PENNSYLVANIA NOW HAS A 'CLEAR' STATE OF MIND

As the Pennsylvania Supreme Court recently stated, when dealing with hearsay "[t]hings can get complicated pretty quickly…At times, the line that divides hearsay from non-hearsay can be difficult to discern." Nowhere is that more true than with "state of mind" hearsay; but a great deal of clarity has been brought to the issue as a result of the Court's decision in *Commonwealth v. Fitzpatrick*, Pa., No. 6 MAP 2020 (July 23, 2021).

The problem's origins are simple. The phrase "state of mind" in evidence law has distinct but oft-conflated definitions. The first simply allows proof of what the person believes or feels *when that feeling or belief is relevant.* Examples abound:

- "The food at Giuseppi's is terrible." If we are trying to prove that the speaker would never eat there, this statement of what the person believes about the cuisine, whether right or wrong, is admissible and is not hearsay.
- "I am Michelangelo, the great sculptor. A snail birthed me." If we are trying to prove the speaker is delusional/insane, the words tell what the person's belief is, not that they are the great 16th century artist. The words are not for their truth and thus not hearsay.

The second is where the words express the person's state of mind and are offered to prove not just that the speaker holds this belief but that the belief is true. That is what Pa.R.Evid. 803(3) addresses and, except in cases involving a will, is limited to current feelings – "I am tired," "I feel angry" – and future plans – "I am going to the bank tomorrow." The rule expressly excludes statements of memory or belief such as "I am angry at Jules *because last week he punished me.*" The speaker is now asserting a memory – last week Jules punished them – and the statement may not be used to prove that memory.

This dichotomy may seem simple, but it has eluded lawyers and judges for decades. Again, the Court acknowledged this in *Fitzpatrick* - "we first must distinguish between the two ways in which a declarant's state of mind can be invoked as a basis for admitting a declarant's out-of-court statement in a legal proceeding. The two often are conflated by courts and practitioners alike."

The assertion in *Fitzpatrick* was simple. In a troubled marriage, Annemarie Fitzpatrick wrote the words "if anything happens to me – Joe" on her day planner. That same day she died; and in the prosecution of her husband "Joe" for her murder, the prosecutor argued that her prediction proved true:

> Anne Marie's voice is here to tell you something else. On the day of her death, June 6, 2012, if something happens to me, Joe. Annemarie Fitzpatrick. If her voice is in this room, ladies and gentlemen, it's on this side of the courtroom. And that's what she wanted you to know.

That this use of the planner note was for its truth can't be questioned; yet this eluded the Superior Court. As explained by the Supreme Court,

> the Superior Court held that the note was hearsay that was admissible under the state of mind exception—which would allow it to be offered for its truth as substantive evidence—but then simultaneously concluded that it was not being offered for the truth of the matter asserted and was not hearsay at all.

To clear up the confusion, the Supreme Court set forth certain principles. The first was:

> Nothing in the plain terms of the exception would allow, for instance, a party to introduce an out-of-court statement of one person to prove the intent, motive, feelings, pain, or health of another person. The bounds of the exception are limited to the then-existing state of mind of the declarant only.

The Court went on to explain that the planner note had, in effect two messages – that the wife was distressed over the state of the marriage and her belief that Joe "would be the perpetrator…" The latter, indisputably, went beyond the reach of 803(3) because it is a statement of belief as to Joe's intent and conduct. And that was what the prosecutor argued.

Another principle explained by the Court is that the declarant's statement must have relevance, and largely limited that to three conditions: the defense is claiming self-defense, in which the victim's stated fear of the defendant refutes the claim of the victim being the first aggressor; where the defense is that a suicide occurred and the victim made statements inconsistent with a suicidal intent; and to refute a claim of accident. Each of these exceptions itself is subject to 403 considerations. Otherwise, "in the typical prosecution, a victim's state of mind simply is not relevant."

The final rule – and that which governed Fitzpatrick's case – is simple and clear. If the victim's statement includes what the Court called a "fact-bound" component, *i.e.*, a statement of what a third party did or will do, that portion is inadmissible as beyond the limits of 803(3) and cannot be allowed even with a limiting instruction.

Mr. Fitzpatrick won a new trial; along with that Pennsylvania 'won' clarity in the use of state of mind statements. The *Fitzpatrick* holding provides a detailed decision tree for lawyers and judges; and evidence law in Pennsylvania is now consistent with United States Supreme Court precedent and the letter and intent of its hearsay rules.

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