**Illinois Official Reports**

**Appellate Court**

# *People v. Hutt*, 2022 IL App (4th) 190142

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| Appellate Court Caption | THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. OLIVER J. HUTT, Defendant-Appellant. |
| District & No. | Fourth District<br>Nos. 4-19-0142, 4-19-0271 cons. |
| Filed | January 18, 2022 |
| Decision Under Review | Appeal from the Circuit Court of Adams County, Nos. 17-CF-405, 17-DT-51; the Hon. Robert K. Adrian, Judge, presiding. |
| Judgment | Affirmed in part and vacated in part.<br>Cause remanded. |
| Counsel on Appeal | James E. Chadd, Catherine K. Hart, and James Henry Waller, of State Appellate Defender's Office, of Springfield, for appellant.<br><br>Gary L. Farha, State's Attorney, of Quincy (Patrick Delfino, David J. Robinson, and Kathy Shepard, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People. |

Panel JUSTICE STEIGMANN delivered the judgment of the court, with opinion.
Presiding Justice Knecht concurred in the judgment and opinion.
Justice Cavanagh specially concurred in part and dissented in part, with opinion.

## OPINION

¶ 1 The State charged defendant, Oliver J. Hutt, with driving while under the influence of alcohol (DUI) (625 ILCS 5/11-501(a)(2) (West 2016)) in case No. 17-DT-51 and with obstructing justice (720 ILCS 5/31-4(a)(1) (West 2016)) in case No. 17-CF-405. Following a joint bench trial, the trial court found defendant guilty of both offenses. The court sentenced him to concurrent terms of probation and required defendant to pay restitution.

¶ 2 Defendant appeals in both cases, and we have consolidated the two appeals.

¶ 3 Defendant argues that (1) the trial court improperly denied defendant a jury trial because he did not waive that right, (2) trial counsel was ineffective for misrepresenting that defendant waived a jury trial, (3) the evidence was not sufficient to find defendant guilty of obstruction of justice beyond a reasonable doubt, and (4) the trial court's order for restitution was erroneous. We agree only with defendant's fourth contention. Accordingly, we vacate the restitution order and remand for further proceedings; we affirm the trial court's judgment in all other respects.

¶ 4 ### I. BACKGROUND

¶ 5 #### A. Pretrial Proceedings and the Jury Waiver

¶ 6 In July 2017, the trial court conducted a preliminary hearing in case No. 17-CF-405. After finding probable cause, the court arraigned defendant and informed him, "You have the right to a speedy public trial, either a jury trial or a bench trial if you wish to waive or give up your jury trial right."

¶ 7 On October 10, 2017, defendant signed a jury waiver in two cases: the obstructing justice case (case No. 17-CF-405) and case No. 16-CF-752, in which he was charged with resisting a peace officer. Those were the only two case numbers written in the caption of the jury waiver. (The DUI case, case No. 17-DT-51, was not mentioned.) The preprinted language of the jury waiver read, "[T]he defendant *** waives his right to a trial by jury, *in the above entitled cause* [*sic*], and consents to a trial by Court, without Jury." (Emphasis added.)

¶ 8 On October 25, 2017, the trial court conducted a status hearing for five criminal cases pending against defendant, including the DUI case. The court began the hearing by announcing, "Taking up 16-CF-752, 17-CF-405, 17-DT-51, 17-TR-2415, and [17-TR-]2416, People versus Oliver Hutt. [Defendant] appears in person and with counsel, Mr. Chris Pratt." (The traffic cases charged defendant with leaving the scene of an accident (625 ILCS 5/11-402 (West 2016)) and improper lane usage (*id.* § 11-709).) Defense counsel remarked, "[Defendant] had previously waived his right to a jury trial." Addressing defendant personally, the court informed him, "[Y]ou've waived your right to a jury trial, so unless there's some other request from you, we are going to set *these* matters for a bench trial because that would

be the next appropriate step." (Emphasis added.) Defense counsel interjected that plea negotiations were underway and that, as he had explained to defendant, "his options [were] either set it for a bench trial or accept that negotiation and set this matter for a plea." The court asked defendant what he wanted to do.

¶ 9 Instead of answering that question, defendant discussed why he had waived a jury trial. He did not dispute that he had, in fact, waived a jury trial. He explained why he had done so (and to put his explanation in context, we note that an unidentified woman had been seen exiting the passenger side of the car and running from the scene of the accident along with defendant):

> "I *was* asking for my jury trial because I was facing—they're telling me I'm facing extended term, and I shouldn't be facing extended term. My last conviction was 2/25 of 2002, and they keep coming with dates of 2013 and 2008 to put me in a ten-year period. And they tried to force my wife to testify against me against her will, and that's the reason why *I waived my jury trial*." (Emphases added.)

See 730 ILCS 5/5-5-3.2(b)(1) (West 2016) (providing that a defendant convicted of a new felony within 10 years after previously being convicted of a felony, "excluding time spent in custody," is eligible for an extended-term sentence).

¶ 10 The trial court responded that, in any event, defendant had waived a jury trial and that the waiver would stand unless defendant filed a motion to withdraw the waiver:

> "Well, you waived your right to a jury trial. That's a waiver of jury trial, and unless you would file something to withdraw that, you've waived your right to a jury trial. ***
>
> * * *
>
> *** Well, this is what we're going to do: We're going to set *these cases* for a bench trial since he's waived his right to a jury trial. And at this time he's not accepting any plea offer. It's up to the State whether or not the State wants to withdraw that offer or not. I'm not going to force them to do any of that.
>
> But we're going to set *these cases* for a bench trial." (Emphases added.)

¶ 11 In March 2018, the trial court noted that defendant was present with defense counsel and that the resisting case, case No. 16-CF-752 (in which, in the interim, the court had found defendant guilty in a bench trial), was set for sentencing that day. Additionally, the court noted that the other cases pending against defendant, including the DUI case (case No. 17-DT-51), were up for a status hearing.

¶ 12 The State suggested getting the status hearing out of the way first:

> "[THE PROSECUTOR]: Judge, before we get into that, can we just select a date in [case Nos.] 17-CF-405, 17-DT-51, and the TR numbers? Those are—were tracking for status, but the next step is, if [defendant] still wants it, a bench trial. So if we can just select that date, and then jump right into the sentencing?"

¶ 13 Defense counsel then responded as follows:

> "Your Honor, I met with [defendant] earlier this week specifically on that issue and also to review the [presentence investigation report] in this case. As to 17-CF-405 [(the obstructing justice case)], [defendant] informed me that he does wish to proceed to trial on that matter.
>
> In addition, [defendant] is quite insistent at least in his discussions with me that he is still entitled to a trial by jury *in that case*. I informed him that, on the date that he had

> waived in this case, he had waived on both of those cases going so far as to show him the scanned copy of that waiver contained with the circuit clerk's file. He does not agree with that." (Emphasis added.)

In other words, according to defense counsel, the jury waiver, which defendant signed on October 10, 2017, applied, by its terms, to both the resisting case (case No. 16-CF-752) and the obstructing justice case (case No. 17-CF-405). Those were the two case numbers written in the caption of the jury waiver. When defendant insisted to defense counsel that he still had the right to a jury trial *in the obstructing justice case*, defense counsel demonstrated to the contrary by showing defendant the jury waiver that he had signed on October 10, 2017.

¶ 14 The trial court decided that it needed to review a transcript of the pretrial hearing that was conducted on October 10, 2017:

> "[W]e will get a transcript then of what took place at the hearing on the waiver, because the Court would need to know what was said when he waived before the Court could make any determination if he waived on both cases of what he was told. So why don't we set this for status on—or the other cases for status then on April the 25th at 8:45 a.m. And then the Court will order a transcript."

¶ 15 The sentencing hearing in the resisting case, case No. 16-CF-752, was continued because the prosecutor and defense counsel needed time to investigate defendant's eligibility for extended-term sentencing.

¶ 16 In April 2018, the trial court conducted a status hearing at which defendant appeared with counsel. The court began by announcing, "Next calling People versus Oliver Hutt in 16-CF-752, 17-CM-405, 17-DT-51, which includes tickets 17-TR-2415 and 2416." Defense counsel informed the court that he and the prosecutor agreed that defendant was eligible for extended-term sentencing (but defendant was unconvinced). With that question cleared up, the court set a sentencing hearing for the resisting case, case No. 16-CF-752.

¶ 17 Defense counsel then told the trial court, "[O]n the other case that is still pending, [defendant] indicates that he will want to take that to trial. He had waived earlier his right to a jury trial, so he needs to set that for a bench trial." (Actually, *two* other cases were pending, although they were factually related: the DUI case (No. 17-DT-51) and the obstructing justice case (No. 17-CF-405). Again, these are the two cases on appeal.) After conferring with the parties off the record, the court inquired as follows:

> "THE COURT: What time would you like to start Tuesday, June 26, all-day trial in 17-CF-405?
>
> [THE PROSECUTOR]: 9:00?
>
> [DEFENSE COUNSEL]: That's fine.
>
> THE COURT: All right."

Thus, the DUI case was mentioned only at the beginning of this status hearing, and it was not explicitly set for a bench trial (although the obstructing justice case was).

¶ 18 On June 26, 2018, however, the trial court announced that the DUI case was one of the cases scheduled to be tried that day in a consolidated bench trial:

> "THE COURT: We are taking up [case Nos.] 17-CF-405, *17-DT-51*, 17-TR-2415 and [17-TR-]2416, People versus Oliver Hutt. [Defendant] appears in person and with counsel ***. People appear by Assistant State's Attorney ***.
>
> We are set today for a bench trial *on all of these cases.*

And, [Assistant State's Attorney], are you prepared for a bench trial today?

[THE PROSECUTOR]: Yes, Your Honor.

THE COURT: [Defense counsel], are you prepared for a bench trial today?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: All right. And any—for the record, [case No.] 17-CF-405 is an Information which alleges the offense of obstructing justice. [Case No.] 17-DT-51 is a driving under the influence of alcohol. [Case No.] 17-TR-2415 is leaving the scene of an accident and [case No.] 17-TR-2416 is improper traffic lane usage." (Emphases added.)

¶ 19 B. Evidence at Trial

¶ 20 The parties waived opening statements, and the State presented its evidence in the consolidated bench trial. In a nutshell, the evidence tended to show the following. (We omit much of the evidence pertaining to the DUI because the sufficiency of the evidence in that case is uncontested.)

¶ 21 On May 20, 2017, shortly after arresting defendant for DUI, Quincy police officer Zach Bemis obtained a search warrant for defendant's blood and urine. (Defendant had refused a breath test.) In the laboratory of Blessing Hospital, Bemis presented defendant with a copy of the search warrant, which commanded Bemis to "search *** the body of [defendant]" and to "seize *** [b]lood and urine for the presence of alcohol and/or drugs."

¶ 22 On direct examination, the State and Bemis engaged in the following question and answer:

"Officer MeGee transported [defendant] over to Blessing Hospital and I met them there with the signed search warrant. I informed [defendant] that the search warrant was signed for his blood and urine, you know, so he needed to provide us with those samples. He said that he needed time to think about it. And I told him we didn't have time to think about it, we needed to do it now. And he was asking the staff what his bond was and he really wasn't answering anything so we took that as a refusal since he would not submit to the tests that he was being ordered to submit to.

Q. So at the hospital, he refused to offer or submit to any blood or urine samples to be taken; is that right?

A. Yes.

Q. And this was done after he was presented with the search warrant that had been signed by the judge?

A. Yes.

Q. And do you recall if he was told that if he refused, if that would result in any further charges?

A. I don't recall if I told him that, that he would have additional charges. Usually on search warrants, I usually don't. That way they're more inclined not to refuse, if they just know that a judge has signed an order for them to provide the sample. But I don't remember if I told him that he would be arrested for some additional charges or not."

¶ 23 On cross-examination, defense counsel and Bemis engaged in the following question and answer:

"Q. So then you said [defendant] was transported to Blessing Hospital. You said that you showed him the search warrant and asked him if he would submit, correct?

A. Correct.

Q. And he said he didn't know if he wanted to give it to you?

A. Correct.

Q. And you asked if he was refusing?

A. Correct.

Q. And he said he had—he needed time to think about it?

A. Correct.

Q. And then you asked again to provide it and he just seemed confused. He was asking the medical staff what his bond was?

A. Correct.

Q. And so you said, and your words on direct were [']I took that as a refusal?[']

A. Correct."

Bemis agreed that the warrant ordered the police to seize evidence and did not order defendant to do anything.

¶ 24 On redirect examination, the State asked the following questions, and Bemis provided the following answers:

"Q. Why was [defendant] taken to the hospital?

A. To allow the medical staff there to be able to perform either the blood draw or the urinalysis.

Q. And [defendant] never, at any time, said yes, hook me up? You may take blood from me?

A. No, he never did.

Q. He never allowed anybody to touch him and take blood from him, did he?

A. No.

Q. And he never submitted to a urine sample?

A. No."

¶ 25 The trial court followed up by asking questions of its own, as follows:

"THE COURT: Once you've received that search warrant and you're at the hospital, is [*sic*] there procedures that the Quincy Police Department have as to how to execute that search warrant?

THE WITNESS: Yes.

THE COURT: And could you explain what those procedures are?

THE WITNESS: We explain to the arrestee that a search warrant has been signed for their blood and for their urine and they need to provide that. We do that with the medical staff there. If they agree to that, then the medical staff will do the blood draw and provide the cup for the urinalysis. And if they refuse to do that, we don't force them. We don't hold them down or anything like that. We just basically leave the scene and go back to headquarters so."

The court asked whether the police could have held defendant down and forcibly taken some of his blood. Bemis acknowledged that they could have but explained that the police typically do not do so because of the risk of injury to the suspect, officers, and medical staff.

¶ 26 Robert MeGee, another Quincy police officer who was also present at the hospital, testified that he asked defendant to provide samples of his blood and urine. Defendant said no. MeGee testified that, while waiting, defendant "seemed a little angry," called Bemis and MeGee "racist," and was "cussing and just [expressing] general disdain for the situation." On direct examination, MeGee further testified as follows:

> "Officer Bemis just told him that he had a signed search warrant. Showed it to him. I believe he provided him with a copy of it. Read over it with him and asked him if he was going to give a blood sample and urine sample.
>
> Q. And at that point, what did [defendant] say, if anything?
>
> A. He said no.
>
> Q. Did he say anything else to anyone else?
>
> A. There was a lot of back and forth between [defendant] and the phlebotomist that was there. He, at one point, asked her what his bond was and then Officer Bemis and I had to inform him that Blessing Hospital staff had nothing to do with the case other than they were there to draw blood.
>
> Q. And did [defendant] ever specifically answer or say no, I am going to refuse to give you blood or give you urine?
>
> A. He didn't use those exact words[,] but he was asked if he would provide a blood sample and that the phlebotomist draw his blood or provide a urine sample and he stated no.
>
> Q. And, in fact, he never did allow anybody to take a blood sample, did he?
>
> A. No.
>
> Q. He never did provide a urine sample, did he?
>
> A. No.
>
> Q. At some point after no samples were obtained, what took place with [defendant]?
>
> A. He was asked on at least three separate occasions if he would provide blood and urine, refused all three times, and then he was transported back to *** headquarters ***."

¶ 27 On cross-examination, MeGee testified as follows:

> "Q. And you didn't personally ask [defendant] to submit to or provide a blood or urine sample; correct?
>
> A. I did.
>
> Q. You did?
>
> A. Yes.
>
> Q. Even though you didn't have the warrant?
>
> A. Yes. Officer Bemis had asked once. Then [defendant] had talked to the phlebotomist about bond. We informed him that she had nothing to do with bond. She asked if he would provide a sample. And then I asked if he would provide a sample.
>
> Q. And when the phlebotomist asked, he asked her what his bond was; correct?

A. Correct.

Q. He didn't specifically refuse?

A. He just asked what bond was."

¶ 28 C. The Trial Court's Decision

¶ 29 At the conclusion of the bench trial—with some uncertainty about whether the proved conduct fit the charged crime—the trial court found that defendant's recalcitrance at the hospital qualified as obstructing justice by concealment of physical evidence (720 ILCS 5/31-4(a)(1) (West 2016)). The court reasoned as follows:

> "Then we come to the obstructing justice charge and, quite frankly, the Court has several—had several questions concerning the appropriateness of that charge when a defendant doesn't submit when being ordered to have his blood or urine taken. However, the Court can now rely on *** appellate direction because there is *** precedent in this case which actually is right on point on this. *** [T]he Appellate Court says it is a proper charge in this case and *** affirmed the finding of the defendant's guilt in a situation just like this where there is a search warrant and the defendant failed to submit to the testing and the Court says that, in fact, that is and can be the basis for an obstructing justice charge because, in fact, the body is concealing the evidence as to the driving under the influence because every minute that goes by, the body is dissipating that alcohol and that is concealing the evidence. And when the defendant does not submit to that, does not submit to the search warrant, then he is concealing that evidence and so that is a proper charge.
>
> And in this case, as with the case that was in the Appellate Court, even though the officers could, if they wanted to, hold him down and forcibly take that blood, the Appellate Court basically came down on the side of, well, they shouldn't even if they can because it poses a risk of injury to everyone involved, not only the officer but the defendant and anyone else, court, or not court, but the hospital personnel who would be aiding in the taking of that blood. So the—the Appellate Court has said it is a proper charge.
>
> In this case, the defendant, while he never refused, the issue is he never submitted, and it's not the refusal that is the key here as to a refusal with the statutory summary suspension, it's the fact that he doesn't submit because every minute that goes by that he doesn't submit, then he is concealing that evidence. And so the fact that he didn't submit when asked to is the key, and he never submitted to that even though he was asked three different times, according to Officer MeGee, to submit, he never did. He never submitted. He continued to conceal that evidence. And so the Court would find the defendant guilty of obstructing justice."

¶ 30 D. Defendant's Sentence

¶ 31 After the trial court found defendant guilty, it sentenced him to 24 months of probation for obstructing justice. For DUI, the court sentenced him to 12 months of probation.

¶ 32 That left the question of the damage to the pickup truck defendant collided with. At the conclusion of the sentencing hearing, the following discussion regarding restitution ensued:

"THE COURT: [Counsel], for the record, on 17-DT-51, there was a request for restitution; is that correct?

[THE PROSECUTOR]: Yes, Your Honor, and there is a proposed restitution order.

[DEFENSE COUNSEL]: I have seen that order, Your Honor. Certainly, obviously[,] [defendant], again, continues to profess his innocence. I believe there was sufficient testimony at the bench trial to support that restitution order.

THE COURT: All right. The Court is going to order that restitution."

¶ 33 However, the record of the sentencing hearing is devoid of any evidence on the dollar amount of damage to the pickup truck. The restitution order refers to a State Farm Insurance Company (State Farm) claim number, and the bottom right corner of the restitution order is marked "Discovery #2."

¶ 34 By the terms of the restitution order, defendant was ordered to pay $9925.80 to State Farm at a specified address. But first he must pay $250 to Tyler Bridgeman at a specified address to reimburse him for his insurance deductible. The restitution order, however, imposes no deadlines for payment to either State Farm or Bridgeman. Nor does the restitution order specify whether payment to State Farm or Bridgeman is to be made in installments or in a lump sum. Even so, in the proceedings below, no objection was made to the form of the restitution order.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 Defendant argues that (1) the trial court improperly denied defendant a jury trial because defendant did not waive that right, (2) trial counsel was ineffective for misrepresenting that defendant waived a jury trial, (3) the evidence was not sufficient to find defendant guilty of obstruction of justice beyond a reasonable doubt, and (4) the trial court's order for restitution was erroneous. We agree only with defendant's fourth contention. Accordingly, we vacate the restitution order and remand for further proceedings; we affirm the trial court's judgment in all other respects.

¶ 38 A. The Waiver of the Jury Trial in the DUI Case

¶ 39 1. *Invited Error*

¶ 40 On October 10, 2017, defendant signed a jury waiver that applied to only two cases: the obstructing justice case and the resisting case. Nevertheless, after defendant signed this jury waiver—which, by its terms, was limited to only those two cases—the trial court found that he additionally had waived a jury trial in the DUI case. By this mistake, defendant contends, the court breached its "duty to see that the election of an accused to forego a trial by jury [was] both expressly and understandingly made." *People v. Surgeon*, 15 Ill. 2d 236, 238, 154 N.E.2d 253, 255 (1958).

¶ 41 The State's initial response is that defendant has procedurally forfeited this contention. However, in the event that this forfeiture claim proves to be unavailing, the State argues that defendant acquiesced to a bench trial. We need not address the State's forfeiture argument because we agree with the State that defendant acquiesced to a bench trial.

¶ 42 Silently acquiescing to an error results in a forfeiture, but actively ratifying the error results in estoppel. See *People v. Holloway*, 2019 IL App (2d) 170551, ¶ 44, 160 N.E.3d 995. If, in

the trial court, defendant invited an error, he now is estopped from complaining of the error. See *id.*

¶ 43 On October 25, 2017, defendant told the trial court, "I waived a jury trial"—and, in context, he must have meant all five criminal cases pending against him because all of those cases were being discussed. Immediately before defendant admitted to the court, "I waived a jury trial," the court told him, "[Y]ou've waived your right to a jury trial, so unless there's some other request from you, we are going to set these matters"—including the DUI case—"for a bench trial because that would be the next appropriate step." In context, then, we deem defendant's acknowledgement "I waived a jury trial" as including the DUI case. In short, the effectiveness of the jury waiver in the DUI case is, at this point, beyond dispute. See *id.*

¶ 44 2. *The Claim of Ineffective Assistance of Counsel in Misrepresenting a Jury Waiver*

¶ 45 Defendant claims that his defense counsel "was ineffective for misrepresenting the existence of a jury waiver to the court." That claim is inconsistent, however, with the acquiescence we just discussed. The claim of ineffective assistance is just another way of asserting that defendant did not waive a jury trial in the DUI case. But that assertion is barred. See *People v. Speight*, 153 Ill. 2d 365, 379, 606 N.E.2d 1174, 1180 (1992); *Holloway*, 2019 IL App (2d) 170551, ¶ 44. If, as we have held, defendant has forfeited the assertion because he is estopped by acquiescence from making it, then, by logical corollary, there was no misrepresentation by defense counsel to the trial court—or none that we will entertain.

¶ 46 B. Obstructing Justice: Sufficiency of the Evidence

¶ 47 1. *The Standard of Review*

¶ 48 Defendant argues that "[t]he evidence was insufficient to find [him] guilty of obstruction of justice when he took no action to conceal or destroy evidence." He regards the facts as undisputed. Accordingly, in his view, his guilt of obstructing justice is a question of law, and our standard of review is *de novo*. See *In re Ryan B.*, 212 Ill. 2d 226, 231, 817 N.E.2d 495, 498-99 (2004); *People v. Smith*, 191 Ill. 2d 408, 411, 732 N.E.2d 513, 514 (2000).

¶ 49 The State does not dispute that our standard of review is *de novo*. Nonetheless, the State asserts that, even applying the *de novo* standard, the undisputed facts meet the definition of obstruction. See *Ryan B.*, 212 Ill. 2d at 231. Specifically, the State argues the following: "Defendant's failure to submit to the valid warrant and [to] the officers' lawful requests that he do so constituted obstruction of justice." In support of that argument, the State relies heavily on *People v. Baskerville*, 2012 IL 111056, 963 N.E.2d 898, and *People v. Synnott*, 349 Ill. App. 3d 223, 811 N.E.2d 236 (2004).

¶ 50 However, we disagree with both defendant and the State that (1) the facts are undisputed and (2) *de novo* review is appropriate in this case to determine if his conviction was proper. We acknowledge that "when the facts are not in dispute their legal effect may be a question of law." *People v. Rizzo*, 362 Ill. App. 3d 444, 449, 842 N.E.2d 727, 732 (2005) (citing *In re Marriage of Kneitz*, 341 Ill. App. 3d 299, 303, 793 N.E.2d 988, 992 (2003)). But in this case, the facts are in dispute.

¶ 51 First, contrary to his assertion, defendant does dispute the facts or, at the very least, the inferences to be drawn from those facts. Defendant claims that although he was asked three

times to submit to a blood draw, at most, he responded "no" only once, and defendant even questions whether the evidence was sufficient to show (1) whether defendant said no and (2) that defendant was responding to a police officer's demand to submit to a blood draw. Defendant also suggests that "[t]he extent of any 'refusal' by [defendant] in this case is far less clear [than *People v. Kegley*, 2017 IL App (4th) 160461-U]." However, the trial court found otherwise.

¶ 52 "If divergent inferences could be drawn from undisputed facts, a question of fact remains." *People v. Lattimore*, 2011 IL App (1st) 093238, ¶ 35, 955 N.E.2d 1244; see also *People v. Loggins*, 2019 IL App (1st) 160482, ¶ 32, 130 N.E.3d 432 (noting that *de novo* review is not appropriate where "the parties disagree about the inferences that can be drawn from the trial evidence").

¶ 53 Second, as we recently wrote in *People v. Jackson*, 2020 IL App (4th) 170036, ¶ 30, 165 N.E.3d 523, "It is hard to envision how *de novo* review could ever apply when, as here, the trial court has received testimony from live witnesses." We further noted that, "[e]ven when the parties have stipulated to the facts, [i]f the evidence presented is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution." (Internal quotation marks omitted.) *Id.*

¶ 54 Here, the trial court heard live testimony, evaluated the credibility of the witnesses, and drew inferences from the evidence to reach its conclusion. Accordingly, we conclude that the standard of review that normally applies in a criminal case—namely, "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt" (*People v. Jackson*, 2020 IL 124112, ¶ 64, 162 N.E.3d 223)—applies here. The Illinois Supreme Court has repeatedly stated that "[t]his standard of review applies in *all* criminal cases." (Emphasis added.) *Id.* We take the supreme court at its word and reserve *de novo* review to the narrow classes of cases identified by the court. See, *e.g.*, *Ryan B.*, 212 Ill. 2d at 229 (reviewing sufficiency of the evidence *de novo* after stipulated bench trial).

¶ 55 2. *The Law*

¶ 56 Subsection (a)(1) of section 31-4 provides as follows:

> "(a) A person obstructs justice when, with intent to prevent the apprehension or obstruct the prosecution or defense of any person, he or she knowingly commits any of the following acts:
>
> (1) Destroys, alters, conceals or disguises physical evidence, plants false evidence, [or] furnishes false information[.]" 720 ILCS 5/31-4(a)(1) (West 2016).

¶ 57 In case No. 17-CF-405, the information accused defendant of obstructing justice within the meaning of section 31-4(a)(1) in that "he, with the intent to obstruct the prosecution of [himself], intentionally *concealed* evidence from [a] Quincy [p]olice [o]fficer, in that he refused to submit to blood and urine testing after being ordered to comply with such through a search warrant." (Emphasis added.) In other words, "with intent to *** obstruct the prosecution *** of any person"—namely, himself—defendant "knowingly *** conceal[ed] *** physical evidence." *Id.* Concealing physical evidence is one of the statutorily specified means of obstructing justice. *Id.*

¶ 58 In *People v. Comage*, 241 Ill. 2d 139, 946 N.E.2d 313 (2011), the Illinois Supreme Court examined the obstructing justice statute and wrote the following:

> "The obstructing justice statute does not define the word 'conceal.' When a statutory term is undefined, it is appropriate to employ a dictionary definition to ascertain its meaning. See *Landis v. Marc Realty, L.L.C.*, 235 Ill. 2d 1, 11[, 919 N.E.2d 300] (2009). The obstructing justice statute was adopted in 1961. See 1961 Ill. Laws 1983, 2039 § 31-4 (eff. Jan. 1, 1962). Webster's dictionary from that time contains two definitions of the word 'conceal.' The first definition states: '1 : to prevent disclosure or recognition of : avoid revelation of : refrain from revealing : withhold knowledge of : draw attention from : treat so as to be unnoticed ***.' Webster's Third New International Dictionary 469 (1961). The second definition states: '2 : to place out of sight : withdraw from being observed : shield from vision or notice ***.' *Id.*" *Id.* at 144 (plurality opinion).

The supreme court concluded that "a defendant who places evidence out of sight during an arrest or pursuit has 'concealed' the evidence for purposes of the obstructing justice statute if, in doing so, the defendant actually interferes with the administration of justice, *i.e.*, materially impedes the police officers' investigation." *Id.* at 150.

¶ 59 3. *This Case*

¶ 60 In this case, defendant refused a lawful order contained in a search warrant that required him to allow the police to take his blood or urine for testing. As an initial matter, we note that defendant does not claim that the warrant itself was illegal or improper.

¶ 61 We conclude that defendant's conduct in this case constituted the offense of obstructing justice. First, the evidence at issue meets the requirement of "physical evidence" contained in the obstructing justice statute. In *People v. Watson*, 214 Ill. 2d 271, 288, 825 N.E.2d 257, 266 (2005), the supreme court concluded, "A lawful grand jury subpoena for constitutionally protected *physical evidence, such as blood*, may be issued if supported by probable cause." (Emphasis added.) The court examined the requirements for a subpoena and a search warrant for a blood draw under the fourth amendment and referred to a person's blood as physical evidence throughout its opinion. *Id.* at 283-88. Accordingly, we conclude that defendant's blood was "physical evidence" under the obstructing justice statute.

¶ 62 Second, defendant's actions meet the definition of "conceal" contemplated by the obstructing justice statute. In the context of this case, "conceal" does not mean " 'to place out of sight.' " See *Comage*, 241 Ill. 2d at 144. Obviously, defendant's blood was not visible. Instead, defendant's conduct meets the other definition for "conceal" described by *Comage*: " 'to prevent disclosure or recognition of : avoid revelation of : refrain from revealing.' " *Id.* This definition is entirely consistent with the supreme court's holding in *Baskerville* that a defendant can obstruct the legal process by failing to act as well as taking obstructive actions. Accordingly, we conclude that the circumstances present in this case—refusal to submit to a blood draw with knowledge of a valid search warrant for the same—can constitute obstructing justice by concealing physical evidence.

¶ 63 Third, defendant's actions were knowing. The State presented evidence that the police informed defendant of the warrant for his blood and then asked three separate times for defendant to submit to a blood draw. Defendant first responded by saying he had to think about it. This statement shows that defendant was aware of his obligation to submit to the blood

draw. The trial court could have inferred that defendant's subsequent attempts to change the subject or ignore the question constituted a knowing refusal to submit to the warrant under the circumstances.

¶ 64 The State also presented evidence that defendant explicitly refused the officers' request on one of the occasions he was asked to submit. Although the testimony on this point is not as clear as it could have been, the trial court was entitled to resolve the discrepancies in favor of the State and to conclude that, whatever the specific form of communication, defendant clearly refused to submit to the blood draw when asked. For the same reasons, the trial court was entitled to infer that defendant engaged in these actions with the intent to prevent his own prosecution.

¶ 65 After viewing the evidence in the light most favorable to the State, we conclude that (1) all of the elements of obstructing justice are present and (2) the State presented sufficient evidence to convict defendant beyond a reasonable doubt.

¶ 66 We note that the issue in this case is somewhat novel. A conviction would have been unquestionable had the police (1) informed defendant that his refusal to submit to the warrant could lead to a felony charge of obstructing justice and (2) directly asked defendant if he was refusing to submit and tried to get an explicit response from him. Nonetheless, we commend the police in this case for obtaining a search warrant, a practice that we encourage, particularly in this context.

¶ 67 The public interest is not well served if police officers or hospital staff are required to attempt to forcibly restrain or subdue a DUI suspect to obtain a blood sample. Accordingly, it is all the more important for police to explain clearly to DUI suspects that (1) a search warrant for their blood *requires* their compliance and (2) their noncompliance constitutes a separate felony offense. Given the privacy interests at stake and the invasive nature of the search, the coercive force of a potential felony conviction is almost certainly preferable to the coercive force of physical restraint.

¶ 68 C. The Restitution Order Was Deficient

¶ 69 Last, defendant argues that the restitution order is improper and requests a new hearing on the matter. We agree.

¶ 70 First, the restitution statute requires that, "[t]aking into consideration the ability of the defendant to pay," the trial court "shall determine whether restitution shall be paid in a single payment or in installments, and shall fix a period of time *** within which payment of restitution is to be paid in full." 730 ILCS 5/5-5-6(f) (West 2018). The restitution order in this case specified no time period within which defendant was to pay the restitution. Nor did the restitution order say whether the restitution was to be paid in a lump sum or in installments. See *id.*

¶ 71 Second, " '[a]lleged losses which are unsupported by the evidence must not be used as a basis for awarding restitution.' " *People v. Adame*, 2018 IL App (2d) 150769, ¶ 14, 94 N.E.3d 248. Contrary to the remark by defense counsel at the conclusion of the sentencing hearing, no evidence had been put in the record regarding the amounts that State Farm and Bridgeman had paid for the damage to the pickup truck.

¶ 72 Recently, in *People v. Birge*, 2021 IL 125644, ¶ 49, the Illinois Supreme Court concluded a trial court commits clear error when it orders restitution in an amount that "ha[s] no actual

basis in the trial or sentencing evidence and was simply declared by the prosecutor and accepted by the sentencing court." The supreme court held that such an error affects the integrity of the judicial process. *Id.* ¶¶ 50-53. The court vacated the restitution order and remanded for a new hearing "and a determination as to the appropriate amount of restitution owed." *Id.* ¶ 53. Similarly, this court has held that, when a trial court enters a restitution order that fails to state (1) the manner of payment and (2) when that payment is due, the appropriate remedy is to remand the case to the trial court for compliance with section 5-5-6(f) of the Unified Code of Corrections (730 ILCS 5/5-5-6(f) (West 2016)). *People v. Hibbler*, 2019 IL App (4th) 160897, ¶¶ 81-83, 129 N.E.3d 755.

¶ 73 Unlike *Hibbler*, the presentence investigation report in this case did not include an amount of restitution and, in fact, indicated that no restitution was due. *Cf. id.* ¶¶ 90-92. Further, defense counsel never agreed with the State that the amount of restitution was correct. Instead, counsel's statements regarding the evidence presented at trial being sufficient to support the restitution award was clearly incorrect under *Birge*. No evidence was ever presented to the trial court—at trial, sentencing, or via court filing—regarding a dollar amount for restitution. Nor does the record contain any indication concerning how and when defendant must pay restitution.

¶ 74 Accordingly, we vacate the trial court's deficient restitution order and remand the case for further proceedings on restitution in the event the State wishes to pursue that matter on remand.

¶ 75 III. CONCLUSION

¶ 76 For the reasons stated, we affirm the trial court's judgment in part, vacate the restitution order, and remand for further proceedings consistent with this opinion.

¶ 77 Affirmed in part and vacated in part.

¶ 78 Cause remanded.

¶ 79 JUSTICE CAVANAGH, specially concurring in part and dissenting in part:

¶ 80 While otherwise agreeing with the majority's decision, I respectfully disagree that the evidence, viewed in the light most favorable to the prosecution, meets the cited description of obstructing justice, namely, "conceal[ing] *** physical evidence." See 720 ILCS 5/31-4(a)(1) (West 2016). To be sure, defendant's blood was "physical evidence." *Id.* However, he did not "conceal[ ]" his blood. *Id.* As the majority admits, he did not " 'place' " his blood " 'out of sight.' " *Comage*, 241 Ill. 2d at 144 (quoting Webster's Third New International Dictionary 469 (1961)). In other words, it was not that his blood initially was visible and that he then hid it. Nor can it be reasonably inferred that he cared about the *visibility* of his blood or its exposure to sight. "Concealment" in the sense of obscuring something from view is inapposite in the circumstances of this case.

¶ 81 Even so, the majority holds that, by refusing to allow his blood to be drawn, defendant acted out the other definition of "conceal" quoted in *Comage*: " 'to prevent disclosure or recognition of : avoid revelation of : refrain from revealing.' " *Id.* (quoting Webster's Third New International Dictionary 469 (1961)). That definition of "conceal," however, pertains to information, facts, knowledge, intentions, and feelings—not to physical objects. The placing-out-of-sight definition of "conceal" is the one that pertains to physical objects.

¶ 82 To pursue this distinction further, compare the following two definitions of "conceal" from the Oxford English Dictionary Online:

> "1.
>
> a. *transitive*. To keep (information, intentions, feelings, etc.) from the knowledge of others; to keep secret *from* (formerly also *to*) others; to refrain from disclosing or divulging.
>
> * * *
>
> 1828 W. Scott *Fair Maid of Perth* iii, in *Chron. Canongate* 2nd Ser. III. 50 Concealing from him all knowledge who or what he was.
>
> 1883 'G. Lloyd' *Ebb & Flow* II. xxix. 175 The latter could not conceal her pleasure at the bequest.
>
> 1921 F. Hutchins & C. Hutchins *Sword Liberty* ii. 27 While the marquis concealed his intentions, he openly avowed his sentiments.
>
> 2010 *N.Y. Times* 12 Apr. 5/1 He.does not conceal his feelings about the state of contemporary opera.
>
> * * *
>
> 2.
>
> a. *transitive*. To hide (a person or thing); to put or keep out of sight or notice. Also: to prevent from being visible.
>
> * * *
>
> 1877 *Nineteenth Cent.* Oct. 409 He.could have concealed himself in any one of a hundred hiding-places.
>
> 1921 C. Kingston *Remarkable Rogues* xix. 268 He.had the canvas concealed in the false bottom of a trunk and taken to America.
>
> 1994 *Amer. Spectator* Nov. 40/2 The behavior is typical of an attempt to conceal a weapon.
>
> 2012 *Daily Tel.* 20 July 30/2 I'm very conscious of my stomach, so I tend to conceal my waist." (Emphases in original.) Oxford English Dictionary Online, https://www.oed.com/view/Entry/38066 (last visited Nov. 19, 2021).

Because defendant's blood was not "information, intentions, feelings, etc.," the first of those definitions from the Oxford English Dictionary is inapplicable. The second definition likewise is inapplicable because defendant would have had no reason to care, particularly, whether anyone *saw* his blood.

¶ 83 Essentially the same two definitions can be found in Merriam-Webster Online Dictionary:

> "1 : to prevent disclosure or recognition of
>
> // *conceal* the truth
>
> // She could barely *conceal* her anger.
>
> 2 : to place out of sight
>
> // *concealed* himself behind the door
>
> // The defendant is accused of attempting to *conceal* evidence." (Emphases in original.) Merriam-Webster Online Dictionary, https://www.merriam-

webster.com/dictionary/conceal (last visited Jan. 6, 2022) [https://perma.cc/SYF4-U5ME].

I believe that the final example from Merriam-Webster, quoted above, fairly clinches the point: "The defendant is accused of attempting to *conceal* evidence," meaning that the defendant is accused of attempting to "place" the evidence "out of sight." (Emphasis in original.) *Id.* Likewise, defendant in the present case was accused of concealing evidence, specifically, his blood. That meant he was accused of placing his blood out of sight. He did not do so. Nor can it be reasonably inferred that he had an intention to do so. Whether anyone saw his blood was not his apparent concern. Rather, he did not want his blood to be taken to the laboratory and chemically analyzed.

¶ 84 It may be that defendant's passive recalcitrance qualified as obstructing a peace officer (720 ILCS 5/31-1(a) (West 2016)), as in *Baskerville* and *Synnott*. But he was not charged with obstructing a peace officer, and thus, *Baskerville* and *Synnott* are not on point. The charged offense of obstruction of justice through the concealment of physical evidence was, as a matter of law, unproven.

¶ 85 Therefore, in addition to the majority's disposition, I would reverse the conviction of obstructing justice.