[J-192-98]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

COMMONWEALTH OF PENNSYLVANIA ,	:	No.141 Capital Appeal Dkt.
	:	
Appellee	:	Appeal from the Judgment of Sentence
	:	entered on February 5, 1993 in the Court
	:	of Common Pleas of Philadelphia County,
v.	:	Nos. 6001, 6003 March term 1992
	:	
	:	
ANTHONY FLETCHER,	:	
	:	
Appellant	:	ARGUED: October 19, 1998

CONCURRING OPINION

MR. JUSTICE SAYLOR **DECIDED: March 24, 2000**

I join the majority opinion, save for the conclusion that the victim's out-of-court statement "that he had f----ed up a package of dope that belonged to [Appellant]" was admissible under the state of mind exception to the hearsay rule. I would not permit the state of mind exception to be employed, as it is here, to support the general admission of a statement of memory or belief about a past event, as traditional hearsay dangers of fabrication, faulty memory and incorrect narration are implicated by such use. Moreover, since this manner of application could be extended to a broad range of statements, it effectively undermines the hearsay rule. In my view, application of the state of mind exception should be reserved for statements of intention offered to establish that a declarant acted in conformity therewith, see, e.g., Commonwealth v. Collins, 550 Pa. 46, 59-60, 703 A.2d 418, 424-25 (1997), cert. denied, ___ U.S. ___, 119 S. Ct. 538 (1998); and statements which directly indicate the declarant's mental state at the time that the

statement was made, where the declarant's state of mind is at issue in the case. See, e.g., Commonwealth v. Auker, 545 Pa. 521, 547, 681 A.2d 1305, 1319 (1996).[1] See generally Pa.R.E. 803(3).[2]

Because I believe that the hearsay evidence concerning the victim's statement should not have been admitted under our evidentiary rules, I would find that counsel was ineffective for failing to lodge an appropriate objection. I do agree with the majority, however, for the reasons stated in its opinion, that such ineffectiveness did not prejudice the outcome of the trial.

Mr. Chief Justice Flaherty and Mr. Justice Zappala join this concurring opinion.

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[1] With regard to these forms of statements, reliability may be inferred because of spontaneity and reflection of a then-existing condition of mind or emotion, see 2 McCormick, EVIDENCE, §274, at 217 (5th ed. 1999); nevertheless, the out-of-court statement "ought to be accompanied by other, not inconsistent, evidence." Commonwealth v. Marshall, 287 Pa. 512, 523, 135 A. 301, 305 (1926), cited in Comment to Pa.R.E. 803(3). Additionally, where hearsay is admitted pursuant to the state of mind exception, it should be accompanied by a limiting instruction. See generally United States v. Brown, 490 F.2d 758, 763 (D.C. Cir. 1973).

[2] In the specialized context of decedents estates, Pa.R.E. 803(3) would permit admission of a statement of memory or belief offered to prove the fact remembered or believed if it relates to the execution, revocation, identification, or terms of the declarant's will.