

Evidence

404(b) Evidence

[State v. Watts](#), ___ N.C. ___, ___ S.E.2d ___ (Aug. 21, 2017) (per curiam). The court modified in part and affirmed the lower court's decision in [State v. Watts](#), ___ N.C. App. ___, 783 S.E.2d 266 (April 5, 2016). In this child sexual assault case, the Court of Appeals held, over a dissent, that the trial court committed reversible error by admitting 404(b) evidence. The charges at issue arose from the defendant's alleged sexual assault on an eleven-year-old girl to whom defendant was like a "grandpa." The State sought to introduce at trial 404(b) evidence. Specifically a witness to testify that the defendant had forced his way into her apartment and raped her in 2003. Those alleged events resulted in indictments for rape and breaking or entering against the defendant, but those charges were dismissed in 2005. The trial court allowed the 404(b) evidence to be admitted. After the witness testified, defense counsel moved to strike the testimony, for limiting instruction, or in the alternative a mistrial. The trial court denied the defendant's motions. The Court of Appeals held that admission of this evidence was prejudicial error. It reasoned that the trial court erred by determining that the evidence was relevant to show opportunity and that the evidence was not sufficiently similar to show common plan or scheme. The Court of Appeals further concluded that "[a]dding to the prejudicial nature" of the testimony was the fact that the trial court did not instruct the jury to consider the evidence only for the 404(b) purpose for which it was admitted. The Supreme Court rejected the State's argument that defense counsel's motion did not constitute a request for a limiting instruction. It went on to hold:

Our General Statutes provide that "[w]hen evidence which is admissible . . . for one purpose but not admissible . . . for another purpose is admitted, the court, upon request, *shall* restrict the evidence to its proper scope and instruct the jury accordingly." N.C.G.S. § 8C-1, Rule 105 (2015) (emphasis added). "Failure to give the requested instruction must be held prejudicial error for which [a] defendant is entitled to a new trial." Accordingly, because defendant was prejudiced by the trial court's failure to give the requested limiting instruction, we affirm, as modified herein, the opinion of the Court of Appeals that reversed defendant's convictions and remanded the matter to the trial court for a new trial. (citations omitted).

Arrest, Search & Investigation

Stops

[State v. Johnson](#), ___ N.C. ___, ___ S.E.2d ___ (Aug. 21, 2017). The Supreme Court reversed the decision below, [State v. James Johnson](#), ___ N.C. App. ___, 784 S.E.2d 633 (April 5, 2016), which had held that because a police officer lacked reasonable suspicion for a traffic stop in this DWI case, the trial court erred by denying the defendant's motion to suppress. The defendant was stopped at a red light on a snowy evening. When the light turned green, the officer saw the defendant's truck abruptly accelerate, turn sharply left, and fishtail. The officer pulled the defendant over for driving at an unsafe speed given the road conditions. The Supreme Court held that the officer had reasonable suspicion to stop the defendant's vehicle. It noted that G.S. 20-141(a) provides that "[n]o person shall drive a vehicle on a highway or in a public vehicular area at a speed greater than is reasonable and prudent under the conditions then existing." The Court concluded:

All of these facts show that it was reasonable for [the] Officer . . . to believe that defendant's truck had fishtailed, and that defendant had lost control of his truck, because of defendant's abrupt acceleration while turning in the snow. It is common knowledge that drivers must drive more slowly when it is snowing, because it is easier to lose control of a vehicle on snowy roads than on clear ones. And any time that a

driver loses control of his vehicle, he is in danger of damaging that vehicle or other vehicles, and of injuring himself or others. So, under the totality of these circumstances, it was reasonable for [the] Officer . . . to believe that defendant had violated [G.S.] 20-141(a) by driving too quickly given the conditions of the road.

The Court further noted that no actual traffic violation need have occurred for a stop to occur. It clarified: "To meet the reasonable suspicion standard, it is enough for the officer to *reasonably believe* that a driver has violated the law."