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SIFRIT v. STATE:

The State May Present Inconsistent Legal Theories at Separate Trials for a Single Crime if the Underlying Facts Are Consistent**By: Victoria Emanuele**

In a case of first impression, the Court of Appeals of Maryland held that separate trials for the same crime in which inconsistent theories of the case are presented does not violate a defendant's right to due process so long as the underlying facts presented in both cases are consistent. *Sifrit v. State*, 383 Md. 77, 857 A.2d 65 (2004).

Erika Sifrit ("Erika"), and her husband, Benjamin Sifrit ("Benjamin"), were tried separately and convicted of theft and murder. Both convictions arose out of events that occurred in Ocean City, Maryland over the 2002 Memorial Day weekend, resulting in the deaths of Martha Crutchley ("Martha") and Joshua Ford ("Josh").

According to the facts of this case, Erika and Benjamin had befriended Martha and Josh on a bus while headed for Seacrets, a nightclub. Erika and Benjamin did not have exact change to pay the fare, so Martha and Josh provided the fare in exchange for a round of drinks at the nightclub. Erika and Benjamin agreed, and the couples spent the rest of the evening together at Seacrets.

Later that weekend, police responded to an alarm call from the Hooters Restaurant and Bar on 122nd Street in Ocean City. When they arrived, police found Erika and Benjamin loading Hooters merchandise into their car. The couple was placed in handcuffs and searched. Police found a 9 millimeter handgun and a knife on Benjamin, a fully-loaded .357 magnum revolver and knife on Erika, and a .45 caliber gun, ski masks, flex cuffs, and tape in the car. The couple was arrested.

Subsequent to the arrest, Erika asked police to retrieve anti-anxiety medication from her purse. In locating the medication, police discovered four spent .357 magnum shell casings and one live round, as well as identification cards for Martha and Josh. Fearing for the safety of Martha and Josh, police searched the Sifrit's condominium

and discovered photographs of Martha and Josh, a bullet covered in blood and tissue (later determined to be Josh's), a key to the condominium, several blood stains (later determined to be Martha's and Josh's), and evidence that the condominium had been recently cleaned and painted. Erika later confessed to police that she and Benjamin cut-up Martha and Josh, placed their body parts in garbage bags, then disposed of the parts in several dumpsters just across the Delaware border.

Erika and Benjamin were arrested for the murders of Martha and Josh. Subsequent to their arrests, Erika entered into a Memorandum of Understanding ("MOU") with the Office of the State's Attorney wherein the State's Attorney agreed not to prosecute Erika for homicide, as long as she testified against Benjamin and revealed the location of the victims' bodies. The agreement was conditioned upon Erika submitting to, and passing, a polygraph exam. Although Erika led police to some of the victims' remains and provided details regarding the murders, the MOU was not honored because during a pre-polygraph test interview, Erika admitted to being involved in the murders, specifically, to giving commands to Benjamin. As a result of her inculpatory statements, Erika was charged with the murders of Martha and Josh.

Due to extensive pre-trial publicity, Erika's case was removed from the Circuit Court for Worcester County and transferred to the Circuit Court for Frederick County. The circuit court convicted Erika of the first-degree murder of Josh, the second-degree murder of Martha, and theft related to the burglary at Hooters. She was sentenced to life in prison plus twenty years. Erika appealed and the Court of Appeals of Maryland granted *certiorari*.

Erika first claimed that the State violated her right to due process by presenting factually inconsistent theories of the case at her trial and that of her husband, Benjamin. She asserted four ways in which she believed the State's case differed in the two trials and in which these differences rose to the level of a due process violation. *Id.* at 106-107, 857 A.2d at 82. These differences were: (1) ownership and possession of the murder weapon, (2) the testimony of Michael McInnis, a friend of Benjamin, called by Erika in her case-in-chief, (3) the testimony of Melissa Seling, a witness who befriended the couple in Ocean City just a few days after the murders of Martha and Josh,

and (4) the number of shots fired by Erika and Benjamin, respectively. *Id.*

Looking to other jurisdictions for guidance, the court addressed each of Erika's points, and held that none of the differences in the two trials alleged by Erika went to the State's underlying theory of the case, which remained consistent throughout both trials. *Id.* at 107, 857 A.2d at 82. The theory was that Erika and Benjamin committed the crimes together. *Id.* With respect to the issue of ownership and possession of the murder weapon, the court reasoned that the identity of the actual owner of the guns was irrelevant because both Erika and Benjamin were in possession of the guns and were present at the time the crime was committed. *Id.* Regarding the testimony of McInnis and Seling, the court reasoned that while the State attempted to create different inferences through the use of these witnesses at the two trials, their testimony was fundamentally consistent throughout both trials, and therefore, did not amount to a due process violation. *Id.* at 113, 857 A.2d at 85-86. Finally, on the issue of the number of shots fired by Erika and Benjamin, the court concluded that whether Erika's participation in the murders was limited to firing shots, or simply to aiding Benjamin luring Martha and Josh to their deaths, it did not affect her culpability. *Id.* at 83, 857 A.2d at 108. Under either theory, a jury could find both participants guilty of murder. *Id.*

The court concluded that the differences raised by Erika were differences in emphasis and inference, but in no way exculpated the other defendant. *Id.* at 107, 857 A.2d at 82. According to the court, evidence tending to show Benjamin's guilt was not necessarily relevant to show Erika's guilt. *Id.* As such, the court determined that when the evidence remains consistent with underlying facts, any inconsistent emphasis or inference will not amount to a due process violation. *Id.*

In *Sifrit v. State*, the court of appeals held that the State is permitted to present inconsistent theories at the severed trials of co-defendants so long as the underlying facts are consistent. Moreover, where a defendant violates the terms of a plea agreement, the State is no longer bound by the terms of that agreement.