



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

STATE’S ANSWERING BRIEF

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Dated: March 16, 2026

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NATURE AND STAGE OF THE PROCEEDINGS

On October 7, 2024, a grand jury returned an indictment against Tonio Dredden (“Dredden”) charging him with Aggravated Menacing, Possession of a Deadly Weapon During the Commission of a Felony (“PDWDCF”), Assault Second Degree, Unlawful Imprisonment First Degree, Terroristic Threatening, and Possession of a Deadly Weapon by a Person Prohibited (“PDWBPP”). A1, A11-13. After a two-day trial, a jury found Dredden guilty of all charges.¹ A5. Prior to sentencing, the State filed a motion to have Dredden declared a habitual offender, and Dredden separately stipulated to his eligibility for enhanced sentencing. A6. On September 10, 2025, the Superior Court declared Dredden a habitual offender and sentenced him as follows:

PDWDCF: 20 years at Level V, suspended after serving three years, followed by probation.

Assault Second Degree: 15 years at Level V, suspended after serving eight years, followed by probation.

Aggravated Menacing: 10 years at Level V, suspended after serving five years, followed by decreasing levels of supervision.

Unlawful Imprisonment First Degree: 5 years at Level V, suspended after serving two years, followed by probation.

¹ The Superior Court severed the PDWBPP charge, which proceeded as a “B” case immediately following the jury’s verdict in the “A” case. A5. The jury found Dredden guilty of PDWBPP in the “B” case. A5.

PDWBPP: 3 years at Level 5.

Dredden now appeals. This is the State's answering brief.

SUMMARY OF THE ARGUMENT

Appellant's argument is denied. The Superior Court did not abuse its discretion or otherwise err when it granted the jury's request to review the victim's prior recorded statement, which was admitted into evidence pursuant to 11 *Del. C.* § 3507. As this Court has made clear, a trial judge has broad discretion to permit a jury to review a witness's prior recorded statement during deliberations when the jury has requested to do so. Here, the trial judge correctly considered all relevant factors and circumstances, including the prosecutor's attempt to play the victim's prior recorded statement during the State's closing, when it granted the jury's request to re-view the section 3507 recording.

STATEMENT OF FACTS

On August 11, 2024, officers from the Wilmington Police Department (“WPD”) went to 414 W. 28th Street in response to a 911 call placed by Daniel Cannon in which he reported “Tony put tape over GG’s mouth.” A71-75; State’s Trial Exhibit 2. When the officers arrived, Cannon, who was outside of the residence, led them inside and toward the rear of the home. A75-76. As the officers approached the back door they saw Kathleen Daniels, who was “tied up with black duct tape over her mouth.” A76. The officers’ discovery was captured on Cpl. Jason Smith’s body-worn camera. A78; State’s Trial Exhibit 3. According to Cpl. Smith, Daniels was “sitting in a chair with both her wrists and ankles bound.” A80. She was whimpering and “appeared frightened, in distress, [and] scared.” A80, A95. Dredden was seated immediately next to Daniels, and it appeared to the officers that he had just woken up. A81; State’s Trial Exhibit 4.

The officers cut the zip-ties that Dredden had used to bind Daniels’ ankles and wrists and escorted her outside. A83. Daniels’ feet appeared wounded and swollen. A85; State’s Trial Exhibit 6. Prior to escorting Daniels out of the residence, officers asked Daniels who had done this to her, she responded that it was Dredden. A86. Once outside, Daniels spoke with the police officers; that conversation was captured on a body-worn camera. Court Exhibit 2. She told the officers that Dredden, who was living with her, accused her of stealing items from a safe in the home. Court

Exhibit 2. When Daniels denied the theft, Dredden threatened her with a knife, bound her hands and ankles, held the knife to her throat, and taped her mouth. Court Exhibit 2.

At trial, Daniels testified that she had no memory of what happened after Dredden became upset with her. A121. After her recorded conversation with police was played, Daniels testified that she recalled giving the statement to the police. A124. She testified that she was scared when Dredden held the knife to her neck and she thought he could hurt her. A125. On cross-examination, Daniels initially denied having a “kinky” relationship with Dredden. A129-30. However, when confronted with a notarized letter she prepared prior to trial in which Daniels stated she and Dredden could be “very kinky when expressing ourselves sexually,” she testified that their relationship was kinky. A130.

ARGUMENT

THE SUPERIOR COURT DID NOT ABUSE ITS DISCRETION WHEN IT GRANTED THE JURY'S REQUEST TO VIEW THE VICTIM'S PRIOR RECORDED STATEMENT DURING DELIBERATIONS.

Question Presented

Whether the Superior Court abused its discretion when it granted the jury's request to view the victim's prior recorded statement, which had been introduced pursuant to 11 *Del. C.* § 3507, and played during the victim's trial testimony.

Standard and Scope of Review

A trial court's decision to replay out-of-court statements to a jury during deliberations is reviewed for an abuse of discretion.²

Merits of the Argument

During its case-in-chief, the State entered into evidence the recording of body camera footage that captured Daniels' statement to police at the scene pursuant to 11 *Del. C.* § 3507.³ Court Exhibit 2. During the State's closing argument, the prosecutor attempted to play the body-worn camera footage that included Daniels' prior recorded statement ("the section 3507 recording"). A216. As the recoding

² *Taylor v. State*, 65 A.3d 593, 600-01 (Del. 2013).

³ Section 3507 provides, "[i]n a criminal prosecution, the voluntary out-of-court prior statement of a witness who is present and subject to cross-examination may be used as affirmative evidence with substantive independent testimonial value."

began playing, but prior to any of part of Daniels' statement to police being played, Dredden objected, the trial judge sustained the objection, and the recording was not played. A216-18. The court, at Dredden's request, gave the jury a curative instruction, advising them to disregard the brief clip of the body-worn footage that had been played. A220. During deliberations, the jury requested to re-view the section 3507 recording. A275. The trial judge granted the jury's request over Dredden's objection and permitted the jury to view the recording one time. A284.

On appeal, Dredden argues the Superior Court abused its discretion when it granted the jury's request to view the section 3507 recording during deliberations. He also contends the prosecutor's attempt to play the section 3507 recording in closing placed undue emphasis on the recording and prompted the jury's request to view it. Dredden's arguments are unavailing.

The law regarding the ability of a jury to review section 3507 statements during deliberation is well-settled. In *Flonnory v. State*, the Court held that recorded statements played during trial pursuant to 11 *Del. C.* § 3507 should not be admitted as separate trial exhibits that the jury can review during deliberations.⁴ The *Flonnory* Court, however, noted two exceptions: (1) when the jury requests to rehear a section 3507 statement during its deliberation, or (2) where the parties do not object to

⁴ *Flonnory v. State*, 893 A.2d 507, 527 (Del. 2006).

having the statements go into the jury room.⁵ A trial judge has broad discretion in deciding what evidence the jury may rehear during deliberations.⁶ In exercising discretion, the trial judge must evaluate the benefits of replaying such evidence. “A proper analysis require[s] the trial judge to determine whether the benefits of admitting the § 3507 statements [are] outweighed by the danger of unfairly emphasizing the testimony of one witness over the testimony of others.”⁷ And, if the court grants the jury’s request to re-view the section 3507 recording, “the trial judge should usually permit only a single replaying of a [section] 3507 statement.”⁸

Here, the trial judge considered the jury’s request to re-view the section 3507 recording and properly weighed “the relative prejudice to the parties against the danger of unfairly emphasizing one piece of testimonial evidence over that of all other testimonial evidence.”⁹ *See* A278-84. The trial judge permitted the section 3507 recording to be replayed once, and instructed the jury as follows:

I will tell you that you will be allowed to one time in the courtroom rewatch this video, but I will tell you that just as I instructed you previously that this video is -- legally offered it is to be examined as testimony just as any other live witness. We do not have the capability of affording you to rewatch live testimony or even to get the transcript as it is not certified at this time. So we have this available and it is being

⁵ *Id.* at 526-27.

⁶ *Id.* at 525.

⁷ *Id.* at 530-31.

⁸ *Morse v. State*, 120 A.3d 1, 13 (Del. 2015) (citing *Lewis v. State*, 21 A.3d 8, 14 (Del. 2011)).

⁹ *Flonnory*, 893 A.2d at 530.

played again for you, 1, because you requested it; and 2, because we have the availability. However, you will only be able to see this one time. The reason is, like I said, it is to be treated like any other testimony.

The fact that we are replaying this for you once is not to be seen by you all as the Court or any party overemphasizing or placing any undue emphasis on this testimony. It is to be treated exactly the same as every other piece of testimony that you have received. And again, your recollection of all that testimony is what controls.

A285. Immediately thereafter, the trial judge re-read the general section 3507 instruction to the jury and permitted them to re-view the section 3507 recording one time in the courtroom. A286-87.

The Superior Court adhered to this Court's precedent when it permitted the jury to re-view the section 3507 recording in this case. This was a situation in which the jury requested to review Daniels' prior recorded statement and the trial judge followed the procedure and guidelines set forth in *Flonnory* and its progeny when it considered the request. Ultimately, the court permitted the jury to re-view the recording once while in the courtroom. The Superior Court did not abuse its discretion in doing so.

Dredden argues that the prosecutor's attempt to play Daniels' prior recorded statement during the State's closing "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," and created a "high" likelihood "that

the jury would have heard prejudicial testimonial § 3507 statements a total of three times . . . unfairly reinforcing emphasis through repetition.”¹⁰ In *Morse v. State*, the prosecutor, in closing argument, told the jury that it was generally not permitted to re-hear a witness’ prior recorded statements, however the jury should ask for the prior recorded statements if it wanted to review them during deliberations.¹¹ The Court concluded that the Superior Court did not abuse its discretion in granting the jury’s request to re-view the prior recorded statements of two witnesses, which had been admitted pursuant to 11 *Del. C.* § 3507. However, when the Court addressed the prosecutor’s remarks, it gave the following guidance:

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*.¹²

Dredden appears to argue the State did not hew to this Court’s guidance when it attempted to play Daniels’ prior recorded statements during closing argument. While acknowledging that the prosecutor did not “verbally encourage the jury to request the § 3507 statement during deliberations,” Dredden nonetheless claims the prosecutor’s misstep in attempting to play Daniels’ prior recorded statement had the same effect.¹³ He contends the jury may have heard “prejudicial testimonial

¹⁰ Op. Brf. at 12; 13.

¹¹ *Morse*, 120 A.3d at 17.

¹² *Id.* (emphasis added).

¹³ Op. Brf. at 12.

statements” during the prosecutor’s admittedly brief attempt to play Daniels’ prior recorded statement in closing, thus prompting a request to re-view the section 3507 statement during deliberations. In support of his claim on appeal, Dredden does much to speculate as to what the jury may have heard in the brief clip. The record, however, is sufficiently clear as to what others in the courtroom heard:

PROSECUTOR: Your Honor, we didn’t even get to the portion of the video where any words came out of her mouth. It was stopped before.

THE COURT: At this point in time it was stopped very quickly. . . . It happened once, it was stopped immediately. I did not hear any of the allegations that were referenced in the closing that had been played yet. A217.

Dredden did not contend otherwise. In any event, the trial judge, at Dredden’s request, provided the jury with a curative instruction in which the court told the jury to disregard the short clip that had just been played.¹⁴ A220. As this Court has consistently held, “[e]rror can normally be cured by the use of a curative instruction to the jury, and jurors are presumed to follow those instructions.”¹⁵ Thus, the prosecutor’s misstep in attempting to play Daniels’ prior recorded statement was cured by the trial judge’s immediate instruction to disregard the brief clip, which the

¹⁴ The court immediately followed the curative instruction with a pattern section 3507 instruction. A220-21.

¹⁵ *Guy v. State*, 913 A.2d 558, 565–66 (Del. 2006) (citing *Dawson v. State*, 637 A.2d 57, 62 (Del. 1994); *Bailey v. State*, 521 A.2d 1069, 1077 (Del. 1987)).

jury is presumed to have followed. The record here does not support a finding that the prosecutor prompted the jury to request a re-viewing of the section 3507 recording or that the jury ignored the court's instruction. As was true in *Morse*, "the trial court reached a careful, calculated decision, while taking sufficient steps to limit prejudice to [Dredden]." ¹⁶

Dredden also argues that by permitting the jury to re-view the section 3507 recording during deliberations, the trial judge abused her discretion and "irreparably skewed the jury's balancing of the evidence and prevented the jury from reaching a fair verdict." ¹⁷ He frames the argument as a prosecutorial misconduct claim. Dredden does not claim that the court abused its discretion when it denied his motion for a mistrial and instead gave a curative instruction. Rather, Dredden claims this was a close case and appears to argue the court should have taken additional remedial measures after the prosecutor's attempt to play Daniels' prior recorded statement during the State's closing. He contends, "[t]he only effective measure that the trial court could have taken to protect [him] from unfair prejudice would have been to deny the jury's request to review the § 3507 statement." ¹⁸ This claim is unavailing.

¹⁶ *Morse*, 120 A.3d at 14.

¹⁷ Op. Brf. at 15.

¹⁸ Op. Brf. at 16.

Whether a mistrial should be declared lies within the trial judge’s discretion.¹⁹ However, when reviewing the denial of a motion for mistrial based on prosecutorial misconduct, this Court reviews the record *de novo* to determine whether the complained of actions constitute prosecutorial misconduct.²⁰ If not, the analysis ends.²¹ If, however, the Court determines that the actions constitute prosecutorial misconduct, then the Court reviews under either a harmless error analysis or a plain error analysis depending on whether counsel lodged a timely objection to the alleged misconduct.²² “If defense counsel raised a timely and pertinent objection to prosecutorial misconduct at trial, or if the trial judge intervened and considered the issue *sua sponte*, [this Court] essentially review[s] for ‘harmless error.’”²³ “A trial judge should grant a mistrial only where there is a manifest necessity or the ends of public justice would be otherwise defeated. The remedy of a mistrial is mandated only when there are no meaningful and practical alternatives to that remedy. Every misstatement in a jury argument does not amount to prosecutorial misconduct requiring a mistrial.”²⁴

¹⁹ *Banther v. State*, 977 A.2d 870, 891 (Del. 2009) (citing *Burns v. State*, 968 A.2d 1012, 1018 (Del. 2009); *Ashley v. State*, 798 A.2d 1019, 1022 (Del. 2002); *Steckel v. State*, 711 A.2d 5, 11 (Del. 1998)).

²⁰ *Kirkley v. State*, 41 A.3d 372, 377 (Del. 2012); *Baker v. State*, 906 A.2d 139, 148 (Del. 2006).

²¹ *Kirkley*, 41 A.3d at 377.

²² *Baker*, 906 A.2d at 148.

²³ *Id.*

²⁴ *Banther*, 977 A.2d 870, 890-91 (citations and internal quotes omitted).

Here, Dredden lodged a timely objection to the prosecutor's attempt to play Daniels' prior recorded statement during the State's closing. Thus, this Court reviews for harmless error. Under the harmless error standard, where a prosecutor has engaged in misconduct, the Court will "determine whether the misconduct prejudicially affected the defendant."²⁵ To make this determination, the Court applies the three-factor *Hughes*²⁶ test, which assesses: "(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."²⁷ This assessment is performed "in a contextual, factually specific manner."²⁸

In this case, the prosecutor attempted to play Daniels' prior recorded statement during the State's closing. Dredden immediately objected and the statement was not played. There is no record evidence to support the idea that the jury heard any part of the statement. Even if the Court determines the prosecutor's error amounted to misconduct, Dredden cannot establish that the prosecutor's actions or the court's response amounted to reversible error.

Contrary to Dredden's assertion, this was not a close case. Police responded to a 911 call placed by Daniels' grandson who reported that Dredden had put tape

²⁵ *Kirkley*, 41 A.3d 372 at 376 (citing *Baker*, 996 A.2d at 148).

²⁶ *Hughes v. State*, 437 A.2d 559, 571 (Del. 1981).

²⁷ *Kirkley*, 41 A.3d 372 at 376 (citing *Baker*, 996 A.2d at 149).

²⁸ *Id.*

over her mouth. When the police arrived at the residence, they discovered Daniels seated in a chair with her wrists and ankles bound to it with zip ties. Daniels' mouth was covered with black duct tape. Dredden was seated immediately next to her. Both Daniels and Dredden were fully clothed and located in a room that was not a bedroom. The officers' discovery was captured by body-worn cameras and the footage was introduced into evidence. Daniels had suffered injuries from a knife and from the zip ties. At the scene, Daniels' told police Dredden became upset with her and had accused her of stealing from him. When she denied the accusation, Dredden taped her mouth shut, bound her to the chair and threatened her with the knife – placing it at against her throat. Daniels' statement to police was recorded on one of the officers' body-worn camera and introduced into evidence. On direct examination Daniels testified that she did not remember much of what happened. However, when her prior recorded statement was played for the jury, she testified that she remembered speaking with the police and that her account of what had happened was truthful. At no point in her statement to police did Daniels' describe the ordeal as a "misunderstanding." On cross examination, Daniels acknowledged that she had written a letter describing her relationship with Dredden as kinky and that this was a "misunderstanding."

In sum, the police discovered Daniels bound and gagged, the body-worn camera footage captured her captive state and her demeanor – she was scared and

whimpering. She told police Dredden had done this to her, and she testified that she told police the truth. That Dredden proffered a defense that this was all a “misunderstanding” does not make it a close case.

Daniels’ testimony and her prior recorded statement were central to the case. She was the victim, and her prior recorded statement provided the only account of what happened prior to the police arriving on scene.

When Dredden objected to the prosecutor’s attempt to play Daniels’ prior recorded statement during the State’s closing, the recording was stopped, and the trial judge assessed the situation. By all accounts, the jury had not heard any portion of Daniels’ prior recorded statement. Although the court did not grant Dredden’s request for a mistrial, the trial judge gave a curative instruction, telling the jury to disregard anything they may have heard on the recording. The court’s curative instruction was a meaningful and practical alternative to declaring a mistrial. Dredden nevertheless argues that the trial judge should have provided the additional remedial measure of denying the jury’s request to re-view Daniels’ prior recorded statement, in order to avert any prejudicial effect.

Prior to granting the jury’s request to re-view Daniels’ prior recorded statement, the trial judge considered the possible prejudice to Dredden, paying particular attention to the prosecutor’s attempt to play the statement during the State’s closing. A279-80. The court determined that the clip “was a very, very brief

portion of the closing . . . [that] was only played to the extent that [defense counsel] and then my attention could realize what the statement was . . . [and defense counsel] immediately objected” A270-80. The court continued, “I don’t think that playing this now upon their request cuts against that because they were instructed and . . . juries are presumed to follow the instructions they are given” A280. The Superior Court did not abuse its discretion when it made that determination. There is no record evidence to support the idea that the jury heard any portion of Daniels’ prior recorded statement when the prosecutor attempted to play it during the State’s closing. Even if the jury heard a portion of the statement, the trial judge instructed them to disregard it. The trial judge correctly assessed the potential danger of prejudice in the overemphasis of Daniels’ prior recorded statement in light of the prosecutor’s attempt to play it during the State’s closing and the court’s curative instruction. Thus, the Superior Court did not abuse its discretion when it granted the jury’s request to re-view the section 3507 recording.

CONCLUSION

The State respectfully requests that this Court affirm the judgment below without further proceedings.

/s/ Andrew J. Vella

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