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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 REPLY BRIEF

JAMES O. TURNER, JR. [#5447]
ANTHONY J. CAPONE [#5315]
Office of Public Defender
Carvel State Office Building
820 N. French Street
Wilmington, Delaware 19801
(302) 577-5135

Attorneys for Appellant

DATED: April 2, 2026

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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.

The State, in its Answering Brief, contends that "[t]here is no record evidence to support the idea that the jury heard any part of the statement."[1] The State then cites the record evidence that the jury heard part of the improperly played § 3507 statement where the trial Judge states: "it was only played to the extent that Ms. Shaffer and then my attention could realize what the statement was…"[2] Hedging slightly, the State then elaborates in its Answering Brief, "[e]ven if the jury heard a portion of the statement, the trial judge instructed them to disregard it."[3]

Nonetheless, while the precise scope of the usage remains elusive, the record does contain evidence which strongly supports the inference that the State succeeded in playing a portion of the § 3507 statement before it was

[1] Ans. Br. at 14.
[2] A279; Ans. Br. at 17.
[3] Ans. Br. at 17.

halted by the objection. Specifically, the trial court noted that "I just had a note here at 20:43:41 seemed to be where it was paused when we had our sidebar discussion, so I don't know what time the State started . . ."[4]

The video timestamp of 20:43:41 occurs at mid-sentence during the § 3507 statement,[5] and the subject matter under discussion is consistent with the State's arguments immediately preceding the clip.[6] In the time that it took for the defense and the trial court to hear and recognize that testimony was being played, and the time it took for the prosecutor to halt the clip upon objection, the jury was obviously exposed to testimonial evidence that was integral to the State's case.

A.

The curative instruction was an insufficient remedy to mitigate the error.

What was improperly played in this case was prejudicial enough for defense counsel to request a mistrial and for the trial court to go through the three-part analysis and issue a curative instruction. However, in delivering the curative instruction, which attempted to contain the potential prejudice, the

[4] A288.
[5] Op. Br. Ex. B.
[6] A216.

Court set a boundary that the jury would later breach. The trial court told defense counsel that the jury would be instructed that their recollection controls and the "testimony is to be treated just like any other."[7] Subsequently, the trial court then instructed the jury that their "recollection of the testimony controls."[8] In other words, the curative instruction was structured to prevent undue emphasis by limiting the jury to its recollection, implicitly ruling out a rewatch of the footage. Had that boundary been enforced, the curative would perhaps have been effective.

Despite the instruction, the jury would not be limited to its recollection. The improperly played portion of video likely left the jury wanting to see more. Further, the prosecutor encouraging the jury during closing argument to rewatch some of the videos in this case,[9] although unintentional, could have also had the effect of placing additional undue emphasis on the improperly played § 3507 statement.

"The risk that a jury will be unable to follow the court's instruction to ignore information depends on a number of factors including the strength of the proper evidence against the defendant, the nature of the information, and

[7] A219.
[8] A221.
[9] A227.

the manner in which the information was conveyed."[10] Here, in part due to its emphasis in the State's closing argument, which immediately proceeded deliberations, the statement was unduly emphasized in the minds of the jury and thus they did not settle for their recollection alone.

Because of the concern expressed by this Court in *Morse* that the jury's request to watch the § 3507 statement in deliberations must be spontaneous in nature,[11] the trial court should have recognized the jury's request to view the statement during deliberations as a sign that the initial curative instruction had not fully resolved the issue. Instead, the curative instruction was undercut by the trial court allowing the jury to rewatch the § 3507 statement.

B.

The § 3507 Instruction read to the jury during deliberations after they requested to rewatch the § 3507 video placed further undue emphasis on the statement by informing the jury that they would not be permitted to rehear live testimony or get transcripts.

[10] *U.S. v. Lee*, 573 F.3d 155, 163 (3d Cir. 2009).
[11] *Morse v. State*, 120 A.3d 1, 17 (Del. 2015).

In *Flonnory*, this Court described the circumstances through which the jury may request a transcript of trial testimony and the approach that the trial court may take to that request as follows: "when a jury request for a transcript of testimony is denied, it is usually because: (1) the request may slow the trial where the requested testimony is lengthy; and (2) when reading only a portion of the entire trial testimony, the jury may give undue emphasis and credence to that portion of the testimony and may fail to consider the trial testimony as a whole."[12] This Court went on to explain that "[t]he trial judge has broad discretion to allow the jury to rehear testimony in any form (e.g., having the court reporter reread portions of the testimony or having transcripts of testimony prepared.)"[13]

In *Morse*, the jury, during deliberations, sent a note requesting a transcript of one witness's trial testimony.[14] This Court held that it was not plain error for the trial court to deny the jury's request for the transcript.[15] The concurrence cautioned, however, that "[w]hen a trial court accedes to a jury's request to see a witness's videotaped § 3507 statement, it should not be unexpected that the jury might also wish to compare that statement to the

[12] *Flonnory v. State*, 893 A.2d 507, 525 (Del. 2006).
[13] *Id.*
[14] *Morse v. State*, 120 A.3d 1, 7 (Del. 2015).
[15] *Id.* at 15.

witness's trial testimony or another witness's testimony, as was the case here. Once the trial judge goes down the route of permitting the jury to see particular parts of the record again at the jury's request, it is hazardous to deny them the chance to view other logically related parts of the record and the court should consider carefully whether selectively granting requests for a second viewing of evidence would put undue weight on parts of the record and compromise the jury's ability to put all the evidence in fair perspective."[16]

Prior precedent, therefore, demonstrates that it is within the province of the jury to request trial testimony during deliberations, and then the decision to grant or deny that request lies with the trial judge. "The essence of judicial discretion is the exercise of judgment directed by conscience and reason, as opposed to capriciousness or arbitrary action…."[17]

Though the State argues that the instant case offers a "careful, calculated" parallel to *Morse,* [18] the record reveals another troubling divergence from *Morse*. Before instructing the jury after their request to rewatch the § 3507, the trial judge told the parties: "I will also let them know, however, that we do not have transcripts of testimony available because I don't want that to welcome them asking for transcripts of the testimony, which

[16] *Id.* at 18 (Strine, C.J., concurring).
[17] *Pitts v. White*, 109 A.2d 786, 788 (Del. 1954).
[18] Ans. Br. at 12.

we cannot give them."[19] The Court then, *sua sponte*, instructed the jury "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."[20] The trial court directly acknowledged this extra instruction was outside of the precedent of *Morse*, prefacing her instructions with ". . . I'm going to go a little bit further than *Morse* did . . ."[21]

By preemptively and arbitrarily ruling out any other review of testimony and failing to allow for consideration of such a request on its merits, no matter how short, specific, or otherwise necessary the jury's request might have been, the trial court incautiously increased the undue emphasis that the mid-deliberations replay placed on the § 3507 statement. It should be noted that, even without transcripts available, rereading of testimony is possible.[22] If, for example, the jury had wanted to request the trial testimony of Ms. Daniels, specifically when she was called as a witness by defense counsel, that testimony was only 6-7 pages[23] not including the sidebar, and could have, in the court's discretion, been read by the court reporter without causing great delay to the jury.

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[19] A284.
[20] A285.
[21] A283.
[22] *Morse* at 15.
[23] A205-212.

By preemptively foreclosing such additional review, keeping other testimony out of reach while ushering the jury in for a replay of the § 3507 statement, the trial court undermined its earlier instruction that the jury's recollection of testimony must control and demonstrated that the § 3507 statement was *not* "testimony to be treated like any other."[24] In practice, this magnified the undue emphasis upon the § 3507 statement. It should not have come as a surprise that trial counsel, as reported, did not even make it to the elevator after the § 3507 statement was played and the parties were excused before the jury had a verdict.[25]

Contrary to the State's assertion, this was a close case[26] where the court and trial prosecutor acknowledged that statements were contradictory[27] and the complaining witness was called as a witness by defense counsel and gave statements that were, at times, exculpatory in nature.

The remedy imposed of simply giving instructions was not sufficient to mitigate the effects of the prejudicial error that occurred at closing argument. In *Lewis v. State*, this Court held that the cautionary instructions could not

[24] A219.
[25] A317.
[26] Ans. Br. at 14; *Hughes v. State*, 437 A.2d 559, 571 (Del. 1981).
[27] A278, 281.

cure unlimited replay of the § 3507 statement in the jury room.[28] In the instant case, one of the instructions itself placed further undue emphasis on the § 3507 statement by informing the jury that trial testimony would not be available. The jury, after watching the § 3507 video, knowing that no further testimony could be explored in the same fashion, rapidly reached a verdict.

Accordingly, the trial court abused its discretion in allowing the jury to rewatch the § 3507 video during deliberations after a portion of the § 3507 statement was improperly played at closing.

[28] *Lewis v. State*, 21 A.3d 8, 15 (Del. 2011)("That procedure exalted the recorded section 3507 statements above the balance of the evidence in Lewis' trial and unduly emphasized their importance, notwithstanding the trial judge's cautionary instruction to the contrary.").

CONCLUSION

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

Respectfully submitted,

/s/ James O. Turner, Jr.
James O. Turner, Jr. [#5447]
Carvel State Building
820 North French Street
Wilmington, DE 19801

/s/ Anthony J. Capone
Anthony J. Capone [#5315]
Office of Public Defender
Carvel State Building
820 North French Street
Wilmington, DE 19801

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