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Case Number 406,2025

IN THE SUPREME COURT OF THE STATE OF DELAWARE

TONIO DREDDEN,	)	
	)	
Defendant-Below,	)	
Appellant,	)	
	)	
v.	)	No. 406, 2025
	)	
STATE OF DELAWARE	)	
	)	
Plaintiff-Below,	)	
Appellee.	)	

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE

APPELLANT'S OPENING BRIEF

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DATED: February 11, 2026

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NATURE AND STAGE OF THE PROCEEDINGS

After his arrest on August 11, 2024, Tonio Dredden was indicted on October 7, 2024, for Aggravated Menacing, Possession of a Firearm During the Commission of a Felony, Assault in the Second Degree, Unlawful Imprisonment First Degree, Terroristic Threatening and Possession of a Deadly Weapon by a Person Prohibited. D.I.#1; D.I.#3. A1.

Jury trial occurred on June 16 and 17, 2025. A14. The Possession of a Deadly Weapon by a Person Prohibited count was severed before trial and heard by the jury as a "B trial" after the initial verdict. A296. Mr. Dredden was found guilty on all counts in both the A and B cases. A293, 314. Sentencing occurred on September 10, 2025. A320.

Mr. Dredden was Sentenced to a total of 20 years and 30 days Level 5 followed by decreasing levels of supervision. A326–27.

Each charge was specifically Sentenced in the following manner: Mr. Dredden was declared a habitual offender through stipulation and was Sentenced, for Aggravated Menacing, to 10 years Level 5 suspended after 5 years minimum mandatory Level 5 for 5 years Level 4, DOC discretion, suspended after 1 year for two years Level 3 GPS. A326. For the charge of Assault in the Second Degree he was declared a habitual offender and Sentenced to 15 years Level 5 suspended after 8 years minimum mandatory

followed by two years Level 3 GPS. A326. For Possession of a Deadly Weapon During Commission of a Felony, he was Sentenced to 20 years Level 5 suspended after 3 years for two years Level 3 GPS. A326. For the charge of Unlawful Imprisonment in the Second Degree he was declared a habitual offender and Sentenced to Level 5 for 5 years suspended after 2 years for two years Level 3 GPS. A326. For Terroristic Threatening he was Sentenced to 30 days at Level 5 no probation to follow. A326. For Possession of a Deadly Weapon by a Person Prohibited in the "B" case, he was Sentenced to 3 years Level 5 suspended after 2 years Level 5. A326–27.

SUMMARY OF THE ARGUMENT

1. Because the State had begun to play video of the complaining witness's 11 *Del. C.* § 3507 statement during its closing argument before it was halted by a granted objection, the trial court should have recognized that the jury note requesting to view the § 3507 statement during deliberations was not spontaneous but instead connected to the State's earlier inappropriate use of the video. Under these circumstances, it was an abuse of discretion by the trial court to allow an exception to the general rule that testimonial exhibits should not be reviewed by the jury during deliberations. Allowing the jury to review the footage during deliberation placed undue emphasis on the testimony therein, and undermined the curative instruction provided, in lieu of a mistrial, when the footage was played during closing. The prejudicial repetition of the complaining witness's unsworn § 3507 statement for a third time during deliberations unfairly imbalanced the jury's consideration of conflicting testimony and thus requires reversal.

STATEMENT OF FACTS

Trial Testimony

The State called Corporal Smith of the Wilmington Police Department. A69. He was dispatched to 414 West 28th Street where he encountered a man named Daniel. A75. Upon entering the residence, Daniel directed him to the back of the residence. A76. Daniel is the grandson of Kathleen Bridget Daniels and is the person who called 911. A72, 128. Corporal Smith testified that Kathleen Bridget (Daniels) was tied up and she appeared frightened. A80. Body camera video was played. A79. She was in a chair with both wrists and ankles bound. A80. Mr. Dredden appeared to have just awoken from sleeping. A81.

Photos were shown to the jury that her toes had some swelling and dried blood. A85. Ms. Bridget Daniels said Antonio Dredden tied her up. A88.

On cross examination, Corporal Smith acknowledged that although Kathleen appeared frightened, he does not know her typical demeanor. A91. She also refused medical care. A91.

Officer Frey testified about indentations on Kathleen Daniels' wrists. Ms. Daniels took the stand, and at times she seemed to have trouble remembering key details of what happened. A115–16. The Defense initially objected for lack of § 3507 foundation. A119–20. After further questioning,

the § 3507 statement was played in which she told the police, among other things, that Tony had a knife to her neck. A124. After watching the § 3507 statement, she acknowledged that she was scared when it happened and she did not want the knife held to her neck. A124. At some point, she grabbed the knife and got a cut on her hand. A125.

On cross-examination Ms. Daniels acknowledged that Mr. Dredden is her boyfriend and was her boyfriend at the time. A127.

Daniels was asked about a letter she created in which she described that they "can be very kinky" and agreed that their relationship is kinky. A130. She also acknowledged that this incident was misunderstood by police and by her grandson Daniel. A132.

Corporal Smith also testified that a knife was found in the house. A148.

After the State rested, Ms. Daniels was called by the Defense and asked about a notarized June 12, 2025 letter she created in which she said that she lied. A208, 211.

§ 3507 Statement in State's Closing Argument

During the State's closing argument, part of the § 3507 video was played by the State and the Defense objected. A216. At sidebar the trial court stated the § 3507 "cannot be played…there's case law for doing it if the jury were to ask for that, that's a whole other discussion, so that cannot be played

for them." A216. The Defense requested a mistrial: "The State replaying it this time during argument defense feels it's appropriate to ask for a mistrial. A217. The Judge stated: "At this point in time, it was stopped very quickly—I'll expand on the record with all the factors." A217. The Judge would also state: "there was not the portion of it that was. That was just argued by the State in their closing." A218. The trial court went through the various factors and decided to give a curative instruction instead of a mistrial. A218, 220. Subsequently, during deliberations, the Judge stated for the record that the § 3507 statement was paused at 20:43:41 at the time of the objection and that not much of it played at closing argument, though the Judge could not tell how long it played. A288–89.

Subsequently to the objection in closing, the State's argument included the following statement: "I encourage you to rewatch some of the videos that were shown today." A227.

§ 3507 Statement During Deliberations

During deliberations, the jury requested by note to see the § 3507 statement. A275–76. The Defense opposed and asked that the jury be instructed to use their memory to recall that video as they will do for every other piece of testimony in this case." A276. The State requested that the jury be able to hear the § 3507 statement. A278. Defense then stated that allowing

the § 3507 statement cuts against the trial court's curative ruling when defense counsel objected during closing. A278. The trial court disagreed that it cut against the ruling at closing argument because they were instructed and were presumed to follow the instructions. A280.

The trial court ruled the jury would see the § 3507 statement one more time, in the courtroom, together with a reading of the § 3507 instruction.[1] A281. After the statement was played, the jury left the courtroom to continue deliberations. A287. The jury found Mr. Dredden guilty of all 5 charges. A293. In contrast with the two hours A273, 284 that the jury had deliberated before asking to see the § 3507 statement, once the jury saw the footage, defense counsel "didn't even get to the elevator before the jury had that verdict." A317.

The B trial involving the charge of Possession of a Deadly Weapon by a Person Prohibited occurred. A301. The jury found Mr. Dredden guilty of that charge. A314.

[1] Op. Br. Ex. C.

I. BY INAPPROPRIATELY PLAYING A TESTIMONIAL 11 DEL. C. § 3507 EXHIBIT FOR THE JURY DURING CLOSING ARGUMENTS, THE STATE INVITED UNDUE EMPHASIS UPON THE FOOTAGE IN DELIBERATIONS, THUS THE JURY'S REQUEST TO SEE THE § 3507 STATEMENT YET AGAIN WHILE DELIBERATING WAS NOT SPONTANEOUS AND THE TRIAL COURT ABUSED ITS DISCRETION BY GRANTING THE REQUEST.

Question Presented

Whether it was an abuse of discretion to allow the jury to have the 3507 statement played during deliberations at their request when, during the State's closing argument, a portion of the § 3507 statement was improperly played, it was objected to, a mistrial was requested, and a curative instruction was the remedy imposed by the trial court, and the curative instruction was given to the jury. This issue was preserved by defense counsel's objection when the jury requested the replay of the § 3507 video during deliberations. A276–78.

Standard of Review

"A trial court's decision to replay out-of-court statements to a jury during deliberations is reviewed for abuse of discretion."[2] "An abuse of discretion occurs when a court has exceeded the bounds of reason in light of the circumstances, or so ignored recognized rules of law or practice so as to produce injustice."[3]

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[2] *Morse v. State*, 120 A.3d 1, *12 (Del. 2015).
[3] *McCrary v. State*, 290 A.3d 442, 454 (Del. 2023).

Argument

In *Flonnory v. State*, this Court held that "admitting a witness's out-of-court written or recorded § 3507 statement as a trial exhibit that goes into the jury room during deliberations should be the exception rather than the rule."[4] The purpose of this rule is to prevent the jury from giving undue emphasis or weight to the § 3507 statement over other trial testimony.[5] The trial judge does, however, have discretion to depart from this default rule when in his judgment the situation so warrants (e.g., where the jury asks to rehear the § 3507 statement during its deliberations or where the parties do not object to having the written or recorded statements go into the jury room as exhibits). The trial judge's broad discretion in these circumstances is coextensive with his discretion to allow or refuse to allow the jury to rehear in-court testimony of any witness"[6] "[T]he trial judge must weigh the relative prejudice to the parties against the danger of unfairly emphasizing one piece of testimonial evidence over that of all other testimonial evidence."[7]

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[4] *Flonnory v. State*, 893 A.2d 507, 525 (Del. 2006).
[5] *Id.* at 528; *Morse v. State*, 120 A.3d 1, *12, *13 (Del. 2015) ("The purpose of this rule is to prevent the jury from giving undue weight to any particular statement.")
[6] *Id.* at 527.
[7] *Flonnory v. State*, 893 A.2d 507, 530 (Del. 2006).

In *Lewis v. State*, this Court held that "[i]f the jury's request to rehear trial testimony is granted, there is usually a single reading of that testimony. In *Flonnory*, we noted held that when a section 3507 statement is replayed it becomes testimonial."[8]

In *Lewis v. State*, this Court held that the § 3507 statements that were permitted to go back to the jury during deliberations for unlimited replaying were exalted above the balance of the evidence and given undue importance.[9] The other issue in *Lewis* was whether the trial court had abused its discretion by *sua sponte* allowing all four § 3507 videos into the jury room during deliberations in response to a jury complaint of having difficulty following one § 3507 video at trial.[10] This Court reversed the convictions.

In its ruling upon the jury's request, the trial court relied most heavily upon *Morse v. State*.[11] A277–81. In *Morse*, this Court was faced with a situation in which the jury had requested to hear a § 3507 statement during deliberations, the Judge found it would be helpful to resolve conflicting accounts, and only one in-courtroom viewing was permitted.[12] However, the

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[8] *Lewis v. State*, 21 A.3d 8, 14 (Del. 2011); *Flonnory v. State*, 893 A.2d 507, 530 (Del. 2006).
[9] *Id.* at 15.
[10] *Id.* at 13.
[11] *Morse v. State*, 120 A.3d 1 (Del. 2015).
[12] *Morse* at 13–14 (Del. 2015)

jury's request in *Morse* was the result of what this Court repeatedly labeled as an "ill-advised" suggestion by the prosecutor that the jury should request to see the § 3507 footage when deliberating.[13]

As a result, this Court struck a balance in *Morse* with a ruling that was notably more circumscribed than the fact pattern that had been presented. Because such "ill-advised" suggestions "should be avoided"[14] and "should not be repeated in the future,"[15] it held that situations where the State had prompted the jury to seek a rewatch of § 3507 footage are outside of the exception and therefore governed by the general rule:

> A jury's request to rehear a § 3507 statement during deliberations is an exception to the general rule, and applies when the jury requests to rehear a § 3507 statement **of its own accord**. This exception was created with the understanding that the request would be **spontaneous in nature**, not made at the encouragement of counsel.[16]

Therefore, *Morse* should have steered the trial court to a diametrically opposite result. The crux of *Morse,* as applied to the present case, is not in the specifics of the procedure used to grant the jury's request. Rather, it signals that when the State attempts to use a § 3507 statement improperly in its closing

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[13] *Morse* at 13, fn. 73; 16.
[14] *Id.* at 16.
[15] *Id.* at 13, fn. 73; 18.
[16] *Id.* at 17 (emphasis added).

argument, it will not be rewarded with an exception to the general rule that a jury should not be reviewing testimonial exhibits during deliberation.[17]

A.

Because the State showed a portion of the § 3507 statement in its closing argument, it prompted the jury to place undue emphasis on the testimonial evidence that was more readily available, especially once replayed during deliberations, elevating the § 3507 testimony's importance above what the jury could recall from earlier trial testimony.

In the instant case, although the prosecutor did not verbally encourage the jury to request the § 3507 statement during deliberations, the effect of the State improperly playing it in closing should be seen as the logical antecedent to the jury's request to see it during deliberations. The footage played amid other video recordings,[18] all of which were followed by the prosecutor's exhortation that "I encourage you to rewatch some of the videos that were shown today." A227. Additionally, the weight that the jury gave to the footage compared to other trial testimony is reflected in the quick verdict that arrived after the review. Defense counsel, specifically, made a record that after the §

[17] *Morse* at 17–18.
[18] A215–16.

3507 was played that counsel did not even get the elevator before the jury had a verdict. A317.

This was a case where it would have been important for one piece of testimony not to be elevated over another because the other trial testimony included testimony from Ms. Daniels that she believed the police and her grandson misunderstood the incident, testimony about a letter she prepared in which she stated that her and Mr. Dredden's relationship was kinky, and also testimony about a letter prepared by Ms. Daniels in which she acknowledged saying in the letter that she lied. A119, 130, 211.

Accordingly, the trial court abused its discretion in allowing the jury to have the § 3507 statement replayed during jury deliberations.

B.

The likelihood is high that the jury would have heard prejudicial testimonial § 3507 statements a total of three times in this case, unfairly reinforcing emphasis through repetition.

In the instant case, after the jury gave the note requesting to hear the § 3507 statements during deliberations, the trial court engaged in a discussion of when the § 3507 footage was stopped at closing argument and how much of it was improperly played. The trial court noted that the § 3507 video was

paused at 20:43:41,[19] the trial court did not know how long it was played, the trial court did not know when the State started it, and, by recollection, the trial court did not believe much had played in front of the jury at closing arguments. A288–89.

In the § 3507 video, approximately 10 seconds before the point in which the trial court notes that the § 3507 video was paused, Ms. Daniels recounts to the police on the video that she was tied up and gagged. Approximately 5-7 seconds before that it sounds like she says: "Yeah I did it because I didn't want, I thought he was gonna kill me." (Exhibit B).

To be clear, the record does not confirm how much was played or what was said in front of the jury, but it is clear that something was played, and if only 10–15 seconds was played, that would have been enough for prejudicial testimonial statements to be improperly placed before the jury-either about being tied up and gagged and/or that she thought he was going to kill her.

A curative instruction was given to the jury after the portion of the § 3507 video was improperly played. The jury was told to disregard what was just played. By then allowing the jury to see the § 3507 video again during their deliberations, it allowed the jury to potentially see prejudicial testimonial statements two additional times for a total of three times. This is contrary to

[19] The § 3507 video is Exhibit B to Appellant's Opening Brief.

the standard practice which is that if the jury is allowed to rehear a § 3507 statement, it is just to be replayed once.

Accordingly, it was an abuse of discretion for the trial court to allow the jury to have the § 3507 video replayed after a portion was already improperly played at closing argument.

C.

By erroneously allowing the jury to review footage of a § 3507 statement mid-deliberation, the trial court irreparably skewed the jury's balancing of the evidence and prevented the jury from reaching a fair verdict.

"To determine whether prosecutorial misconduct prejudicially affects a defendant's substantial rights, we apply the three factors of the *Hughes* test, which are: 1) the closeness of the case, 2) the centrality of the issue affected by the error, and 3) the steps taken to mitigate the effects of the error."[20]

In the instant case, a portion of the § 3507 video was improperly replayed at closing. The Defense objected and requested a mistrial. A217. The

[20] *Trala v. State*, 244 A.3d 989, 999 (Del. 2020) (citing *Hughes v. State*, 437 A.2d 559, 571 (Del. 1981)).

trial court went through an analysis and chose a curative instruction over a mistrial. A218.

In the trial court's analysis, the trial court did not examine the closeness of the case factor, but this was a close case. Although the § 3507 video was damaging to Mr. Dredden, the other trial testimony included testimony from Ms. Daniels that the police and her grandson misunderstood the incident and that she had prepared a letter in which she states she lied. The defense had established significant motive for the complaining witness to misrepresent the situation and put those points to the jury. A228–239.

Testimonial footage can easily become unfairly prejudicial when replayed during deliberations when it is reviewed in isolation and there is no countervailing opportunity for the jury to similarly refresh its memory of the contradictory testimony.[21] Under the present circumstances, that prejudice interfered with the jury's ability to consider the critical details of a close case. The only effective measure that the trial court could have taken to protect Mr. Dredden from unfair prejudice would have been to deny the jury's request to review the § 3507 statement.

For these reasons, the trial court abused its discretion in allowing a replay of the § 3507 statement for the jury during deliberations.

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[21] See *Morse* at 18 (Strine, C..J., concurring).

CONCLUSION

For the reasons and upon the authorities cited herein, the judgment of the Superior Court should be reversed.

Respectfully submitted,

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