex act, Defendant violently assaulted her and took the money back. Victim C identified Defendant in a photographic lineup.

Count V (Obscenity) alleges a crime against “Victim D” occurring on April 3, 2014. Defendant is accused of sending a photograph depicting a sexual act to Victim D via text message.

Superior Court Criminal Rule 8 provides that offenses may be joined in the same indictment “if the offenses charged are of the same or similar character.”¹ Joinder of offenses with the same or similar character, allegedly committed by the same defendant, within a short period of time, even though on different dates, is permissible.

All Counts, except Count V, involve sex prompted by payment by Defendant, subsequent violent assault, and robbery. The alleged crimes occurred within a three-day period. It does not appear that Defendant will be forced to present separate and distinct defenses, or otherwise be subjected to embarrassment, or risk jury confusion. Judicial economy and efficiency weigh heavily in favor of joinder in this case.² An appropriate limiting instruction will be given to avoid any potential compromise to Defendant.

¹*Younger v. State*, 496 A.2d 546, 549-50 (Del. 1985); *State v. Ellis*, 375 A.2d 473, 475 (Del. Super.1977).

²*See State v. Flagg*, 739 A.2d 797, 799-800 (Del. Super. 1999).

THEREFORE, Counts I, II, III, IV, VI, and VII are properly joined as offenses with the same or similar character. Count V will be severed.

DEFENDANT'S MOTION TO SEVER IS HEREBY GRANTED IN PART AND DENIED IN PART.

IT IS SO ORDERED.

*/s/ Mary M. Johnston*_____

The Honorable Mary M. Johnston