

SUPREME COURT OF GEORGIA

Nundra v. State

No. S23A0043, Supreme Court of Georgia (March 21, 2023)

SUMMARY

The Supreme Court of Georgia affirmed Nundra’s murder conviction, holding that any assumed error in admitting his 1997 armed robbery conviction under Rule 404(b) and victim good-character evidence was harmless given the overwhelming evidence of guilt. The court also rejected claims that the prosecutor’s comparison of Nundra to serial killers was improper, finding it a permissible inference from evidence, and that admission of TrueAllele DNA evidence without a random-match baseline was not plain error. Key topics: harmless error, other-acts evidence, victim character evidence, prosecutorial closing argument, DNA evidence reliability, cumulative error.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Peterson, Presiding Justice
JURISDICTION	Georgia
DECIDED	March 21, 2023
DOCKET	S23A0043
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal from conviction and sentence for murder and related offenses
STANDARD OF REVIEW	Harmless error for evidentiary issues; plain error for unpreserved objections; abuse of discretion for closing argument
PRECEDENTIAL VALUE	Published
PARTIES	Nundra v. The State

TOPICS

- criminal procedure
- evidence
- harmless error
- prosecutorial misconduct
- expert testimony

PRACTICE AREAS

- Criminal Law

QUESTIONS PRESENTED

1. Whether the trial court abused its discretion in admitting evidence of Nundra's 1997 convictions for armed robbery and hijacking a motor vehicle under Rule 404(b).
2. Whether the trial court erred in admitting evidence of the victim's good character and emotional impact on his family.
3. Whether the trial court abused its discretion in allowing the State to compare Nundra to serial killers during closing argument.
4. Whether the trial court plainly erred in admitting TrueAllele DNA evidence without a baseline probability of a random match.
5. Whether the cumulative effect of errors requires reversal.

HOLDINGS

1. Assuming error, the admission of the 1997 convictions was harmless because the evidence of guilt was very strong, the jury was instructed not to infer criminal propensity, and Nundra's guilty plea allowed the jury to infer he had been punished for those crimes.
2. Assuming error, the admission of victim good character evidence was harmless because the evidence of guilt was very strong, and the risk that the jury convicted for reasons other than guilt was low.
3. The trial court did not abuse its discretion; the comments were inflammatory but within the wide latitude of closing argument and based on permissible inferences from the evidence.
4. No plain error; Nundra failed to show that the trial court made a clear or obvious error. The issue was not preserved, and the absence of a baseline goes to weight, not admissibility.
5. The cumulative effect of the assumed errors (admission of 1997 convictions and victim good character evidence) was harmless because the evidence of guilt was very strong, the jury was instructed not to be influenced by sympathy, and the combined prejudicial effect did not outweigh the strength of the evidence.

KEY QUOTATIONS

“requires reversal of [the a]ppellant's convictions unless it can be deemed harmless, meaning that ‘it is highly probable that the error did not contribute to the verdict.’” (11)

“The State's comments here were inflammatory, but attorneys are allowed wide latitude in their arguments to the jury.” (22)

“Nundra cites no authority — and we are aware of none — suggesting that expert testimony about a random-bystander benchmark is necessary for a trial court to admit TrueAllele evidence.” (32-33)

FACTUAL BACKGROUND

On October 25, 2017, Nundra, McFadden, and Ousley planned to burglarize a pawn shop. Nundra noticed Herbert Moore in a truck and decided to rob him. He shot Moore eight times, killing him. After the shooting, Nundra, McFadden, and Ousley fled to Hightower's apartment, where Nundra burned his clothes and threatened

to kill the others if they talked to police. The murder weapon, wrapped in a stocking hat containing Nundra's DNA, was found in a nearby park. Nundra was arrested and gave a false alibi.

PROCEDURAL HISTORY

Nundra was convicted in Decatur County Superior Court of murder and other charges. He filed a motion for new trial, which was amended and denied. The trial court vacated and re-entered the order after Nundra failed to receive notice. Nundra appealed to the Supreme Court of Georgia.

DISPOSITION

affirmed

CASES CITED

- Seals v. State, 311 Ga. 739, 739 n.1 (860 SE2d 419) (2021)
- Southall v. State, 300 Ga. 462, 463-464 (1) (796 SE2d 261) (2017)
- Allen v. State, 310 Ga. 411, 412 n.2 (851 SE2d 541) (2020)
- Heard v. State, 309 Ga. 76, 90 (3)(g) (844 SE2d 791) (2020)
- Brown v. State, 303 Ga. 158, 164 (2) (810 SE2d 145) (2018)
- Jackson v. State, 306 Ga. 69, 80 (2)(c) (829 SE2d 142) (2019)
- Thompson v. State, 302 Ga. 533, 542 (III)(A) (807 SE2d 899) (2017)
- Johnson v. State, 301 Ga. 277, 280 (2) (800 SE2d 545) (2017)
- Strong v. State, 309 Ga. 295, 316 (4) (845 SE2d 653) (2020)
- Kirby v. State, 304 Ga. 472, 486 (4)(a)(ii) (819 SE2d 468) (2018)
- Thomas v. State, 314 Ga. 681, 685 (1)(a) n.2 (878 SE2d 493) (2022)
- United States v. Beechum, 582 F2d 898 (5th Cir. 1978)
- Jones v. State, 311 Ga. 455, 465 (3)(b)(ii) (858 SE2d 462) (2021)
- Morrell v. State, 313 Ga. 247, 262 (2)(c) (869 SE2d 447) (2022)
- Lucas v. State, 274 Ga. 640, 642-644 (2) (555 SE2d 440) (2001)
- Robinson v. State, 257 Ga. 194, 196 (4) (357 SE2d 74) (1987)
- Conner v. State, 251 Ga. 113, 122-123 (6) (303 SE2d 266) (1983)
- Booth v. State, 301 Ga. 678, 686 (4) (804 SE2d 104) (2017)
- Martin v. State, 223 Ga. 649, 650-651 (2) (157 SE2d 458) (1967)
- Hudson v. State, 273 Ga. 124, 127 (5) (538 SE2d 751) (2000)
- Pace v. State, 271 Ga. 829, 843 (32)(b) (524 SE2d 490) (1999)
- Bell v. State, 263 Ga. 776, 777 (439 SE2d 480) (1994)
- Morton v. State, 306 Ga. 492, 497 (3) (831 SE2d 740) (2019)
- Gates v. State, 298 Ga. 324, 326-327 (3) (781 SE2d 772) (2016)
- State v. Kelly, 290 Ga. 29, 33 (2)(a) (718 SE2d 232) (2011)

- Smith v. State, 315 Ga. 287, 300 (2)(a) n.6 (882 SE2d 300) (2022)
- Harper v. State, 249 Ga. 519, 525 (1) (292 SE2d 389) (1982)
- Walsh v. State, 303 Ga. 276, 279 (811 SE2d 353) (2018)
- Kilpatrick v. State, 308 Ga. 194, 196-197 (2) (839 SE2d 551) (2020)
- Duncan v. State, 305 Ga. App. 268, 272 (2)(a) (699 SE2d 341) (2010)
- Caldwell v. State, 260 Ga. 278, 289-290 (1)(e) (393 SE2d 436) (1990)
- Gates v. State, 308 Ga. 238 (840 SE2d 437) (2020)
- State v. Lane, 308 Ga. 10, 13-14 (1) (838 SE2d 808) (2020)
- Ash v. State, 312 Ga. 771, 781 (2) (865 SE2d 150) (2021)
- Lofton v. State, 309 Ga. 349, 367 (7) (846 SE2d 57) (2020)
- Payne v. State, 314 Ga. 322, 334 (4) (877 SE2d 202) (2022)

CITED IN

- Nundra v. State, Nundra v. State, 316 Ga. 1, 6 (2023)
- Nundra v. State, Nundra v. State, 2023 Ga. LEXIS citation not provided in source, 885 SE2d 790, 797 (2) (Mar. 21, 2023)
- Nundra v. State, Nundra v. State, 316 Ga. 1, 14 (2023)