

SUPREME COURT OF GEORGIA

Tiraboschi v. State

S21A0574 · No. S21A0574 · Decided August 10, 2021

SUMMARY

The Supreme Court of Georgia affirmed Thomas Tiraboschi’s convictions for malice murder arising from the strangulation and smothering death of his cellmate. The court assumed, without deciding, that admitting evidence of Tiraboschi’s prior convictions under OCGA § 24-4-404(b) was erroneous, but held that any nonconstitutional evidentiary error was harmless because the evidence was not unduly prejudicial and the evidence of guilt was overwhelming.

CASE DETAILS

COURT	Supreme Court of Georgia
WRITING FOR THE COURT	Nahmias, Chief Justice
JURISDICTION	Georgia
DECIDED	August 10, 2021
DOCKET	S21A0574
DISPOSITION	affirmed
PROCEDURAL POSTURE	Direct appeal from the denial of a motion for new trial following convictions for malice murder and felony murder.
STANDARD OF REVIEW	For a nonconstitutional evidentiary error, the court asks whether it is highly probable that the error did not contribute to the verdict. The Supreme Court of Georgia reviews the record de novo and weighs the evidence as reasonable jurors would have done.
PRECEDENTIAL VALUE	Published opinion of the Supreme Court of Georgia; precedential.
PARTIES	Thomas Tiraboschi v. The State

TOPICS

- evidence
- harmless error
- criminal procedure
- appellate procedure

PRACTICE AREAS

- criminal procedure
- evidence
- appellate review

QUESTIONS PRESENTED

1. Whether the trial court's admission under OCGA § 24-4-404 (b) of evidence concerning Tiraboschi's prior convictions for vehicular homicide and theft by receiving constituted reversible error.
2. Whether any error in admitting the prior-act evidence was harmless in light of the evidence of guilt, the limited relevance of the evidence, and the trial court's limiting instructions.

HOLDINGS

1. Any error in admitting evidence concerning Tiraboschi's prior convictions under OCGA § 24-4-404 (b) was harmless because it was highly probable that the evidence did not contribute to the guilty verdict.
2. The court did not decide whether the trial court erroneously admitted the prior-act evidence because, assuming error, the error was harmless.

KEY QUOTATIONS

“The test for determining whether a nonconstitutional evidentiary error was harmless is whether it is highly probable that the error did not contribute to the verdict.” (6)

“In conducting this harmless-error review, “we review the record de novo and weigh the evidence as we would expect reasonable jurors to have done so.”” (6)

“In sum, the jury heard compelling evidence of Appellant’s guilt, and it is highly probable that the admission of the evidence relating to his prior convictions did not contribute to the jury’s guilty verdict.” (8-10)

FACTUAL BACKGROUND

Tiraboschi and Chris Lowery were cellmates at Augusta State Medical Prison. After Lowery complained of chest pain and was determined by prison medical staff not to be suffering a life-threatening cardiac event, Tiraboschi told prison officers that he had killed Lowery by choking him. An autopsy identified mechanical asphyxia combined with smothering as the cause of death and found injuries consistent with strangulation, with no indication of a heart attack. At trial, Tiraboschi argued that Lowery might have died from natural causes rather than strangulation and smothering.

PROCEDURAL HISTORY

A Richmond County grand jury indicted Tiraboschi for malice murder and felony murder after the strangulation death of his cellmate. A jury convicted him on both counts, and the trial court sentenced him to life without parole for malice murder; the felony murder count was vacated by operation of law. The trial court denied Tiraboschi's amended motion for new trial after an evidentiary hearing, and he appealed to the Supreme Court of Georgia.

DISPOSITION

affirmed

CASES CITED

- *Malcolm v. State*, 263 Ga. 369, 373 (434 SE2d 479) (1993)
- *Jackson v. State*, 306 Ga. 69, 80 (829 SE2d 142) (2019)
- *Howell v. State*, 307 Ga. 865, 875 (838 SE2d 839) (2020)
- *Kirby v. State*, 304 Ga. 472, 485 (819 SE2d 468) (2018)
- *Johnson v. State*, 301 Ga. 277, 279-280 (800 SE2d 545) (2017)
- *Rodrigues v. State*, 306 Ga. 867, 871-872 (834 SE2d 59) (2019)
- *Jackson v. State*, 306 Ga. 69, 80-81 (829 SE2d 142) (2019)
- *Manning v. State*, 303 Ga. 723, 725-726 (814 SE2d 730) (2018)

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