

IN THE CIRCUIT COURT OF THE NINTH
JUDICIAL CIRCUIT IN AND FOR ORANGE
COUNTY, FLORIDA

APPELLATE CASE NO.: 2016-AP-000007-A-O
LOWER CASE NO.: 2015-MM-000587-A-E

JERMETRAS WATSON,

Appellant,

v.

STATE OF FLORIDA,

Appellee.

Appeal from the County Court
for Orange County, Florida,
Faye L. Allen, County Court Judge

Robert Wesley, Public Defender
Manuel Soto Diaz, Assistant Public Defender,
for Appellant

Aramis Ayala, State Attorney,
Daniel J. Quinn, Assistant State Attorney,
for Appellee

Before TRAVER, HIGBEE, EGAN, J.J.

PER CURIAM.

Jermetras Watson (“Appellant”) appeals the denial of his “Motion to Exclude Williams Rule Evidence” (“Motion to Exclude”). This court has jurisdiction pursuant to Florida Rule of Appellate Procedure 9.030(c)(1).

Appellant argues that the court erred in denying his Motion to Exclude, and allowing the State to present similar fact evidence of a 2012 offense. The Court finds that the denial of the Motion to Exclude was an abuse of discretion.

The State sought to introduce similar fact evidence solely as knowledge of Defendant's loitering and prowling count. It also indicated that it would introduce similar fact evidence as to absence of mistake on the exposure count, but only if Defendant testified. (Hearing Transcript at 19-20). The Defendant did not testify, and absence of mistake never became relevant. Nevertheless, the Court allowed evidence of the 2012 incident as to both exposure and loitering and prowling allegations at trial. (Trial Transcript at 281).

For similar fact evidence to be admissible, the facts of the offenses must be strikingly similar and "[t]here must be identifiable points of similarity which pervade the compared situations . . . [T]he points of similarity must have some special character or be so unusual as to point to the defendant." *Drake v. State*, 400 So. 2d 1217, 1219 (Fla. 1981). The characteristics of the crimes must be so unique as to constitute "fingerprint" evidence. *State v. Savino*, 567 So. 2d 892, 894 (Fla. 1990).

In the instant case, the evidence presented was not so unique as to constitute "fingerprint" evidence, and was typical of any perpetrator engaging in public masturbation. *See Kulling v. State*, 828 So. 2d 311 (Fla. 2d DCA 2002). The probative value of the similar fact evidence was substantially outweighed by the danger of unfair prejudice. *See* § 90.403, Fla. Stat. (2015).

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that the Final Judgment and Sentence is **REVERSED** and the matter **REMANDED** for a new trial.

DONE AND ORDERED in Chambers, at Orlando, Orange County, Florida, on this
8 day of March, 2017.

/S/

DAN TRAVER
Presiding Circuit Judge

HIGBEE and EGAN, J.J., concur.

Certificate of Service

I HEREBY CERTIFY that a copy of the foregoing Final Order Affirming in Part and Reversing in Part Trial Court has been provided to **Manuel Soto Diaz**, Assistant Public Defender, to **Daniel J. Quinn**, Assistant State Attorney, 415 North Orange Avenue, Orlando, Florida 32801, and to **The Honorable Faye L. Allen**, 425 North Orange Avenue, Orlando, FL 32801 this 8th day of March, 2017.

/S/ _____
Judicial Assistant