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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA25-425

Filed 18 November 2026

Mecklenburg County, Nos. 22CR011682-590, 22CR011683-590, 22CR210300-590

STATE OF NORTH CAROLINA

v.

RENE VELEZ VILLAVICENCIO

Appeal by defendant from judgment entered 18 September 2024 by Judge Reggie McKnight in Mecklenburg County Superior Court. Heard in the Court of Appeals 14 January 2026.

Attorney General Jeff Jackson, by Special Deputy Attorney General Jocelyn C. Wright, for the State.

Goodman Carr, PLLC, by W. Rob Heroy, for defendant-appellant.

FREEMAN, Judge.

Defendant appeals from judgment entered upon a jury's verdict finding defendant guilty of second-degree rape, second-degree sexual offense, second-degree forcible rape, and first-degree kidnapping. On appeal, defendant argues the trial court erred by (1) denying defendant's motion to dismiss the rape and sexual offense charges, (2) excluding defendant's impeachment evidence under Rule 412, and (3)

handing down conflicting sentences. After careful review, we find no error in part, vacate in part, and remand.

I. Factual and Procedural Background

In 2019, L.C.[1] became "best friends" with her coworker, Mariana. L.C. met defendant after he and Mariana started dating in December 2019. L.C. testified that she and defendant were cordial, but not close. L.C. maintained that she and defendant never had consensual sex.

On 14 August 2020, defendant planned Mariana's twenty-first birthday party at his cousins' house. The house was a split-level with a swimming pool in the back. Upon entering, stairs up to the main floor led to a kitchen and living area, while the stairs down led to a sunken "bonus room" with a couch and TV, a guest bedroom with an extra bed or "pallet" made up on the floor, and a hall bathroom. At the house party were defendant, his cousins, Mariana, L.C., a woman named Maria, and other invited guests.

The party began around 9:30 P.M. with an alcohol drinking game in the kitchen. L.C. arrived alone around 10:00 P.M., not planning to stay the night. Defendant and Mariana were the only guests L.C. knew when she arrived and joined the drinking game.

[1] Initials used by agreement of the parties to shield the victim.

Mariana testified that she and L.C. took Adderall during the party.[2] Defendant also testified that L.C. gave Mariana an unidentified pill to help her hold her alcohol. Nonetheless, Mariana soon retreated to the small downstairs bathroom to vomit. Defendant went with her to assist. L.C., by this time "very heavily intoxicated," had "fuzzy," "patchy" memories of joining them to check on Mariana.

Defendant testified that L.C. wanted to change into her bathing suit and began removing her clothes in front of him and Mariana, which prompted defendant to look up at the wall and try to turn his back to L.C. The defense elicited testimony that L.C., while undressed, tried to kiss Mariana, but the State objected under Rule 412 and this line of questioning was prohibited.

Maria also came downstairs to check on Mariana. Defendant took Mariana to the bedroom across the hall, where they went to sleep.[3] L.C. and Maria remained in the bathroom together for another hour and a half, talking and taking Snapchat photos.[4] L.C. testified that by this point in the evening, she had consumed so much alcohol that her memory was "patchy" and "splotchy," and she did not remember talking with Maria or taking the photos presented.

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[2] L.C. testified she did not remember taking any pills or drugs.

[3] At this point, Mariana testified that she "blacked out" from alcohol consumption and remembered little more beyond lying down to sleep, being briefly awakened by the arrival of more party guests, and going back to sleep for the rest of the night.

[4] Although defendant testified that L.C. changed into her swimsuit before he left the bathroom, L.C. was still wearing regular clothes in her photos with Maria.

The defense proffered further testimony that L.C. steered the photos in a suggestive direction, kissed Maria twice, got partially undressed, and propositioned Maria sexually, but the State objected under Rule 412 and the jury did not hear most of this.

Upon leaving the bathroom, L.C. found defendant and Mariana in the bedroom across the hall, lying on the "pallet" floor bed. L.C. woke them by lying down on top of them—later testifying that she did not remember doing so, although photo evidence showed her in this position.

A second drinking game began in the downstairs bonus room. Defendant testified that he and the other participants were taking shots of Jack Daniels whiskey. L.C. tried to join the game, but defendant claimed he cut her off, saying she'd had too much to drink already.

At approximately 3:00 A.M., Maria left the party, and others began to consider getting into the swimming pool or going to bed. L.C., now wearing her swimsuit, got into the pool alone. Defendant and Mariana also came outside, but they had an argument and did not get into the pool. Defendant testified that he too had begun to "black out" from alcohol consumption and remembered little about the pool or what followed.

Still in the wee hours of the morning, L.C. realized she was too drunk to drive home. Though she testified she did not remember changing, L.C. got back into her

regular clothes. Then she lay down next to Mariana on the pallet in the downstairs bedroom. The lights were off. At some point, L.C. fell asleep.

Having testified earlier that he fell asleep on the couch in the bonus room after the Jack Daniels drinking game, defendant later testified that he lay down on the pallet with Mariana after the pool trip. A crate for the family's pit bull made the bedroom cramped and kept defendant from lying down comfortably or falling asleep. Defendant testified that he got up and left the room to go lie on the couch as soon as L.C. lay down beside Mariana.

L.C. was awakened by someone lying down next to her, on the opposite side from Mariana. The room was so dark that L.C. did not see who it was. Without speaking, an unknown male pushed aside L.C.'s shorts and underwear and vaginally penetrated her with his fingers, followed by his penis. This went on for an unspecified length of time. L.C. testified that she remained still and silent, feeling "froze[n]," "scared," "disassociated," and "still pretty intoxicated." The unknown male then withdrew and left the room. Mariana remained asleep.

L.C. lay there, "disoriented," for an unspecified length of time, "trying to process what just happened" and unsure if it was real due to her intoxication. She decided to leave the party and return home. Without waking Mariana, L.C. left the pallet and crossed the hall to the bathroom, where she closed the door and stood in the dark to try to collect her wits before leaving. An unknown male entered the bathroom behind L.C. and pinned her against the sink with his full body weight, not

speaking or turning the lights on. She felt him restrain her arms behind her back with one hand while he removed her shorts and underwear with the other. L.C. testified she "could not move" or fight back. She felt the unknown male force her head down into the sink and vaginally penetrate her from behind with his penis. This continued until he ejaculated. Then he left the bathroom.

These events reminded L.C. of a sexual assault she had suffered as a preteen. She left the bathroom "visibly upset," "shaken up," and "crying." By the light of the TV in the bonus room, L.C. saw defendant standing near the couch, preparing to lie down. She went over to ask him to walk her to her car. At this point, L.C. did not think defendant was her assailant.

L.C. testified that defendant had just lain down and closed his eyes as she approached. When she roused him, defendant repeatedly insisted that he had been sound asleep, but he agreed to walk her to her car.[5]

Seeing L.C. still upset, defendant sat on the street and talked to L.C. through her open car door for about thirty minutes. L.C. was unsure how many of her memories were real, so she only disclosed to defendant that she had just had a bad "memory" or "dream" reminiscent of a negative experience from her childhood. L.C. testified that defendant responded to this by asking if she was currently on birth

[5] Defendant testified that L.C. shook him awake from a deep sleep, and that he had been asleep on the couch since the Jack Daniels drinking game; but when he saw how upset she was, he agreed to accompany her outside. According to defendant, L.C. asked when she woke him if he had "come" inside her, which confused defendant because he did not remember having sex with L.C.

control.[6] Discomfited by his question, L.C. ended the conversation and drove home alone in the early morning hours of 15 August 2020.

The following day, 16 August 2020, L.C. texted Mariana about the assaults by the unknown male at the party and asked her not to tell defendant. Despite L.C.'s request, Mariana repeated the story to defendant. Mariana testified that defendant did not visibly react at first, but later he was "freaking out," scared, and taciturn, which was not his usual persona. Defendant texted L.C., offering to "assume all responsibility" for what had happened to her at his party and asking her not to tell his family because the news would "break them." L.C., not understanding how defendant could "take responsibility," stopped speaking to him and Mariana.

L.C. went to Atrium Health later that day and had a sexual assault nurse examination (SANE exam) performed by a certified nurse examiner (Nurse). L.C. told the Nurse that she did not know who her assailant was. The pain in L.C.'s shoulders and arms, the fresh bruises on her skin, and the results of her genital exam were consistent with her description of the assaults.

A Charlotte-Mecklenburg Police detective (Detective) interviewed L.C. on 21 August 2020 and downloaded copies of her 16 August texts with defendant. Within the week following L.C.'s SANE exam, the Detective separately interviewed and took

[6] Defendant testified he did not remember asking L.C. this.

voluntary DNA samples from defendant, Mariana, Maria, and other guests.[7] Defendant denied having any sexual contact with L.C.

Almost two years later, forensic analysis confirmed defendant as the source of the DNA and seminal fluid collected during L.C.'s SANE exam. A warrant for defendant's arrest was issued on 1 April 2022.

Defendant was charged with two counts of second-degree forcible rape, one count of second-degree forcible sexual offense, and one count of first-degree kidnapping. He was indicted on 29 August 2022. On 30 May 2024, superseding indictments were entered; the first three of the charges listed were now second-degree rape, second-degree forcible rape, and second-degree sexual offense.

On 9 September 2024, the matter came on for trial. The court sustained the State's objections to testimony and evidence about the following matters: (1) L.C.'s alleged sexual advances toward Maria, followed by L.C.'s alleged attempts to hide evidence of their bathroom encounter after L.C. regained sobriety; (2) an allegation that L.C.'s rape accusation could have stemmed from a consensual encounter that she later regretted; and (3) L.C.'s alleged brandishing of a pocketknife at the party as evidence of her bizarre behavior while intoxicated.

[7] L.C.'s then-boyfriend, Kyle, also provided a DNA sample, but the Detective did not interview him because Kyle was not at the party.

The defense moved to dismiss all charges for insufficient evidence when the State rested and again at the close of all evidence. Both motions were denied. On 17 September 2024, the jury found defendant guilty of all four charged offenses.

The court consolidated defendant's four charges into two pairs for sentencing purposes. The bedroom assaults, for which defendant was charged with second-degree rape and second-degree sexual offense, received an oral sentence of 73 to 148 months, which the court verbally amended to "70 to 148" months a few seconds later. The bathroom assault, for which defendant was charged with second-degree forcible rape and first-degree kidnapping, received a consecutive oral sentence of 73 to 148 months. Defendant gave oral notice of appeal.

II. Jurisdiction

This Court has jurisdiction to review a final judgment of a superior court pursuant to N.C.G.S. §§ 7A-27(b)(1). "A defendant who has entered a plea of not guilty to a criminal charge, and who has been found guilty of a crime, is entitled to appeal as a matter of right when final judgment has been entered." N.C.G.S. § 15A-1444(a) (2025).

III. Discussion

Defendant raises three issues on appeal. Defendant seeks to vacate his two convictions that pertain to the bedroom assaults, alleging insufficient evidence of L.C.'s physical helplessness, and to reverse his two convictions that pertain to the bathroom assault and remand for a new trial, citing the exclusion of the defense's

impeachment evidence under Rule 412. In the alternative, defendant asks this Court to remand for resentencing.

A. Mental Incapacitation or Physical Helplessness

Defendant argues the trial court erred by denying his motions to dismiss for insufficiency of the evidence because the State did not prove all required elements of the two charges relating to the bedroom assaults: namely, second-degree rape and second-degree sexual offense.

"The question for a court on a motion to dismiss for insufficient evidence 'is whether there is substantial evidence (1) of each essential element of the offense charged, or of a lesser offense included therein, and (2) of [the] defendant's being the perpetrator of such offense.' " *State v. Bradsher*, 382 N.C. 656, 658 (2022) (quoting *State v. Powell*, 299 N.C. 95, 98 (1980)). "Substantial evidence is the amount 'necessary to persuade a rational juror to accept a conclusion.' " *State v. Ditenhafer*, 373 N.C. 116, 125 (2019) (quoting *State v. Mann*, 355 N.C. 294, 301 (2002)). "In evaluating the sufficiency of the evidence to support a criminal conviction, the evidence must be considered 'in the light most favorable to the State; the State is entitled to every . . . reasonable inference to be drawn therefrom.' " *Id.* at 125–26 (quoting *Powell*, 299 N.C. at 99).

"This Court reviews the trial court's denial of a motion to dismiss de novo. Under a de novo review, this Court considers the matter anew and freely substitutes

its own judgment for that of the lower tribunal." *State v. Fraley*, 299 N.C. App. 463, 469 (2025) (cleaned up).

Here, as it appeared at the date of defendant's conviction, section 14-27.22 of our General Statutes defined second-degree rape as follows, in relevant part:

> (a) A person is guilty of second-degree forcible rape if the person engages in vaginal intercourse with another person:
>
> (1) By force and against the will of the other person; or
>
> (2) Who . . . is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know the other person . . . is mentally incapacitated or physically helpless.

N.C.G.S. § 14-27.22(a) (2018).

As it appeared at the date of defendant's conviction, section 14-27.27 of our General Statutes defined second-degree sexual offense as follows, in relevant part:

> (a) A person is guilty of second degree forcible sexual offense if the person engages in a sexual act with another person:
>
> (1) By force and against the will of the other person; or
>
> (2) Who . . . is mentally incapacitated or physically helpless, and the person performing the act knows or should reasonably know the other person . . . is mentally incapacitated or physically helpless.

N.C.G.S. § 14-27.27(a) (2018).

Section 14-27.20, as it appeared at the date of defendant's conviction, defined the operative terms at issue here as follows:

> (2) Mentally incapacitated.—A victim who due to any act is

> rendered substantially incapable of either appraising the nature of his or her conduct, or resisting the act of vaginal intercourse or a sexual act.
>
> . . . .
>
> (3) Physically helpless.—Any of the following:
>
> a. A victim who is unconscious.
>
> b. A victim who is physically unable to resist an act of vaginal intercourse or a sexual act or [to] communicate unwillingness to submit to an act of vaginal intercourse or a sexual act.
>
> (4) Sexual act.— . . . the penetration, however slight, by any object into the genital or anal opening of another person's body. . . .

N.C.G.S. §§ 14-27.20(2), (3)–(4) (2019).

The following elements of each charge must be proven: (1) defendant engaged in "vaginal intercourse" or "a sexual act," respectively, with L.C.; (2) L.C. was "mentally incapacitated or physically helpless" during these acts by defendant; and (3) defendant knew or reasonably should have known of L.C.'s mental incapacitation or physical helplessness when he performed these acts.

Defendant contests the trial court's finding that the second element of both charges was satisfied: that L.C. was mentally incapacitated or physically helpless, such that she did not consent to sex with defendant. Defendant's arguments and cited authority focus almost entirely on physical helplessness. He contends that L.C. was not physically helpless because no evidence tended to show she was unconscious or immobile during the bedroom assaults. When asked whether she *could* "scream or

fight back" during her two vaginal penetrations by defendant in the bedroom, L.C. only answered that she *did* not. Defendant presents this testimony as dispositive that the second element of both charges was not met.

However, physical helplessness is not the only finding that can satisfy this element. If the jury found L.C. was mentally incapacitated, the second element of both charges would be equally satisfied. *State v. Haddock*, 191 N.C. App. 474, 481 (2008). "Any act," including her own voluntary choice to become intoxicated, can render a rape victim "substantially incapable" of consenting to or resisting sex; this qualifies as mental incapacitation, even if the victim's level of intoxication falls "short of unconsciousness or physical helplessness." *Id.* at 483; *see also State v. Aiken*, 73 N.C. App. 487, 499 (1985). The victim in *Aiken* was so drunk, her friends believed she was unconscious when the defendant raped her. 73 N.C. App. at 490, 497–98. Recalling the events of that night, however, the victim testified that she was conscious enough to recognize "a light coming on" and "someone yelling," but "she thought it was all a dream." *Id.* at 491. This Court found no error in the *Aiken* defendant's conviction of second-degree rape. *Id.* at 501.

Here, as in *Aiken*, L.C. testified that she was still so intoxicated when she awoke, she was unsure if the assaults were really happening. Later, she still questioned whether she had been in a "dream" or flashing back to a sexual assault in her early adolescence when she felt defendant penetrate her. The Nurse testified that gaps in memory and partial or full blackouts are common in patients who

experience sexual trauma.

In the light most favorable to the State, substantial evidence was presented to convince a rational jury that even if L.C. did not meet the statutory definition of "physically helpless," in that she was not unconscious or immobile either time defendant penetrated her vagina in the bedroom, she was mentally incapacitated by her intoxication during these events. All three elements of both charges, second-degree rape and second-degree sexual offense, were met.

On defendant's challenge to the trial court's denial of his motion to dismiss these charges for insufficient evidence, we discern no error.

B. Application of Rule 412

Defendant next argues the trial court reversibly erred by excluding relevant evidence under Rule 412. He alleges that his proffered impeachment evidence regarding L.C.'s prior sexual behavior fell under an exception to Rule 412, requiring the court to weigh it under Rule 403 for its probative value before barring it.

We review a trial court's decision to exclude evidence under Rule 412 for abuse of discretion. *State v. Edmonds*, 212 N.C. App. 575, 579 (2011). On the question of whether the excluded evidence was relevant, we do not review for abuse of discretion but give deference on appeal because the trial court is "better situated to evaluate whether a particular piece of evidence tends to make the existence of a fact of consequence more or less probable." *State v. Khouri*, 214 N.C. App. 389, 406 (2011) (citing *State v. Tadeja*, 191 N.C. App. 439, 444 (2008)).

If the trial court erred in excluding the evidence, the appellant must also show "a reasonable probability that had the error not been committed, a different result would have been reached at trial." N.C.G.S. § 15A-1443(a) (2025). A new trial is awarded only if the appellant shows the court's error was prejudicial in this way. *State v. Wilkerson*, 363 N.C. 392, 415 (2009).

Here, as it appeared at the date of defendant's trial, Rule of Evidence 412 read in relevant part:

> (a) As used in this rule, the term "sexual behavior" means sexual activity of the complainant other than the sexual act which is at issue in the indictment on trial.
>
> (b) Notwithstanding any other provision of law, the sexual behavior of the complainant is irrelevant to any issue in the prosecution unless such behavior:
>
> . . . .
>
> (3) Is evidence of a pattern of sexual behavior so distinctive and *so closely resembling the defendant's version of the alleged encounter with the complainant* as to tend to prove that such complainant consented to the act or acts charged or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented; . . .
>
> . . . .
>
> (d) Notwithstanding any other provision of law, *unless and until the court determines that evidence of sexual behavior is relevant* under subdivision (b), *no reference to this behavior may be made in the presence of the jury* and no evidence of this behavior may be introduced at any time during the trial of any of the following:
>
> (1) A charge of rape . . .

> (2) A charge of a sex offense . . .
>
> . . .
>
> *Before* any questions pertaining to such evidence are asked of any witness, the proponent of such evidence shall *first* apply to the court for a determination of the relevance of the sexual behavior to which it relates. . . .

N.C.G.S. §§ 8C-1, Rule 412(a), (b)(3), (d), (d)(1)–(2) (2018) (emphases added).

The defense cited this Court's decision in *State v. Shoffner*, 62 N.C. App. 245 (1983), to argue that evidence of L.C.'s sexualized advances toward Mariana and Maria earlier in the evening should have been admitted under Rule 412(b)(3), the "modus operandi" exception. In *Shoffner*, the alleged victim publicly propositioned both defendants for sex in the same way those defendants (and other witnesses) had seen her entice other men. 62 N.C. App. at 246–49.

Shoffner is distinguishable. No one, not even defendant, testified that L.C. made sexual advances toward defendant, nor that he reasonably could have perceived L.C. as pursuing sex with *him* based on her behavior with Mariana and Maria.

Mariana testified that she and L.C. had a "loving," "touchy" friendship even before the events of Mariana's twenty-first birthday. Testimony also confirmed that defendant had seen L.C. intoxicated around Mariana before that night. A rational jury could therefore conclude that even if L.C. did remove her clothes in the presence of Mariana and defendant, and even if L.C. did attempt to kiss Mariana while undressed, defendant would not have been led to a reasonable belief that L.C. wanted

to have sex with him.

While the photos in the record confirm that L.C. and Maria spent time together in the bathroom, no evidence was presented that defendant learned the nature of their interactions until after L.C. had left the party. A rational jury could therefore conclude that even if L.C. did proposition Maria, defendant would not have been led to a reasonable belief that L.C. wanted to have sex with him.

Evidence of a victim's prior sexual behavior must "so closely resembl[e] *the defendant's version* of the alleged encounter with the complainant as to tend to prove that such complainant consented . . . or behaved in such a manner as to lead the defendant reasonably to believe that the complainant consented" before that evidence can be admitted. N.C.G.S. § 8C-1, Rule 412(b)(3) (emphasis added). Here, defendant has presented no version of this type of encounter with L.C. Defendant has maintained that he does not remember having sex with L.C. Without defendant's version of the story, there is nothing for the defense to compare with L.C.'s prior sexual behavior in alleging that L.C. had solicited defendant for sex in a manner consistent with her alleged modus operandi. Defendant cannot show that a different result would have been reached had the evidence hinted at by his counsel been presented to the jury in full.

The trial court considered the relevance of the proffered evidence before determining that the analysis in *Shoffner* does not control here. The court noted both that (1) L.C.'s alleged sexual behavior was directed toward third parties, not toward

defendant, and (2) defendant offered no version of his own encounter with L.C. to compare with her alleged modus operandi. Evidence of L.C.'s alleged sexual behavior at the party with anyone other than defendant did not tend to make any fact of consequence regarding her encounter with defendant more or less probable, rendering such evidence irrelevant and therefore properly excluded under Rules 412 and 403. The trial court did not abuse its discretion in so ruling.

Concluding our analysis on this point, we note that in the process of invoking Rule 412's exceptions, the defense violated the Rule's guidelines for introducing evidence. Rule 412(d) requires: "no reference to [the complainant's prior sexual] behavior may be made in the presence of the jury"; and, "[b]efore any questions pertaining to such evidence are asked of any witness, the proponent of such evidence shall first apply to the court" to determine whether the intended evidence falls under a Rule 412 exception.

On three occasions, defense counsel asked a witness about L.C.'s prior sexual behavior (after the trial court had already ruled to exclude any evidence barred by Rule 412). Only after the State objected and the jury left the room did counsel argue that the answers he intended to elicit qualified under a Rule 412 exception. This order of operations was impermissible.

On defendant's challenge to the trial court's exclusion of his proffered impeachment evidence under Rule 412, we conclude no abuse of discretion and no error is shown.

C. Inconsistency in Sentencing

Lastly, defendant argues that because his written and oral sentences did not match, his sentence was unlawful and we should remand for resentencing. Though the State counters that any discrepancies were likely clerical errors, it concedes that the trial court's miscalculation of the statutory minimum sentences for defendant's convictions requires correction.

We review alleged sentencing errors, including clerical errors, de novo. *State v. Allen*, 249 N.C. App. 376, 379 (2016). "A clerical error is defined as an error resulting from a minor mistake or inadvertence, especially in writing or copying something from the record, and not from judicial reasoning or determination." *State v. Horne*, 931 S.E.2d 280, 284 (N.C. Ct. App. 2026) (quoting *State v. Jarman*, 140 N.C. App. 198, 202 (2000)). "When, on appeal, a clerical error is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." *Id.* (quoting *State v. Smith*, 188 N.C. App. 842, 845 (2008)).

A judgment is rendered when given orally, but it is not entered until it is written and filed. *In re J.C.*, 236 N.C. App. 558, 562 (2014). "If the written judgment conforms generally with the oral judgment, the judgment is valid." *Id.* (quoting *Edwards v. Taylor*, 182 N.C. App. 722, 727 (2007)). "However, if there is a discrepancy between the written order and the oral rendering of the order in open court as reflected by the transcript, the transcript is considered dispositive." *Id.*; *see*

also In re O.D.S., 247 N.C. App. 711, 719–20 (2016). Following this principle, we have vacated and remanded a sentence for a discrepancy of three months between the oral and written judgments. *See State v. Leaks*, 240 N.C. App. 573, 578 (2015).

After orally sentencing defendant to either "73 to 148 months" or "70 to 148" months for the bedroom assaults, the trial court entered a written judgment reflecting the higher sentence of the two: 73 to 148 months. Next, after orally sentencing defendant to "73 to 148 months" for the bathroom assault, the court entered a written judgment reflecting a sentence of 78 to 148 months.

The trial court's original oral judgment on the first sentence matches its written judgment of 73 to 148 months. However, the second oral rendering of "70 to 148" poses a problem. Even if the court merely misspoke, under *J.C.* and *O.D.S.*, the transcript controls. We therefore vacate this sentence and remand for resentencing so that the written judgment entered conforms to the oral judgment rendered.

The trial court's original oral judgment on the second sentence of "73 to 148 months" does not match its written judgment of 78 to 148 months. Under N.C.G.S. § 15A-1340.17 (2013), the minimum sentence allowable for the Class C felony of second-degree rape is 73 months. The written judgment listing a minimum of 78 months is more than a mere clerical error. Therefore, we also vacate this sentence and remand for resentencing to resolve these discrepancies.

IV. Conclusion

We conclude there is no error in the trial court's decisions regarding the State's proof of all elements of defendant's charges of second-degree rape and second-degree sexual offense. We further conclude the court did not abuse its discretion by excluding the defense's proffered impeachment evidence regarding L.C.'s prior sexual behaviors. We vacate defendant's sentences and remand for resentencing with instructions to the trial court to correct the discrepancies between its oral and written judgments.

NO ERROR IN PART; VACATED IN PART; AND REMANDED FOR RESENTENCING.

Judges TYSON and WOOD concur

Report per Rule 30(e).