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Recent Developments: Sippio v. State: Medical Examiner's Testimony as to Murder Victim's Manner of Death Is Appropriate Where the Autopsy Report Has Been Admitted into Evidence

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Sippio v. State

In a case of first impression, the Court of Appeals of Maryland held that the state medical examiner may testify as to a murder victim's manner of death when the medical examiner's autopsy report, which notes manner of death, has been admitted into evidence. *Sippio v. State*, 350 Md. 633, 714 A.2d 864 (1998). The court also held that a criminal defendant may not present character evidence of his truthfulness without first testifying, or, in the alternative, without requesting to vary the order of proof, and making a binding proffer of his intention to testify. The ruling sets forth a new trend because the court had never considered the admissibility of a medical examiner's opinion testimony as to manner of death.

On December 30, 1995, Dwayne Sippio ("Sippio") fired a shot that killed Brenda Branch ("Branch"). Although Sippio confessed to the shooting, he maintained that it was an accident. At trial, the court admitted into evidence the victim's autopsy report prepared by Dr. John Smialek, Chief Medical Examiner for the State of Maryland which stated the victim's manner of death. In its case-in-chief, the prosecution offered Dr. Smialek's testimony that Branch's manner of death was homicide. Sippio objected, contending that Dr. Smialek's testimony was improper as it resolved an ultimate legal

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By Cheryl F. Matricciani

issue reserved for the jury. The trial court overruled the objection and allowed the testimony. Sippio additionally sought to introduce testimony as to his character for truthfulness without first testifying. The court sustained the state's objection to the testimony and excluded the evidence.

Sippio was convicted in the Circuit Court for Baltimore City of second degree murder, felonious use of a handgun, and unlawfully wearing, carrying, and transporting a handgun. The Court of Special Appeals of Maryland, in a per curiam opinion, affirmed the conviction. The Court of Appeals of Maryland affirmed that ruling after carefully considering the role of expert testimony, the procedure for offering character evidence under the common law, and the Maryland Rules of Evidence.

The court of appeals addressed the admissibility of a medical examiner's testimony as to a murder victim's manner of death by reviewing an earlier decision where the court considered the admissibility of a death certificate that contained a medical examiner's written opinion as to manner of death. *Sippio*, 350 Md. at 645, 714 A.2d at 870. In *Benjamin v. Woodring*, 268 Md. 593, 303 A.2d 779 (1973), the court held that the manner of death portion of the death certificate was inadmissible because it contained "such non-factual information as 'indications, inferences, or conclusions drawn by the certificate maker that did not qualify as 'essential facts concerning the medical causes of death.'" *Sippio*, 350 Md. at 644-45, 714 A.2d at 870 (quoting *Benjamin*, 268 Md. at 606, 608, 303 A.2d at 787, 788). Sippio argued that the *Benjamin* court's holding should be extended to preclude a medical examiner from testifying concerning manner of death. *Id.* at 645, 714 A.2d at 870.

Before distinguishing *Benjamin* from the instant case, however, the court of appeals first examined Health General Article of the Annotated Code of Maryland, section 5-301 et seq., which establishes the procedures a medical examiner must follow when a death results from suicide, homicide, or accident. *Id.* The court noted that the 1990

amendment to section 5-311 added the words “manner of death” to the list of items the medical examiner must include in an autopsy report. *Id.* at 646, 714 A.2d at 871. The court reasoned, therefore, that “[t]o create a per se rule prohibiting such testimony would be akin to holding that medical examiners are not qualified to determine manner of death, or that medical examiners’ findings are generally unreliable evidence in a court of law.” *Id.* at 647, 714 A.2d at 871.

In differentiating *Benjamin* from the instant case, the court reviewed *Terry v. State*, 34 Md. App. 99, 366 A.2d 65 (1976), where the Court of Special Appeals of Maryland upheld the admissibility of a medical examiner’s opinion testimony as to manner of death. *Sippio*, 350 Md. at 647, 714 A.2d at 871. In *Terry*, which was decided prior to the 1990 amendment to section 5-311, the court held that despite the *Benjamin* court’s suggestion that a medical examiner’s investigative duties were limited by law to essential facts concerning the medical causes of death, “we cannot conceive that this precludes calling the medical examiner as an expert witness to express his opinion in a case.” *Id.* at 647-48, 714 A.2d at 871 (quoting *Terry*, 34 Md. App. at 107-08, 366 A.2d at 70). Adopting the court’s rationale in *Terry*, the court held that *Benjamin* was inapposite to the instant case and that testimony concerning manner of death was appropriate. *Id.* at 648, 714 A.2d at 872. Additionally, the court

noted that when *Benjamin* was decided, “determining manner of death was merely ‘incumbent upon [medical examiners] in completing the [death certificate] form.’” *Id.* at 647, 714 A.2d at 871 (quoting *Benjamin*, 268 Md. at 609, 303 A.2d at 788). Accordingly, the court declined Sippio’s request to prohibit the medical examiner’s testimony regarding manner of death. *Id.* at 648, 714 A.2d at 872.

After determining that the subject of the testimony was appropriate, the court looked to Maryland Rule of Evidence 5-702 and found that the admissibility of expert testimony depends on whether it would aid the trier of fact in understanding the evidence or in determining a fact in issue. *Id.* at 649, 714 A.2d at 872. The court found that Dr. Smialek’s testimony aided the jury’s understanding when he explained that homicide was the killing of one human being by another, regardless of intent, and that a medical examiner does not consider the intent of the suspect when investigating the manner of death. *Id.* at 652, 656, 714 A.2d at 874, 875. The court noted that without Dr. Smialek’s testimony, the jurors might have given the word “homicide” a “degree of culpability greater than its definition allows.” *Id.*

The court analyzed Dr. Smialek’s testimony and determined that it met the three requirements outlined in Maryland Rule 5-702. *Id.* at 649, 714 A.2d at 872. In so doing, the court found that: (1) Dr. Smialek’s

training and professional experience qualified him to testify as an expert; (2) the subject matter was appropriate for expert testimony because Dr. Smialek clearly described the fatal gunshot wound in terms understandable to the jury; and (3) a legally sufficient factual basis existed to support the testimony because Dr. Smialek performed the autopsy and reviewed the facts surrounding the shooting. *Id.* at 649-53, 714 A.2d at 872-74. The court concluded, therefore, that Dr. Smialek’s testimony as to manner of death was a proper subject for expert testimony. *Id.* at 652, 714 A.2d at 874.

The court also rejected Sippio’s assertion that Dr. Smialek’s testimony concerning the victim’s manner of death was a legal conclusion reserved for the jury. *Id.* at 653, 714 A.2d at 874. The court determined that the ultimate issue was not whether Branch’s death was a homicide, but whether the shooting was accidental or deliberate. *Id.* at 655, 714 A.2d at 875. The court found that Dr. Smialek’s testimony as to manner of death did not address Sippio’s intent and was, therefore, appropriate. *Id.* at 654, 714 A.2d at 875. The court cautioned, however, that its holding was limited to the situation where a medical examiner’s report was properly admitted into evidence, and not where a report’s admissibility was contested. *Id.* at 656, 714 A.2d at 875. Sippio waived the latter issue, according to the court, when he did not

object to the introduction of the medical examiner's report into evidence. *Id.*

In addressing the second issue concerning character evidence, the court examined specific circumstances under which character evidence is permissible. *Id.* at 663, 714 A.2d at 879. The court first affirmed the requirement that a criminal defendant must testify before presenting character evidence for truthfulness. *Id.* at 664, 714 A.2d at 879. In so doing, the court found that a defendant's promise to testify during opening argument was not binding, and therefore, failed to meet the requirement. *Id.* at 665, 714 A.2d at 880. The court next looked to Maryland Rule of Evidence 5-608, and agreed that a defendant's character for truthfulness first must be attacked before a witness may offer testimony supporting the defendant's character for truthfulness. *Id.* at 663, 714 A.2d at 879. The court then reviewed *Sahin v. State*, 337 Md. 304, 653 A.2d 452 (1995), which held that a criminal defendant may offer character evidence for truthfulness without the prosecution first attacking the defendant's character. *Sippio*, 350 Md. at 662, 714 A.2d at 879. The court in *Sahin* reasoned that because the defendant was charged with a character impeaching offense, the charge alone represented a sufficient attack on the defendant's character. *Id.* at 663, 714 A.2d at 879. However, the court in *Sippio* noted that the key to *Sahin* was

that a defendant must still testify in order to present the character evidence. *Id.* at 664, 714 A.2d at 879. To permit a criminal defendant to present character evidence without first testifying, the court reasoned, allows the defendant to support his or her good character for truthfulness without first placing that character trait at issue. *Id.* The court, however, noted that Maryland Rules 5-104(b) and 5-611(a) permit a judge to vary the order in which a defendant presents evidence, thereby allowing a defendant to present character evidence before testifying. *Id.* at 665, 714 A.2d at 880. However, a defendant must make a binding announcement that he will testify. *Id.*

In *Sippio v. State*, the court held that opinion testimony by a medical examiner as to manner of death is appropriate to supplement a properly admitted medical examiner's report. This places an undue burden on a defendant who must overcome a seemingly irrebuttable presumption when testimony is admitted that the victim's manner of death was homicide. A special instruction to the jury to consider the testimony only for its medical relevance, and not as conclusive evidence of the defendant's intent, may provide the defendant with some leverage against the testimony. Another option is to object to the introduction of the medical examiner's report and seek to have the testimony similarly excluded. As the court here seems to have

limited the introduction of a medical examiner's testimony to instances where the medical examiner's report is admitted into evidence, such an objection may prevent the opinion testimony from being introduced into evidence.