

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA24-747

Filed 5 March 2025

Perquimans County, Nos. 22CRS050015–16

STATE OF NORTH CAROLINA

v.

GRANDY JAMAL DUNBAR, Defendant.

Appeal by defendant from judgments entered 23 January 2024 by Judge Andrew Womble in Perquimans County Superior Court. Heard in the Court of Appeals 12 February 2025.

Attorney General Joshua H. Stein, by Assistant Attorney General Mary L. Maloney, for the State.

Everson Law Office, PLLC, by Cynthia Everson, for defendant-appellant.

FLOOD, Judge.

Defendant Grandy Jamal Dunbar appeals from the trial court's judgments finding him guilty of: felony fleeing to elude arrest with a motor vehicle; and misdemeanor resisting, delaying, or obstructing a public officer. On appeal, Defendant argues the trial court: (A) erred in denying Defendant's motion to dismiss, (B) plainly erred in allowing law enforcement deputies to testify about Defendant's

prior bad acts without conducting a Rule 404(b) and Rule 403 analysis, (C) plainly erred in its jury instruction on felony fleeing to elude arrest, and (D) erred in sentencing Defendant as a prior record level III. Upon careful review, we conclude the trial court: did not err in denying Defendant's motion to dismiss, because there was substantial evidence of all elements of felony fleeing to elude arrest as well as of Defendant's identity; and did not plainly err in allowing law enforcement deputies' testimonies, nor in its jury instruction on felony fleeing to elude, because the trial court did not commit fundamental error. We also conclude, however, that the trial court erred in sentencing Defendant as a prior record level III, and therefore vacate Defendant's sentence and remand for resentencing.

I. Factual and Procedural Background

On 15 January 2022, Deputy Ryan Michael Cappel, with the Perquimans County Sheriff's Office, was working as a patrol deputy, while parked in a parking lot at 405 West Grubb Street in Hertford, North Carolina. He was watching vehicular movement at a traffic light at the intersection of West Grubb Street and South Edenton Street. At 6:29 a.m. that morning, before sunrise, he saw a 2012 Nissan Maxima traveling through the intersection. Deputy Cappel did an inquiry on its license plate using a system called Criminal Justice Law Enforcement Automated Data Services ("CJLEADS").¹ His search revealed that the vehicle's license plate was

¹ CJLEADS provides real-time DMV data on vehicles, drivers' licenses, and offender information.

revoked, and there was a pick-up plate order by the Department of Motor Vehicles (“DMV”) and an “insurance stop.”² Deputy Cappel then “attempted to catch up to the vehicle” in order to initiate a traffic stop.

Deputy Cappel followed the vehicle until it stopped at a red light at the intersection of West Grubb Street and Church Street. As the light turned green, he activated his blue lights and sirens, and the vehicle pulled into the One Stop Gas Station located at the intersection. The vehicle pulled in by the gas pumps, followed by Deputy Cappel, and stopped “for about five seconds.” As Deputy Cappel was deciding whether to get out of his patrol car, the vehicle suddenly made a very sharp left turn, at which time Deputy Cappel’s high beams were on and facing the driver of the vehicle, whom Deputy Cappel later identified as Defendant. There were also bright lights at the gas station under the canopy over the gas pumps. Defendant looked out his driver’s side window; “made full face contact with [Deputy Cappel] for about one or two seconds,” with Deputy Cappel being able to get a “good look” at Defendant; and then accelerated away at a high rate of speed.

Defendant left the gas station, and Deputy Cappel initiated a pursuit. Both vehicles drove on West Grubb Street, with Defendant driving at a speed of fifty-six miles per hour. During the pursuit, the vehicles reached speeds of about seventy

² Testimony at trial revealed that an “insurance stop” could refer to: a lapse of insurance on the vehicle, which requires law enforcement to retrieve the license plate; or new insurance on the vehicle, but the new insurance company failed to inform the DMV.

miles per hour, while West Grubb Street’s speed limit was twenty-five miles per hour, and Defendant briefly drove his vehicle into the lane for oncoming traffic. Later at trial, Deputy Cappel testified that he had not seen vehicles reach those speeds on that road since it is “congested . . . with the housing and all the business around there[,]” making such speeds extremely dangerous.

After approximately one mile of chase, at 6:38 a.m., Defendant’s vehicle came to an abrupt stop, and Defendant fled on foot. At the time the vehicle stopped, Deputy Cappel’s vehicle had on high beams and a streamer stinger light—a 2,000 lumens flashlight—enabling him to get a clear view of Defendant, exiting out of the driver’s side door, who looked at Deputy Cappel “face on.” Deputy Cappel did not pursue Defendant on foot due to safety concerns. After Deputy Cappel had radioed other officers, Deputies Damon Sizemore and Daniel Turner arrived to assist. Deputy Sizemore brought up Defendant’s identification on CJLEADS, his offender sheet, and his most recent jail photo. Deputy Cappel was “one hundred percent” certain that the driver who fled from him was Defendant.

That same day, a warrant was issued for Defendant’s arrest. When officers went to the address where the vehicle was registered to look for Defendant, he was not there. Defendant, however, was served with the charges and arrested by officers, including Deputy Cappel, four days later, on 19 January 2022, when he was at court for another matter.

On 21 March 2022, Defendant was indicted, and on 23 January 2024, the

STATE V. DUNBAR

Opinion of the Court

matter came on for trial. Defendant moved to suppress Deputy Cappel's pretrial viewing of photographs to identify Defendant as the individual who fled from the scene, alleging the photographic identification of Defendant violated the Eyewitness Identification Act. The trial court denied the motion to suppress, providing that the "photographic showup" was not prohibited by N.C.G.S. §15A-284.52, and that identification of Defendant would go to the weight but not the admissibility of evidence. When the State presented its case, in addition to Deputy Cappel's testimony, which described the aforementioned events, Chief Deputy Tom Reid testified, stating he was in court on the date of Defendant's arrest, and he knew there was a warrant for Defendant's arrest.

Following the close of the State's evidence, Defendant made a "general motion to dismiss." In denying his motion to dismiss, the trial court recited the elements the State must prove for felony fleeing to elude arrest. Defendant did not present evidence and renewed his motion to dismiss, which the trial court again denied.

Defendant had stipulated that his driver's license had been revoked, and that he had knowledge of the revocation on the offense date. The trial court instructed the jury that Defendant stipulated as such. The jury instructions, which listed the elements of felonious operation of a motor vehicle to elude arrest, included the following instruction:

And, fourth, that two or more of the following factors were present at that time. Number one, reckless driving. I will tell you, ladies and gentlemen, for you to find the element

of reckless driving, the State must prove two things beyond a reasonable doubt. First, that [D]efendant drove a vehicle upon a street in Perquimans County. Grubb Street is a public street in Perquimans County. And, second, that [D]efendant drove at speeds in excess of [fifteen] miles per hour over the municipal speed limit and that in doing so, he acted carelessly and heedlessly in willful and wanton disregard of the rights or safety of others. The second element is driving while his driver's license is revoked.

Following deliberations, the jury returned guilty verdicts on felony fleeing to elude arrest; misdemeanor resisting, delaying, or obstructing a public officer; and misdemeanor driving with a revoked license. The trial court arrested judgment on the driving while license revoked charge, because it was one of the elements used to prove felony fleeing to elude arrest. The parties stipulated Defendant was a prior record level III for felony sentencing. Defendant was sentenced to ten to twenty-one months' imprisonment for the offense of felony fleeing to elude arrest, followed by a consecutive sentence of sixty days' imprisonment for the offense of resisting, delaying, or obstructing a public officer. Defendant timely appealed.

II. Jurisdiction

This Court has jurisdiction to review this appeal from final judgments of a superior court, pursuant to N.C.G.S. §§ 7A-27(b) and 15A-1444(a) (2023).

III. Analysis

On appeal, Defendant argues the trial court: (A) erred in denying Defendant's motion to dismiss, (B) plainly erred in allowing Deputies Cappel and Reid to testify about Defendant's prior bad acts without conducting a Rule 404(b) and Rule 403

analysis, (C) plainly erred in its jury instruction on felony fleeing to elude arrest, and (D) erred in sentencing Defendant as a prior record level III. We address each argument, in turn.

As a preliminary matter, we address whether Defendant has preserved his arguments for appellate review.

“In order to preserve an issue for appellate review, a party must have presented to the trial court a timely request, objection, or motion, stating the specific grounds for the ruling the party desired the court to make if the specific grounds were not apparent from the context.” N.C.R. App. P. 10(a)(1). “Unpreserved error in criminal cases . . . is reviewed only for plain error.” *State v. Lawrence*, 365 N.C. 506, 512 (2012); *see also* N.C.R. App. P. 10(a)(4). In order to demonstrate plain error:

First, the defendant must show that a fundamental error occurred at trial. Second, the defendant must show that the error had a “probable impact” on the outcome, meaning that “absent the error, the jury probably would have returned a different verdict.” Finally, the defendant must show that the error is an “exceptional case” that warrants plain error review, typically by showing that the error seriously affects “the fairness, integrity or public reputation of judicial proceedings.”

State v. Reber, 386 N.C. 153, 158 (2024) (quoting *Lawrence*, 365 N.C. at 518–19).

Here, it is uncontested that defense counsel did not object to or otherwise challenge Deputies Cappel’s or Reid’s testimonies under Rule 404(b) or Rule 403. It is further uncontested that defense counsel did not object to the jury instruction on felony fleeing to elude arrest. Because defense did not object to the challenged

testimonies or jury instruction, these issues are not preserved for appellate review. *See* N.C.R. App. P. 10(a)(1). Accordingly, Defendant's second and third allegations of error are reviewed only for plain error. *See Lawrence*, 365 N.C. at 512.

A. Motion to Dismiss

Defendant argues the trial court erred in denying Defendant's motion to dismiss on all charges based on insufficient evidence of Defendant's identity, and on felony fleeing to elude arrest based on insufficient evidence of the aggravating factor of reckless driving. We disagree.

"This Court reviews the trial court's denial of a motion to dismiss *de novo*." *State v. Smith*, 186 N.C. App. 57, 62 (2007). As our Supreme Court has provided:

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. Substantial evidence is that amount of relevant evidence necessary to persuade a rational juror to accept a conclusion.

State v. Hill, 365 N.C. 273, 275 (2011) (citation and internal quotation marks omitted). Moreover,

[t]he evidence is to be considered in the light most favorable to the State; the State is entitled to every reasonable intendment and every reasonable inference to be drawn therefrom; contradictions and discrepancies are for the jury to resolve and do not warrant dismissal; and all of the evidence actually admitted, whether competent or incompetent, which is favorable to the State is to be considered by the court in ruling on the motion.

Id. at 275 (citation omitted).

Here, viewing the evidence in the light most favorable to the State, the following constitutes substantial evidence that Defendant was the perpetrator: Deputy Cappel's testimony that he was "one hundred percent" sure the driver of the vehicle was Defendant; that in the gas station parking lot, Deputy Cappel's high beams were on and facing Defendant, the gas station had bright lights under the canopy over the gas pumps, and Defendant "made full face contact with [Deputy Cappel] for about one or two seconds," allowing Deputy Cappel to get a "good look" at Defendant; that at the time the vehicle had stopped, Deputy Cappel's vehicle had on high beams, and Deputy Cappel had a streamer stinger light—a 2,000 lumens flashlight—enabling him to get a clear view of Defendant exiting out of the driver's side door, who looked at Deputy Cappel "face on"; and that Deputy Cappel further identified Defendant as the driver of the vehicle via Defendant's CJLEADS report, offender sheet, and jail photograph. *See id.* at 275.

Further, viewing the evidence in the light most favorable to the State, the following constitutes substantial evidence as to Defendant's reckless driving: during the chase, the vehicles reached speeds of about seventy miles per hour, where West Grubb Street's speed limit was twenty-five miles per hour, and Defendant drove the vehicle into the lane for oncoming traffic; and Deputy Cappel testified that the road is congested and lined by houses and businesses, making such speeds extremely dangerous. *See id.* at 275. As discussed previously, this evidence demonstrates Defendant drove "heedlessly in willful or wanton disregard of the rights or safety of

others[,]” or drove “without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property[,]” sufficient for the elements of reckless driving, and when considered along with the other aggravating factor, sufficient to support the crime of felony fleeing to elude arrest. *See id.* at 275; *see also* N.C.G.S. §§ 20-141.5(a)–(b), 20-140(a)–(b) (2023).

Accordingly, viewing the evidence in the light most favorable to the State, because there was substantial evidence of each element of the crime of felony fleeing to elude arrest, and substantial evidence of Defendant’s identity as the perpetrator, we conclude the trial court did not err in denying Defendant’s motion to dismiss. *See Hill*, 365 N.C. at 275.

B. Testimonies of Deputies Cappel and Reid

Defendant next argues that the trial court plainly erred in allowing Deputies Cappel and Reid to testify about Defendant’s prior bad acts without conducting a Rule 404(b) and Rule 403 analysis. We disagree.

Rule 404(b) governs the admissibility of “[e]vidence of other crimes, wrongs, or acts” to show “proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake, entrapment or accident.” *State v. Locklear*, 363 N.C. 438, 447 (2009) (citing N.C.R. Evid. 404(b)). “[A]s long as the evidence of other crimes or wrongs by the defendant is relevant for some purpose other than to show the defendant’s propensity to commit the charged crime, such evidence is admissible under Rule 404(b).” *Id.* at 447 (citation omitted) (cleaned up). “[T]he ultimate test

for determining whether such evidence is admissible [under Rule 404(b)] is whether the incidents are sufficiently similar and not so remote in time as to be more probative than prejudicial under the balancing test of [N.C.R. Evid. 403].” *State v. Boyd*, 321 N.C. 574, 577 (1988).

Under Rule 403, “relevant[] evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]” N.C.R. Evid. 403. “Whether or not to exclude evidence under Rule 403 . . . is a matter within the sound discretion of the trial court and its decision will not be disturbed on appeal absent a showing of an abuse of discretion.” *State v. McCray*, 342 N.C. 123, 131 (1995). This Court does “not apply plain error to issues which fall within the realm of the trial court’s discretion.” *State v. Cunningham*, 188 N.C. App. 832, 837 (2008) (citation and internal quotation marks omitted).

Here, because Rule 403 is reviewed for an abuse of discretion, and this Court does not apply plain error to discretionary issues on the part of the trial court, Defendant’s allegation of error under Rule 403 is overruled. *See id.* at 837; *see also McCray*, 342 N.C. at 131. Additionally, neither the CJLEADS report, the offender sheet, nor jail photos were admitted into evidence, and thus do not trigger a Rule 404(b) inquiry. *See Locklear*, 363 N.C. at 447; *see also* N.C.R. Evid. 404(b). Even if Deputies Cappel’s and Reid’s testimonies alluding to these documents could allow the jury to infer Defendant had a criminal history, such testimony does not indicate Defendant’s propensity to “commit the *charged* crime[.]” since the jury never learned

what Defendant's criminal history was from the documents; thus, the evidence was admissible under Rule 404(b). *See Locklear*, 363 N.C. at 447 (emphasis added). No other evidence of Defendant's criminal history was presented to the jury, including from the testimonies of Deputies Cappel and Reid. Their testimonies that Defendant was in court for an unrelated matter do not identify the reason Defendant was in court in the first place, and thus are not "evidence of other crimes, wrongs, or acts" by Defendant. *See id.* at 447.

Accordingly, because we do not review Defendant's allegation of error under Rule 403, and there was no error under Rule 404(b) in admitting Deputies Cappel's and Reid's testimonies, there was no "fundamental error[.]" and Defendant has not satisfied the plain error test. *See Reber*, 386 N.C. at 158; *see also Lawrence*, 365 N.C. at 512; *Cunningham*, 188 N.C. App. at 837. We therefore find no plain error on part of the trial court.

C. Jury Instruction on Felony Fleeing to Elude Arrest

Defendant next argues the trial court plainly erred in its jury instruction on felony fleeing to elude arrest by improperly instructing the jury on the aggravating factor of reckless driving. We disagree.

"An indictment must charge all the essential elements of the alleged criminal offense." *State v. Stokes*, 174 N.C. App. 447, 452 (2005). "An indictment for a statutory offense is sufficient, as a general rule, when it charges the offense in the language of the statute." *Id.* at 452 (citation omitted).

STATE V. DUNBAR

Opinion of the Court

Jury “[i]nstructions that as a whole present the law fairly and accurately to the jury will be upheld.” *State v. Roache*, 358 N.C. 243, 303 (2004). The trial court does not commit error where the jury instructions “tracked the language of the pattern jury instructions.” *See State v. Funchess*, 141 N.C. App. 302, 309 (2000); *see also Stokes*, 174 N.C. App. at 453.

Under N.C.G.S. § 20-141.5, “[i]t shall be unlawful for any person to operate a motor vehicle on a street, highway, or public vehicular area while fleeing or attempting to elude a law enforcement officer who is in the lawful performance of his duties.” N.C.G.S. § 20-141.5(a). “If two or more . . . aggravating factors are present at the time the violation occurs, violation of this section shall be a Class H felony.” N.C.G.S. § 20-141.5(b). Two aggravating factors include “[r]eckless driving as proscribed by [N.C.]G.S. [§] 20-140” and “[d]riving when the person’s drivers license is revoked.” N.C.G.S. § 20-141.5(b)(3), (5). Reckless driving includes:

(a) Any person who drives any vehicle upon a highway or any public vehicular area carelessly and heedlessly in willful or wanton disregard of the rights or safety of others shall be guilty of reckless driving.

(b) Any person who drives any vehicle upon a highway or any public vehicular area without due caution and circumspection and at a speed or in a manner so as to endanger or be likely to endanger any person or property shall be guilty of reckless driving.

N.C.G.S. § 20-140(a)–(b).

Here, the indictment alleged two aggravating factors, “driving recklessly . . .

and driving while [D]efendant's driver's license was revoked[,]” which correctly charged the “offense in the language of the statute.” *See Stokes*, 174 N.C. App. at 452; *see also* N.C.G.S. § 20-141.5(b)(3), (5). Although the trial court included language from another aggravating factor that was not listed in the indictment, “[s]peeding in excess of [fifteen] miles per hour over the legal speed limit[,]” the trial court correctly instructed the jury that, in addition to speeding, Defendant had to have “acted carelessly and heedlessly in willful and wanton disregard of the rights or safety of others.” *See* N.C.G.S. § 20-141.5(b)(1). The trial court's instructions properly conformed to the language of the statute, as well as to the pattern jury instructions on the aggravating factors that were alleged in the indictment, and thus the jury instructions “present[ed] the law fairly and accurately.” *See Roache*, 358 N.C. at 303; *see also Funchess*, 141 N.C. App. at 309; N.C.G.S. § 20-140(a)–(b); *see generally* N.C.P.I.--Crim. 270.54A, 270.80 (2021) (providing the pattern jury instructions for operating a motor vehicle to elude arrest and reckless driving).

Additionally, there was uncontroverted evidence of Defendant's driving that supported a guilty verdict on reckless driving as an aggravating factor. Evidence was presented that, in addition to Defendant's speeds reaching seventy miles per hour on a street with a twenty-five mile per hour speed limit, Defendant drove the vehicle into oncoming traffic and drove in an area “congested” with houses and businesses. This evidence was sufficient to indicate Defendant was driving “carelessly and heedlessly in willful or wanton disregard of the rights or safety of others[.]” *See*

N.C.G.S. § 20-140(a)–(b).

Accordingly, because the trial court did not err in its jury instruction, there was no “fundamental error[,]” and Defendant has not satisfied the plain error test. *See Reber*, 386 N.C. at 158; *see also Lawrence*, 365 N.C. at 512. We therefore find no plain error on part of the trial court.

D. Sentencing

“Although a stipulation by the defendant may be sufficient to prove [a] defendant’s prior record level, the trial court’s assignment of a prior record level is a conclusion of law, which we review *de novo*.” *State v. Mack*, 188 N.C. App. 365, 380 (2008).

“The prior record level of a felony offender is determined by calculating the sum of the points assigned to each of the offender’s prior convictions that the court . . . finds to have been proved in accordance with this section.” N.C.G.S. § 15A-1340.14(a) (2023). “The State bears the burden of proving, by a preponderance of the evidence, that a prior conviction exists and that the offender before the court is the same person as the offender named in the prior conviction.” N.C.G.S. § 15A-1340.14(f). As our Supreme Court has provided:

The State may prove a prior conviction exists by (1) stipulation of the parties; (2) an original or copy of the court record of the prior conviction; (3) a copy of records maintained by the Department of Public Safety, the Division of Motor Vehicles, or of the Administrative Office of the Courts; or (4) any other method found by the court to be reliable.

STATE V. DUNBAR

Opinion of the Court

State v. Arrington, 371 N.C. 518, 522 (2018) (citing N.C.G.S. § 15A-1340.14(f)) (cleaned up). “After the trial court determines the total number of prior record points a defendant has accumulated, the court utilizes N.C.G.S. § 15A-1340.14(c) to establish the prior record level based on the total record points the defendant has accrued.” *Id.* at 522.

Generally, the parties’ stipulation as to a defendant’s prior record level is binding. *See State v. Crawford*, 179 N.C. App. 613, 620–21 (2006); *see also State v. Ellis*, 168 N.C. App. 651, 661 (2005). Where a defendant stipulates to a conviction, the defendant agrees to the facts underlying the conviction. *See Arrington*, 371 N.C. at 524. Where a stipulation is based on a mistake or error demonstrated by Record evidence, however, this Court is required to defer to the Record rather than the parties’ stipulation. *See State v. Green*, 266 N.C. App. 382, 390 (2019) (concluding that where a defendant stipulated to a class I felony violation, and where the record evidence demonstrated the defendant’s conviction was for a misdemeanor violation of the applicable statute, “the parties’ stipulation was an error or mistaken”). Where the Record clearly shows that a stipulated-to offense is a misdemeanor traffic offense, the trial court has committed error by entering the point. *See State v. Flint*, 199 N.C. App. 709, 728 (2009); *see also* N.C.G.S. § 15A-1340.14(b)(5).

Here, Defendant was properly assigned four points for his conviction of selling or delivering cocaine. Defendant’s stipulation to selling or delivery cocaine means

STATE V. DUNBAR

Opinion of the Court

Defendant stipulated to the facts underlying the conviction, and because delivering cocaine is a class G felony, the trial court properly assigned four points to Defendant's prior record level. *See Arrington*, 371 N.C. at 522; *see also* N.C.G.S. § 15A-1340.14(b)(3) (providing that a prior class G felony conviction is to be assigned four points). The Record, however, reveals Defendant was assigned one point for a prior conviction of misdemeanor fleeing or eluding arrest with a motor vehicle. Although the misdemeanor offense is classified as a "Class 1 misdemeanor[.]" the offense is a Chapter 20 misdemeanor *traffic* offense, specifically excluded from being considered a "prior misdemeanor conviction" that can be assigned a point. *See* N.C.G.S. § 15A-1340.14(b)(5) ("For purposes of this subsection, misdemeanor is defined as any Class A1 and Class 1 nontraffic misdemeanor offense . . . but not any other misdemeanor traffic offense under Chapter 20[.]"); *see also* N.C.G.S. § 20-141.5(a). Because the Record clearly demonstrates Defendant was improperly assigned one point for an offense for which a point cannot be assigned, the trial court should have assigned five points against Defendant, rather than six. *See Green*, 266 N.C. App. 390; *see also Flint*, 199 N.C. App. at 728.

Accordingly, because the trial court should have assigned five points to Defendant's prior record level, rather than six, we conclude the trial court erred in sentencing Defendant as a prior record level III. *See* N.C.G.S. § 15A-1340.14(c)(2) (providing that a prior record level II includes "[a]t least 2, but not more than 5 points"). We therefore vacate Defendant's sentence and remand for resentencing.

IV. Conclusion

Upon careful review, we conclude the trial court did not err in denying Defendant's motion to dismiss, because there was substantial evidence of all elements of felony fleeing to elude arrest as well as of Defendant's identity. We further conclude the trial court did not plainly err in allowing Deputies Cappel's and Reid's testimonies, nor in its jury instruction on felony fleeing to elude arrest, because the trial court did not commit fundamental error. The trial court erred, however, in sentencing Defendant as a prior record level III. We therefore vacate the sentence and remand for resentencing.

NO ERROR In Part; NO PLAIN ERROR In Part; VACATED In Part; and
REMANDED FOR RESENTENCING.

Chief Judge DILLON and Judge COLLINS concur.

Report per Rule 30(e).