SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0393-19

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

CORY L. CURE,

Defendant-Appellant.

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Submitted March 9, 2022 – Decided May 4, 2022

Before Judges Whipple and Susswein.

On appeal from the Superior Court of New Jersey, Law Division, Ocean County, Indictment No. 16-11-2202.

Joseph E. Krakora, Public Defender, attorney for appellant (Laura B. Lasota, Assistant Deputy Public Defender, of counsel and on the brief).

Bradley D. Billhimer, Ocean County Prosecutor, attorney for respondent (Samuel Marzarella, Chief Appellate Attorney, of counsel; Dina R. Khajezadeh, Assistant Prosecutor, on the brief).

PER CURIAM

Defendant Cory L. Cure appeals from an August 13, 2019 judgment of conviction. We discern the following facts from the record. Shortly after 11:00 a.m. on October 28, 2016, the Seaside Heights Police Department (SHPD) dispatcher received a 9-1-1 call from defendant from a restaurant. Defendant was agitated and complained that a bus driver would not accept his New Jersey Transit bus pass and was otherwise unable to get on the bus because he did not have any money. SHPD dispatched Officer Anthony Molinaro in a patrol car to the scene. When Molinaro arrived, two SHPD officers were already present. The officers' search of the area revealed that defendant was no longer in or around the restaurant.

Molinaro went back on patrol, driving towards SHPD Headquarters. He then received a radio transmission from a patrolman who encountered defendant. The patrolman knew the police were searching for a man who was upset he was unable to board a bus and encountered a man fitting the description walking towards SHPD Headquarters. The patrolman approached defendant, who told him that he was angry he was unable to get on the bus and was going to the police station.

After the patrolman pointed out defendant, Molinaro approached defendant in his patrol car. Molinaro asked what was wrong, and defendant

responded that he was upset he was not allowed on the bus because he was trying to get to South Toms River. Molinaro told defendant that he could drive him over the bridge from Seaside Heights to Toms River, but not all the way to South Toms River. SHPD officers commonly give rides across the bridge, as the mile and a half bridge can be hazardous to cross on foot. Defendant agreed to Molinaro's offer for a ride, and Molinaro pulled over to the side of the road. Defendant was "directly . . . in front of" Borough Hall. As Molinaro was speaking to defendant from the patrol car, a second SHPD officer, Patrolman Ryan Stichter, pulled up behind Molinaro's patrol car.

Molinaro told Stichter to pat down defendant before he could enter the patrol car. For safety reasons, a pat down is standard procedure before anyone gets into a patrol car, regardless of whether they are under arrest. Defendant responded to Stichter approaching for a pat down by putting his hands up and saying "[n]o fucking way, you ain't touching my shit." Defendant took two steps back with his hands still over his head and repeated "[n]o fucking way, you ain't touching my shit."

Because defendant was becoming more agitated, Molinaro exited his patrol vehicle "to make sure [the situation] wouldn't escalate." Defendant was speaking very loudly and in an angry tone. To calm defendant, Molinaro tried

to explain that defendant must be patted down before entering the car. Defendant responded by calling Molinaro a "fat drunk" and saying, "I smell alcohol on your breath."

This exchange occurred while the parties were still in front of Borough Hall about fifteen feet from the police station. Molinaro later testified that people were in the area "entering and leaving Borough Hall." Stichter also later testified that it was a sunny day so "[t]here [were] people just around the block . . . there were people outside and they were starting to draw their attention to see what was going on." When defendant loudly refused to be frisked, "people down the block . . . started to look to see what was going on." Molinaro estimated that about "half a dozen [people were] . . . walking around." In a restaurant across the street, people inside were looking to see what was happening.

Molinaro and Stichter repeatedly attempted to calm defendant by explaining that they were trying to help him. Defendant was flailing his arms. Defendant did not calm down, and the officers arrested him for disorderly conduct, N.J.S.A. 2C:33-2(a)(1), for "creating a disturbance on the 100 block of Sherman by yelling and screaming profanities at the officers and [threatening

their] lives." Since the arrest occurred in front of SHPD Headquarters, Stichter led defendant handcuffed directly through the front door of the station.

Inside the station, Stichter led defendant to the booking room. Stichter took the handcuffs off defendant and handed his backpack to Officer Grabowski. Stichter searched defendant while Grabowski searched the backpack without seeking a warrant. Inside defendant's jacket, Stichter found eighteen .40 caliber bullets, a mixture of regular and hollow point. Grabowski found two firearms in defendant's backpack, a loaded Hi-Point handgun and an unloaded Glock. Both firearms were found to be fully operational. The parties later stipulated at trial that defendant did not have a permit to purchase or carry a firearm.

The officers attempted to put defendant through the usual booking processes of being photographed and fingerprinted, but defendant was irate and did not cooperate. Defendant continually made "machine gun noise sounds" as he spoke to the officers. He told the officers that "the purge is coming and [they] better bunker down and protect [their] families." He further told the officers that "[w]e're coming back with my boys and we have bigger guns than you do." Defendant indicated that he knew some of the officers' addresses and would be "coming back for them," punctuating the statement by making a semi-automatic firearm sound. According to Officer Joseph DiGiovanni, defendant was "[o]ut

of control, anxious" and shouting extremely loudly that "he could have walked in our front door and killed every motherfucker in here."

On November 30, 2016, defendant was indicted in Ocean County for the offenses committed on October 28, 2016. Count One and Count Two charged defendant with second-degree unlawful possession of a weapon, N.J.S.A. 2C:39-5(b)(1); Count Three charged defendant with third-degree terroristic threats, N.J.S.A. 2C:12-3(a); Count Four charged defendant with fourth-degree possession of hollow nose bullets, N.J.S.A. 2C:39-3(f); Count Five and Count Six charged defendant with second-degree certain persons not to possess a weapon, N.J.S.A. 2C:39-7(b).

On March 21, 2019, the trial court heard defendant's motion to suppress evidence seized from the warrantless search incident to arrest. The court denied the motion and allowed the disputed material into evidence on April 8, 2019. On May 16, 2019, the court conducted an N.J.R.E. 104(c) hearing to determine the admissibility of certain statements allegedly made by defendant after his arrest and ruled that the statements were admissible.

In his jury trial,[1] defendant elected to testify, recounting that the evening before the arrest, he was at a party in Seaside Heights. He was attempting to get to South Toms River to set up a Halloween block party for his niece. Describing himself as a drug addict, he spent the previous night into the morning of the arrest "popping molly," a form of methamphetamine, sniffing cocaine, and smoking cigarettes dipped in phencyclidine (PCP). Defendant said that this combination of drugs was "the worst thing ever" and left him "spaced out. In my own zone. High as hell."

Defendant denied that the guns and bullets were his. Defendant further denied that Molinaro ever offered him a ride across the bridge to Toms River. Defendant did, however, acknowledge that the testimony regarding his behavior in the police station was true, saying he was "scared" and "paranoid," and reacted to his situation "[l]ike an animal."

The court granted defendant's motion to assert an intoxication defense. At the conclusion of the State's case, the court denied defendant's motion for a judgment of acquittal. The jury returned a guilty verdict for Counts One through

[1] The second-degree certain persons not to possess a weapon counts, N.J.S.A. 2C:39-7(b) were severed.

Four. Defendant subsequently entered an open-ended guilty plea on the severed counts.

The court sentenced defendant to a seven-year state prison term subject to a forty-two-month parole disqualifier for Count One; a concurrent seven-year state prison term subject to a forty-two-month parole disqualifier for Count Two; a concurrent five-year state prison term for Count Three; a concurrent four-year state prison term for Count Four; and a consecutive five-year state prison term subject to a five-year parole disqualifier for Count Five. The court merged Count Six into Count Five before sentencing defendant to an aggregate twelve-year state prison term subject to an eight-and-a-half-year parole disqualifier. This appeal followed.

Defendant raises the following issues.

> POINT I:
> BECAUSE THE POLICE DID NOT HAVE PROBABLE CAUSE TO ARREST DEFENDANT FOR DISORDERLY CONDUCT, THE SEARCH INCIDENT TO ARREST WAS UNLAWFUL AND THE EVIDENCE MUST BE SUPPRESSED.
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> POINT II:
> THE TRIAL COURT ERRED IN DENYING DEFENDANT'S MOTION FOR JUDGMENT OF ACQUITTAL ON THE THIRD-DEGREE TERRORISTIC THREATS CHARGE BECAUSE THE STATE DID NOT PROVE THE ELEMENTS OF

THAT OFFENSE BEYOND A REASONABLE DOUBT.

POINT III:
THE SENTENCING COURT ERRED IN IMPOSING A CONSECUTIVE SENTENCE FOR THE SECOND-DEGREE CERTAIN PERSONS OFFENSE.

POINT IV:
THE SENTENCING COURT IMPOSED AN ILLEGALLY EXCESSIVE SENTENCE FOR DEFENDANT'S FOURTH-DEGREE POSSESSION OF HOLLOW [] NOSE BULLETS CONVICTION.

Defendant first argues that, because the police did not have probable cause to arrest him for disorderly conduct, the search incident to arrest was unlawful, and the court erred by admitting the evidence of the guns and hollow point ammunition. We agree that, under the totality of the circumstances, the police did not have probable cause to arrest defendant for disorderly conduct under N.J.S.A. 2C:33-2(a)(1).

The Fourth Amendment of the United States Constitution and Article I, Paragraph 7, of the New Jersey Constitution both guarantee "[t]he right of the people to be secure . . . against unreasonable searches and seizures[.]" U.S. Const. amend. IV; N.J. Const. art. I, ¶ 7. Warrantless stops and searches are presumptively invalid. State v. Dangerfield, 171 N.J. 446, 455 (2002). As a result, the State bears the burden of establishing by a preponderance of the

evidence that any such stop or search is justified by one of the "well-delineated exceptions to the warrant requirement." State v. Edmonds, 211 N.J. 117, 128, 129-30 (2012). This case involves a search incident to a lawful arrest, Chimel v. California, 395 U.S. 752 (1969), which requires probable cause to arrest, Dangerfield, 171 N.J. at 456. Thus, our focus is on whether the police had probable cause to arrest defendant.

"For probable cause to arrest, there must be probable cause to believe that a crime has been committed and 'that the person sought to be arrested committed the offense.'" State v. Chippero, 201 N.J. 14, 28 (2009) (quoting Schneider v. Simonini, 163 N.J. 336, 363 (2000)). Probable cause is a "a well-grounded suspicion that a crime has been or is being committed." State v. Pineiro, 181 N.J. 13, 21 (2004) (internal citations omitted). "It requires nothing more than 'a practical, common-sense decision whether, given all the circumstances . . . there is a fair probability'" that a crime has been committed. Dangerfield, 171 N.J. at 456 (internal citations omitted).

A totality of the circumstances standard applies to probable cause determinations because probable cause is a "fluid concept – turning on the assessment of probabilities in particular factual contexts – not readily, or even usefully, reduced to a neat set of legal rules." Schneider, 163 N.J. at 361

(quoting Illinois v. Gates, 462 U.S. 213, 232 (1983)). The reasonableness of the arresting officers' actions must be considered from "the specific reasonable inferences which [they are] entitled to draw from the facts in light of [their] experience." Dangerfield, 171 N.J. at 456 (quoting Terry v. Ohio, 392 U.S. 1, 27 (1968)).

Our review of the factual findings of a trial court on a motion to suppress is highly deferential. State v. Watts, 223 N.J. 503, 516 (2015). In reviewing a motion to suppress, we "must uphold the factual findings underlying the trial court's decision so long as those findings are 'supported by sufficient credible evidence in the record.'" State v. Elders, 192 N.J. 224, 243 (2007) (quoting State v. Locurto, 157 N.J. 463, 474 (1999)). This is particularly true in situations "which are substantially influenced by [a motion judge's] opportunity to hear and see the witnesses and to have the 'feel' of the case, which a reviewing court cannot enjoy." State v. Johnson, 42 N.J. 146, 161 (1964). Our review of a motion judge's legal conclusions, however, is plenary. Manalapan Realty, L.P. v. Twp. Comm. of Manalapan, 140 N.J. 366, 378 (1995). Thus, we defer to the trial court's finding that Molinaro's testimony was compelling and credible and that most of Stichter's testimony was credible.

Based on the totality of the circumstances here, we think the facts do not establish that probable cause existed to arrest defendant for disorderly conduct under N.J.S.A. 2C:33-2(a)(1).

N.J.S.A. 2C:33-2(a)(1) provides:

> a. Improper behavior. A person is guilty of a petty disorderly persons offense, if with purpose to cause public inconvenience, annoyance or alarm, or recklessly creating a risk thereof he
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> > (1) Engages in fighting or threatening, or in violent or tumultuous behavior; or
> >
> > (2) Creates a hazardous or physically dangerous condition by any act which serves no legitimate purpose of the actor.
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> > . . . .
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> "Public" means affecting or likely to affect persons in a place to which the public or a substantial group has access; among the places included are highways, transport facilities, schools, prisons, apartment houses, places of business or amusement, or any neighborhood.

We clarified the application of N.J.S.A. 2C:33-2(a)(1) in State v. Stampone, 341 N.J. Super. 247 (App. Div. 2001). That case involved a brief altercation between a man waiting in a car on a residential street and a police officer investigating what he was doing in the area. Id. at 249-50. While checking the man's identification, the man reached for an unknown object. Id.

at 250. Alarmed, the officer grabbed his arm and wrenched it back so he was sitting straight forward, and the man slammed the door almost on the officer's legs. Ibid. After checking the man's identification and establishing that he had a valid purpose for parking on the street, the officer charged him with disorderly conduct, N.J.S.A. 2C:33-2(a)(1). Id. at 253.

We overturned the disorderly conduct conviction because those facts did not rise to the level of disorderly conduct the statute intends to prevent. Id. at 254-56. We explained the requirements of the offense charged:

> Offensive language aside, in order to successfully convict an accused of disorderly conduct the State must prove beyond a reasonable doubt that the defendant caused public inconvenience, public annoyance or public alarm, or a reckless risk thereof, by fighting, threatening, violent or tumultuous conduct, or by creating a hazardous or physically dangerous condition by an act serving no legitimate purpose of the actor.
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> [Id. at 254.]

We found that none of these elements were present in defendant's conduct. Id. at 254-56. Defendant was not violent, threatening, or creating a hazardous condition. Id. at 254. Since there was no indication that any member of the public witnessed the exchange, defendant presented no capacity to cause public alarm or inconvenience. Id. at 255. Because the only conduct at issue was whether slamming a car door and almost hitting an officer's leg in the process

constituted disorderly conduct, we held this was not sufficient to rise to a conviction for disorderly conduct under N.J.S.A. 2C:33-2(a)(1). Id. at 254-56.

Similarly here, we think the police lacked probable cause to arrest defendant for disorderly conduct under the totality of the circumstances. We see no evidence of violence or other physical conduct that would justify an arrest for a petty disorderly conduct offense. Defendant raised his hands and shouted obscenities about how the officers were not permitted to frisk him, getting more and more agitated. Defendant was standing directly in front of the entrance to Borough Hall, flailing his arms, and shouting. Flailing arms might be sufficient for the purposes of the statute if done in a manner that might strike the officers or passersby. But based on our review of the record, that did not happen.

Defendant's behavior was not violent, threatening, or creating a hazardous condition. The officers' testimony does not indicate that they felt threatened, or that any passersby came even remotely close. Police arrested defendant about fifteen feet from Borough Hall, and people were watching from down the block and across the street. Any potential physical contact was not imminent under the circumstances.

Moreover, the State did not elicit testimony from any passersby to demonstrate that a member of the public was alarmed, inconvenienced, or

annoyed. Defendant was not blocking the sidewalk or otherwise preventing people from entering or exiting Borough Hall. Although defendant's behavior was loud and erratic, the evidence, at most, indicates members of the public were curious about what was going on. "Not every conversational exchange between an overzealous police officer and a contentious citizen should become an occasion for prosecution." Stampone, 341 N.J. Super. at 256. The use of the evidence found as a result of the subsequent search is another matter altogether.

Once in custody, defendant's unruly and pre-arrest behavior took on a much more sinister character. When he threatened the officers and their families, defendant committed a new offense of terroristic threats. This constituted an intervening act that broke the chain of events between the initial unlawful arrest and the subsequent search of defendant's person and backpack.

The exclusionary rule provides that "evidence seized during an unlawful search could not constitute proof against the victim of the search." Wong Sun v. United States, 371 U.S. 471, 484 (1963). "Though ordinarily we apply the exclusionary rule to the fruits of an unlawful stop, we will not exclude evidence sufficiently attenuated from the taint of the stop." State v. Alessi, 240 N.J. 501, 524-25 (2020) (citing State v. Worlock, 117 N.J. 596, 621 (1990) (relying on Wong Sun, 371 U.S. at 486)). "To determine whether [evidence] is accordingly

attenuated, we examine three factors: '(1) the temporal proximity between the illegal conduct and the challenged evidence; (2) the presence of intervening circumstances; and (3) the flagrancy and purpose of the police misconduct.'" Ibid. (internal citations omitted). A defendant's unlawful act, independent of the unlawful arrest, may cause a break in the chain of events, justifying admission of the evidence seized. State v. Lee, 381 N.J. Super. 429, 435-36, (App. Div. 2005), rev'd on another basis, 190 N.J. 270 (2007).

Thus, when defendant committed the new offense of terroristic threats, officers gained the authority to search his person, which they did, and discovered bullets. Officers also searched defendant's backpack and found handguns. The search of the backpack is admissible under the inevitable discovery exception. See State v. Sugar, 108 N.J. 151, 156-60 (1987).

Defendant next argues that the jury's guilty verdict on defendant's third-degree terroristic threat charge goes against the weight of the evidence, and that the court erred in declining to grant a judgment of acquittal at the conclusion of the State's case. We disagree and affirm.

Defendant was charged with third-degree terroristic threats, threat to commit a crime of violence, N.J.S.A. 2C:12-3(a). This statute provides, in relevant part:

> A person is guilty of a crime of the third degree if he threatens to commit any crime of violence with the purpose to terrorize another or to cause evacuation of a building, place of assembly, or facility of public transportation, or otherwise to cause serious public inconvenience, or in reckless disregard of the risk of causing such terror or inconvenience.
>
> [N.J.S.A. 2C:12-3(a).]

The State must prove beyond a reasonable doubt that the defendant "(1) threatened to commit a crime of violence; and (2) he intended to terrorize the victim, or acted in reckless disregard of the risk of doing so." State v. Tindell, 417 N.J. Super. 530, 553 (App. Div. 2011). This is measured under an objective standard. State v. Dispoto, 189 N.J. 108, 122 (2007). A court should not consider the target's actual fear, but rather whether a reasonable person in that person's situation would have believed the threat by the speaker. Cesare v. Cesare, 154 N.J. 394, 402-03 (1998).

At the close of the State's case and before submission to the jury, the defendant may move to dismiss the charges against him for failure to establish all elements of the alleged crimes. R. 3:18-1. A trial judge must then determine whether "a reasonable jury could find guilt of the charge beyond a reasonable doubt." State v. Scherzer, 301 N.J. Super. 363, 400 (App. Div. 1997) (quoting State v. Reyes, 50 N.J. 454, 459 (1967)).

We review a trial court's denial of a motion of acquittal de novo. State v. Dekowski, 218 N.J. 596, 608 (2014). "In doing so, we conduct an independent review of the evidence, applying the same standard as the trial court." State v. Zembreski, 445 N.J. Super. 412, 430 (App. Div. 2014). This standard calls for giving the State all reasonable favorable inferences and determining whether a reasonable jury could find guilt beyond a reasonable doubt. Reyes, 50 N.J. at 458-59.

Here, the trial judge, giving all favorable inferences to the State as required by Reyes, held that the proofs offered by the State "plainly permit reasonable inferences to be drawn by a jury that the defendant committed the crime of terroristic threats under [N.J.S.A. 2C:12-3(a)]." We discern no error.

Ample evidence in the record supports the trial judge's denial of defendant's motion for acquittal. Once in custody, defendant's unruly and disruptive pre-arrest behavior became threatening. Defendant made "machine gun noise sounds" as the officers attempted to put him through the booking process. He told officers "the purge is coming and [they] better bunker down and protect [their] families." Defendant stated "[w]e're coming back with my boys and we have bigger guns than you do." Molinaro testified that defendant was continuously telling him that he knew where some SHPD officers lived and

that he was "coming back for them." Another SHPD officer present testified that defendant told him "that he could have walked in [through the] front door and killed every motherfucker in here."

Although noises and threatening to personally harm the officers may not rise to third-degree terroristic threats because a reasonable police officer would understand that a handcuffed detainee would not have the means to carry out such a threat, defendant's other statements met the "purpose to terrorize another" under N.J.S.A. 2C:12-3(a). Defendant explicitly stated that he knew various SHPD officer's addresses and would have "[his] boys," possibly people not currently in custody, come to harm the officers and their families. These statements are beyond the bounds of what police officers ordinarily expect to hear from a detainee. Defendant's choice of words had the purpose of frightening the officers by means that would not be hindered by his detention. Thus, we conclude the trial court did not abuse its discretion in denying defendant's motion for acquittal.

Defendant next argues that the court lacked a "sound legal basis" to impose consecutive sentences for defendant's certain person offenses. We disagree and conclude that the court imposed the sentence consistent with the factors set forth in State v. Yarbough, 100 N.J. 627 (1985).

When determining whether to impose concurrent or consecutive sentences, a sentencing judge must consider the Yarbough factors, which include whether:

> (a) the crimes and their objectives were predominantly independent of each other;
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> (b) the crimes involved separate acts of violence or threats of violence;
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> (c) the crimes were committed at different times or separate places, rather than being committed so closely in time and place as to indicate a single period of aberrant behavior;
>
> (d) any of the crimes involved multiple victims;
>
> (e) the convictions for which the sentences are to be imposed are numerous.
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> [Id. at 644.]

A sentencing judge should state in their sentencing decision their reasoning for imposing a consecutive or concurrent sentence. Id. at 643. In doing so, the judge should weigh the factor qualitatively, not quantitatively. State v. Carey, 168 N.J. 413, 427 (2001). In other words, a sentencing judge should not merely list the factors present, but rather engage with their fact-sensitive nature and explain their reasoning for arriving at their decision. State v. Kruse, 105 N.J. 354, 363 (1987).

Our review of a trial court's sentencing is "relatively narrow and is governed by an abuse of discretion standard." State v. Blackmon, 202 N.J. 283, 297 (2010). We should not merely "substitute [our] judgment for that of the sentencing court." State v. Fuentes, 217 N.J. 57, 70 (2014). We should, however (1) "require that an exercise of discretion be based upon findings of fact that are grounded in competent, reasonably credible evidence"; (2) "require that the factfinder apply correct legal principles in exercising its discretion"; and (3) modify a sentence only "when the application of the facts to the law is such a clear error of judgment that it shocks the judicial conscience." State v. Roth, 95 N.J. 334, 363-64 (1984).

Here, the sentencing judge adequately analyzed his reasoning for imposing consecutive sentences for the certain persons offense and the unlawful possession offenses using the Yarbough factors. First, the sentencing judge explained that the possessory offenses are interrelated, since defendant was found with the two weapons and ammunition at the same time, in the same backpack. The terroristic threats charge, however, should be considered independent. The sentencing judge then found that the second and third factors were not relevant to defendant since there were no specific acts of violence, nor were there separate crimes committed in different places.

Next, the sentencing judge engaged with the facts specific to the case to determine whether consecutive sentences were warranted. The nature of the offense was such that defendant would be guilty of the certain persons offense solely by possessing a firearm. The judge found that defendant's conduct far exceeded this. He possessed two firearms, one of which was loaded with illegal ammunition. He was under the influence of illegal drugs walking through a public area of Seaside Heights, with the intention of boarding public transportation to go to a block party in South Toms River. Under these circumstances,

> [t]o not impose some consecutive time would be to fail to recognize the extraordinarily grave danger . . . posed to society by the conduct. . . . [I]t doesn't need a wild imagination to think of what would've happened when [their] guns are taken to the Center Home section of South [Toms] River . . . for Halloween celebrations with children around.
>
> So, [the court found] that the risk posed to . . . society [was] extraordinary by the conduct . . . .

We think this reasoning is sufficient to impose consecutive sentences on defendant. While the sentencing judge found that only the first Yarbough factor was present, the analysis correctly did not end there. Since the test is qualitative, and not quantitative, the judge looked to the factors surrounding the crime. Finding that the public area defendant was arrested in and was intending to go

to, as well as his highly intoxicated state, the trial judge held that consecutive sentences was proper. Nothing in the record indicates this sentence was clear error that shocks the judicial conscience.

Defendant and the State agree that the court erred in imposing a five-year sentence for Count Four, fourth-degree possession of hollow nose bullets, N.J.S.A. 2C:39-3(f), because the sentence exceeds what is statutorily permissible. The trial judge orally imposed a four-year sentence on Count Four, while in the judgment of conviction, the judge imposed a five-year sentence. In both, the sentence was to run concurrently with Counts One, Two, and Three. Both sentences exceed the eighteen-month maximum sentence for a fourth-degree offense allowed by N.J.S.A. 2C:43-6(a)(4) (providing that sentences for fourth-degree offenses "shall not exceed [eighteen] months").

"[A]n illegal sentence is one that 'exceeds the maximum penalty . . . for a particular offense' or a sentence 'not imposed in accordance with the law.'" State v. Acevedo, 205 N.J. 40, 45 (2011) (quoting State v. Murray, 162 N.J. 240, 247, (2000)).

Affirmed. Remanded for resentencing. We do not retain jurisdiction.