

IN THE COURT OF APPEALS OF THE
STATE OF OREGON

STATE OF OREGON,
Plaintiff-Respondent,

v.

MICHAEL HARVEY KELLEY,
Defendant-Appellant.

Washington County Circuit Court
18CR11491; A169574

Andrew Erwin, Judge.

Submitted October 20, 2020.

Ernest G. Lannet, Chief Defender, Criminal Appellate Section, and Mark Kimbrell, Deputy Public Defender, Office of Public Defense Services, filed the briefs for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Philip Thoennes, Assistant Attorney General, filed the brief for respondent.

Before Lagesen, Presiding Judge, and James, Judge, and Kamins, Judge.

PER CURIAM

Remanded for resentencing; otherwise affirmed.

PER CURIAM

Defendant appeals a judgment of conviction for driving under the influence of intoxicants, ORS 813.010, and reckless driving, ORS 811.140. He assigns error to (1) the denial of his motion to suppress and (2) the trial court's imposition of a special condition of probation specifying that "[i]f requested, defendant must submit to field sobriety and/or intoxilyzer tests." We reject without further discussion defendant's contention that the court erred in denying his motion to suppress. As for the probation condition, the state concedes—correctly—that the court erred by imposing that condition because the court did not first announce that condition in open court. *See State v. Anotta*, 302 Or App 176, 177, 460 P3d 543, *rev den*, 366 Or 552 (2020) (trial court erred by imposing special conditions of probation that it did not impose in open court). We therefore remand for resentencing. *See id.* at 178 (remanding for resentencing when court erred in imposing special conditions of probation that it did not announce in open court); *see also State v. Dennis*, 303 Or App 595, 598, 464 P3d 518 (2020) (same).

Remanded for resentencing; otherwise affirmed.