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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2662-21

STATE OF NEW JERSEY,	:	CRIMINAL ACTION
Plaintiff-Respondent,	:	On Appeal from a Judgment of Conviction of the Superior Court of
v.	:	New Jersey, Law Division, Morris County.
JEREMY ARRINGTON,	:	
Defendant-Appellant.	:	Indictment Nos. 16-03-689-I, 17-05-1346-I
	:	Sat Below:
	:	Hon. Ronald D. Wigler, J.S.C., Hon. James W. Donohue, J.S.C., and a jury.

BRIEF AND APPENDIX ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Jeremy Arrington was charged with multiple counts of murder, attempted murder, and related offenses following an incident at a home in Newark. Arrington's sole defense to these serious charges was that he was not guilty by reason of insanity. The trial court completely barred Arrington from presenting this defense to the jury.

The defense had intended to meet its burden of proving insanity through lay testimony, evidence about the crimes themselves, and Arrington's own testimony. But the trial court ruled that the defense could not present this evidence or argue that Arrington was not guilty by reason of insanity because the defense did not intend to call an expert witness. Our law is clear that lay witnesses can offer opinions about insanity; defense expert testimony is not a legal requirement to an insanity defense.

The trial court's erroneous ruling made it impossible for Arrington's trial to be fair. The court's ruling prevented the jury from hearing any evidence whatsoever about Arrington's defense to these horrific allegations. The court's ruling prevented Arrington from testifying in his own defense. In short, the court's ruling was harmful error. This error, along with the wrongful admission of highly prejudicial other-crimes evidence without any limiting instruction, deprived Arrington of his constitutional rights to present a defense, to testify,

and to have a fair trial. His convictions must be reversed and remanded for a new trial.

PROCEDURAL HISTORY

Essex County Indictment 16-03-689-I charged Arrington with fourth-degree aggravated assault, pointing a firearm, N.J.S.A. 2C:12-1(b)(4) (Count 1); second-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b) (Count 2); second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count 3); fourth-degree possession of hollow nose bullets, N.J.S.A. 2C:39-3(f) (Count 4); second-degree burglary, N.J.S.A. 2C:18-2 (Count 5); fourth-degree trespassing, N.J.S.A. 2C:18-3(a) (Count 6); third-degree resisting arrest by force, N.J.S.A. 2C:29-2(a)(3)(a) (Count 7); and fourth-degree obstruction, N.J.S.A. 2C:29-1 (Count 8). (Da 1-8)[1]

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[1] Da — Defendant's Appendix
1T — December 21, 2016 — Plea
2T — September 24, 2018 — Motion
3T — May 9, 2019 — Competency
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5T — September 24, 2019 — Competency
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8T — December 16, 2021 — Conference
9T — January 5, 2022 — Conference
10T — January 11, 2022 — Conference
11T — February 8, 2022 — Trial
12T — February 9, 2022 — Trial
13T — February 10, 2022 — Trial
14T — February 15, 2022 — Trial
15T — February 16, 2022 — Trial
16T — February 17, 2022 — Trial
17T — February 18, 2022 — Trial
18T — February 22, 2022 — Trial

Essex County Indictment 16-02-382-I charged Arrington with third-degree terroristic threats, N.J.S.A. 2C:12-3(b) (Count 1); third-degree criminal restraint, N.J.S.A. 2C:13-2(a) (Count 2); and third-degree endangering the welfare of a child, N.J.S.A. 2C:24-4(a) (Count 3). (Da 65)

On December 21, 2016, before the Honorable Ronald D. Wigler, J.S.C., Arrington pleaded guilty to Counts 1, 2, 3, and 5 from Indictment 16-03-689, and Counts 1, 2, and 3 from Indictment 16-02-382. (Da 10-16; 1T 11-11 to 12-23) In exchange for his guilty plea, for Indictment 16-03-689, the State recommended an 18-month sentence on Count 1, seven years with 42-months of parole ineligibility on Counts 2 and 3, and four years NERA on Count 5. (Da 10-16; 1T 11-11 to 12-23) For Indictment 16-02-382, the State recommended five-year sentences on all three counts. (Da 10-16; 1T 11-11 to 12-23) The State recommended that this sentence run concurrently with any sentence Arrington received on Indictment 17-05-1346. (Da 10-16; 1T 11-11 to 12-23)

Essex Indictment 17-05-1346-I charged Jeremy Arrington with:

19T — February 23, 2022 — Trial
20T — February 24, 2022 — Trial
21T — February 25, 2022 — Charge Conference
22T — March 3, 2022 — Trial
23T — March 4, 2022 — Trial
24T — April 8, 2022 — Sentence

- Three counts of first-degree murder, N.J.S.A. 2C:11-3(a)(1), (2) (Counts 1, 5, and 7);

- Second-degree possession of a handgun without a permit, N.J.S.A. 2C:39-5(b) (Count 2);

- Seven counts of third-degree criminal restraint, N.J.S.A. 2C:13-2 (Counts 3, 6, 8, 11, 14, 17, and 19);

- Fourth-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(d) (Count 4);

- Three counts of second-degree aggravated assault, serious bodily injury, N.J.S.A. 2C:12-1(b)(1) (Count 9, 12, and 15);

- Four counts of first-degree attempted murder, N.J.S.A. 2C:11-3, 2C:5-1 (Counts 10, 13, 16, and 21);

- Two counts of fourth-degree aggravated assault, pointing a firearm, N.J.S.A. 2C:12-1(b)(4) (Counts 18 and 20);

- Second-degree possession of a handgun for an unlawful purpose, N.J.S.A. 2C:39-4(a) (Count 22);

- Third-degree possession of a knife for an unlawful purpose, N.J.S.A. 2C:39-4(d) (Count 23);

- Third-degree terroristic threats, N.J.S.A. 2C:12-3(b) (Count 24);

- Fourth-degree tampering, N.J.S.A. 2C:28-6(1) (Count 25);

- Second-degree burglary, N.J.S.A. 2C:18-2 (Count 26); and

- Three counts of first-degree felony murder, N.J.S.A. 2C:11-3(a)(3) (Counts 27, 28, and 29). (Da 17-46)

Between September 24, 2018, and September 24, 2019, before the Honorable James W. Donohue, J.S.C., a hearing was held on Arrington's

competency to stand trial. (2T-5T) On September 24, 2019, Judge Donohue ruled that Arrington was competent. (5T 18-20 to 32-20; Da 47)

On February 28, 2020, a Miranda hearing was held before Judge Donohue. (6T) On March 9, Judge Donohue ruled that Arrington knowingly and voluntarily waived his rights and made a voluntary statement. (7T 4-14 to 13-13; Da 48)

Between December 16, 2021, and January 11, 2022, before Judge Wigler, the parties discussed Arrington's defense of not guilty by reason of insanity. (8T-10T) As the defense expert who opined on Arrington's competency was ill and unable to come to court (9T 72-22 to 73-10), the defense sought to prove Arrington's insanity without calling an expert. (8T 49-25 to 50-6, 50-23 to 51-7) Although Judge Wigler initially agreed that the defense could try to satisfy its burden of proof through the testimony of lay witnesses (8T 71-9 to 18), Judge Wigler later ruled that the defense could not raise an insanity defense without an expert. (9T 80-5 to 21; 10T 4-9 to 24) As the defense did not have another expert, Arrington was barred from presenting an insanity defense.

Between February 8 and March 4, 2022, trial was held before Judge Wigler and a jury. (11T-23T) The jury acquitted Arrington of one count of

attempted murder (Count 21) but convicted him of the other counts. (Da 49-55; 23T 125-21 to 130-11)

On April 8, 2022, Judge Wigler sentenced Arrington to an aggregate sentence of 375 years in prison with 281 years of parole ineligibility: 75 years NERA on the three murder convictions and 50 years with 30 years of parole ineligibility on the three attempted murder convictions, all to run consecutively. (24T 75-14 to 99-12, 104-2 to 8) Judge Wigler imposed an extended-term 20-year sentence, 10 years without parole on possession of a handgun without a permit (Count 2); 18 months each for unlawful possession of a knife (Count 4), pointing a firearm (Counts 18 and 20), and tampering (Count 25); five years for criminal restraint (Count 19) and terroristic threats (Count 24); and 10 years NERA for burglary (Count 26). (24T 75-14 to 99-12; Da 56-60) All other counts merged. (24T 75-14 to 99-12; Da 56-60)

On Indictments 16-03-689 and 16-02-382, Judge Wigler sentenced Arrington in accordance with the plea agreement. (24T 99-13 to 104-1; Da 61-67)

A Notice of Appeal was filed on May 3, 2022. (Da 68-72)

STATEMENT OF FACTS

The State presented evidence that on November 5, 2016, Jeremy Arrington forcibly entered the second-floor home at 137 Hedden Terrace in Newark carrying a gun and wearing a ski mask. (14T 40-17, 51-19 to 52-4; 15T 29-10 to 14, 30-3 to 7, 31-15 to 16, 132-15 to 133-18; 19T 14-12 to 15-6, 17-10 to 19, 17-25 to 18-1, 18-2 to 7) Multiple people were at the home at that time: 22-year-old Bilqis Karam; her 13-year-old siblings, Asaad and Asiyah; Asiyah's friend, Tyquannah McGee; Bilqis's 28-year-old sister Asia Whitehurst; Asia's two children, seven-year-old Ariel and 11-year-old Al-Jahon; Bilqis's cousin, 14-year-old Shyleea Ryan; and Bilqis's friend from college, Syasia McBurroughs. (14T 41-24 to 25, 42-24 to 43-9, 44-8 to 14, 44-20 to 23, 123-7 to 10; 15T 16-8 to 14, 19-1, 25-23 to 24; 19T 9-5 to 6)

Bilqis, Asaad, Asia, and Shyleea testified at trial, providing substantially consistent testimony. They all made out-of-court and in-court identifications of Arrington as the man in the home that day, testifying that he took off the ski mask, and they recognized him because of his prior association with Venus Ryan, Shyleea's mother. (14T 53-15 to 17, 54-12 to 15, 55-8 to 18, 63-16 to 20, 87-20 to 25, 133-21 to 134-2, 135-1 to 11, 152-1 to 16, 163-6 to 10, 163-21 to 23; 15T 31-15 to 16, 64-13 to 24; 19T 21-4 to 5, 57-22 to 59-22)

According to the witnesses, after entering the home, Arrington directed everyone to one of the bedrooms at gunpoint. (14T 56-8 to 14, 135-23 to 136-5) Tyquannah was not with the others; instead, she was hiding in a closet. (13T 15-6 to 7; 14T 81-1 to 8) Bilqis and Shyleea testified that Arrington was talking about a Facebook post. (14T 57-9 to 11; 19T 23-11 to 16) The State introduced into evidence a redacted Facebook thread on Venus Ryan's page: a link to a news story about Arrington followed by a comment by Asia that said, "I knew I didn't like his dumb ass," posted on October 13. (19T 166-6 to 167-25, 169-3 to 17, 171-13 to 172-12)

After gathering everyone in a bedroom, Arrington took everyone's cell phone, put them in a pillowcase, and stomped on the pillowcase. (14T 57-20 to 58-6, 138-19 to 20; 15T 38-15 to 24; 19T 27-22 to 28-1) Arrington then got a kitchen knife and cut up the bedsheets. (14T 58-14 to 25, 59-14 to 24, 138-10 to 17) Arrington told Asiyah to tie everyone's hands behind their backs but took over because Asiyah was going too slowly. (14T 60-7 to 13, 60-23 to 61-3; 15T 39-1 to 21, 40-10; 19T 24-10 to 25-11) Arrington did not tie Shyleea's hands. (14T 61-13 to 62-5) Arrington punched Asia in the face after tying her hands. (14T 62-12; 15T 42-15 to 17; 19T 28-15 to 23) Arrington then moved people from the bedroom to other rooms in the home. (14T 64-13 to 16, 65-7

to 14, 65-24 to 66-3) Arrington ordered Shyleea to turn on the televisions and turn the volume up. (14T 73-20 to 24, 148-4 to 9; 19T 35-15 to 17)

Shyleea testified that Arrington brought Ariel into one of the bathrooms. (19T 30-9 to 31-4) She testified that Arrington told her to stab Ariel; Arrington was holding a gun. Shyleea testified that when she did not stab Ariel, Arrington stabbed Ariel instead. (19T 40-10 to 41-25, 48-4 to 10) Ariel was declared dead shortly after she arrived at the hospital. (12T 19-15 to 25) The forensic pathologist who performed the autopsy on Ariel testified that the cause of death was multiple stab wounds, and the manner of death was homicide. (17T 64-8 to 10, 64-13 to 16, 69-4 to 6, 77-13 to 78-1, 92-7 to 13)

Asaad testified that Arrington stabbed Al-Jahon, killing him. (14T 143-10 to 11, 148-18 to 22, 149-10 to 14) Al-Jahon was declared dead on arrival at the hospital. (12T 19-6 to 12) The forensic pathologist who performed the autopsy on Al-Jahon testified that the cause of death was multiple stab wounds, and the manner of death was homicide. (17T 9-24 to 10-1, 13-19 to 22, 19-10 to 17, 49-25 to 50-8)

Asaad further testified that Arrington brought him into one of the bathrooms and stabbed him multiple times. (14T 142-6 to 19, 145-5 to 146-16) Arrington left the bathroom then returned with Shyleea, ordering her at gunpoint to stab Asaad. (14T 146-17 to 147-5, 147-11 to 21; 19T 44-16 to 46-

4) The surgeon who treated Asaad testified that he had multiple stab wounds to his neck and chest and remained in the hospital until December 16. (12T 31-10 to 18, 40-19 to 25, 47-5 to 8; see also 14T 151-2 to 19)

Asia testified that Arrington brought her to another bedroom and stabbed her repeatedly. (15T 43-10 to 24, 14-5 to 8, 45-11 to 46-22) At one point, Arrington brought Shyleea to the room and told her to stab Asia. (15T 47-2 to 17; 19T 43-4 to 11, 19T 43-12 to 16) Asia testified that Shyleea asked Arrington something like, "this is how you do it?" or "this right?" (15T 47-18 to 22) The trauma surgeon who treated Asia testified that she had multiple stab wounds and remained in the Intensive Care Unit until December 12. (12T 28-24 to 29-1, 29-9 to 13, 38-12 to 23; 15T 56-4 to 15)

Arrington returned to the bedroom where Bilqis and Syasia were. (16T 67-19 to 68-6) Bilqis testified that Arrington sat next to Syasia on the bed, asked her if she was going to tell anyone what happened, then put a pillow over her head, shot her, and left the room. (14T 69-6 to 70-4, 70-15 to 71-5; 19T 34-11 to 12, 38-13 to 23) Arrington returned with Shyleea and told her to stab Syasia; Arrington was still holding a gun. (14T 74-7 to 15, 75-1 to 22; 19T 49-3 to 12) The forensic pathologist who performed the autopsy on Syasia testified that she had a gunshot wound to her head, later-inflicted sharp force wounds, that both types of injuries caused her death, and the manner of death

was homicide. (18T 9-10 to 12, 9-19 to 21, 16-4 to 6, 24-8 to 19, 29-20 to 30-13, 31-19 to 23)

Shyleea testified that Arrington stabbed Asiyah and also ordered her to stab Asiyah. (19T 46-5 to 48-3) Moreover, after Arrington shot Shyleea, he brought Bilqis into a bedroom closet with Asiyah and Shyleea, gave Bilqis and Shyleea knives, and ordered them to stab Asiyah. (14T 79-10 to 13, 81-1 to 8; 19T 49-21 to 50-18, 50-21 to 51-9, 51-15 to 52-9) Arrington then stabbed Asiyah himself. (14T 82-3 to 17; 19T 52-10 to 14) The surgeon who treated Asiyah testified that her wounds were superficial, but she had to be put under general anesthesia to close all the wounds. Asiyah remained at the hospital for about 11 days. (12T 48-1 to 23, 51-13 to 20, 52-3 to 5)

Arrington brought Bilqis and Shyleea to the living room. (14T 82-22 to 24) Shyleea testified that Arrington held the gun to her head and pulled the trigger, but it jammed. (19T 53-8 to 21) The jury acquitted Arrington of attempting to murder Shyleea. (23T 128-23 to 129-1; Da 53)

Throughout Arrington's time in the house, he wiped the surfaces he touched. (14T 92-15 to 16; 15T 34-13 to 21) Shyleea testified that Arrington made her touch the all the doorknobs and the handles of all the knives. (19T 39-10 to 22, 40-2 to 6)

Zanerah McGee, Tyquannah's sister, testified that Tyquannah, who is autistic, called her and said she was in a closet hiding because a man was stabbing people and had a gun. (13T 15-6 to 7, 16-2 to 24, 17-1, 17-18 to 23) Zanerah took a cab over to the home, rang the doorbell, asked if Tyquannah was there, and was told that she was not. (13T 17-24 to 18-25) Bilqis testified that the doorbell rang, and Arrington instructed her to answer using the intercom. (14T 77-5 to 25) Then Arrington untied Bilqis's hands and instructed her to go out on the balcony to talk to the person who was ringing the doorbell. At Arrington's direction, Bilqis told Zanerah that Tyquannah was not at the house, but also tried to alert Zanerah that something was wrong through her facial expressions. (13T 23-6 to 16; 14T 78-1 to 79-3) Zanerah testified that the woman on the balcony mouthed "help me." (13T 23-21) Zanerah called 9-1-1, then spoke to the police when they arrived. (13T 24-9, 24-10 to 18)

The police knocked on the door, Arrington jumped out a window, and Bilqis and Shyleea ran out of the house into the garage. (14T 83-2 to 15, 84-13 to 18; 19T 53-22 to 54-11, 54-15 to 55-3) Bilqis ran into a police car, while Shyleea ran back into the house to Asaad and brought him out into the living room. (14T 85-9 to 10, 149-22 to 150-13; 19T 56-8 to 57-13)

Police got an arrest warrant for Arrington and tracked Arrington's cell phone to a different home in Newark. (19T 127-25 to 128-2, 132-3 to 19) The

police arrived at the home, and after Arrington had initially falsely claimed he was holding a hostage, arrested Arrington without incident. (15T 101-23 to 102-2; 19T 135-24, 136-21 to 137-6) Police secured consent to search from the home's resident, finding ammunition and a pair of black gloves with possible blood stains, among other items. (16T 31-1 to 34-13, 34-14 to 35-4)

Following Arrington's arrest, he made a statement to police in which he discussed a Facebook post, admitted he had been at 137 Hedden Terrace, admitted stabbing Asia, admitted bringing a gun to the home, alternatively asserted that the gun had gone off accidentally when he threw it on the bed and that he had told Bilqis to fire the gun, and claimed that the children had been playing with knives. (20T 10-5 to 16, 20-1 to 29-22, 33-16 to 35-11, 36-6 to 132-10)

The State presented evidence that Ariel's DNA was found on sweatpants taken from Arrington when he was arrested. (18T 119-18 to 25, 135-12 to 14, 136-7 to 9) Asaad's DNA was found on the blade of one of the knives from the home, while Asia's DNA was found on a different knife found at the home. (14T 17-4 to 12; 18T 138-16 to 22, 147-18 to 148-1, 152-22 to 153-1, 154-9 to 13) Asiyah and Asia's DNA was found on a pair of black gloves taken from the home where Arrington was arrested. (16T 34-14 to 35-4; 18T 119-18 to 25, 160-8 to 11, 160-25 to 161-1)

LEGAL ARGUMENT

POINT I

THE COURT IMPROPERLY DEPRIVED DEFENDANT OF HIS CONSTITUTIONAL RIGHTS TO A DEFENSE AND TO TESTIFY. (9T 80-5 to 21, 80-22 to 84-6, 86-13 to 87-25, 96-14 to 25, 99-3 to 101-17; 10T 4-9 to 24)

"Under both the Federal and the New Jersey Constitutions, criminal defendants. . . have the right to a meaningful opportunity to present a complete defense." State v. Chambers, 252 N.J. 561, 582 (2023) (citing State v. Budis, 125 N.J. 519, 531 (1991); Crane v. Kentucky, 476 U.S. 683, 690 (1986). See also Holmes v. South Carolina, 547 U.S. 319, 324 (2006) ("Whether rooted directly in the Due Process Clause of the Fourteenth Amendment or in the Compulsory Process or Confrontation Clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense."). In this case, Arrington was wholly deprived of his constitutional right to present a defense, including his right to testify in his own defense, because of the trial court's erroneous conclusion that an insanity defense required the defendant to present expert testimony. The court's wholesale bar on Arrington's only defense violated his State and Federal constitutional rights to compulsory process, due process, and a fair trial. U.S.

Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10. His convictions must be reversed and remanded for a new trial.

Arrington's sole defense was that he was not guilty by reason of insanity. (8T 48-25 to 49-1) Both the trial court and the prosecutor were on notice that this was Arrington's defense. (8T 22-7 to 11 ("To clarify this, I want the Defense to put on their case for the insanity."); 8T 32-20 to 22 (discussing instructions for voir dire and noting that the defense is "probably not going to be denying [the allegations] because you're going to be relying on the insanity defense")) Although defense counsel had retained an expert to examine Arrington for the competency hearing who could also have opined on Arrington's insanity, that expert was ill and not able to testify at trial, despite the court's offered accommodations. (8T 21-3 to 20; 9T 72-22 to 73-17; 10T 8-20 to 23) Defense counsel was unable to retain a substitute expert. (9T 79-11 to 24) Nonetheless, defense counsel was clear that he intended to proceed with an insanity defense and believed he could satisfy the defense burden to prove insanity without the use of expert testimony. (8T 49-25 to 50-6, 50-23 to 51-7, 52-6 to 20, 67-20 to 21, 69-1 to 11)

The court initially agreed that Arrington could raise an insanity defense so long as the defense presented evidence of insanity through testimony by Arrington or other lay witnesses. (8T 50-9 to 22, 56-15 to 24, 64-12 to 65-5,

71-9 to 18, 91-7 to 11) However, the court then reversed course and ruled that Arrington could not raise an insanity defense without presenting expert testimony, even if Arrington planned to testify about his own state of mind. (9T 80-5 to 21, 80-22 to 84-6, 86-13 to 87-25, 96-14 to 25, 99-3 to 101-17; 10T 4-9 to 24) Defense counsel strenuously objected, yet Arrington's trial proceeded without defense counsel being permitted to present any evidence in support of an insanity defense. (8T 62-18 to 63-8, 74-12 to 25; 10T 6-10 to 15)

The trial court's ruling barring the defense from presenting any evidence of insanity was wholly improper. The court's ruling improperly (1) deprived Arrington of his right to present a defense; and (2) deprived Arrington of his right to testify in his defense. These errors will be addressed in turn.

First, defendants have the constitutional right to present a defense. Crane, 476 U.S. at 690; Chambers, 252 N.J. at 582. Included in this right is the "Sixth Amendment right to offer any evidence that refutes guilt or bolsters a claim of innocence." State v. Harris, 156 N.J. 122, 177 (1998). Thus, "if evidence is relevant and necessary to a fair determination of the issues, the admission of the evidence is constitutionally compelled." State v. Garron, 177 N.J. 147, 171 (2002).

Arrington's sole defense in this case was insanity: that he was "not criminally responsible" for the charged conduct because at "the time of such

conduct he was laboring under such a defect of reason, from disease of the mind as not to know the nature and quality of the act he was doing, or if he did know it, that he did not know what he was doing was wrong." N.J.S.A. 2C:4-1; see also State v. Handy, 215 N.J. 334, 357 (2013) (noting that "one who meets the test for insanity, that is, one who lacks the ability to distinguish between right and wrong, is thereby excused from criminal culpability"). "Insanity is an affirmative defense which must be proved by a preponderance of the evidence." N.J.S.A. 2C:4-1; see also Handy, 215 N.J. at 357 (citing State v. Singleton, 211 N.J. 157, 174 (2012)) (same).

The trial court barred Arrington from presenting this defense to the jury because the defense did not have any experts who could testify. But there is no legal requirement that a defendant call an expert in support of his insanity defense. The statute does not contain any requirement that the defendant present medical or other expert testimony. See N.J.S.A. 2C:4-1.

Moreover, caselaw does not require the defense to present expert testimony and instead recognizes that a defendant's insanity is an appropriate subject for lay witness testimony. "Lay witnesses on insanity may give their opinion of a person's sanity or insanity provided such opinions are based on facts within the knowledge of the witness and stated." State v. Morehous, 97 N.J.L. 285, 294–95 (1922), overruled on other grounds by State v. Smith, 32

N.J. 501 (1960). "It has long been the law of this State that a lay witness 'may state facts and express an opinion in respect to the sanity of a defendant.'" State v. Risden, 106 N.J. Super. 226, 235–36 (App. Div. 1969), modified, 56 N.J. 27 (1970) (quoting Clifford v. State, 60 N.J.L. 287, 289 (Sup. Ct. 1897)). Thus, in Risden, the Supreme Court held that various lay witnesses should have been allowed to testify that the defendant acted "crazy," as this kind of opinion "springs from the common understanding and experience of mankind" and "represents the reaction of an ordinary man arising from his observation and is helpful to an understanding of his testimony and an appreciation of the mental or emotional state of the person described." 56 N.J. at 40.

This Court's caselaw further illustrates the importance of lay witness testimony in a jury's determination of the defendant's insanity. This Court has rejected a defense claim that uncontradicted expert testimony that the defendant was insane at the time of the offense ought to override lay testimony about the defendant's behavior and compel a "judgment of acquittal by reason of insanity." State v. Scelfo, 58 N.J. Super. 472, 477–78 (App. Div. 1959). The court instead held that expert testimony "is in parity with lay opinion testimony in that the jury is entitled to give each equal weight." Ibid. The court explained that "the right to a jury trial requires that the jury be the ultimate determinative body, thus making incompatible any concept of binding expert

opinion testimony." Ibid. While expert testimony can certainly be relevant, such testimony is not binding on the jury and thus is not a prerequisite to an insanity defense. See also Estate of Nicolas v. Ocean Plaza Condo. Ass'n, Inc., 388 N.J. Super. 571, 582–83 (App. Div. 2006) (holding that for purposes of a statute of limitation, a "person's insanity. . . can be established under N.J.R.E. 701, through the testimony of laypersons, without the presentation of expert testimony").

Adding further support to the fact that an insanity defense can be established through lay witness testimony is the model criminal jury charge on insanity. The model charge recognizes that legal insanity is distinct from psychiatry's view of insanity: "The law adopts a standard of its own as a test of criminal responsibility, a standard not always in harmony with the views of psychiatrists." Model Criminal Jury Charge, "Insanity" (rev. Oct. 17, 1988), at 2. In light of this distinction, the charge instructs the jury to consider "all of the relevant and material evidence having a bearing on [defendant's] mental condition" — fact, lay opinion, and expert opinion:

> including [defendant's] conduct at the time of the alleged act, his/her conduct since, any mental history, any lay and medical testimony which you have heard from witnesses who have testified for the defense and for the State, and such other evidence by the testimony of witnesses or exhibits in this case that may have a bearing upon, and assist you in your determination of the issue of his/her mental condition. [Id. at 3 (emphasis added).]

Moreover, consistent with our caselaw, the model charge instructs that "no distinction is made between expert testimony and evidence of another character," and "[t]he same tests that are applied in evaluating lay testimony must be used in judging the weight and sufficiency of expert testimony." Ibid. Thus, in emphasizing that the jury should consider all evidence, including lay testimony, about a defendant's insanity, the model charge further supports the fact that a defendant can raise an insanity defense through non-expert testimony.

In sum, the statute, caselaw, and model jury charge all recognize that lay testimony on a defendant's sanity is admissible and constitutes competent evidence for a jury to consider in evaluating this affirmative defense. Despite being competent evidence, the trial court here erroneously excluded this evidence in Arrington's case. As a result of the trial court's legal error, the jury deliberating on Arrington's guilt was prevented from hearing any evidence whatsoever about Arrington's defense to these serious charges. The trial became entirely one-sided, with the defense barred from presenting its case to the jury. The trial court was not permitted to bar Arrington from raising his sole defense to these charges. Crane, 476 U.S. at 690; Chambers, 252 N.J. at 582. This total ban on Arrington presenting his defense to the jury requires reversal of his convictions and a remand for a new trial.

Second, the court's ruling barring Arrington's insanity defense also deprived Arrington of his right to testify in his own defense, also requiring reversal of his convictions. As Arrington stated during the colloquy about his right to testify, "I was going to testify but due to the fact you denied the insanity defense, I am not testifying." (20T 231-13 to 15) "I'm not testifying due to the fact you denied the insanity defense." (20T 232-22 to 23)

A defendant's right to testify in his own defense is an essential element of due process under our State and federal constitutions. As the United States Supreme Court has held, three distinct provisions of the federal Constitution protect this fundamental right. Rock v. Arkansas, 483 U.S. 44, 51 (1987). First, "[t]he necessary ingredients of the Fourteenth Amendment's guarantee that no one shall be deprived of liberty without due process of law include a right to be heard and to offer testimony." Id. at 51. Second, "the Compulsory Process Clause of the Sixth Amendment. . . grants a defendant the right to call 'witnesses in his favor,'" which "logically include[s]" the right of the accused "to testify himself." Id. at 52. Finally, "[t]he opportunity to testify is also a necessary corollary to the Fifth Amendment's guarantee against compelled testimony." Ibid. Our Supreme Court has likewise explained that the New Jersey Constitution provides an accused the right to testify in his own defense. State v. Savage, 120 N.J. 594, 628 (1990). "[T]he right to testify is essential to

our state-based concept of due process of law, which guarantees a 'fair and impartial trial in which there is a legitimate and decorous recognition of the substantive rights of the defendant." Ibid. "The right is also implicit in our state constitutional guarantee for a criminal defendant 'to have compulsory process for calling witnesses in his favor.'" Ibid. (citing N.J. Const. art. I, ¶ 10).

Beyond its constitutional underpinnings, our caselaw has recognized the profound importance this right holds to those who stand accused. Testifying allows a defendant the "opportunity to tell his story in his own words" and "to display his own demeanor and testimonial qualities to the finder of fact who will ultimately determine the credibility of his defense." State v. Fusco, 93 N.J. 578, 586 (1983). Our Supreme Court has also acknowledged that the right to testify in one's own defense enhances the truth-seeking function of a criminal trial. State v. Sands, 76 N.J. 127, 142 (1978) "[T]he truth is more likely to be arrived at by hearing the testimony of all persons of competent understanding who may seem to have knowledge of the facts involved in a case, leaving the credit and weight of such testimony to be determined by the jury." State v. Bradshaw, 195 N.J. 493, 508 (2008) (quoting Rosen v. United States, 245 U.S. 467, 471 (1918)).

Arrington's testimony would have been the critical piece of his insanity defense. Indeed, "[a] defendant's state of mind at the time of an alleged crime is inherently intangible and, therefore, is proven predominantly through witness testimony and circumstantial evidence." State v. Jenewicz, 193 N.J. 440, 451 (2008). "An obvious, ready source of direct evidence about state of mind is the defendant's testimony" on his own behalf. Ibid. Particularly without a defense expert, Arrington's testimony would have been the best evidence in support of his defense that at the time of the crimes he "lack[ed] the ability to distinguish between right and wrong," Handy, 215 N.J. at 357, or that due to a disease of the mind, did not "know the nature and quality of the act he was doing." N.J.S.A. 2C:4-1. The assessment of Arrington's testimony about his mental state at the time of the offense should have been left to the jury. See State v. Cole, 229 N.J. 430, 450 (2017) (collecting cases establishing that it is "the jury's province to assess the credibility of all of the evidence").

As Arrington himself told the court, his right to testify was meaningless without being permitted to testify about his defense. (20T 231-13 to 15, 232-22 to 23) In short, Arrington's testimony was the single best way to put the issue of his insanity at the time of the offense before the jury. As a direct result of the court's ruling, the jury never learned about Arrington's insanity defense. When his own liberty was at stake, Arrington was denied the ability to speak

on his own behalf regarding his mental state at the time of the offense. The gravity of the prejudice to Arrington from the deprivation of his right to testify cannot be overstated.

The trial court's ruling barring Arrington from presenting evidence of insanity and of testifying in support of his insanity defense is wholly contrary to our law. But even if there were some evidentiary rule limiting the presentation of that evidence, such a rule must cede to Arrington's constitutional rights to present a defense and to testify. As our Supreme Court has recognized, "when the mechanistic application of a state's rules of evidence or procedure would undermine the truth-finding function by excluding relevant evidence necessary to a defendant's ability to defend against the charged offenses," the defendant's constitutional rights "must prevail." State v. Garron, 177 N.J. 147, 169-70 (2003). Arrington's defense was insanity. The court was not permitted to deprive him of this defense.

The trial court's erroneous deprivation of Arrington's constitutional rights to testify and present a defense compels reversal of his convictions. Given the magnitude of a criminal defendant's interest in having a voice at the proceedings at which his liberty is adjudicated, the right to testify in one's own defense is analogous to the right to represent oneself. Like that right, it "is either respected or denied; its deprivation cannot be harmless." State v.

Outland, 245 N.J. 494, 507 (2021) (quoting State v. King, 210 N.J. 2 (2012)). Moreover, the prejudice to the integrity of the factfinding process from the court's improper bar on presenting any evidence in support of Arrington's insanity defense was monumental. The jury never heard any testimony relating to Arrington's intended defense of insanity. Without such evidence and "[a]bsent the full scope of defendant's testimony, the jury was denied the opportunity to fairly evaluate the evidence and determine the credibility of the witnesses." Bradshaw, 195 N.J. at 509-10. Arrington's convictions must be reversed.

POINT II

THE IMPROPER ADMISSION OF OTHER-CRIMES EVIDENCE WITHOUT ANY LIMITING INSTRUCTION REQUIRES REVERSAL OF DEFENDANT'S CONVICTIONS. (Not Raised Below)

During Shyleea's cross-examination, when defense counsel was asking questions about her and her mother's relationship with Arrington, the following exchange occurred:

> Q And do you recall how long before this incident that we're talking about that took place when he walked you to school?
>
> A This was a little bit -- I think -- I think this was -- I'm not sure. This was after an incident about him raping my mother.

[(19T 72-23 to 73-3) (emphasis added)]

This testimony improperly introduced evidence of an uncharged bad act that was inadmissible under N.J.R.E. 404(b) and State v. Cofield, 127 N.J. 328 (1992). Its improper admission requires reversal of Arrington's convictions. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 9, 10.

Under New Jersey Rule of Evidence 404(b), "[e]vidence of other crimes, wrongs or acts is not admissible to prove the disposition of a person in order to show that he acted in conformity therewith." This limitation is essential to guard against the risk "that the jury may convict the defendant because he is a 'bad' person in general" and not because the evidence adduced at trial

establishes guilt beyond a reasonable doubt. Cofield, 127 N.J. at 336. For this reason, evidence of past misconduct is admissible only when it proves some specific fact in issue such as "motive, opportunity, intent, preparation, plan, knowledge, identity or absence of mistake, or accident." N.J.R.E. 404(b).

When the State seeks to use 404(b) other crimes evidence at trial, it must provide notice and "identify the specific, non-propensity purpose" for which it sought to admit the evidence. To ensure that such evidence will be used only for these appropriate, limited purposes and not to demonstrate the defendant's propensity to commit crime, other crimes evidence is only admissible if it is (1) relevant to a material issue in dispute; (2) similar in kind and reasonably close in time to the offense charged; (3) clear and convincing; and, (4) its probative value must not be outweighed by its apparent prejudice. Cofield, 127 N.J. at 338.

Here, testimony that Arrington previously raped Shyleea's mother was wholly irrelevant yet highly unfairly prejudicial. This evidence did not help prove anything about the crimes for which Arrington was on trial. It had no bearing "on a subject that is at issue at the trial." State v. P.S., 202 N.J. 232, 255 (2010). Without any possible relevant purpose, the only remaining use of this evidence was the improper one — that Arrington was a bad person who

committed crimes against others so he must also be guilty of the instant offenses.

Moreover, the risk that the jury would use this inadmissible evidence for that prohibited purpose was heightened by the lack of any limiting instruction by the court. The requirement that other-crime evidence must be accompanied by a proper limiting instruction is so essential that it applies even if defense counsel elicited the evidence and even if counsel did not request a limiting charge. See, e.g., State v. Clausell, 121 N.J. 298, 322-23 (1990). Once a court permits evidence of uncharged bad acts to be admitted, in order to prevent "the danger that. . . [it] may indelibly brand the defendant as a bad person and blind the jury from a careful consideration of the elements of the charged offense," State v. Blakney, 189 N.J. 88, 93 (2006), it "must precisely instruct the jury. . . [on] the proper use of such evidence. . . and [that it is] not to [be used to] impugn the character of the defendant." Id. at 92. It is especially important to accurately evaluate this kind of evidence because other crimes evidence has a "unique tendency to turn a jury against the defendant." State v. Hernandez, 170 N.J. 106, 119 (2001). "[T]he inherently prejudicial nature of [other-crimes] evidence casts doubt on a jury's ability to follow even the most precise limiting instruction." State v. Vallejo, 198 N.J. 122, 133 (2009)) (quoting State v. Stevens, 115 N.J. 289, 309 (1989)).

Without any instruction on what the jury could do with this highly prejudicial piece of other-crimes evidence, it would have been entirely reasonable for the jury to infer that Arrington was more likely to be guilty of the instant offenses because of his prior act of violence against Shyleea's mother. See State v. Reddish, 181 N.J. 553, 611 (2004) ("An explicit instruction that the jury should not make any inferences about defendant's propensity to commit crimes is an essential point to be made in the limiting instruction.") (internal quotations omitted)). Here, such an instruction was essential even though not requested by defense counsel.

The improper admission of this uncharged and unrelated crime, combined with the failure to instruct the jury that it could not use this crime as evidence that Arrington had a propensity to commit violent crimes, deprived Arrington of his constitutional rights to due process and a fair trial and requires reversal of his convictions as plain error. U.S. Const. amends. VI, XIV; N.J. Const. art. I, ¶¶ 1, 10; R. 2:10-2; Cofield, 127 N.J. at 341-42 (1992) (finding plain error where court did not give adequate limiting charge on use of other-crime evidence).

POINT III

DEFENDANT'S SENTENCE IS ILLEGAL. (24T 92-2 to 25, 93-16 to 25, 94-16 to 23, 104-2 to 8; Da 56-60)

Arrington was convicted of three counts of attempted murder. (Da 49-55) Attempted murder is a first-degree crime with a sentencing range of 10 to 20 years in prison. N.J.S.A. 2C:5-4; 2C:43-6(a)(1). However, on each of the attempted murder convictions, the court sentenced Arrington to 50 years in prison with a 30-year parole disqualifier. (24T 92-2 to 25, 93-16 to 25, 94-16 to 23, 104-2 to 8; Da 56-60) The court did so under a provision of N.J.S.A. 2C:5-4 that states that if a defendant "attempted. . . to murder five or more persons," the court shall impose a sentence of least 30 years in prison with a 30-year period of parole ineligibility. (24T 92-2 to 25) The court reasoned that this provision applied because, although Arrington was convicted of only three counts of attempted murder, the three completed murder convictions could also be considered so as to "exceed[] the five-person" requirement under this statute. (24T 92-12 to 17) The court's analysis is incorrect. The imposition of 50-year terms with 30-year parole disqualifiers is not authorized by New Jersey law and violates Arrington's Sixth Amendment rights. These sentences must be vacated and remanded for resentencing.

The United States Supreme Court has held that, "[o]ther than the fact of a prior conviction, any fact that increases the penalty for a crime beyond the prescribed statutory maximum must be submitted to a jury, and proved beyond a reasonable doubt." Apprendi v. New Jersey, 530 U.S. 466, 489 (2000). This constitutional maxim applies with equal force whether it increases the sentencing range at the top, Blakely v. Washington, 542 U.S. 296, 303 (2004), or at the bottom. Alleyne v. United States, 570 U.S. 99, 103 (2013).

As explained above, the prescribed statutory maximum for attempted murder, as a first-degree crime, is 20 years. N.J.S.A. 2C:5-4; 2C:43-6(a)(1). The fact being used to try to exceed that statutory maximum in this case is that Arrington attempted to murder five or more people. N.J.S.A. 2C:5-4. (24T 92-12 to 17) Thus, under the Apprendi line of cases and the Sixth Amendment, to impose this kind of enhanced sentence, the jury must find beyond a reasonable doubt that Arrington attempted to murder at least five people. The jury here did not make such a finding. Instead, the jury found beyond a reasonable doubt that Arrington attempted to murder three victims. (23T 125-21 to 130-11; Da 49-55)

Moreover, Arrington's three murder convictions do not constitute jury findings that he attempted to murder the deceased victims. Murder and attempted murder are different crimes with different mens rea requirements

such that they cannot be equated. Attempted murder requires that the defendant act with the specific purpose to kill, while a defendant can be convicted of murder if he purposely or knowingly caused the victim's death or serious bodily injury resulting in death. N.J.S.A. 2C:5-1; 2C:11-3(a); State v. Rhett, 127 N.J. 3, 7 (1992) (reversing defendant's attempted murder conviction because "[b]y instructing the jury that it could find defendant guilty of attempted murder on anything less than purposeful conduct, the charge conflicts with the statutory definition of 'attempt'"); State v. Gilliam, 224 N.J. Super. 759 (App. Div. 1988) (reversing attempted murder conviction because of charge that jury must find defendant acted "purposely or knowingly"). Thus, the jury did not find beyond a reasonable doubt that it was Arrington's purpose to kill five or more people. Without such a jury finding, the court was not permitted to increase the penalty for the attempted murder charges beyond the 20-year statutory maximum. The 50-year sentences with 30-year parole disqualifiers are illegal and violate Arrington's Sixth Amendment rights. These sentences must be vacated and remanded for resentencing in the ordinary sentencing range.

CONCLUSION

For the reasons set forth in Points I and II, defendant's convictions must be reversed and remanded for a new trial. Alternatively, for the reasons set forth in Point III, defendant's attempted murder sentences must be vacated and remanded for resentencing in the ordinary sentencing range.

Respectfully submitted,

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