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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA20-14

Filed: 20 October 2020

Iredell County, Nos. 18 CRS 50097, 18 IF 700124-25

STATE OF NORTH CAROLINA

v.

BRENDA W. BRYANT

Appeal by defendant from judgment entered 17 July 2019 by Judge Julia Lynn Gullett in Iredell County Superior Court. Heard in the Court of Appeals 22 September 2020.

*Joshua H. Stein Attorney General, by Assistant Attorney General William Walton, for the State.*

*Arnold & Smith, PLLC, by Paul A. Tharp and J. Bradley Smith, for defendant.*

ARROWOOD, Judge.

Brenda W. Bryant (“defendant”) appeals from judgment entered 17 July 2019 following convictions for three misdemeanor offenses. Defendant challenges the trial court’s denial of certain motions to dismiss as well as the community punishment

sentence imposed by the trial court. For the following reasons, we find no error, but remand this action to the trial court for resentencing.

I. Background

On 7 January 2018, shortly before 12:47 a.m., Officer Alex Arndt (“Officer Arndt”) of the Mooresville Police Department observed a white passenger car “failing to maintain its lane control” by driving “halfway between the straight lane and halfway in the right-turn lane.” At the time, Officer Arndt was parked alongside Officer Mark Ruffin (“Officer Ruffin”) also of the Mooresville Police Department.

Officer Arndt pursued the vehicle for the observed traffic violation with Officer Ruffin following in tow. As the vehicle approached a nearby intersection, Officer Arndt observed the vehicle make a “right turn out of the straight-only lane” instead of using the right-turn lane. Believing he had witnessed two traffic violations, Officer Arndt activated his blue lights and pulled over the car. Officer Arndt was driving a marked Mooresville Police Department patrol vehicle and wearing a uniform displaying his badge number. “Defendant knew a police car pulled her over[.]”

As Officers Arndt and Ruffin approached the vehicle, Officer Arndt noticed that the driver’s side window was “being rolled up from either a completely opened position or an almost completely open position . . . which [he] found very odd.” Upon arriving to the vehicle, the driver’s side window “ended up being about two inches cracked” open.

Before Officer Arndt could introduce himself or explain why he had pulled her over, defendant stated, “I am on my way home, young man, and I’m sober. I don’t drink. I go to Trinity Baptist Church, and I’m as sober as can be.” Officer Arndt instructed defendant to put the car in park and exit the vehicle as he had a “sneaking suspicion that [defendant] was going to drive off in my traffic stop.” Defendant indicated that she did not want to exit the vehicle because it was cold outside. Officer Arndt instructed defendant two more times to exit the vehicle without success.

Given her resistance, Officer Arndt warned defendant that if she did not comply and exit the vehicle, he would physically remove her from the vehicle and charge her with resisting, delaying, and obstructing a law enforcement officer in the performance of his duties. Defendant replied, “hold on one second,” and leaned over to the right in such a way as to cause Officer Arndt to believe she was about to put the car in drive and flee the scene. Both Officers testified that they believed defendant was attempting to put the vehicle in drive. At this point, Officer Arndt opened the driver’s side door, turned off the vehicle, and continued to order defendant to exit. Defendant refused to leave the car, so Officer Arndt grabbed defendant’s left arm to lead her out of the vehicle. Defendant physically resisted by “holding onto the steering wheel with her right hand as [Officer Arndt] was trying to pull her out of the vehicle.”

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Officer Arndt eventually removed defendant from the car and walked her to the rear of the vehicle. As the Officers attempted to speak to defendant, defendant was “yelling at passing motor vehicles” and began “running around.” To prevent defendant from running “out into traffic[.]” Officer Arndt decided to place defendant in handcuffs, which she also resisted by repeatedly “trying to turn around[.]” Defendant, once cuffed, attempted to walk back to her open car door. The Officers decided, again for defendant’s safety, to place her in the rear of Officer Arndt’s patrol car while they conducted their investigation. Defendant “would not willingly get in the patrol car” and “tried to get out of Officer Arndt’s patrol car a couple of times[.]” And once placed in the police cruiser, defendant “got back up multiple times throughout the whole investigation.” In other words, defendant “refuse[d] to sit down.”

Officer Arndt returned to defendant’s vehicle to search for identification. While doing so, he heard a voice say “hello” on a mobile device lying on the front passenger seat. Officer Arndt picked up the phone and began speaking with a person who identified himself as defendant’s husband. Defendant’s husband provided Officer Arndt with defendant’s name and date of birth and also stated that defendant may have obsessive-compulsive disorder or some sort of phobia. Meanwhile, Officer Ruffin continued to speak with defendant to extract information relevant to the traffic investigation, but she refused to provide any of the requested information. Defendant

did, however, say that she had obsessive-compulsive disorder and that she had taken a medication for epilepsy earlier that day. Defendant refused to cooperate further.

Officer Arndt returned to his cruiser and informed defendant that she had been pulled over for failure to maintain lane control and a designated lane violation; Officer Arndt explained his observation that she was “driving all over the road.” Defendant claimed she had done “nothing illegal” and otherwise refused to speak to the Officers. Because of defendant’s prior resistive conduct, and because of her failure to cooperate during the investigation of the moving violations, Officer Arndt placed defendant under arrest. The dashcam from Officer Arndt’s patrol vehicle (and bodycam) captured most of the events leading up to this point, including one of the alleged traffic violations (the designated lane violation). The footage was played for the jury.

Before being transported to the Mooresville Police Department for processing, Officer Arndt escorted defendant to Lake Norman Region Medical Center for medical treatment as she complained of pain in her right hand and wrist. After she was medically cleared, Officer Arndt took defendant to the police station for processing. The magistrate released defendant on unsecured bond, and Officer Arndt thereafter transported defendant to a hotel near the scene of the original traffic stop.

Defendant was charged with failure to maintain vehicle lane control; a designated lane violation; failure to carry a valid driver’s license; and resisting,

delaying, and obstructing a law enforcement officer in the performance of his duties. On 15 July 2019, this matter appeared for a jury trial before Judge Julia Lynn Gullett in Iredell County Superior Court. At the close of the State's evidence, Judge Gullett granted defendant's motion to dismiss the charge of failing to carry a valid driver's license but denied defendant's request to dismiss the remaining charges. The jury found defendant guilty of all remaining offenses on 17 July 2019.

Judge Gullett consolidated the convictions for one judgment and sentenced defendant at misdemeanor class two and prior record level one to thirty days in custody, which was suspended, and placed defendant on twenty-four months' supervised probation. The trial judge also ordered defendant to obtain a mental health evaluation and comply with recommendations. Judge Gullett informed defendant that once she had fully complied with the mental health evaluation and recommendations, defendant could be transferred to unsupervised probation. Defendant gave oral notice of appeal immediately following announcement of the judgment.

## II. Discussion

In essence, defendant raises three issues on appeal: (1) whether the document charging defendant for resisting, delaying, and obstructing a public officer was defective; (2) whether the trial court erred by denying defendant's motions to dismiss the resist charge and the failure to maintain lane control violation; and (3) whether

the trial judge committed reversible error by sentencing defendant to a longer term of supervised probation than permitted under N.C. Gen. Stat. § 15A-1343.2(d)(1). We address each issue in the order enumerated above.

A. Charging Document

On appeal, defendant first contends that the document charging her with resisting, delaying, or obstructing a public officer was fatally defective because it failed to allege that defendant knew or had reasonable grounds to believe that Officer Arndt was a public officer and because it failed to allege that defendant acted “intentionally and without justification or excuse.”

“On appeal, we review the sufficiency of an indictment *de novo*.” *State v. McKoy*, 196 N.C. App. 650, 652, 675 S.E.2d 406, 409 (2009) (citation omitted). “In a misdemeanor case the charging document may be a statement of charges instead of an indictment.” *State v. Dale*, 245 N.C. App. 497, 502, 783 S.E.2d 222, 226 (2016) (citing N.C. Gen. Stat. § 15A-922 (2013)). The charging document, regardless of its form, shall state the following:

A plain and concise factual statement in each count which, without allegations of an evidentiary nature, asserts facts supporting every element of a criminal offense and the defendant’s commission thereof with sufficient precision clearly to apprise the defendant or defendants of the conduct which is the subject of the accusation.

N.C. Gen. Stat. § 15A-924(a)(5) (2019). The Supreme Court of North Carolina has held that a charging document for resisting arrest shall “(a) identify by name the

person alleged to have been resisted, delayed or obstructed, and describe his official character with sufficient certainty to show that he was a public officer within the purview of the statute, (b) indicate the official duty he was discharging or attempting to discharge, and (c) state in a general way the manner in which [the] accused resisted or delayed or obstructed such officer.” *State v. Wiggs*, 269 N.C. 507, 512, 153 S.E.2d 84, 88 (1967) (citing *State v. Harvey*, 242 N.C. 111, 113, 86 S.E.2d 793, 794 (1955)).

The elements of a resist, delay, or obstruct charge are as follows:

- 1) that the victim was a public officer;
- 2) that the defendant knew or had reasonable grounds to believe that the victim was a public officer;
- 3) that the victim was discharging or attempting to discharge a duty of his office;
- 4) that the defendant resisted, delayed, or obstructed the victim in discharging or attempting to discharge a duty of his office; and
- 5) that the defendant acted willfully and unlawfully, that is intentionally and without justification or excuse.

*State v. Dammons*, 159 N.C. App. 284, 294, 583 S.E.2d 606, 612 (2003) (citing N.C. Gen. Stat. § 14-223 (2001)).

In this case, the document charging defendant for resisting arrest alleged sufficient facts to show that defendant knew or had reasonable grounds to believe that Officer Arndt was a public officer and that defendant acted intentionally and



without justification or excuse. The “Magistrate’s Order” (*i.e.*, the charging document) in the case *sub judice* states as follows:

I, the undersigned, find that the defendant named above has been arrested without a warrant and the defendant’s detention is justified because there is probable cause to believe that on or about the date of offense shown and in the county named above the defendant named above unlawfully and willfully did resist, delay and obstruct [Officer] ARNDT, a public officer holding the office of OFFICER WITH THE MOORESVILLE POLICE DEPARTMENT, by REPEATEDLY REFUSING TO EXIT HER VEHICLE AFTER BEING INSTRUCTED TO DO SO AND BY ALSO BEING PHYSICALLY RESISTIVE AS I ATTEMPTED TO HAVE HER WALK BACK TO MY PATROL VEHICLE. At the time, the officer was discharging and attempting to discharge a duty of his office by CONDUCTING A TRAFFIC STOP FOR MOVING VIOLATIONS.

The charging document clearly states that defendant “unlawfully and willfully did resist, delay and obstruct [Officer] ARNDT, a public officer WITH THE MOORESVILLE POLICE DEPARTMENT . . . .” The document also states that defendant resisted, delayed, and obstructed the public officer’s duties by “REPEATEDLY REFUSING TO EXIT HER VEHICLE AFTER BEING INSTRUCTED TO DO SO AND BY ALSO BEING PHYSICALLY RESISTIVE AS [OFFICER ARNDT] ATTEMPTED TO HAVE [DEFENDANT] WALK BACK TO [HIS] PATROL VEHICLE.” Thus, not only does the charging document identify the public officer’s name and the police department where he was employed, the paper alleges additional facts suggesting that defendant knew or surely had reasonable

grounds to know that Officer Arndt was a police officer (*i.e.*, resisting to walk to his “patrol car”). Defendant’s assignment of error with respect to this piece of the document charging her with resisting arrest is without merit. *See Wiggs*, 269 N.C. at 512, 153 S.E.2d at 88 (holding that defendant’s motion in arrest of judgment was properly denied where warrant stated public officer’s name and generally described defendant’s actions).

The Magistrate’s Order also sufficiently alleges that defendant acted intentionally and without justification or excuse. In *Dammons*, this Court clarified that an element of a resist charge is that “defendant acted willfully and unlawfully, **that is intentionally and without justification or excuse.**” *Dammons*, 159 N.C. App. at 294, 583 S.E.2d at 612 (emphasis added) (citing N.C. Gen. Stat. § 14-223 (2001)). Thus, at least with respect to N.C. Gen. Stat. § 14-223, the terms “willful” and “unlawful” are synonymous with the terms “intentional” and “without justification or excuse.” And here, as noted *supra*, the charging document states that defendant “unlawfully and willfully did resist, delay and obstruct [Officer] ARNDT . . . by REPEATEDLY REFUSING TO EXIT HER VEHICLE AFTER BEING INSTRUCTED TO DO SO AND BY ALSO BEING PHYSICALLY RESISTIVE AS [OFFICER ARNDT] ATTEMPTED TO HAVE HER WALK BACK TO [HIS] PATROL VEHICLE.” This language provides a general description of defendant’s actions and serves as sufficient notice to defendant of the facts that she

should expect to be brought out at trial. *See State v. Baldwin*, 59 N.C. App. 430, 434-35, 297 S.E.2d 188, 191-92 (1982) (upholding indictment stating that defendant “unlawfully and wilfully did resist, delay and obstruct PSO W.P. Hoffman . . . by struggling with Officer W.P. Hoffman and attempting to get free of PSO W.P. Hoffman’s grasp.”).

In sum, defendant’s challenge to the document officially charging her with a violation of N.C. Gen. Stat. § 14-223 (“Resisting officers”) is without merit as the document sufficiently and properly alleges that defendant knew or had reasonable grounds to believe that Officer Arndt was a public officer and that defendant acted willfully and unlawfully, that is, intentionally and without justification or excuse by repeatedly refusing to exit her vehicle after being lawfully instructed to do so and by being physically resistive to Officer Arndt’s attempt to safely escort her to his cruiser.

B. Motions to Dismiss

Next, defendant assigns error to the trial court’s denial of her motions to dismiss the charges of (1) resist, delay, and obstruct and (2) failure to maintain lane control. We address the trial court’s denial of each motion in turn.

“This Court reviews the trial court’s denial of a motion to dismiss *de novo*.” *State v. Smith*, 186 N.C. App. 57, 62, 650 S.E.2d 29, 33 (2007) (citing *State v. McKinnon*, 306 N.C. 288, 298, 293 S.E.2d 118, 125 (1982)). In ruling on a motion to dismiss, “the trial court need determine only whether there is substantial evidence of

each essential element of the crime and that the defendant is the perpetrator.” *State v. Winkler*, 368 N.C. 572, 574, 780 S.E.2d 824, 826 (2015) (internal quotation marks and citation omitted). Substantial evidence is defined by the North Carolina Supreme Court as “evidence which a reasonable mind could accept as adequate to support a conclusion.” *State v. Lee*, 348 N.C. 474, 488, 501 S.E.2d 334, 343 (1998) (citing *State v. Vick*, 341 N.C. 569, 583-84, 461 S.E.2d 655, 663 (1995)). In reviewing the trial court’s decision on appeal, the evidence must be viewed “in the light most favorable to the State, giving the State the benefit of all reasonable inferences.” *State v. Barnes*, 334 N.C. 67, 75, 430 S.E.2d 914, 918 (1993) (citation omitted).

In order to be submitted to the jury for determination of defendant’s guilt, the evidence “need only give rise to a reasonable inference of guilt.” *State v. Turnage*, 362 N.C. 491, 494, 666 S.E.2d 753, 755 (2008) (citing *State v. Stone*, 323 N.C. 447, 452, 373 S.E.2d 430, 433 (1988)). This is true regardless of whether the evidence is direct or circumstantial. *State v. Trull*, 349 N.C. 428, 447, 509 S.E.2d 178, 191 (1998). If the court decides that a reasonable inference of the defendant’s guilt may be drawn from the circumstances, then “it is for the jury to decide whether the facts, taken singly or in combination, satisfy them beyond a reasonable doubt that the defendant is actually guilty.” *State v. Thomas*, 296 N.C. 236, 244, 250 S.E.2d 204, 209 (1978) (citation and emphasis omitted). When ruling on a motion to dismiss, the only question for the trial court is whether “the evidence is sufficient to get the case to the

jury; it should not be concerned with the weight of the evidence.” *State v. Earnhardt*, 307 N.C. 62, 67, 296 S.E.2d 649, 652 (1982) (citing *State v. McNeil*, 280 N.C. 159, 162, 185 S.E.2d 156, 157 (1971)).

1. Resist, Delay, or Obstruct Charge

Defendant posits that the State failed to show it was necessary for Officer Arndt to remove defendant from her motor vehicle after he had stopped her for the observed traffic violations. Defendant also claims that the State failed to demonstrate that there was an officer safety issue necessitating defendant’s removal from the car. And, because the removal of defendant from the vehicle was unlawful, at least according to defendant, her failure to exit the car was not an interference with Officer Arndt’s duties. We disagree.

In this case, viewing the evidence in the light most favorable to the State and giving the State the benefit of all reasonable inferences, there is sufficient evidence for a reasonable mind to draw the conclusion that each essential element of the subject crimes was committed, and that defendant was the perpetrator. To be sure, the State did not, and does not, rely on defendant’s post-arrest behavior to establish a violation of N.C. Gen. Stat. § 14-223 (“Resisting officers”). Instead, the State offered adequate evidence from which a reasonable jury could infer that Officer Arndt lawfully detained defendant’s vehicle based on probable cause for two observed traffic violations and that defendant’s conduct, during the investigation of said violations,

amounted to resisting, delaying, and obstructing Officer Arndt from discharging or attempting to discharge the duties of his office.

It is well settled that “[w]hen an officer has lawfully detained a vehicle based on probable cause to believe that a traffic law has been violated, he may order the driver to exit the vehicle.” *State v. McRae*, 154 N.C. App. 624, 629, 573 S.E.2d 214, 218 (2002) (citing *State v. McGirt*, 122 N.C. App. 237, 239, 468 S.E.2d 833, 834-35 (1996)). “Asking a stopped driver to step out of his or her car improves an officer’s ability to observe the driver’s movements and is justified by officer safety, which is a ‘legitimate and weighty’ concern.” *State v. Bullock*, 370 N.C. 256, 262, 805 S.E.2d 671, 676 (2017) (quoting *Pennsylvania v. Mimms*, 434 U.S. 106, 110, 54 L. Ed. 2d 331, 336 (1977)).

Here, notwithstanding the inherent officer safety concerns attached to every traffic stop, Officer Arndt had reasonable grounds to believe that defendant “was going to attempt to drive away from [the] traffic stop.” Officer Arndt testified that after asking defendant to exit the vehicle—a lawful command—defendant “twisted her body to the right, which [Officer Arndt] took as an indication she was going to put her vehicle back in drive,” prompting Officer Arndt to physically remove defendant from the motor vehicle. Had defendant fled the scene, as the circumstances suggested, it would have been impossible for the Officers to discharge their duties of conducting a traffic stop for moving violations. As it turned out, though, “[r]ather

than conversing [with defendant] while standing exposed to moving traffic, the officer prudently . . . ask[ed] the driver of the vehicle to step out of the car . . . where the inquiry [could] be pursued with greater safety to both.” *Mimms*, 434 U.S. at 111, 54 L. Ed. 2d at 337. And the jury concluded, based on the State’s relevant evidence, that defendant resisted, delayed, and obstructed this effort by, *inter alia*, refusing to exit her vehicle and by being physically resistive when Officer Arndt attempted to walk her back to his police cruiser. In short, the State’s evidence was sufficient for the jury to conclude that defendant “unlawfully and willfully did resist, delay and obstruct . . . a public officer . . . [while] the officer was discharging and attempting to discharge a duty of his office by CONDUCTING A TRAFFIC STOP FOR MOVING VIOLATIONS.”

Therefore, we hold that the State presented sufficient evidence that Officer Arndt was discharging a duty of his office when he asked defendant to exit her vehicle. The State, moreover, proffered substantial evidence from which a reasonable mind could conclude that defendant resisted, delayed, and obstructed Officer Arndt from discharging or attempting to discharge his official duty of conducting a traffic stop for moving violations.

2. Failure to Maintain Lane Control Charge

Defendant asserts that the State failed to proffer evidence indicating that the road lanes crossed by defendant were clearly marked. Moreover, defendant argues

that the trial judge's jury instruction as to this charge was flawed because it failed to account for statutory language concerning whether defendant first ascertained that it was safe to move the car out of her lane.

At the outset, we note that defendant waived the latter contention as she neither objected to the jury instruction at trial nor raised this issue under the plain error standard on appeal. N.C.R. App. P. 10(a)(2), 10(a)(4) (2020); *State v. Smith*, \_\_ N.C. App. \_\_, \_\_, 837 S.E.2d 166, 169 (2019) (holding that defendant waived appellate review of jury instruction by failing to object at trial and by subsequently failing to specifically allege plain error on appeal). Therefore, defendant waived appellate review of this particular issue.

Insofar as defendant claims that the State failed to submit substantial evidence that the road on which defendant was traveling had clearly marked lanes, the argument is without merit.

Defendant was charged with failure to maintain lane control in violation of N.C. Gen. Stat. § 20-146(d)(1). Subsection 20-146(d)(1) is limited to streets that have been "divided into two or more clearly marked lanes for traffic[.]" N.C. Gen. Stat. § 20-146(d)(1) (2019). "Where a vehicle actually crosses over the double yellow lines in the center of a road, even once, and even without endangering any other drivers, the driver has committed a traffic violation of N.C. Gen. Stat. § 20-146 . . . ." *State v. Sutton*, 259 N.C. App. 891, 893, 817 S.E.2d 211, 213 (2018).



At trial, Officer Arndt testified that he observed defendant's vehicle failing to maintain lane control by "driving halfway between the straight lane and halfway in the right-turn lane." Officer Arndt explained that the violation was "clearly visible because [defendant's] headlights were illuminated." Officer Arndt further stated that when "driving down a road at nighttime, lane lines, including the double-yellow line, any white line, they're luminescent so when lights strike[] them you can see them. That's how we can drive on roads at nighttime. I clearly observed [defendant] driving in both lanes of travel." This testimony is sufficient evidence from which a reasonable mind may accept as adequate to support the conclusion that defendant violated N.C. Gen. Stat. § 20-146(d)(1). *See Sutton*, 259 N.C. App. at 892, 817 S.E.2d at 212 ("Although the law enforcement officer had seen defendant's truck cross only once about one inch over the double yellow lines on a curvy road, crossing the center line is a traffic violation which is sufficient to justify the stop.").

### C. Sentencing

Defendant lastly maintains that the trial court committed reversible error by ordering defendant to serve twenty-four months of supervised probation without first making findings as to why a probation period greater than eighteen months—the maximum probationary period set out in N.C. Gen. Stat. § 15A-1343.2(d)(1)—was necessary. We review this assignment of error under N.C. Gen. Stat. § 15A-1446(d)(18), which allows for appellate review of sentencing errors even when there

was no objection at trial. *See* N.C. Gen. Stat. § 15A-1446(d) (2019). This Court reviews alleged sentencing errors *de novo*. *See State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721 (2011) (citing *Staton v. Brame*, 136 N.C. App. 170, 174, 523 S.E.2d 424, 427 (1999)).

Pursuant to North Carolina procedure under the Criminal Procedure Act, trial courts are bound by the following mandate:

(d) Lengths of Probation Terms Under Structured Sentencing.--Unless the court makes specific findings that longer or shorter periods of probation are necessary, the length of the original period of probation for offenders sentenced under Article 81B shall be as follows:

(1) For misdemeanants sentenced to community punishment, not less than six nor more than 18 months[.]

N.C. Gen. Stat. § 15A-1343.2(d)(1) (2019).

Here, the trial court imposed a suspended active sentence of thirty days plus a community punishment of twenty-four months' supervised probation. The trial judge stated the following regarding the sentence:

In these matters, the Court consolidates the infractions with the Class 2 misdemeanor of resisting an officer. The Court finds that she has no prior convictions, which makes her a prior Record Level 1 for misdemeanor sentencing purposes. The Court sentences her to 30 days, suspended for initially 24 months supervised probation. The Court waives the fine, orders her to pay the court cost, orders that she obtain a mental health assessment and complete any recommended treatment. And once she has done that, then

her probation can be transferred to unsupervised probation. That's all.

When defendant sought clarification regarding the twenty-four months of supervised probation, the trial judge replied as follows: “[Y]ou have 24 months of supervised probation. However, when you finish the mental health assessment and the treatment, then it will be changed to unsupervised probation. That’s just to make sure there’s enough time for you to finish your treatment.”

In order to impose a longer term of probation than that prescribed by N.C. Gen. Stat. § 15A-1343.2(d), the trial court is required to make findings as to why the longer sentence is necessary. *State v. Lambert*, 146 N.C. App. 360, 366, 553 S.E.2d 71, 76-77 (2001) (remanding for resentencing where trial court failed to make required findings of fact that a longer term of probation was necessary). Moreover, a “defendant released on supervised probation must be given a written statement explicitly setting forth the conditions on which the defendant is being released.” N.C. Gen. Stat. § 15A-1343(c) (2019).

In this case, the State argues that while the “special conditions” statute (N.C. Gen. Stat. § 15A-1343(c)) requires a written statement, the statute pertaining to the lengths of probation (N.C. Gen. Stat. § 15A-1343.2(d)) requires only “findings” and does not specifically require the findings to be in writing. Following this logic, because the trial judge made findings in open court, the transcript of which was

attached to the appellate record, the trial court did not err by imposing a longer period of supervised probation.

Here, the judgment entered by the trial court places defendant on supervised probation for twenty-four months. However, directly below the check box on the actual judgment imposing this punishment, the trial court failed to indicate any purported findings supporting a longer period of probation than allowed under N.C. Gen. Stat. § 15A-1343.2(d)(1). And it is not clear from the trial transcript that a longer period of probation was imposed for the purpose of allowing defendant to complete the required mental health treatment. In fact, the mental health assessment was an independent special condition attached to defendant's probation. Just because a trial court imposes a special condition to probation does not mean that the trial judge may freely extend the statutory length of probation absent "specific findings that [a] longer . . . period[] of probation [is] necessary." N.C. Gen. Stat. § 15A-1343.2(d). Accordingly, this portion of defendant's sentence is remanded for further findings pursuant to N.C. Gen. Stat. § 15A-1343.2(d). *See generally State v. Wheeler*, 202 N.C. App. 61, 70-71, 688 S.E.2d 51, 57 (2010) (remanding for resentencing under similar circumstances).

### III. Conclusion

For the foregoing reasons, we hold that the trial court did not err by denying defendant's motions to dismiss as the State offered sufficient, substantial evidence to

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prove the subject offenses. We, therefore, find no error in defendant's conviction. However, as explained above, we remand this matter to the trial court for resentencing.

NO ERROR; REMANDED FOR RESENTENCING.

Chief Judge MCGEE and Judge ZACHARY concur.

Report per Rule 30(e).