2021 IL App (5th) 190259-U

NO. 5-19-0259

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Shelby County.
	)	
v.	)	No. 19-CF-7
	)	
DUSTIN L. NUNAMAKER,	)	Honorable
	)	Allan F. Lolie,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE VAUGHAN delivered the judgment of the court.
Presiding Justice Boie and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2018)) and escape (720 ILCS 5/31-6(c) (West 2018)) are affirmed where the evidence was sufficient to prove defendant was in custody for purposes of the escape statute and the convictions were based on separate physical acts. However, we vacate the court's restitution order and remand so that the trial court can remedy its error in failing to determine the deadline by which defendant is to pay his restitution in full.

¶ 2 A jury convicted defendant of resisting a peace officer (720 ILCS 5/31-1(a-7) (West 2018)) and escape (*id.* § 31-6(c)). On appeal, defendant asserts that (1) the State failed to prove that he was in custody, as required by the escape statute; (2) his resisting a peace officer conviction should be vacated under the one-act, one-crime doctrine; and (3) the

court abused its discretion in failing to specify the manner, method, and deadline for his restitution payment. For the following reasons, we affirm in part and vacate in part.

¶ 3 I. BACKGROUND

¶ 4 Defendant, Dustin Nunamaker, was charged with one count of escape (*id.* § 31-6(c)) for intentionally escaping the lawful custody of Chief Dave Tallman and Officer Joseph Houk of the Shelbyville Police Department, and one count of resisting a peace officer (*id.* § 31-1(a-7)) for knowing Officer Joseph Houk to be a peace officer and knowingly resisting Officer Houk's authorized act by disobeying his command to stop running and squirming away from him when he attempted to take hold of defendant. We discuss only the facts relevant to this appeal.

¶ 5 At trial, the State presented the testimony of Chief Tallman, Officer Houk, and two additional sheriff's deputies. The defendant presented no evidence. The evidence is largely undisputed.

¶ 6 On January 17, 2019, Jamie McDonald requested officers stand by at her residence while defendant removed his property. Chief Tallman and Officer Houk were dispatched to the residence. The officers were not familiar with defendant but were aware defendant had a warrant out for his arrest on a theft charge prior to arriving at McDonald's home. Upon arriving, the officers observed three people outside of the house, one of whom fit the description of defendant. When the officers asked defendant if he had identification, defendant said, "No, I'm Jason Ingram," and provided a date of birth. Officer Houk asked dispatch to run a search on Jason Ingram and was told there was no record for that person.

¶ 7 After being asked about his identity multiple times, defendant complained that the officers were going to make him late for work at Graphic Packaging. The officers then advised defendant that they would take him to Graphic Packaging and check with the human resource department to see if he was Jason Ingram. Defendant said "Okay." Once they arrived at Graphic Packaging, a man in the human resource department informed the officers that there was no Jason Ingram employed at Graphic Packaging, but a person named Dustin Nunamaker was employed there until he was fired eight days prior.

¶ 8 Officer Houk testified, at that time, the officers "transported [defendant] to the squad car and transported him to the Shelby County Detention Center." The State asked, "Now when you say you put him back into the Shelbyville Police Department's squad car; is that correct?" Officer Houk answered, "Correct."

¶ 9 Chief Tallman testified, at that time, the officers were still trying to verify whether defendant was in fact Dustin Nunamaker. He stated, "we had also looked at a photograph of [Dustin Nunamaker] that Officer Houk had brought up on Facebook. And so we got back into my squad car and were on our way to the, you know, the jail and I had decided then, and I believe Officer Houk had, too, that we were plenty satisfied that [the person with them] was Dustin Nunamaker."

¶ 10 The officers drove on along Main Street to reach the detention center. On the way, defendant asked where the officers were taking him. Officer Houk informed defendant that he was under arrest for an outstanding warrant and was being transported to the Shelby County Detention Center.

¶ 11 At all times, Chief Tallman was driving, Officer Houk was in rear passenger seat, and defendant was in the front passenger seat. The officers explained that having defendant in the front was safer and easier to keep control because the squad cars do not have cages.

¶ 12 When they arrived, Chief Tallman pulled as close to the walk-in door of the detention center with the passenger side as possible. The officers opened their car doors at the same time, but defendant remained seated with the door closed. Chief Tallman ordered defendant to "[g]o ahead and get out," as the passenger side door was unlocked. At this point, Officer Houk had exited the car. When Chief Tallman was in the middle of exiting the car, defendant exited the car and took off running past Officer Houk.

¶ 13 During the chase, Officer Houk ordered defendant to stop several times and defendant failed to comply. Officer Houk deployed a taser but the taser probe did not extend through defendant's thick clothing and had no effect on him. The men circled the town square and ran back toward the detention center. At that time, Officer Houk leaped toward defendant, but defendant twisted as Officer Houk attempted to grab the back of his jacket, resulting in Officer Houk falling to the ground. Officer Houk immediately felt pain in his left thumb and observed bleeding on both hands. About one to two minutes after Officer Houk fell, defendant was apprehended and taken to the detention center.

¶ 14 Both officers conceded that they did not follow procedure by failing to handcuff defendant although he was under arrest. They also stated that they never provided defendant his *Miranda* rights. The officers testified that procedure was not followed because they were not satisfied that defendant was Dustin Nunamaker until after they left Graphic Packaging and did not want to stop on Main Street mid-transport. The officers also

noted how defendant behaved during the entire encounter until they arrived at the detention center. Chief Tallman explained this was a unique situation, and he wanted to be sure he was arresting someone who deserved it.

¶ 15 The court denied defense counsel's motion for a directed verdict, and the jury found defendant guilty of both counts. Defendant was sentenced to five years' imprisonment for escape to be concurrently served with two years' imprisonment for resisting a peace officer.

¶ 16 The court also ordered defendant to pay $6664.08 in restitution for the expenses paid by the subrogation firm from Officer Houk's workers' compensation claim. The court stated, "Defendant is to report to the clerk within 30 days of his DOC release to begin addressing those payments." Defendant timely appealed.

¶ 17 II. ANALYSIS

¶ 18 On appeal, defendant asserts three arguments. He contends that the State failed to prove he was in lawful custody as required by the escape statute (720 ILCS 5/31-6(c) (West 2018)). He also argues that this court should vacate his resisting a peace officer conviction because it was based on the same act as his escape conviction. Lastly, defendant claims the trial court erred in ordering restitution without specifying the manner or method of payment and the date when full payment is due.

¶ 19 a. Sufficiency of the Evidence for Escape Conviction

¶ 20 Defendant asserts that because this appeal turns on the application of undisputed facts to the language of the statute, we are addressing a question of statutory interpretation that is reviewed *de novo*. *In re Ryan B.*, 212 Ill. 2d 226, 231 (2004); *People v. Smith*, 191 Ill. 2d 408, 411 (2000). The State contends *de novo* review is improper because defendant

challenges the sufficiency of the evidence. As such, the State claims the correct standard of review is whether, in viewing all the evidence in the light most favorable to the State, any rational trier of fact could have found all the essential elements of the offense beyond a reasonable doubt. *People v. McClanahan*, 2011 IL App (3d) 090824, ¶¶ 9-11; *People v. Garza*, 2019 IL App (4th) 170165, ¶¶ 16-17. We need not determine the appropriate standard of review here because we find defendant's claim fails under either standard. See *People v. Hileman*, 2020 IL App (5th) 170481, ¶ 27.

¶ 21 Turning to the substantive issue, defendant contends that because a person voluntarily accompanying officers does not amount to an arrest pursuant to *People v. Redmond*, 341 Ill. App. 3d 498, 507 (2003) (citing *People v. Neal*, 111 Ill. 2d 180, 193-94 (1985)), the facts here show that the officers—at most—merely informed defendant he was arrested. Citing to *People v. Kosyla*, 143 Ill. App. 3d 937, 940, 952 (1986), defendant argues such facts are insufficient to prove custody under the escape statute.

¶ 22 The State argues that the officers did more than inform defendant of the arrest by "transporting" defendant from Graphite Packing to the squad car and then to the detention center after discovering a person named Ingram did not work at Graphite Packing. The State further notes that the officers remained in close proximity to defendant from the time of the initial encounter until he ran at the detention center, and informed defendant he was arrested on the way to the detention center. Under these facts, the State contends this case more resembles *McClanahan*, 2011 IL App (3d) 090824, ¶¶ 9-11, *Garza*, 2019 IL App (4th) 170165, ¶¶ 16-17, and *Hileman*, 2020 IL App (5th) 170481, ¶ 27.

¶ 23 The offense of escape is committed when "[a] person in the lawful custody of a peace officer *** intentionally escapes from custody." 720 ILCS 5/31-6(c) (West 2018). Our supreme court has explained that " 'custody' is [a] very expansive" term that "encompasses varying degrees of state control." *People v. Beachem*, 229 Ill. 2d 237, 245 (2008). As such, review of relevant appellate court precedent is helpful.

¶ 24 In *Kosyla*, an officer informed defendant that he was arrested but did not make physical contact or otherwise restrain his freedom of movement before defendant ran toward a cornfield behind his house. *Kosyla*, 143 Ill. App. 3d at 940, 951. The Second District reversed defendant's escape conviction, finding that defendant "evade[d] the imposition of custody altogether, not *** escape[d] from it." *Id.* at 952.

¶ 25 Later, in *People v. Lauer*, 273 Ill. App. 3d 469, 474 (1995), the First District differentiated the circumstances of *Kosyla*, where defendant was merely informed of his arrest, from a situation where the officer physically restrained a defendant. *Lauer* found that although officers never handcuffed defendant nor informed him that he was under arrest (*id.* at 473), the officers' physical movement of defendant through the home before defendant broke free was sufficient to prove "custody" under the escape statute (*id.* at 474).

¶ 26 The Third District, in *People v. Johnson*, 396 Ill. App. 3d 1028, 1030-33 (2009), also validated the distinction found in *Lauer*. In *Johnson*, an officer knew there was an active warrant for defendant and instructed defendant to turn around and place his hands behind his back. *Id.* at 1029. At first, defendant complied, and the officer put a handcuff on defendant's right wrist. *Id.* However, before the officer could handcuff defendant's left wrist, defendant broke free and turned to run. *Id.* The officer grabbed the handcuff dangling

from defendant's right wrist, but defendant pulled away again and ran. *Id.* On appeal, the court affirmed defendant's escape conviction because the officers had restricted defendant's freedom of movement. *Id.* at 1032-33. The court also noted that defendant's acquiescence "to the officer's control by placing his hands behind his back so that they could be handcuffed clearly indicates defendant knew he was in custody at the time he fled." *Id.*

¶ 27 Similarly, in *McClanahan*, after an officer informed defendant he was under arrest, the officer grabbed defendant and a struggle ensued. *McClanahan*, 2011 IL App (3d) 090824, ¶ 5. Defendant eventually was forced onto the hood of a car but managed to break free when the officer reached for his handcuffs. *Id.* On appeal, defendant's conviction for escape was affirmed (*id.* ¶ 18), because the officers did not merely state defendant was under arrest, they "physically restrained him and forcefully moved defendant to the hood of the squad car" (*id.* ¶ 16).

¶ 28 The Fourth District also followed the *Lauer* distinction in *Garza*, where two officers lawfully entered the residence of defendant, who lived with his girlfriend and children, to execute defendant's outstanding warrant. *Garza*, 2019 IL App (4th) 170165, ¶ 5. When the officers entered the home, they allowed defendant to put on a shirt and say goodbye to his family. *Id.* While defendant walked through the home to complete the tasks, the officers stayed within two feet of him. *Id.* One officer informed defendant that once they were outside and away from the sight of his children, he would be handcuffed. *Id.* After defendant said goodbye, the officers "escorted" defendant outside. *Id.* ¶ 6. It was disputed whether the officers had hold of defendant's arms as they went outside. *Id.* ¶¶ 6, 8-11.

Before defendant was handcuffed, he asked to smoke a cigarette, and the officers allowed him to do so. *Id.* ¶ 6. After lighting his cigarette, one officer ordered defendant to turn around and place his hands behind his back. *Id.* Defendant turned and took off running. *Id.* The trial court found defendant guilty of escape. *Id.* ¶ 12. On appeal, the court affirmed defendant's escape conviction and found the officer did more than merely state defendant was under arrest. *Id.* ¶¶ 22-23. It explained that the officers escorted defendant through the house by following him very closely and physically escorted defendant through the front door by holding on to one of defendant's arms. *Id.* ¶ 22.

¶ 29 In *Hileman*, this court also found similar circumstances sufficient to prove custody under the escape statute. *Hileman*, 2020 IL App (5th) 170481, ¶ 37. In that case, after an officer informed defendant that he was under arrest, defendant did not comply with the officer's command to place his hands behind his back. *Id.* ¶ 6. To gain control of defendant and walk him towards the patrol car, an officer grabbed defendant's left arm and pulled it behind his back. *Id.* The officer then grabbed defendant's right arm to help gain control, but defendant broke free and took off running. *Id.* ¶ 7. This court found holding defendant by his arms while walking towards their squad car before defendant broke free of their grip was sufficient evidence to prove defendant was in lawful custody. *Id.* ¶ 37. It noted that complete control was not required for the purposes of the escape statute; rather an officer must exercise "a sufficient degree of control over the defendant." *Id.* ¶ 31.

¶ 30 In light of these cases, we reject defendant's argument that he was not in custody because he voluntarily accompanied the officers to Graphite Packaging. We note it is unclear whether defendant voluntarily went with the officers after they discovered he was

not Ingram, where Officer Houk testified that he "transported" defendant to the car when they left Graphite Packaging. Nevertheless, although an individual who voluntarily accompanies police officers has not been arrested (*Redmond*, 341 Ill. App. 3d at 507 (citing *Neal*, 111 Ill. 2d at 193-94); see also *People v. Soto*, 2017 IL App (1st) 140893, ¶ 49), the above cases make clear that a defendant need not be handcuffed nor must an arrest be complete for defendant to be considered in custody under the escape statute. Rather, Illinois courts define custody for the purpose of the escape statute " 'by looking at the control exercised by the police over the defendant' " (*Johnson*, 396 Ill. App. 3d at 1031 (quoting *People v. Brexton*, 343 Ill. App. 3d 322, 326 (2003)); *Hileman*, 2020 IL App (5th) 170481, ¶ 31) "and the restriction of defendant's freedom of movement" (internal quotation marks omitted) (*Garza*, 2019 IL App (4th) 170165, ¶ 18). Complete and unfettered control is not required. *Hileman*, 2020 IL App (5th) 170481, ¶ 31.

¶ 31 Here, unlike *Kosyla*, the officers did more than merely announce defendant was arrested. The fact that police did not handcuff defendant and the record is unclear whether the officer came into physical contact with defendant is not dispositive; rather, we look to whether the officers exercised sufficient control and restricted defendant's freedom of movement. *Supra* ¶ 30. We find the officers here sufficiently restricted defendant's movement when they physically transported defendant—in the squad car—to the detention center. After leaving Graphite Packaging, defendant had no knowledge of, nor influence over, where the officers were transporting him. He was subject to the officers' control of the car. Such control is equal to—and arguably more than—the brief grabbing of defendant's arm presented in *Garza* and *Johnson*. Like *Lauer* and *Hileman*, the officers

physically moved defendant to the detention center. Further, defendant's waiting in the car until Chief Tallman ordered him to exit the car—although the car was unlocked—indicates defendant's acknowledgement of the officers' control. See *Johnson*, 396 Ill. App. 3d at 1033 (acquiescence to the police's control "clearly indicates defendant knew he was in custody at the time he fled"). Accordingly, we find the evidence was sufficient to prove defendant was in custody under the escape statute.

¶ 32 b. One Act, One Crime

¶ 33 Defendant also argues his resisting a peace officer conviction should be vacated under the one-act, one-crime doctrine. He concedes this issue was forfeited but requests the court review his claim for plain error, claiming the error affected the integrity of the judicial process. See *People v. Nunez*, 236 Ill. 2d 488, 493 (2010). Because an alleged violation of the one-act, one-crime doctrine presents the risk of a surplus conviction and sentence, such violation satisfies the second prong of plain error. *People v. Schaefer*, 2020 IL App (5th) 180461, ¶ 24. Accordingly, we will consider defendant's contentions under the second prong of plain error. Whether a conviction must be vacated under the one-act, one-crime doctrine is a question of law subject to *de novo* review. *People v. Johnson*, 237 Ill. 2d 81, 97 (2010).

¶ 34 Under the one-act, one-crime doctrine, a defendant cannot be convicted for multiple offenses that are based on the same physical act. *Schaefer*, 2020 IL App (5th) 180461, ¶ 25. Such analysis requires the court to determine (1) whether a defendant committed a single or multiple acts, and (2) in cases involving multiple acts, whether any of the offenses are lesser-included offenses. *People v. Bush*, 2015 IL App (5th) 130224, ¶ 7.

¶ 35 Defendant contends that Officer Houk's injuries were caused when he "leaped forward" to catch defendant running away from the squad car and officers, which is the same act he took to intentionally escape from the lawful custody of the officers. Defendant therefore argues the same act—running from the squad car and officers—was the basis for both convictions and the resisting a peace officer conviction cannot stand under the one-act, one-crime doctrine. Defendant asserts that the State's contrary position must fail because it attempts to distinguish small, discrete areas of time to show two separate offenses, which is prohibited by *People v. Quigley*, 183 Ill. 2d 1, 10-11 (1998). We find defendant's argument overlooks the Illinois Supreme Court's departure from the "independent motive" test for determining whether multiple convictions are permissible and misconstrues the evidence at trial.

¶ 36 In *People v. King*, 66 Ill. 2d 551, 562 (1977), the Illinois Supreme Court rejected the independent motive test—which considers whether defendant's actions had the same criminal objective. Instead, it held that prejudice to defendants occurs only where multiple convictions are "carved from the same physical act." *Id.* at 566. The interrelationship of multiple acts does not preclude multiple convictions, as long as the offenses are not lesser-included offenses. *Id.*; *People v. Dixon*, 91 Ill. 2d 346, 355 (1982).

¶ 37 An "act" is "any overt or outward manifestation which will support a different offense." *King*, 66 Ill. 2d at 566. While a person cannot be convicted of multiple offenses carved from the same act, a person can be guilty of multiple offenses when a common act is only part of one offense and the sole act of the other offense. *People v. Smith*, 2019 IL 123901, ¶ 19. "Two separate acts *** do not become one common act solely by virtue of

being proximate in time." *People v. Coats*, 2018 IL 121926, ¶ 26. For multiple convictions to be sustained based on separate but closely related acts, the indictment must indicate that the State intended to treat the conduct of the defendant as multiple acts. *People v. Crespo*, 203 Ill. 2d 335, 345 (2001).

¶ 38 The indictment in this case stated that defendant violated the escape statute (720 ILCS 5/31-6(c) (West 2018)), by intentionally escaping from the lawful custody of Chief Tallman and Officer Houk, and the resisting a peace officer statute (*id.* § 31-1(a-7)), by disobeying "the command of Officer Houk to stop running and squirm[ing] away from Officer Houk when Officer Houk attempted to take hold of the Defendant." The State thus indicated its intent to treat defendant's escape and resistance as multiple acts.

¶ 39 This court's previous decision in *Schaefer*, 2020 IL App (5th) 180461, is instructive. In *Schaefer*, defendant argued that either his aggravated fleeing conviction or attempt to elude a peace officer conviction must be vacated because both convictions were based on one continuous act of fleeing from the officer. *Id.* ¶ 24. This court affirmed both convictions because the record showed defendant committed multiple acts that supported the offenses where he drove at high speeds and refused to obey multiple traffic control devices. *Id.* ¶ 27. We explained that while defendant's convictions shared the common act of refusing to stop at the direction of an officer, they were based upon separate acts—defendant's speeding and failure to stop for traffic control devices. *Id.* ¶ 31.

¶ 40 *Lauer* is also comparable to the instant case. In *Lauer*, a heated argument escalated into a physical struggle between two officers and defendant. *Lauer*, 273 Ill. App. 3d at 471. Defendant eventually broke free and entered a house. *Id.* The officers caught up with

defendant and tried to handcuff him, but defendant broke free. *Id.* The officers again apprehended defendant and pulled him through the house. Defendant, however, broke free and ran out the door. *Id.* The First District found that defendant's resisting and escape charges were not based on the same physical act, regardless of whether the resisting charge was based on the struggle inside or outside of the house. *Id.* at 475. It explained that the escape occurred when defendant successfully broke away and fled from the house, not while defendant was being restrained. *Id.*

¶ 41 Here, the indictment and the testimony at trial indicated that defendant committed escape by breaking free from the custody of the officers and resisting a peace officer by failing to comply with Officer Houk's command to stop and turning and squirming away when Officer Houk attempted to grab defendant's jacket. The evidence underlying the resisting a peace officer conviction came from defendant's avoidance of Officer Houk's attempt to re-apprehend defendant after defendant successfully committed the escape. Although the escape was interlaced with and had the same motive as defendant's resistance, the additional acts of failing to comply and squirming away to avoid Officer Houk's reach are therefore sufficient to find a separate act. See *People v. Almond*, 2015 IL 113817, ¶ 47 (multiple convictions are permitted in cases " 'where a defendant has committed several acts, despite the interrelationship of those acts' " (quoting *King*, 66 Ill. 2d at 566)).

¶ 42 We find defendant's reliance on *Quigley*, 183 Ill. 2d 1, unwarranted. In *Quigley*, defendant was charged with both misdemeanor DUI and felony aggravated DUI after he drove under the influence and caused a multiple-vehicle collision, which resulted in injury

to others. *Id.* at 3-4. The Illinois Supreme Court found both charges were based on the same act, noting that "[c]ausing an accident while intoxicated is similar to driving recklessly while intoxicated. Both are based on the act of driving while intoxicated." *Id.* at 10. It further explained that driving under the influence may lead to some other act that causes an accident but both offenses were committed on the basis that defendant drove under the influence, as aggravated DUI does not require any other specific act or violation of the Illinois Vehicle Code. *Id.* The case at bar presents different circumstances.

¶ 43 Unlike *Quigley*, the act underlying defendant's escape—breaking free from custody after exiting the car—was not the act underlying the resisting a peace officer that caused Officer Houk's injury. Officer Houk was not injured when defendant ran upon exiting the squad car. Instead, defendant's additional acts of turning and squirming after Officer Houk attempted to apprehend defendant and failing to comply with Officer Houk's commands caused the injury. While additional acts may have led to the injuries in *Quigley*, only the act of driving under the influence could provide the basis for both convictions. *Id.* This case is distinguishable in that defendant could not have been convicted of resisting a peace officer under subsection (a-7) without proving the additional acts of turning and squirming away to avoid Officer Houk's attempt to apprehend him and failing to comply. Accordingly, two separate acts were alleged and proven to support the two offenses.

¶ 44 While the next step in our inquiry is whether resisting a peace officer or escape is a lesser-included offense of the other (*Smith*, 2019 IL 123901, ¶ 37), defendant provides no argument in this regard. Consequently, he forfeits the issue on appeal. Ill. S. Ct. R.

341(h)(7) (May 25, 2018); *People v. Johnson*, 2021 IL App (5th) 190515, ¶ 29 (if a party fails to raise an argument on appeal, it is forfeited).

¶ 45 Even if we were to ignore defendant's forfeiture, we would find that neither offense is a lesser-included offense of the other. For this step, we apply the abstract elements approach, which requires comparing the elements of the two offenses. *Smith*, 2019 IL 123901, ¶ 37. "If all the elements of one offense are included within the second offense and the first offense contains no element not included in the second offense, the first offense is deemed a lesser-included offense of the second." *Id.*

¶ 46 Defendant was convicted under subsection (c) of the escape statute, which states: "A person in the lawful custody of a peace officer for the alleged commission of a felony offense *** who intentionally escapes from custody commits a Class 2 felony[.]" 720 ILCS 5/31-6(c) (West 2018). He was also convicted under subsection (a-7) of the resisting a peace officer statute, which requires proof that defendant knowingly resisted the performance by a person he knew to be a peace officer of any authorized act within his or her official capacity, and such resistance proximately caused an injury to the peace officer. *Id.* § 31-1(a), (a-7).

¶ 47 A comparison of the statutes reveals that the offenses contain separate elements. *McClanahan*, 2011 IL App (3d) 090824, ¶ 17. Resisting an officer under subsection (a-7) requires the violation to proximately cause injury to the officer. Injury to an officer is not an element of escape. Also, the offense of escape requires a person to be in lawful custody, whereas resisting a peace officer offense does not. Therefore, under the abstract elements

approach, neither offense is a lesser-included offense of the other, and defendant's convictions do not violate the one-act, one-crime doctrine.

¶ 48 c. Restitution Order

¶ 49 Lastly, defendant contends that we should vacate the restitution order entered by the trial court because it failed to set out the method, manner, and time period for full payment as required by the statute. Conversely, the State asserts that *People v. Brooks*, 158 Ill. 2d 260 (1994), is dispositive and requires this court to affirm the trial court's order. A trial court's restitution order is reviewed for an abuse of discretion. *People v. Stites*, 344 Ill. App. 3d 1123, 1125 (2003).

¶ 50 Subsection (f) of the restitution statute sets forth the court's responsibilities in ordering restitution. 730 ILCS 5/5-5-6(f) (West 2018). In pertinent part, it requires the court to "determine whether restitution shall be paid in a single payment or in installments, and *** fix a period of time not in excess of 5 years *** within which payment of restitution is to be paid in full." *Id.* However, where necessary, the court may extend the payment period beyond five years. *Id.*

¶ 51 In *Brooks*, the Illinois Supreme Court addressed whether the five-year time limit begins after a defendant serves his or her sentence. *Brooks*, 158 Ill. 2d at 263. The court answered affirmatively and held the trial court did not abuse its discretion by ordering the defendant, who was serving a 10-year prison sentence, to pay restitution within 2 years of his release from prison. *Id.* at 272 Additionally, the court found it understandable that the trial court did not specify a payment schedule, given that the defendant still had to serve

his prison sentence and "the regularity and amount of his future income, if any, was unknown." *Id.*

¶ 52 As such, *Brooks* is dispositive with respect to the trial court's failure to determine the manner and method in which defendant was to pay restitution. *People v. Tynes*, 259 Ill. App. 3d 307, 308 (1994). Because defendant was sentenced to five years' imprisonment, the restitution order's lack of specificity regarding the manner and method of payment was not an abuse of discretion. See *Brooks*, 158 Ill. 2d at 272.

¶ 53 Yet, unlike the trial court in *Brooks*, the trial court here did not specify the time period in which defendant was to pay the restitution in full. If the court does not specify a particular time, the restitution order is fatally incomplete. *In re Estate of Yucis*, 382 Ill. App. 3d 1062, 1067 (2008); *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 82. This is so because without such specification, the restitution order could never become delinquent or enforceable by the victim. 730 ILCS 5/5-5-6(m)(3) (West 2018); *In re Estate of Yucis*, 382 Ill. App. 3d at 1068. The trial court therefore abused its discretion in failing to specify the time period in which defendant must pay the restitution.

¶ 54 The State concedes if this court finds *Brooks* to be distinguishable and that the trial court erred, we should vacate and remand the restitution order. Accordingly, we vacate the restitution order and remand to the trial court for further proceedings to determine the deadline for payment.

¶ 55 III. CONCLUSION

¶ 56 Because the State proved defendant was in custody for purposes of the escape statute and defendant's convictions did not violate the one-act, one-crime doctrine, defendant's

convictions for escape and resisting a peace officer are affirmed. Because the trial court failed to specify the deadline by which defendant must pay his restitution in full, we vacate the trial court's restitution order and remand for further restitution proceedings.

¶ 57 Affirmed in part and vacated in part; cause remanded.