

RECORD IMPOUNDED

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0183-18

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

SCOTT F. MUNROE,
a/k/a JEROME PETERSON,
SCOTT F. MONROE, JEROME S.
MUNROE and SCOTT MUNROE,

Defendant-Appellant.

Submitted January 11, 2022 – Decided May 23, 2022

Before Judges Currier and Smith.

On appeal from the Superior Court of New Jersey, Law
Division, Union County, Indictment No. 15-01-0072.

Joseph E. Krakora, Public Defender, attorney for
appellant (Gilbert G. Miller, Designated Counsel, on
the brief).

William A. Daniel, Union County Prosecutor, attorney
for respondent (Meredith L. Balo, Assistant Prosecutor,
of counsel and on the brief).

PER CURIAM

After a trial, defendant Scott F. Munroe was convicted of sexual assault, criminal restraint, weapons charges, and other crimes. He appeals, arguing that the trial court improperly excluded evidence of other crimes allegedly committed by two of the State's witnesses, and improperly admitted prior inconsistent statements of a third. He further argues that the court improperly sentenced him, imposing a term of incarceration that was illegal, as well as committed clerical errors in the judgment of conviction (JOC). We affirm in part as to the trial court's inclusion of a witness' prior inconsistent statement and its exclusion of certain N.J.R.E. 404(b) evidence. However, we reverse and remand in part to correct errors in the sentence.

I.

A.

Defendant spent the better part of two days socializing with a longtime friend, Nina Hall, her sister, Samantha Baker, and their friend Janine Patterson.¹ On March 22, defendant picked up Nina and Samantha in his car. As they got in the car, defendant observed them carrying a shopping bag. The three of them

¹ Fictitious names will be used for the alleged victims. N.J.S.A. 2A:82-46; R. 1:38-3(c)(12).

drove around for a couple of hours talking among themselves. Defendant next picked up Janine and took the three women clothes shopping, giving them each \$100 to spend.

After clothes shopping, the four of them purchased alcohol, cigars, and cigarettes and rented a room at a local motel. They did not check in until noon the next day, March 23. Defendant and Nina went to buy more supplies and Samantha and Janine went to the room. While out, defendant repeatedly asked Nina if the three women were going to have sex with him. Dumbfounded by his questions, Nina rejected his idea. Nina's response apparently infuriated defendant, and she testified that he briefly choked her. Eventually defendant and Nina went back to the motel.

According to the women's testimony, defendant angrily demanded that all three of them have sex with him when he returned with Nina. He pulled a gun from his pocket and demanded that they remove their clothes. He slammed Janine against the wall when she laughingly refused his demand. Defendant eventually took Samantha into the bathroom and forced his penis into her mouth. Janine heard the commotion in the bathroom and went to look for help, while Nina remained in the room. Nina went into the bathroom when she heard her sister's cries. She pushed the door open and saw Samantha sitting on the toilet

crying, saying she did not want to give defendant oral sex. Nina did not intervene because she saw the gun in defendant's back pants pocket. After defendant finished with Samantha, Nina and Samantha sat on the bed while defendant sat on a chair in the corner of the room. Defendant noticed Janine's absence and he instructed Nina to search for her.

As this unfolded, Janine went to the motel front desk and told Michael Little, the manager, that she had been assaulted in her room by a man with a gun. Little quickly reported the matter to police. Janine stayed at the front desk until police officers arrived.

Defendant testified differently. He alleged that when he returned to the room with Nina, Janine and Samantha were already undressed. He contended that the oral sex with Samantha was consensual, and that after he and Samantha exited the bathroom, he discovered a gun in the shopping bag the women brought with them. When he confronted Nina about the gun, she claimed she was "holding it for someone." Suspicious, defendant took the gun into the bathroom. He testified that when he came out, Janine had left the room.

Around 3:00 p.m., police officers John Vasquez, Patrick Kudlac, and Tom Matlosz arrived at the scene. When Officer Vasquez entered the motel lobby, he noticed that Janine was crying, hysterical, visibly shaken, and upset. Janine

approached the officers and explained that defendant had a gun. The officers proceeded to the second-floor room.

As Officer Vasquez entered the room, he saw that Nina and Samantha were sitting on the bed while defendant sat in a chair directly across from Samantha. The officer noticed defendant's hands were behind his back while he sat on the chair. Because Officer Vasquez knew that defendant had a gun on his person, he instructed defendant to show his hands, stand up, and turn around. Defendant complied with the officer's directives. Officer Vasquez then instructed defendant to get on the floor, but defendant refused to comply. Given the safety concerns, the officers wrestled defendant to the ground, secured his hands, and tried to restrain him.

During the struggle that ensued, Officer Matlosz saw a black handgun tucked in defendant's back pants pocket when his shirt rolled up. Officer Vasquez secured the weapon. Once the officers were able to restrain defendant, he tried to escape by running to the stairs. At police headquarters, defendant threatened Officer John Halkias, saying he was going to "fuck up" the officer and break the officer's nose.

Nina gave a recorded statement to police the night of the incident, however, Nina told the police that she was unable to swear or affirm her statements to police because she worshipped the devil.

B.

Before trial, defendant moved to admit other-crimes evidence of a robbery that took place after the motel incident in which Janine and Samantha were implicated. Defendant sought to introduce the evidence at his trial in order to show that the women, armed with the handgun hidden in the shopping bag, had planned to lure defendant to the motel and rob him on March 22.

At the N.J.R.E. 104 hearing, testimony revealed that Janine and Samantha were arrested for conspiracy to commit a robbery in Orange on July 8, 2014. The record shows that while an accomplice strip-searched the victim, Janine and Samantha searched the victim's residence. Following the women's arrest, police officers recovered a plastic bag containing an iPhone, make-up items, a hairbrush, and a ring. Janine, whose July 8 charges were dismissed, testified that no weapons were used during the robbery. Samantha, whose July 8 charges remained pending at the time of the hearing, did not testify.

The court found no nexus between defendant's proffered other-crimes evidence and the allegations against him, concluding that the July 8 robbery was

not relevant to defendant's case. The court noted the July 8 robbery was about a dispute between neighbors and that no gun was involved. The court further found the July 8 robbery facts to be inconsistent with defendant's theory that Nina, Janine, and Samantha lured defendant with the promise of sexual favors in order to rob him.

Turning to N.J.R.E. 403, the court found that even if the July 8 evidence was relevant, its probative value was outweighed by undue prejudice and confusion of the issues. The court stated that use of such evidence would invite the jury to engage in "rank speculation." Finally, the court concluded that even without the July 8 evidence, defendant retained the opportunity to attack the credibility of Samantha's testimony at trial.

After the hearing, the court barred any reference to Janine's other-crimes evidence since her July 8 charges were dismissed. The court also denied defendant's motion to introduce Samantha's other-crimes evidence, but it stated that it would hold another Rule 104 hearing during trial on Samantha's other-crimes evidence as needed. At trial, Samantha, Janine, Detective Wilbur Baptist, and defendant testified, as did Nina. Unlike her interview with the police, Nina agreed to be sworn in prior to giving her trial testimony.

After trial, the jury convicted defendant of second-degree sexual assault, N.J.S.A. 2C:14-2(a)(4), second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b), third-degree criminal restraint, N.J.S.A. 2C:13-2(a), third-degree terroristic threats, N.J.S.A. 2C:12-3(a)-(b), and third-degree resisting arrest, N.J.S.A. 2C:29-2(a). In a separate trial, the jury found defendant guilty on the second-degree certain persons charge. N.J.S.A. 2C:39-7(b)(1).

The court sentenced defendant to a five-year term of imprisonment on the certain persons charge consecutive to concurrent seven-year terms on the sexual assault charge (subject to the No Early Release Act, N.J.S.A. 2C:3-7.2), and the weapons charge, which came with a forty-two-month parole disqualifier. The record shows defendant received lesser concurrent sentences as to the criminal restraint, terroristic threats, and resisting arrest charges. Defendant raises the following points on appeal:

- I. THE TRIAL COURT DEPRIVED DEFENDANT OF HIS RIGHT UNDER THE SIXTH AND FOURTEENTH AMENDMENTS TO A FAIR TRIAL WITH A MEANINGFUL OPPORTUNITY TO PRESENT A COMPLETE DEFENSE BY PRECLUDING HIS ABILITY TO IMPEACH SAMANTHA AND JANINE WITH DEFENSIVE OTHER-CRIME EVIDENCE THAT THEY HAD CONSPIRED AND ACTED TO COMMIT ANOTHER ROBBERY SHORTLY AFTER THE INCIDENT IN WHICH DEFENDANT WAS ARRESTED.

II. THE TRIAL COURT ERRED IN ADMITTING NINA'S PRIOR INCONSISTENT STATEMENT, BECAUSE SHE REFUSED TO SWEAR OR AFFIRM THE TRUTH OF THE STATEMENT ON THE GROUND THAT SHE WAS A DEVIL WORSHIPPER AND THE STATEMENT IN ANY EVENT WAS NOT SUFFICIENTLY RELIABLE TO BE CONSIDERED BY THE JURY. (Partially raised below)

A. THE COURT'S RULING ERRONEOUSLY PERMITTED THE JURY TO CONSIDER AS SUBSTANTIVE EVIDENCE HIGHLY PREJUDICIAL OUT-OF-COURT TESTIMONY BY NINA TO WHICH NINA REFUSED TO SWEAR BECAUSE SHE [WAS] A DEVIL WORSHIPPER. (Not raised below)

B. NINA'S PRIOR INCONSISTENT STATEMENT WAS NOT SUFFICIENTLY RELIABLE TO BE CONSIDERED BY THE JURY.

III. THE SENTENCE IMPOSED ON COUNT TEN OF INDICTMENT NO. 15-01-00072-I MUST BE VACATED BECAUSE IT IS ILLEGAL AND THE JUDGMENT OF CONVICTION FOR THAT INDICTMENT MUST BE AMENDED TO CORRECT THAT ILLEGAL SENTENCE AND SEVERAL OTHER INACCURACIES. (Not raised below)

II.

Evidentiary determinations made by the trial court are reviewed under an abuse of discretion standard. Estate of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010) (citing Green v. N.J. Mfrs. Ins. Co., 160 N.J. 480, 492 (1999)). An abuse of discretion "arises on demonstration of 'manifest error

or injustice," Hisenaj v. Kuehner, 194 N.J. 6, 20 (2008) (quoting State v. Torres, 183 N.J. 554, 572 (2005)), or when "there has been a clear error of judgment," State v. Brown, 170 N.J. 138, 147 (2001) (quoting State v. Marrero, 148 N.J. 469, 484 (1997)). In other words, a trial court is granted broad discretion to determine both the relevance of the evidence presented and whether its probative value is substantially outweighed by its prejudicial nature. See, e.g., State v. Scharf, 225 N.J. 547, 572 (2016). However, if the party appealing did not make its objection to admission known to the trial court, the reviewing court will reverse an evidentiary ruling only if it "was so wide of the mark that a manifest denial of justice resulted." State v. Carter, 91 N.J. 86, 106 (1982).

Although we may consider allegations of errors or omissions not brought to the court's attention if it meets the plain error standard under Rule 2:10-2, we frequently decline to consider issues that were not raised below or not properly presented on appeal. State v. Walker, 385 N.J. Super. 388, 410 (App. Div. 2006). Generally, unless an issue goes to the jurisdiction of the trial court or concerns matters of substantial public interest, we will ordinarily not consider it. Ibid. Recognizing that we are not bound to address arguments on appeal not raised in the trial court, we proceed with an analysis of points I and II of the defendant's argument, as the merits of point II, which were not raised in the trial

court, are sufficiently intertwined with the merits of point I, which were. We address defendant's point III using the plain error standard.

III.

A.

Defendant contends that his constitutional rights were violated when the trial court barred evidence implicating Samantha and Janine in a robbery alleged to have been committed under similar circumstances and close in time to defendant's case. We are not persuaded.

The record shows the July 8 criminal charges against Janine were dismissed. The Supreme Court has consistently held that "[o]nly convictions of crimes may be used to affect credibility." State v. Parker, 216 N.J. 408, 419 (2014) (quoting State v. Burgos, 262 N.J. Super. 1, 5 (App. Div. 1992)). A criminal charge, which was ultimately dismissed, cannot be used to impeach a witness' credibility, and the mere fact that they were arrested "is irrelevant." Ibid. We pivot to the other-crimes evidence proffered against Samantha.

The United States Constitution and New Jersey Constitution guarantee all criminal defendants "a meaningful opportunity to present a complete defense." State v. Garron, 177 N.J. 147, 168 (2003) (quoting Crane v. Kentucky, 476 U.S. 683, 690 (1986)). A "core value[]" of the New Jersey Constitution and its

Compulsory Process Clause includes a defendant's right "to present all relevant evidence necessary for the defense and the right to a fair trial." Id. at 166. This right, however, is "not absolute, and may, in appropriate circumstances, bow to competing interests." State v. Budis, 125 N.J. 519, 531 (1991) (citing Chambers v. Mississippi, 410 U.S. 284, 295 (1973)). Defendant's right to present all evidence necessary for a defense is qualified by relevancy. The trial court alone determines relevancy in its capacity as "gatekeeper for the admission or exclusion of evidence." State v. Rosales, 202 N.J. 549, 562 (2010).

The admission of other-crimes evidence is governed by Rule 404(b), which prohibits the admission of such evidence "to prove a person's disposition in order to show that on a particular occasion the person acted in conformity with such disposition." However, Rule 404(b) permits the admission of other-crimes evidence "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident when such matters are relevant to a material issue in dispute." The rule is designed "to strike a balance between the prejudice to a defendant that is inherent in other-crimes evidence and the recognition that the evidence may be highly relevant to prove a defendant's guilt of the crime charged." State v. Barden, 195 N.J. 375, 388 (2008).

The admission of other-crimes evidence must be handled cautiously. State v. Reddish, 181 N.J. 553, 608 (2004). "[T]he 'inflammatory characteristic of other-crime[s] evidence . . . mandates a careful and pragmatic evaluation by trial courts, based on the specific context in which the evidence is offered, to determine whether the probative worth of the evidence outweighs its potential for undue prejudice.'" State v. Cofield, 127 N.J. 328, 334 (1992) (alteration in original) (quoting State v. Stevens, 115 N.J. 289, 303 (1989)).

In light of these concerns, Cofield established a four-part test that other-crimes evidence must satisfy to be admitted into evidence.

1. The evidence of the other crime must be admissible as relevant to a material issue;
2. It must be similar in kind and reasonably close in time to the offense charged;
3. The evidence of the other crime must be clear and convincing; and
4. The probative value of the evidence must not be outweighed by its apparent prejudice.

[127 N.J. at 338.]

To meet the first prong, the evidence proffered must be "relevant to a material issue genuinely in dispute." State v. Darby, 174 N.J. 509, 519 (2002).² In deciding whether evidence is relevant, "the inquiry should focus on 'the logical connection between the proffered evidence and a fact in issue.'" State v. Bakka, 176 N.J. 533, 545 (2003) (quoting Darby, 174 N.J. at 519).

If relevance is established, we "must still determine that the probative value of the [other-crimes] evidence is not substantially outweighed by any of the Rule 403³ factors" State v. Weaver, 219 N.J. 131, 151 (2014). "This determination is highly discretionary." Ibid. "Evidence claimed to be unduly prejudicial is excluded only when its 'probative value is so significantly outweighed by [its] inherently inflammatory potential as to have a probable capacity to divert the minds of the jurors from a reasonable and fair evaluation' of the issues in the case." State v. Brockington, 439 N.J. Super. 311, 333 (App.

² Rule 401 defines "[r]elevant evidence" as "evidence having a tendency in reason to prove or disprove any fact of consequence to the determination of the action."

³ Rule 403 reads as follows: "Except as otherwise provided by these rules or other law, relevant evidence may be excluded if its probative value is substantially outweighed by the risk of: (a) Undue prejudice, confusion of issues, or misleading the jury; or (b) Undue delay, waste of time, or needless presentation of cumulative evidence."

Div. 2015) (alteration in original) (quoting State v. Long, 173 N.J. 138, 163-64 (2002)).

"Under N.J.R.E. 403, the trial court has broad discretion in determining whether the probative value of evidence is significantly outweighed by the risk of undue prejudice." State v. Scherzer, 301 N.J. Super. 363, 425 (App. Div. 1997). "Only where there has been a 'clear error of judgment' should a N.J.R.E. 403 determination be overturned." Ibid. (quoting State v. Koedatich, 112 N.J. 225, 313 (1988)).

We concur with the trial court's finding that defendant's proffered evidence as to Samantha alleged involvement in the July 8 robbery was not relevant to the charges he was facing, and the proffer fails the first prong of Cofield. See Darby, 174 N.J. at 519. Samantha's other-crimes evidence did not tend to prove that the women brought a handgun to the March 22 incident with the intention of robbing him; indeed, the record shows no evidence that the women brought any firearm to the July 8 incident.

Nor did evidence of the July 8 incident support the theory advanced by defense counsel in his merits brief – that because the women were arrested for conspiracy to commit a robbery, they must have intended to rob defendant on March 22. The evidence proffered to support the theory was irrelevant; it could

not reasonably give rise to the inferences which defendant wanted the jury to draw. Defendant failed to establish the required "logical connection" between the evidence he sought to admit and the instant matter, consequently the other-crimes evidence is inadmissible under N.J.R.E. 401.

Even if it were relevant, the evidence would be subject to exclusion under Rule 403 for the reasons set forth by the trial court. Admitting the July 8 robbery evidence would have resulted in undue prejudice, confusion of issues, and misleading the jury. Such evidence would have "divert[ed] the minds of the jurors from a reasonable and fair evaluation of the issues in the case." Brockington, 439 N.J. Super. at 333 (quotation marks omitted).

Defendant was also afforded the opportunity to present evidence to support his claim that he was lured to the hotel by the women. He waived his Fifth Amendment right against self-incrimination and testified about the March 22 incident. Moreover, defendant cross-examined each witness at trial. The record shows the jury heard ample evidence relevant to defendant's theory of the case. We find no clear error of judgment by the trial court in excluding evidence of Samantha's alleged other crimes, and we conclude that the court properly exercised its discretion in doing so.

B.

Defendant also argues that the trial court erroneously admitted and presented unsworn testimony by Nina to the jury. Defendant further argues that the court compounded the error by permitting the State to introduce Nina's pretrial statements as substantive evidence of his guilt. To support that argument, defendant contends the trial court erred in determining that Nina's pretrial statements were reliable. We disagree. N.J.R.E. 803(a)(1) addresses prior statements of witnesses and "allows the admission of a witness's inconsistent statement as substantive evidence." State v. Caraballo, 330 N.J. Super. 545, 556 (App. Div. 2000). Thus, prior inconsistent statements may be admissible as substantive evidence if they are inconsistent with a witness's testimony and, if offered by the party calling the witness, are sound-recorded or in writing made or signed by the witness. State v. Mancine, 124 N.J. 232, 247 (1991); State v. Gross, 121 N.J. 1, 7-9 (1990).

When inconsistencies between a witness's prior statements and trial testimony arise indirectly through feigned loss of memory, the witness's prior inconsistent statement is admissible. State v. Brown, 138 N.J. 481, 544 (1994). In the event that a witness lacks the memory of a prior inconsistent statement, "[t]he jury [is free] to believe the version of events contained in the prior

statement over the version presented by the witness at trial" Id. at 542. Although the judge, in admitting the statement, is essentially making a finding that the feigned memory loss is a lie, the jury is able to observe the witness and make its own decision about which account is true. Id. at 544.

Nina gave recorded statements to police, but she told them she was unable to swear or affirm her statements because she worshipped the devil. Nina feigned a memory loss at trial, and testified in a manner inconsistent with her prior, contemporaneous statement to the police. Nina testified in a manner inconsistent with her prior statements in several areas including: defendant's demand that the women undress; whether defendant aimed a gun directly at Janine's head after she provoked him; and whether Nina removed her clothes due to defendant's threats. Defendant's counsel cross-examined Nina at trial, exploring her intentions vis-à-vis defendant on March 22. The defense also questioned Detective Baptist about his impression of Nina's state of mind during her police station interview.

Nina's statements given at police headquarters were admissible as substantive evidence because they were contained in a sound recording. See N.J.R.E. 803(a). At trial, the court played a video recording of the statements in its entirety. The recording revealed that Nina failed to swear or affirm her

statements. However, Rule 803(a) does not require the sound recording to be under oath. The court properly found the recording reliable and trustworthy, and the jury was able to view the video statements and assess not only Nina's credibility in the prior statements, but also the credibility of her trial testimony.

Defendant also argues the court erred in finding Nina's out-of-court statements reliable for the purpose of admission pursuant to Rule 803(a)(1). Defendant contends that the record does not support the trial court's finding because: (1) "Nina was a target of a criminal investigation[, which] imposed substantial psychological pressure upon her to provide a fabricated statement which would exculpate herself"; (2) Nina lied when she claimed she was not a prostitute; (3) Nina failed to support her assertion that defendant consumed drugs or alcohol; and (4) Nina lied when she claimed she saw defendant forcibly insert his penis in Samantha's mouth. We find no merit to these arguments.

When in dispute, a prior inconsistent statement sought to be admitted for substantive purposes under Rule 803(a)(1)(A) must be the subject of a preliminary hearing to establish its reliability as a precondition to its admissibility. Gross, 121 N.J. at 16. In determining the reliability of pretrial statements, the Supreme Court in Gross enumerated fifteen factors to take into account:

(1) the declarant's connection to and interest in the matter reported in the out-of-court statement, (2) the person or persons to whom the statement was given, (3) the place and occasion for giving the statement, (4) whether the declarant was then in custody or otherwise the target of investigation, (5) the physical and mental condition of the declarant at the time, (6) the presence or absence of other persons, (7) whether the declarant incriminated himself or sought to exculpate himself by his statement, (8) the extent to which the writing is in the declarant's hand, (9) the presence or absence, and the nature of, any interrogation, (10) whether the offered sound recording or writing contains the entirety, or only a portion of the summary, of the communication, (11) the presence or absence of any motive to fabricate, (12) the presence or absence of any express or implicit pressures, inducement or coercion for making the statement, (13) whether the anticipated use of the statement was apparent or made known to the declarant, (14) the inherent believability or lack of believability of the statement, and (15) the presence or absence of corroborating evidence.

[Id. at 10 (quoting State v. Gross, 216 N.J. Super. 98, 109-10 (App. Div. 1987)).]

The determination of the reliability of the statement, based upon all the relevant factors, should be made out of the presence of the jury. Gross, 216 N.J. Super. at 110. The proponent of the statement has the burden of proving its reliability by a preponderance of the evidence. Gross, 121 N.J. at 15.

After finding that Nina feigned her inability to recall her prior inconsistent statement regarding the March 22 incident, the court conducted a Gross hearing

to determine the reliability of her prior recorded statement by hearing from the detective who took the statement and watching the video recording. After analyzing each factor in its comprehensive oral ruling, the court determined that the State met its burden by a preponderance of the evidence and found her statement reliable. The record supports the trial court's findings.

Mindful of the record, we conclude the trial court did not commit plain error in determining that Nina's memory loss was feigned and subsequently admitting her statements into evidence. The jury was free to adopt either version of events. See Brown, 138 N.J. at 544. We also find no abuse of the trial court's discretion, to the extent defendant's point II arguments were preserved at trial.

C.

Defendant next contends the trial court erred by (1) imposing an eighteen-month sentence on his disorderly-persons resisting arrest conviction and (2) failing to accurately reflect his sentence in the judgment. Noting the State concurs with this point on appeal, under Rule 2:10-2 we reverse and remand in part.

We review the legality of a sentence de novo, "affording no special deference to the court['s] interpretation of the relevant statutes." State v. Nance, 228 N.J. 378, 393 (2017). We may correct an illegal sentence "at any time before

it is completed." State v. Murray, 162 N.J. 240, 247 (2000); see also R. 3:21-10(b). If a defendant's sentence is illegal, we must remand for resentencing. See State v. Romero, 191 N.J. 59, 80-81 (2007).

"There are two categories of illegal sentences: those that exceed the penalties authorized for a particular offense, and those that are not authorized by law." State v. Hyland, 238 N.J. 135, 145 (2019). Both categories are "defined narrowly." Ibid. (quoting Murray, 162 N.J. at 246). The first category is at issue in this appeal.

Under the New Jersey Code of Criminal Justice, a disorderly-persons offense carries a maximum penalty of six months imprisonment. N.J.S.A. 2C:43-8. Here, the court's eighteen-month sentence was illegal under the relevant statutory criteria. The jury acquitted defendant of resisting arrest by flight, but it convicted him of resisting arrest as a disorderly persons offense, which has neither flight nor force as an element of the crime. As such, the court improperly imposed a sentence above the statutory maximum for a disorderly-persons offense. N.J.S.A. 2C:43-8.

Moreover, we note the following errors which appear to be clerical: the JOC erroneously states defendant received a thirty-day sentence on count nine

instead of attributing it to count eight, terroristic threats; the JOC also erroneously states that count eight was dismissed rather than count nine.

We therefore reverse and remand for the limited purpose of resentencing defendant on the resisting arrest charge and for entry of a corrected JOC.

Affirm in part, reverse and remand in part. We do not retain jurisdiction.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION