

NC Supreme Court Evaluates Traffic Stop for Fishtailing in Snow

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[State v. Johnson](#), __ N.C. __ (August 18, 2017) opens like a novel:

Defendant was stopped at a red light on a snowy evening. When the light turned green, defendant's truck abruptly accelerated, turned sharply left, and fishtailed, all in front of a police officer in his patrol car. The officer pulled defendant over for driving at an unsafe speed given the road conditions.

On second thought, maybe this reads more like a bar exam question (or a [Dan Fogelberg](#) song).

What say you, barristers? Was the stop lawful?

The North Carolina Supreme Court held that the stop was lawful as these facts provided the officer with reasonable suspicion to believe the defendant was driving at an unsafe speed given the weather and road conditions.

If you thought the stop was unlawful, don't feel badly. A unanimous panel of court of appeals judges did too. See [State v. Johnson](#), __ N.C. App. __, 784 S.E.2d 633 (2016), *reversed*, __ N.C. __, __ S.E.2d __ (2017) (discussed in [this earlier post](#)).

Procedural history. The police officer who pulled over the defendant in *Johnson* gathered evidence during the course of the stop that caused him to believe Johnson was driving while impaired – the offense for which Johnson ultimately was arrested and charged. Johnson filed a motion in district court to suppress the evidence resulting from the stop on the basis that the officer lacked reasonable suspicion to believe he had committed a traffic offense. The district court judge preliminarily indicated his intent to grant the motion. The State appealed to superior court, and the superior court remanded the matter to district court with instructions to deny the motion to suppress. The defendant then pled guilty to impaired driving in district court and appealed for trial de novo in superior court. He refiled the motion to suppress, which was again denied. The defendant then pled guilty, but preserved his right to appeal the denial of the motion to suppress. Following sentencing, the defendant appealed.

Court of appeals. The court of appeals reversed the superior court's order, holding that the officer lacked reasonable suspicion to stop the defendant. The court reasoned that because the defendant was able to maintain lane control during his left-hand turn, there was "nothing illegal" about the turn. Though a legal maneuver can, in conjunction with other circumstances, constitute reasonable suspicion, the court found no other circumstances in Johnson's case to justify the stop. The court explained that the defendant's turn did not affect other traffic or increase the risk of collision to any other motorists or pedestrians.

The State sought discretionary review, and, as mentioned above, the state supreme court reversed the court of appeals.

State supreme court's analysis. The state supreme court explained that the lawfulness of the stop in *Johnson* hinged

on whether the circumstances the officer observed provided him with a reasonable belief that a traffic violation had occurred and not on whether a traffic offense did, in fact, occur.

The officer in *Johnson* thought that the defendant violated G.S. 20-141(a), which prohibits the driving of a vehicle on a highway or a public vehicular area “at a speed greater than is reasonable and prudent under the conditions then existing.” The fact that the defendant abruptly accelerated during a turn while driving in snow and lost control of his truck as it fishtailed rendered reasonable the officer’s belief that the defendant was driving too fast for conditions.

The state supreme court further opined that the fact that the defendant stayed in his lane did not necessarily establish that he was driving at a safe speed given the road conditions. Sometimes, the court noted, drivers traveling at an unsafe speed are able to avoid accident or injury through sheer good fortune.

You might say that in the end, for Johnson, the snow turned into rain.