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Why Proving Defendant's Motive With the Victim's State of Mind Sometimes Makes Sense . . . Despite What Missouri Says

*State v. Revelle*¹

I. INTRODUCTION

In a case with facts sensational enough to attract the attention of NBC's *Dateline*, lies a complicated legal analysis of Missouri's "present state of mind" exception to the hearsay rule. This Note traces the development and scope of the exception as it applies to homicide victims' declarations. After highlighting the conflicting approaches taken across the nation and within Missouri itself, this Note will argue that Missouri courts should acknowledge that evidence of a victim's present state of mind can be relevant to prove a defendant's motive when the victim communicates his or her state of mind to the defendant. Furthermore, in the instant case, the Missouri Court of Appeals for the Southern District could have found that the disputed evidence was inadmissible based on its legal relevancy rather than by illogically applying the present state of mind exception to the hearsay rule.

II. FACTS AND HOLDING

Defendant George Revelle (hereinafter "Defendant"), a Missouri banker, was found guilty of first-degree murder for the death of his wife, Lisa.² When

1. 957 S.W.2d 428 (Mo. Ct. App. 1997).

2. *Id.* at 430. A jury found that the defendant became "hopelessly in debt" after embezzling funds from both his employer, Ozark Bank, and from the City of Fremont Hills, for which he served as mayor. *Id.* Three months before Lisa's death, George took out insurance on her life in the amount of \$500,000 with a double indemnity clause. *Id.* George was the sole beneficiary. *Id.* Within the last three months of Lisa's life, George had talked to various people several times about getting a firearm for "home defense." *Id.* George was assured by friends that a .45 caliber gun would do the trick. *Id.*

In the middle of the night on September 27, 1994, George called the police to check out his family's home after the motion detector lights on the side of the house had been activated. *Id.* The inspecting officer found no sign of anyone near the home. *Id.* George went to work later that day and told his co-workers about the activated lights and that "he would keep his shotgun close that night." *Id.*

The next morning around 5 a.m., police officers were again dispatched to the Revelle residence. *Id.* The officers found George in the garage, talking on a cellular phone, claiming: "They shot my wife." *Id.* at 431. Lisa was killed by a .45 caliber gun shot wound to the head. *Id.* The officers noted that the motion detector lights had not been activated that morning, that there were no dogs barking in the neighborhood, that there were no footprints around the home and that there were no unusual cars or people in the area. *Id.*

faced with criminal charges, Defendant denied that he shot his wife.³ A Christian County Circuit Court jury found otherwise and sentenced Defendant to life imprisonment.⁴

Defendant appealed his conviction on various grounds, but the Missouri Court of Appeals for the Southern District examined only two of his arguments. The first argument was that the evidence was insufficient to support a verdict of guilty. The second argument was that it was reversible error to admit into evidence a hearsay note written by the victim before her death.⁵ As for the first claim of insufficient evidence, the appellate court summarized the facts at trial and concluded not only that Defendant had a monetary motive to kill his wife, but also that the facts were “consistent with each other, consistent with guilt, and inconsistent with any reasonable theory of innocence.”⁶

The appellate court spent a significantly longer time, however, dealing with Defendant’s hearsay argument. During the State’s case-in-chief, the trial court admitted into evidence a note that the victim wrote to Defendant possibly six months prior to her death.⁷ Defendant objected to its admission, claiming it was inadmissible hearsay.⁸ The State conceded it was hearsay, but argued it was admissible hearsay under the “present state of mind exception.”⁹ The note expressed, among other things, the victim’s fear of Defendant, her frustration with their marriage and her dissatisfaction with his continuous desire for material objects.¹⁰ The trial court, focusing on the relevancy and the timeliness

3. *Id.* at 432.

4. *Revelle*, 957 S.W.2d at 430.

5. *Id.*

6. *Id.* at 431. The court said it only needed to find “sufficient evidence from which reasonable jurors could have found the defendant guilty beyond a reasonable doubt.” *Id.* at 430 (citing *State v. Dulany*, 781 S.W.2d 52, 55 (Mo. 1989)).

7. *Id.* The exact date the letter was written was unknown. *Id.*

8. *Id.*

9. *Id.* at 432. The State also argued at the appellate level that the evidence was admissible under the doctrine of curative admissibility. *Id.* at 433. The court of appeals, however, disagreed. That issue will not be addressed in this Note. *Id.* at 432-33.

10. *Id.* at 431. The note read as follows:

Memo

To: George

From: Lisa

Maybe this is the only form you will read—like an office memo. I can’t seem to tell you anything without feeling your anger so I’ll try to write down my feelings.

I am very scared about our marriage and our family. I can’t continue living this way. I’m afraid of you—afraid of your anger and your silence! I find myself telling the kids not to bother you. I find myself tiptoeing around the house and I won’t do it any more. Life’s too short for this garbage. If you can’t talk to me then find someone you can talk to.

Your indecision about your job, our home, everything right now has

of the note rather than on hearsay, ruled that the note was admissible to show the nature of the Revelle marriage at the time of the victim's death.¹¹ The defense did not request, and the court did not impose, a limiting instruction with respect to the purpose of the note's admission.¹²

The Missouri Court of Appeals for the Southern District reversed Defendant's conviction, holding that the trial court erred in admitting the victim's letter into evidence because a homicide victim's letter that is "otherwise inadmissible hearsay cannot be admitted under the state of mind exception as direct evidence of Defendant's state of mind or a true indication of Defendant's motive."¹³ Judge Prewitt dissented, noting that the majority failed to explain why non-hearsay evidence may be used to show a defendant's motive, while evidence that falls under an exception to the hearsay rule cannot be used in the

nothing to do with me—find out why you're stalling. I don't want a big new home or a Mercedes or a Highland membership. I only want someone who loves me and accepts me as I am. I need someone who cares what I think and wants me to be a part of his life. What do you want?

I've often thought that it would be easier if you were having an affair—at least that would be something tangible I could deal with but I don't know how to deal with this. I've tried to give you time but nothing happens and you don't seem to want it to change. You probably don't even believe anything is wrong.

Just to live in a house together isn't enough. I try to find out about your work but you give me one or two word replies. When did you ever ask me about my summer school classes? I want to be a part of your life and maybe you don't care about mine but at least be honest enough to tell me!

I'm hurt and alone and the kids feel it too. I see Stan shutting down his feelings too and it makes me sad. Candice is just plain angry and I know she can feel my pain and your anger.

I will always love you but I won't live with you like this.

Revelle, 957 S.W.2d at 438 n.2.

11. *Id.* at 435. The trial court itself had a difficult time deciding whether to admit the note into evidence. At first, the court denied the defendant's request to exclude Lisa's note. *Id.* Later, the court decided to exclude the memo, noting that the court would listen to evidence regarding the timeliness of the memo. *Id.* Before opening arguments, both sides presented evidence on the remoteness issue. *Id.* At this point, the court stated that remoteness "is the *only issue* we have concerning the memo." *Id.* (emphasis added). The prosecutor responded that it would "forego then the argument about the state of mind and things of that nature." *Id.* The court then reversed itself once again and held the letter was admissible. *Id.* at 436.

12. *Id.* at 435.

13. *Id.* at 433 (Crist, Senior J., writing for the court). Concurring, Judge Shrum emphasized that the majority did indeed recognize the relevancy of the note, but that the note was nonetheless inadmissible under the state of mind exception to hearsay. *Id.* at 434 (Shrum, J., concurring). Judge Parrish also filed a short concurring opinion regarding an issue outside the scope of the this Note. *Id.* at 437 (Parrish, J., concurring).

same manner.¹⁴ Judge Garrison similarly filed a dissenting opinion in which he argued that a homicide victim's statement to a defendant should not be "summarily dismissed as irrelevant and inadmissible" when the defendant is aware of the victim's state of mind and that awareness could motivate the defendant to murder the victim.¹⁵

III. LEGAL BACKGROUND

Hearsay—a statement made outside of court that is offered in court to prove the truth of the matter stated—is generally inadmissible in a court of law.¹⁶ Missouri recognizes, however, several well-established exceptions to the hearsay rule, including the "present state of mind exception."¹⁷ Generally speaking, a statement that manifests the declarant's present state of mind is admissible when relevant, but a statement of the declarant's memory or belief is inadmissible to prove the fact remembered or believed.¹⁸

There are numerous conditions under which a declarant's state of mind may be relevant. A homicide victim's present state of mind is traditionally relevant in three situations. When the defendant of a homicide case raises an issue of (1) self-defense, (2) accidental killing, or (3) suicide of the decedent, Missouri courts will usually find that the victim's state of mind may be relevant in rebutting such defenses.¹⁹ State of mind testimony may be excluded in these

14. *Id.* at 437 (Prewitt, J., dissenting).

15. *Id.* at 447 (Garrison, J., dissenting).

16. *See, e.g.*, *State v. Shurn*, 866 S.W.2d 447, 457 (Mo. 1993), *cert. denied*, 513 U.S. 837 (1994).

17. *Id.* at 458.

18. *See, e.g.*, *State v. Boliek*, 706 S.W.2d 847, 850 (Mo.) (citing *United States v. Brown*, 490 F.2d 758 (D.C. Cir. 1973)), *cert. denied*, 479 U.S. 903 (1986). Two rationales are used to explain the exception. First, statements reflecting present thoughts are inherently more reliable than statements made after motives to fabricate arise. *See* Amanda Bartlett Mook, Note, *The Death of Res Gestae and Other Developments In Missouri Hearsay Law*, 60 MO. L. REV. 991, 997 (1995). Second, given the lack of alternative means to know a person's thoughts, declarations reflecting such thoughts can be a crucial tool in the adversarial system. *See, e.g.*, JOHN W. STRONG et al., MCCORMICK ON EVIDENCE § 274, at 481 (4th 1992).

19. *See, e.g.*, *Shurn*, 866 S.W.2d at 458; *State v. Singh*, 586 S.W.2d 410, 418 (Mo. Ct. App. 1979). In discussing the present state of mind exception, the District of Columbia Circuit stated:

When [self-defense] is asserted, a defendant's assertion that the deceased first attacked him may be rebutted by the extrajudicial declarations of the victim that he feared the defendant, thus rendering it unlikely that the deceased was in fact the aggressor in the first instance. Second, where the defendant seeks to defend on the ground that the deceased committed suicide, evidence that the victim had made statements inconsistent with a suicidal bent are highly relevant. A third situation involves a claim of accidental death, where, for

cases, however, if the prejudicial effect of the statement outweighs its probative value. Such is the case, for example, when the victim's statement offered into evidence is more of a narrative of the defendant's past conduct than a reflection of the victim's present state of mind.²⁰

While Missouri has not explicitly limited the present state of mind exception to the above three scenarios,²¹ it has made its application under other factual circumstances less certain.²² As in the present case, prosecutors will often attempt to show that at the time of a victim's death, there was either fear or tension between the victim and the defendant. Such evidence, it is argued, tends to prove that the defendant had a motive to kill the victim. Missouri courts generally reject this argument,²³ holding that a victim's state of mind is admissible as an exception to the hearsay rule *only* when the "declarant's state of mind, *in itself*, is probative of an ultimate issue in the case."²⁴

An illustration of Missouri's general approach to the present state of mind exception is found in *State v. Post*.²⁵ In *Post*, the court reversed the defendant's murder conviction because, among other reasons, it was reversible error to allow into evidence, under the present state of mind exception, statements that his wife wanted a divorce.²⁶ Accused of drowning his wife, the defendant claimed that his wife accidentally drowned while he was gone.²⁷ The trial court ruled that the wife's present state of mind was relevant to rebut the defense that the wife

example, defendant's version of the facts is that the victim picked up defendant's gun and was accidentally killed while toying with it. In such cases the deceased's statements of fear as to guns or of defendant himself (showing he would never go near defendant under any circumstances) are relevant in that they tend to rebut this defense.

United States v. Brown, 490 F.2d 58, 767 (D.C. Cir. 1973).

20. See, e.g., *State v. Benson*, 142 S.W.2d 52, 54 (Mo. 1940) (stating that although the defendant raised the issue of self-defense, it was improper to admit evidence that did not truly show the state of mind of the victim, but instead was a narration of past events); see also *State v. Randolph*, 698 S.W.2d 535, 540 (Mo. Ct. App. 1985) (holding testimony that victim said defendant robbed another man and that victim was afraid of defendant "did not show the victim's state of mind, but instead showed through hearsay his conversation about appellant's alleged past criminal activities").

21. See, e.g., *State v. Singh*, 586 S.W.2d 410, 419 (Mo. Ct. App. 1979) ("The factors which make the state of mind of an alleged victim of a homicide relevant are myriad. However, the courts have developed three rather well-defined categories in which the relevancy of such statements of fear is established.")

22. See, e.g., *State v. Kelley*, 953 S.W.2d 73, 86 (Mo. Ct. App. 1997), *cert. denied*, 118 S. Ct. 1173 (1998); *State v. Post*, 901 S.W.2d 231, 235-36 (Mo. Ct. App. 1995); *Randolph*, 698 S.W.2d at 541.

23. See *State v. Revelle*, 957 S.W.2d 428, 431 (Mo. Ct. App. 1997).

24. *Id.* (emphasis added).

25. 901 S.W.2d 231 (Mo. Ct. App. 1995).

26. *Id.* at 237.

27. *Id.* at 236.

drowned accidentally.²⁸ The appellate court, however, rejected this argument because the defendant claimed that he had nothing to do with her death—not that he was the one who accidentally drown her.²⁹ Under these facts, the court stated: “[T]he decedent’s particular state of mind that she was unhappy with her husband [had] no relevance.”³⁰

The *Post* court also noted that the victim’s state of mind was irrelevant in proving that the defendant had motive to kill the victim.³¹ While this conclusion alone is not surprising, the way in which the court reached the conclusion sheds light on this controversial area of the law. The court based its reasoning on the fact that the state failed to provide any evidence that the defendant *was aware* of the victim’s desire to divorce the defendant.³² “In absence of knowledge by defendant of these intentions, they do not have relevancy and were erroneously admitted.”³³ The *Post* court strongly implies, therefore, that had the defendant known of the victim’s state of mind (*i.e.*, her intention to divorce), then the declarations would have been relevant to show defendant’s motive and therefore would have been admissible evidence.³⁴

While there is existing authority in Missouri and elsewhere suggesting that the admissibility of such evidence does or should hinge upon the defendant’s *awareness* of the victim’s state of mind,³⁵ this distinction is often overlooked by

28. *Id.* at 233.

29. *Id.* at 236.

30. *Id.* at 233.

31. *Id.* at 236.

32. *Id.* (emphasis added).

33. *Id.*

34. *Id.* Note that six of the seven judges sitting on the Missouri Court of Appeals for the Southern District found this argument convincing. *State v. Revelle*, 957 S.W.2d 428, 437, 446 (Mo. Ct. App. 1997) (Shrum, J., concurring) (Prewitt & Garrison, JJ., dissenting).

35. *See, e.g.*, *Linton v. State*, 880 P. 2d 123, 130 (Alaska Ct. App. 1994) (admitting testimony that the wife feared her husband and wanted to leave him under the present state of mind exception to suggest a plausible motive for the defendant’s crime), *cert. denied*, 517 U.S. 1197 (1996); *State v. Robinson*, 903 P.2d 1289, 1291 (Haw. 1995) (holding murder victim’s statements that she wanted to get out of the relationship with defendant, which defendant heard, were relevant evidence that the defendant was aware of the victim’s future intent to leave him if their relationship did not improve; therefore when the relationship did not improve, defendant had a motive to kill her rather than lose her); *Commonwealth v. Purcell*, 673 N.E.2d 53, 54 (Mass. 1996) (admitting testimony that a murder victim told defendant to leave on the day of the victim’s death was admissible to show both victim’s state of mind and the defendant’s motive to kill her); *State v. Ivory*, 916 S.W.2d 337, 339 (Mo. Ct. App. 1995) (holding statements made by victim to another that he feared the defendant, which led the other to secure assurances from the defendant that he would not harm the victim, were relevant and admissible at defendant’s murder trial under state of mind exception to the hearsay rule even though defendant did not plead self-defense, accidental killing or suicide); *State v. Post*, 901

courts. As a result, it is difficult to know how this distinction squares with the general rule stated by the *Revelle* court that "otherwise inadmissible hearsay cannot be admitted under the state of mind exception as direct evidence of Defendant's state of mind or a true indication of Defendant's motive."³⁶ A few Missouri cases do exist, however, where the victim's state of mind was held to be relevant and admissible for precisely this purpose.

In 1997, the Missouri Supreme Court held that evidence of a victim's present state of mind was admissible to prove the defendant's motive for murder. In *State v. Basile*,³⁷ the defendant was convicted of killing a husband's wife for money.³⁸ The trial court allowed testimony that the victim said her marital relationship was breaking up and that she was aware of her husband's criminal

S.W.2d 231, 236 (Mo. Ct. App. 1995); *State v. Payne*, 394 S.E.2d 158, 164 (N.C. Ct. App. 1990) (admitting victim's testimony of her state of mind that she felt her marriage to the defendant was troubled and that she had related this to the defendant was relevant to corroborate the defendant's alleged motive, which was to get out of the marriage), *cert. denied*, 498 U.S. 1092 (1991); *Commonwealth v. Sneeringer*, 668 A.2d 1167, 1171 (Pa. Super. Ct. 1995) (holding murder victim's statement concerning the breakdown of her and defendant's relationship and victim's express intent to get the defendant out of her life was relevant to show that she did in fact end the relationship or that the defendant had a motive to kill her); *see also Kelley v. State*, 543 So. 2d 286, 287 (Fla. Dist. Ct. App. 1989) (holding victim's state of mind was inadmissible because the statements were not shown to be known by defendant); *State v. Weedon*, 342 So. 2d 642, 647 (La. 1977) (holding murder victim's statements to a friend that she wanted to leave her husband, the defendant, were inadmissible because she did not communicate this desire to him, so there no possible inferences of any reaction by the husband to such an intention); *State v. Volquardts*, 540 So. 2d 497, 500 (La. Ct. App. 1989) (holding victim's state of mind testimony inadmissible because there was no suggestion that the victim's intent to divorce the defendant was communicated to the defendant); Jay M. Zitter, Annotation, *Admissibility of Evidence of Declarant's Then-Existing Mental, Emotional, or Physical Condition Under Rule 803(3) of Uniform Rules of Evidence and Similar Formulations*, 57 A.L.R. 5th 141, 179 (1998), which provides:

[M]any courts have held that evidence of an out-of-court statement by the victim of a crime that the victim wanted to end a relationship or to divorce the defendant was admissible . . . since the statements related to the victim's then-existing state of mind For instance, in the case of one spouse killing the other, the victim's statement can show that the couple was not getting along and thus illustrate a possible motive for the defendant's killing On the other hand, some courts have found testimony to the victim's plans to leave the other spouse inadmissible, such as where the victim's intention was not communicated to the defendant or where such intent was irrelevant to the case, such as where it was claimed that the shooting was accidental and it made no difference whether the victim wanted to leave the defendant.

36. *State v. Revelle*, 957 S.W.2d 428, 433 (Mo. Ct. App. 1997).

37. 942 S.W.2d 342 (Mo.), *cert. denied* 118 S.Ct. 213 (1997).

38. *Id.* at 347.

activities.³⁹ Because the defendant failed to properly preserve the hearsay issue at trial, the Supreme Court held that the trial court properly admitted the evidence under the “plain error” standard of review because the victim’s “attitude . . . and knowledge of [her husband’s] criminal involvement were relevant to establish [his] motive to murder [her].”⁴⁰

*State v. Danforth*⁴¹ is another case that is arguably an exception to Missouri’s general approach. In *Danforth*, the Missouri Court of Appeals affirmed the conviction of a 22-year-old wife for conspiring to kill her 75-year-old husband.⁴² The victim’s son testified at trial that after the honeymoon, the victim said that he “was upset with his new wife because she gave him the run around” and that if she did not live with him, he would sue her for everything he gave her.⁴³ The court, in upholding the admissibility of the testimony, noted that it was

offered by the state, not to prove the truth of the matter asserted, but explicitly to show the declarant’s state of mind . . . , a matter which was relevant here because it corroborated and supported the testimony of other witnesses that defendant wanted her husband killed . . . because she thought if she did not sleep with him that night, he would cut her out of his will.⁴⁴

Even though the court emphasized that the evidence was not used to prove the truth of the matter stated, it is not clear that the court meant the evidence was non-hearsay. The reason this is unclear is because the court relied upon *State v. Singh*⁴⁵ in its analysis, a case that explicitly deals with the present state of mind exception to the hearsay rule.⁴⁶ Because the court’s analysis of admissibility is so brief, it is difficult to determine if the court intentionally used one theory of

39. *Id.* at 357.

40. *Id.* There is no doubt that the reasoning in *Basile* contradicts the majority of case law in Missouri. The effect of *Basile*, however, may be limited by the unusual circumstances of the case. In the *Basile* court’s brief analysis, it emphasized that the controversial hearsay implicated the victim’s husband and not the defendant who was paid to kill the victim. *Id.* “Because the claimed hearsay testimony failed to implicate the defendant, there was no plain error.” *Id.* Had a more stringent standard of review applied, or had the statements directly incriminated the appellant, it is doubtful that the court would have reached the same result.

41. 654 S.W.2d 912 (Mo. Ct. App. 1983).

42. *Id.* at 925.

43. *Id.*

44. *Id.*

45. 586 S.W.2d 410, 418 (Mo. Ct. App. 1979).

46. *State v. Danforth*, 654 S.W.2d 912, 921 (Mo. Ct. App. 1983).

admissibility while relying on the precedent of a different theory or if the court was instead simply using the two theories interchangeably.⁴⁷

Cases such as the few mentioned above illustrate that Missouri courts are anything but consistent in articulating why, how, or when the present state of mind exception is applicable to a victim's statements in a homicide case. This inconsistency helps explain why the *Revelle* court struggled so much with the admissibility of Lisa Revelle's letter.

IV. INSTANT DECISION

A. *The Majority Opinion*

In the instant case, the majority of the court found that it was reversible error to allow into evidence the note that Lisa Revelle wrote to her husband possibly months before her death.⁴⁸ In reaching this decision, the court noted that the parties conceded the note was hearsay and that the State argued it was an exception to the hearsay rule because it reflected Lisa's present state of mind.⁴⁹ In addition to pointing out that the prosecution failed to argue the testimony was non-hearsay, the majority also emphasized that Defendant did not raise any of the three defenses that "most commonly"⁵⁰ make a victim's state of mind relevant:

[H]ere Defendant denied any involvement in causing his wife's death. Defendant did not claim self-defense, did not assert that his wife died by her own hand, did not admit that he was the actor but caused Lisa's death accidentally, *nor did Defendant inject any other plausible issue that would justify an inquiry into the victim Lisa's state of mind.* Given the facts of this case, Lisa's state of mind "as to her belief in the future of the marriage" and "as to her future relations with [Defendant] had no relevance."⁵¹

The court rejected the State's argument that the victim's note to Defendant was relevant, and therefore admissible, because it established Defendant's

47. As with *Basile*, the extension of *Danforth* to other cases is at least somewhat questionable. Left unclear in *Danforth* is whether the court would have reached the same holding if the statements were explicitly offered under the present state of mind exception to the hearsay rule. Also, the court's emphasis on the corroborative nature of the testimony may also limit the scope of the holding.

48. *State v. Revelle*, 957 S.W.2d 428, 434 (Mo. Ct. App. 1997).

49. *Id.* at 431-32.

50. *Id.* at 432.

51. *Id.* (emphasis added) (quoting *State v. Post*, 901 S.W.2d 231, 236 (Mo. Ct. App. 1995)).

motive for her death.⁵² The court relied on cases such as *State v. Kelley*,⁵³ *State v. Post*,⁵⁴ and *State v. Randolph*,⁵⁵ which reject “any notion that the ‘present state of mind’ exception renders hearsay evidence admissible to prove a defendant’s state of mind or motive.”⁵⁶ The reasoning behind this rule, according to the court, is that “[m]otive concerns the state of mind of Defendant, not that of the victim.”⁵⁷ Furthermore, “the exception cannot be used to allow hearsay testimony offered primarily to prove the state of mind of an accused”⁵⁸

The court conceded that the State is entitled to prove motive in a murder case and has wide latitude in doing so.⁵⁹ But motive, the court noted, “can no more be proved by inadmissible and objected-to-hearsay than any other fact.”⁶⁰ Because a victim’s present state of mind is inadmissible to prove a Defendant’s state of mind, the court concluded that the victim’s letter could not be presented to the jury to show Defendant’s motive to kill.⁶¹ In short, the letter did not fall within an exception to the hearsay rule and was therefore inadmissible. Because the erroneous admission of the letter was highly prejudicial to Defendant, the court reversed the conviction and remanded the case for a new trial.⁶²

52. *Id.* at 433.

53. 953 S.W.2d 73 (Mo. Ct. App. 1997), *cert. denied* 118 S.Ct. 1173 (1998).

54. 901 S.W.2d 231 (Mo. Ct. App. 1995).

55. 698 S.W.2d 535 (Mo. Ct. App. 1985).

56. *State v. Revelle*, 957 S.W.2d 428, 433 (Mo. Ct. App. 1997).

57. *Id.* The court’s reliance on *Randolph* may be undermined because in *Randolph* (1) it was not clear that the state showed evidence that the defendant was aware of the victim’s statements, and (2) the victim’s statement was more a narrative of the defendant’s prior bad acts than an account of the victim’s present state of mind. *Randolph*, 698 S.W.2d at 541.

58. *Revelle*, 957 S.W.2d at 432.

59. *Id.* at 433.

60. *Id.*

61. *Id.* The court recognized the fact that non-hearsay evidence of marital problems is probative of a defendant’s motive, but reasons that this principle does not apply to this case because the State conceded that Lisa’s note was hearsay. *Id.* at 434.

62. *Id.* at 434. Two concurring opinions were filed, but this Note will not discuss them in detail because they add little to the majority’s analysis with respect to the use of present state of mind evidence to show motive of another. Judge Shrum’s concurrence, joined by Chief Judge Montgomery, Judge Barney and Judge Parrish, emphasized that the majority did find Lisa’s letter to be relevant, contrary to Judge Prewitt’s claims. *Id.* at 434 (Shrum, J., concurring). The four-judge concurrence noted:

The dissents make a compelling argument that, at least on the issue of motive, the memo is relevant. If Defendant is retried, Lisa’s memo may be admissible depending on how it is submitted and used. However, as incongruous as that may seem, this court deals only with the record presented to it.

Id. at 437.

Judge Parrish also filed a concurrence, in which Judge Shrum joined, discussing issues of curative admissibility, an issue outside the scope of this Note. *Id.* at 434-37 (Shrum & Parrish, JJ., concurring).

*B. The Dissenting Opinions*⁶³

Both Judge Prewitt and Judge Garrison stated that the victim's letter fell under the present state of mind exception to the hearsay rule and that it was relevant evidence because it was communicated to Defendant and could show Defendant's motive to kill.⁶⁴ In other words, Defendant's *awareness* of the victim's present state of mind made the letter relevant to a material issue in the case—Defendant's motive.⁶⁵ The letter, the dissenting judges argued, was therefore correctly admitted into evidence.

Judge Prewitt began his analysis by criticizing the majority for determining "relevance based on whether the evidence is hearsay."⁶⁶ He explained:

The majority opinion states that evidence of marital problems "is admissible and is probative of a defendant's intent, motive, or culpability where proof is by non-hearsay," but does not explain why evidence that is an exception to the hearsay rule covering the same subject has different relevancy considerations than non-hearsay evidence. Obviously, there is no explanation.⁶⁷

According to both dissenting judges, the majority wrongly relied on cases such as *State v. Kelley*, which state that a victim's declarations cannot be admitted under the present state of mind exception to the hearsay rule in order to show the defendant's motive.⁶⁸ Judge Garrison admitted that he agrees with *Kelley* under its facts, but stated that "it is the universal application of the rule of exclusion announced in *Kelley*, regardless of circumstances, with which I cannot agree."⁶⁹

Judge Garrison distinguished *Kelley* and the cases it relied upon for two reasons. First, the statements in those cases, even if communicated to the defendant, would not have motivated the defendant to kill.⁷⁰ Second, and more importantly, the State in those cases did not even allege that the defendants were aware of the victim's statements showing the victim's state of mind.⁷¹ From

63. Both Judge Prewitt and Judge Garrison filed dissenting opinions. *State v. Revelle*, 957 S.W.2d 428, 437, 446 (Prewitt & Garrison, JJ., dissenting). Because their views on the application of the present state of mind exception in this case are quite similar, they will be discussed simultaneously.

64. *Id.*

65. *Id.*

66. *Id.* at 443 (Prewitt, J., dissenting).

67. *Id.*

68. *Id.* at 446 (Prewitt & Garrison, JJ., dissenting).

69. *Id.* at 446.

70. *Id.*

71. *Id.* at 446-47. Judge Garrison also pointed out that the *Post* court, upon which the majority relied, even suggested that had the defendant been aware of the victim's

cases such as *Kelly*, Judge Prewitt and Judge Garrison argued, it does not follow that a victim's statements are always irrelevant to show a defendant's motive.⁷² Instead, when the statements are communicated directly to a defendant they may become highly relevant to prove motive.⁷³

Judge Garrison elaborated on the relevancy analysis by first noting that evidence establishing a motive to commit a crime for which a defendant is on trial is relevant.⁷⁴ To be probative of motive, however, the State must show that the evidence was known to the defendant.⁷⁵ Judge Garrison argued "that the expression of the victim's state of mind is relevant if it was communicated to the defendant and could have provided a motive for the murder."⁷⁶

Applying this analysis to the present case, Judge Garrison argued that the victim's note was relevant because it "could have been interpreted as evidence of a moving cause to commit the crime. Whether Mrs. Revelle truly felt that way is not the crucial question on the matter of motive; rather it is what Defendant believed."⁷⁷ Similarly, Judge Prewitt believed the letter was relevant to show Defendant's motive because Defendant was obviously aware of the victim's refusal to "live with [Defendant] like this."⁷⁸ Therefore, both judges agreed that the conviction should be affirmed because the trial court properly admitted the letter as relevant evidence falling under the present state of mind exception to the hearsay rule.⁷⁹

V. COMMENT

The confusing analysis in *Revelle* makes clear that there is a genuine need for clarification in hearsay law as Missouri and other jurisdictions continue to struggle with the present state of mind exception to the hearsay rule in the context of homicide cases. The majority's application of the present state of mind exception to this case, while appearing to follow precedent, has some analytical problems. These problems stem in part from the fact that prior Missouri case law has never squarely dealt with the issue of relevancy when a defendant is *aware* of the evidence indicating the victim's state of mind.

The majority correctly stated that there are three traditional conditions under which a homicide victim's declarations of state of mind are admissible as

statements, the victim's state of mind would indeed have been relevant to show the defendant's motive. *Id.*

72. *Id.* at 446.

73. *Id.* at 440 (Prewitt, J., dissenting).

74. *Id.* at 446 (Garrison, J., dissenting).

75. *Id.*

76. *State v. Revelle*, 957 S.W.2d 428, 447 (Mo. Ct. App. 1997) (Garrison, J., dissenting).

77. *Id.* at 446.

78. *Id.* at 438 n.2 (Prewitt, J., dissenting).

79. *Id.* at 445, 448 (Prewitt & Garrison, JJ., dissenting).

an exception to the hearsay rule.⁸⁰ These three types of cases justify admissibility because the relevancy of the testimony almost always outweighs its prejudicial effect in that the defendant is the one raising the issue of the victim's state of mind.⁸¹ When, for example, a defendant claims she killed out of self-defense, the victim's state of mind becomes highly relevant to prove or rebut the allegation that the victim was the first aggressor.⁸² In short, the statements in these cases are relevant to the defendant's chosen defense.⁸³

Often said in these three types of cases is that the "declarant's state of mind, in itself, is probative of an ultimate issue in the case."⁸⁴ The *Revelle* court seemingly construed this statement to mean that admissibility of a victim's state of mind testimony *always requires* the victim's state of mind to be, in itself, probative of an ultimate issue of the case.⁸⁵ Under this rule, however, a victim's state of mind will arguably be admissible only if the defendant chooses to make the victim's state of mind part of his or her defense. The *Revelle* court failed to explain why such evidence cannot also be used to circumstantially prove a defendant's motive when the defendant knows the victim's thoughts or intentions. Nothing in the rules of evidence indicates such a distinction was intended, necessary, or desirable when applying the present state of mind exception to the hearsay rule.

This Note argues that evidence of a victim's present state of mind should be admissible in homicide cases not only to rebut the three traditional defense arguments, but also to prove other elements of homicide, including a defendant's motive, if the statements are otherwise legally relevant. In determining legal relevancy, the mere fact that a victim's state of mind can never show another's motive *by itself* should be of no significance. The important fact is that the *communication* of a victim's belief or intent to the defendant creates a whole new scope of relevancy. In these cases, the victim's state of mind becomes a link in the chain of proving the defendant's motive. Once the defendant is aware of the victim's state of mind, that awareness can make it more or less probable that the defendant has motive to react.

Because a defendant's awareness of a victim's state of mind can be probative of the defendant's motive, the *Revelle* court illogically limited the use of the present state of mind exception in homicide cases. This Note argues that the majority's true concern in *Revelle* was that the note's prejudicial effect outweighed its logical relevancy. As stated before, it is this balancing between relevancy and prejudicial effect that initially established the three common

80. *Id.* at 432.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 433. Moreover, "*Randolph* rejects any notion that the 'present state of mind' exception renders hearsay evidence admissible to prove a defendant's state of mind or motive." *Id.*

conditions under which state-of-mind testimony is admissible.⁸⁶ By placing a blanket prohibition on evidence of a victim's state of mind to prove a defendant's motive, the *Revelle* court failed to account for the fact that when a victim communicates his or her state of mind to a defendant, the possible relevancy of the victim's state of mind broadens. Because the potential relevancy increases, a stronger prejudicial effect must be shown to keep the evidence out. This determination, however, must be made on a case-by-case basis.

In the *Revelle* case, all parties conceded the note written by the victim conveyed her state of mind.⁸⁷ Because it was presented to show her beliefs and intentions and not the underlying things believed, the note clearly fell within the present state of mind exception to the hearsay rule. Once the evidence met this threshold requirement, then its relevancy had to be shown.

The victim's note in *Revelle* had logical relevancy because Defendant read the note and, therefore, knew of his wife's feelings of dissatisfaction and refusal to keep living under the then-existing conditions of their marriage.⁸⁸ Knowing his wife might ruin his reputation by breaking their picture-perfect lifestyle by exposing the secrets of their distraught marriage and his scandalous embezzlement, it was more likely that Defendant had a motive to silence her before she acted first. Defendant would also have a motive to collect on his wife's life insurance policy before she divorced him. If from her letter he thought divorce was soon approaching, then Defendant had a moving cause to end her life while they were still married. All of these factors make the note logically relevant because they make it more probable that Defendant had a motive to kill his wife.

The final step in determining the note's admissibility, however, is whether the note was legally relevant, that is, whether its prejudicial effect substantially outweighed its logical relevancy.⁸⁹ In the *Revelle* case, the note's legal relevancy is at least questionable. The note was written at an undetermined time, possibly six months before the victim died.⁹⁰ It is not clear, therefore, that the note's contents reflect the victim's state of mind at the time she was killed. Perhaps the Defendant helped mend the marriage after reading the victim's note, and the victim no longer had reason to leave her husband or expose his financial troubles. Such speculations, of course, are not significant. What is significant is that the letter's unknown date makes its relevance less certain and, therefore, it is more likely that its prejudicial effect outweighed any logical relevancy it otherwise had to Defendant's motive.

86. *Id.* at 432.

87. *Id.* at 431.

88. *Id.* at 438.

89. See FED. R. EVID. 403.

90. State v. Revelle, 957 S.W.2d 428, 431 (Mo. Ct. App. 1997).

Similarly, the language of the letter may be too ambiguous to determine the extent the letter would affect Defendant's motive to act against the victim. The victim wrote that she was suspicious of her husband's business activities, that she wouldn't live with him "like this" and that "just to live in a house together isn't enough."⁹¹ Arguably, these statements do not show that Defendant feared an upcoming divorce or that his wife would expose his previous crimes. Because the statements were possibly untimely and somewhat vague, they are less relevant to show Defendant's motive. The statements, therefore, could be held inadmissible because they were not legally relevant.

As a practical matter, it is likely that some statements in the letter were legally relevant while others were too prejudicial to be admissible. Whether the victim's note was legally relevant, however, is an entirely different issue than the one posed by the *Revelle* court. The *Revelle* court instead chose to broadly state that a victim's state of mind can *never* be relevant to show a defendant's motive. This Note argues that the *Revelle* court should have held that when a defendant has notice of the victim's state of mind, admissibility of the state-of-mind evidence depends upon its legal relevance, which can only be determined on a case-by-case basis.

While the Missouri Court of Appeals for the Southern District arguably abided by precedent, the result it reached seems not only illogical, but inefficient and costly. As the majority noted before it even discussed the victim's letter, there was sufficient evidence to convict Defendant for the murder.⁹² Furthermore, four judges agreed not only that the dissent made a strong argument that the note was relevant to motive, but that upon remand, the note could possibly be properly admitted on several grounds.⁹³

VI. CONCLUSION

While the present state of mind exception to the hearsay rule is well-established in Missouri, its scope and application continues to be muddled by cases such as *Revelle*. Although the *Revelle* majority followed language from prior cases, those cases dealt with distinguishable fact patterns. This misguided application of law to facts resulted in a rule that makes little logical or legal sense. Indeed, four of the seven judges appeared to recognize the flawed result, conceding that a victim's present state of mind *should* be admissible when the defendant is aware of that evidence and the evidence makes it more probable that the defendant had a motive to kill the victim.⁹⁴

This case may be much ado about nothing in a narrow sense because there will probably be sufficient evidence to convict Defendant upon remand—with

91. *Id.* at 438 n.2 (Prewitt, J., dissenting).

92. *Id.* at 430.

93. *Id.* at 437 (Shrum, J., concurring).

94. *Id.*

or without the admission of the victim's letter. Furthermore, Missouri appears to be on the brink of adopting a residual hearsay exception.⁹⁵ If courts such as *Revelle* continue to force illogical restrictions on established hearsay exceptions, the residual clause will give litigants an alternative avenue to get otherwise trustworthy evidence admitted. In a broader sense, however, this case exemplifies why Missouri should affirmatively acknowledge that a victim's state of mind can be relevant to prove a defendant's motive when the defendant is aware of that victim's state of mind.

ROBYN L. ANDERSON

95. *See, e.g.*, *State v. Bell*, 950 S.W.2d 482, 485-86 (Mo. 1997) (Limbaugh, J., concurring) (recognizing that a majority of the judges sitting on the Supreme Court of Missouri agreed that Missouri should join the federal courts and 29 other states by implementing a residual exception to the hearsay rule).