

Neely, C. J., dissenting:

Treating a self-serving suicide note as the equivalent of a spontaneous declaration made in anticipation of imminent death lacks basic common sense. The dying declaration exception to the hearsay rule is used when the declarant is unavailable as a witness to admit "(2)Statement[s] under Belief of Impending Death. In a prosecution for homicide or in a civil action or proceeding, a statement made by a declarant while believing that his death is imminent, concerning the cause or circumstances of what he believed to be his impending death." Rule 804(b)(2), W.V.R.E.

At common law, the dying declaration was used to allow the admission of statements by murder victims who, with awareness of their impending demise, used their dying breath to identify their assailant. Accordingly, justice was served by preventing a murderer from evading justice by virtue of his success in killing the victim.

As noted by the majority, this exception has since been expanded to include civil actions, and does not require that the declarant be the subject of the litigation seeking to introduce the statement.

In this case Mr. Moore was a prosecution witness who was present

at trial and subjected to direct, cross, and re-cross before his self-inflicted death.

Mr. Moore was in complete control of the timing and circumstances of his death. The majority fails to distinguish the difference between Mr. Moore's suicide note, and a statement made by a person facing inevitable death due to circumstances beyond his control. If ever there is a time to put one's best face forward, it would be in a note that will literally stand for all eternity as one's last testament. A suicide note is the perfect opportunity to rewrite one's own history in a way calculated to impress one's final audience.

My objection is not intended to imply Mr. Moore was lying: rather, the idea that suicide notes should be viewed as admissible evidence under the dying declaration exception to the hearsay rule is misguided.

In addition, Mr. Moore's note did not make reference to the cause or circumstances of his death, as required by Rule 804(b)(2), W.V.R.E. Another unsolved mystery is when he actually wrote the suicide note. Although it was found in the room with his

body, it was not dated. How can the majority infer that the undated note was actually crafted under the belief of impending death?

The majority has employed a number of assumptions as a matter of law, and clothed them with an indicia of reliability that are totally unwarranted. A suicide note is a product of a controlled act accompanied by a planned statement. It is simply not analogous to a statement made under the belief of impending death by a person with a total lack of control over the timing and causation of his death. Denying this difference is absurd. It's like comparing the image captured by a photojournalist covering a war, to a staged photograph of a battlefield reenactment.