FIRST DIVISION
February 18, 2014

No. 1-11-3137

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MALIK OUSLEY, Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Cook County. No. 08 CR 10987 Honorable Thomas Joseph Hennelly, Judge Presiding.

JUSTICE DELORT delivered the judgment of the court.
Presiding Justice Connors and Justice Cunningham concurred in the judgment.

ORDER

¶ 1 ***Held:*** The evidence was sufficient to support defendant's murder conviction, and the 27-year sentence imposed was not excessive. The mittimus should be corrected, however, to reflect 1,211 days of presentence custody credit, as indicated in the record and as agreed to by the parties.

¶ 2 Following a bench trial, defendant Malik Ousley was found guilty of first degree murder (720 ILCS 5/9-1(a)(1) (West 2008)), and sentenced to 27 years' imprisonment. On appeal, defendant contends that: (i) the evidence was insufficient to prove him guilty beyond a reasonable doubt of intentional murder; (ii) his sentence was excessive; and (iii) he is entitled to additional presentence custody credit. We affirm defendant's conviction and sentence, but order the mittimus corrected to reflect the proper presentence custody credit.

¶ 3 BACKGROUND

¶ 4 Defendant Malik Ousley was charged by indictment with two counts of first degree murder, alleging that he either intentionally or knowingly inflicted blunt trauma on his five-month-old son and killed him (720 ILCS 9/1-1(a)(1) (West 2008)) (count 1), or inflicted the blunt trauma knowing a strong probability of death or great bodily harm would result (720 ILCS 9/1-1(a)(1) (West 2008)) (count 2). The following evidence was presented at trial.

¶ 5 Raven Wilson, the mother of the victim, Malik Ousley, Jr. (Malik), testified that defendant was the father of Malik, and that Malik was born on November 28, 2007. Wilson added that she and defendant lived with her six children and had been in a relationship for approximately six years. Wilson testified that the kitchen floor is covered with marble, and that defendant's and her bedroom is carpeted with a box spring and mattress lying directly on the floor.

¶ 6 At about 10:30 a.m. on May 14, 2008, Wilson had an argument with defendant because their gas was about to be turned off, and when defendant asked Wilson what happened to the money he had given her to pay the gas bill, Wilson said that she spent it while she was in Miami the prior month. Wilson said she left the house to go to her mother's, and left Malik at home with defendant. Wilson said she had changed Malik's diaper and fed him, and that Malik appeared to be in good health. Wilson confirmed that Malik did not have a cold.

¶ 7 Wilson returned at around 9:30 p.m. Defendant and Malik were still in the house, and she saw that defendant was in the dining room playing a video game. Malik was in his baby swing facing away from her in her bedroom, which she shared with defendant. Wilson decided to sleep in an upstairs bedroom to avoid any further argument with defendant.

¶ 8 On the next day, May 15, 2008, Wilson came downstairs and saw defendant cleaning. Wilson decided to help defendant clean, and went to her bedroom to get a cigarette. When Wilson walked into her bedroom, Malik was in his baby swing. She could hear that Malik was "breathing funny," like he was gasping for air. Wilson picked up Malik, but he did not "wake up," and continued gasping for air. Wilson yelled to defendant to call 911. The paramedics arrived shortly thereafter, and transported Malik and Wilson to the hospital.

¶ 9 While Malik was being treated at the hospital, Wilson spoke with defendant. According to Wilson, defendant said that the baby slipped out of defendant's hands while defendant was making him a bottle. Wilson agreed that the doctors at the hospital showed her various injuries on Malik. Wilson stayed at the hospital until May 17, 2008, when she briefly went home to change her clothes. When she returned to the hospital, she learned that Malik had died.

¶ 10 On cross-examination, Wilson testified that Mailk was born through a "vacuum birth" procedure, which involved various side effects, including brain damage. When asked by defense counsel whether the doctors warned that a subdural hemotoma was an additional possible side effect, Wilson responded, "That does ring a bell." Wilson also conceded that, among the injuries the doctors had pointed out, there was an "old bleed" in Malik's brain. In addition, Wilson was not aware that Malik had a viral infection or pneumonia. Finally, Wilson admitted that, one or two weeks before his death, Malik rolled off of her bed, but she noted that Malik was laughing immediately afterwards.

¶ 11 Dr. Trevone Thompson, the emergency room attending physician who treated Malik, testified that Malik was brought in at around 10:30 a.m. on May 15, 2008. Dr. Thompson stated that Malik

was minimally responsive and his breathing was "agonal," which Dr. Thompson described as similar to "grunting." Malik's left pupil was "blown" (*i.e.*, dilated and nonresponsive), there were bruises on his forehead and left arm, a hematoma on his forehead, and bite marks on his right leg. Because of Malik's breathing difficulty, Dr. Thompson had him intubated. Although an x-ray did not reveal any fractures in Malik's neck or spine, a CAT scan of his head showed a fracture in the posterior occipital region of his skull, swelling in the brain (cerebral edema), bleeding in the brain itself, and bleeding in various protective layers covering the brain: an epidural hematoma (the most superficial layer of the brain), a subdural hematoma (the next layer), and a subarachnoid hemorrhage, which Dr. Thompson stated was "below that deepest layer." Dr. Thompson stated that "some degree of force" would be required to create the occipital fracture, and these injuries would not be consistent with falling to a carpeted floor from a mattress and box spring lying directly on the floor. Finally, Dr. Thompson confirmed that he was not aware of Malik suffering from a viral infection or pneumonia.

¶ 12 Dr. Thompson spoke to defendant about Malik's injuries, and according to Dr. Thompson, defendant explained that defendant had been preparing a bottle for Malik when Malik fell, and although defendant grabbed Malik's leg, Malik still kind of hit the floor "a little bit." Dr. Thompson, however, did not believe a single fall could cause all of these injuries. Instead, Dr. Thompson suspected abuse and believed the injuries were evidence of Shaken Baby Syndrome, which Dr. Thompson described as "signs or patterns of repeated abuse *** or repeated truma that involves the brain and other parts of the body," and it could result not only from shaking the baby, but also from falls, throwing the baby, or hitting the baby with an object. On cross-examination, however, Dr. Thompson conceded that he did not have any evidence that defendant intentionally hurt Malik.

¶ 13 Dr. Jill Glick then testified on behalf of the State. Dr. Glick stated that she was an associate professor of pediatrics and the medical director of the child protective services team at the Comer Children's Hospital of the University of Chicago. Over defendant's objection, she was qualified as an expert witness in the fields of child abuse, pediatric medicine, and emergency pediatrics. Dr. Glick testified that, at around 11 a.m. on May 15, 2008, the emergency department notified her that Malik had been admitted and that the emergency department had made a finding "consistent with concerns for abusive head injury." She then began an investigation and interviewed the social worker in the emergency room, the trauma surgeon, the neurosurgeon, and intensive care physicians. In addition, she reviewed the CT scan and conducted a physical examination of Malik.

¶ 14 With respect to the CT scan, Dr. Glick stated that the scan showed severe swelling in the brain and multiple intercranial hemorrhages that were consistent with cranial rotation injuries, *i.e.*, shaking of the brain that shears the blood vessels and nervous tissues in the brain. Her physical examination revealed a nonresponsive left eye (which indicated brain trauma), bruising on Malik's forehead, and a healing bite mark on his right thigh that Dr. Glick stated was made by someone over the age of eight. In addition, Dr. Glick stated that Malik's response to pain stimuli was inconsistent. Dr. Glick also ordered an eye exam, the results of which revealed extensive multilayered retinal hemorrhaging, or retinal tears, which she was consistent with a rotational injury to the head. After discussing this matter with all of Malik's "treating members," Dr. Glick stated that there was a "[one] hundred percent consensus that this was abusive head trauma," which she explained is the new term for what had been known as "Shaken Baby Syndrome." Dr. Glick's written report concluded that Malik suffered from child abuse. She explained that her conclusion was based upon

the results of her findings, and that the "history" provided–that the injuries resulted from a fall while Malik was under the care of his father–did not explain the extent of Malik's injuries and was inconsistent with the injuries that were present.

¶ 15 Dr. Glick did not believe that a fall from a few feet high could have caused Malik's injuries; rather, she believed that a tremendous amount of force caused his brain injuries. In addition, she opined that there was a delay in getting care for Malik because his injuries occurred within 72 hours before his arrival at the hospital. Dr. Glick explained that, because 24 hours had elapsed when Malik's intercranial swelling reached its maximum, Malik would have sustained his injuries at some point within a 72-hour time period prior to that maximum intracranial pressure.

¶ 16 Dr. Glick noted that, although the postmortem report did indicate a fracture, the skull fracture was "clinically irrelevant" to the diagnosis of child abuse because there was sufficient other evidence of cranial rotational injury.

¶ 17 Dr. Glick disagreed that Malik's brain injuries could have resulted from his vacuum birth. She stated that his injuries were acute, and he was neurologically normal when he was discharged following his birth, he had been clinically well since that time, and he did not have any virus that would have induced cerebral edema. According to Dr. Glick, even if Malik had an old, healed subdural hemorrhage or viral encephalitis, the multiple new intercranial bleedings, extensive retinal bleeding, and cerebral edema, were only consistent with very recent abusive head trauma.

¶ 18 Finally, Dr. Glick opined that Malik's injuries were intentional and abusive, based upon the clinical findings (including the external injuries, namely, the bite mark, bruises, and various cranial injuries), as well as the delay in seeking treatment. She emphasized that the person who caused the

injury "knew that they were injuring the child," that Malik "was violently shaken," and that a "tremendous" amount of force was needed to create Malik's injuries. Dr. Glick reiterated that the shaking had to have been "extremely violent and extreme" to such an extent that "anybody witnessing this would say it's violence."

¶ 19 Detective Sean Kennedy of the Chicago Police Department Special Victims Unit testified that, at around 1:30 p.m. on May 15, 2008, he was assigned to investigate a report of possible child abuse. He went to the hospital where Malik was being treated and spoke to Dr. Glick. He also saw Malik, who had bruises on his face, swelling on his face and neck, a bite mark on his right thigh, and a mark on his left arm. He later spoke to defendant at the hospital. Defendant said that he was Malik's primary caregiver. Defendant then said that, on May 14, 2008, he was Malik's sole caregiver during that time because Wilson left their home at around 10:30 a.m. and was gone until approximately 10:30 p.m. According to Detective Kennedy, defendant said that Malik was in his swing and started crying, so defendant picked Malik up and brought him to the kitchen to feed him. Defendant was holding Malik in his right arm and holding the milk in his right hand. As defendant was pouring the milk into a bottle in his left hand, Malik "jerked" out of defendant's arm and fell to the tile floor. Defendant said he tried to grab Malik's right leg to break his fall, but Malik's forehead and left leg hit the floor. Malik started screaming, so defendant put ice in a towel and put it on his head. Defendant told Detective Kennedy that Malik calmed down after about ten minutes, so defendant put Malik back into the baby swing, fed him some milk, and changed his diaper.

¶ 20 Detective Kennedy then testified that, on May 16, 2008, he went to defendant's house and spoke to him for about 30 minutes. Defendant showed Detective Kennedy how the events transpired

and showed him where on the kitchen tile Malik hit his forehead. Defendant then told Detective Kennedy that, after Malik fell, his body went limp and his eyes rolled in the back of his head. He took Malik to his and Wilson's bedroom and started shaking Malik to wake him up, but Malik did not awaken, so defendant performed CPR. Malik eventually awoke, and defendant put him back into the baby swing. Defendant added that he later checked on Malik and changed his diaper. Defendant did not call 911 because he "panicked," that he had never been through this before. Defendant further explained that he did not tell Wilson what happened because he thought Malik would be "okay" and defendant and Wilson had been arguing. Nonetheless, defendant said that he intended to tell Wilson on the following day.

¶ 21 Dr. Adrienne Segovia, an assistant medical examiner at the Office of the Cook County Medical Examiner, testified as an expert in the field of forensic pathology. Dr. Segovia stated that she supervised Malik's autopsy, and that Dr. John Ralston (who had since left the office) performed the autopsy and wrote the postmortem report, but she signed and reviewed Dr. Ralston's report. In addition, she reviewed the eye pathology report, the forensic radiologist's report, the neuropathologist's report, the investigator's report, the body diagram, and the medical reports.

¶ 22 The external examination revealed bruises on Malik's forehead and abrasions on the back of his neck, both of which were consistent with blunt trauma. In addition, Malik had bite marks on his right buttock, his right lower thigh, and the inside of his right upper thigh. The internal examination indicated a frontal parietal subgaleal hematoma due to medical intervention, and a subdural hematoma and subarachnoid hemorrhage that were caused by an impact injury or rotational forces. There was a hemorrhage around the optic nerve of Malik's eyes, which also indicated blunt

head trauma. Finally, Dr. Segovia stated that Malik's brain was swollen to nearly twice the average weight of a brain of a typical five-month-old infant.

¶ 23 Dr. Segovia testified that some of Malik's injuries were consistent with being dropped on a hard floor, but the hemorrhages were inconsistent. In addition, some of his injuries were consistent with shaking, but again the location of the impact points on his head were not. She noted, however, that Malik's injuries were not consistent with one fall because there were multiple impact points on opposite sides of his head. In her opinion, Malik died as a result of homicide due to blunt head trauma. Dr. Segovia testified that "significant" force would have been needed to cause his injuries, and his injuries were not caused by a viral infection. Dr. Segovia noted that Dr. Ralston's opinion was that Malik's cause of death was due to cerebral injuries resulting from blunt head trauma, all of which were the result of child abuse. She agreed with that opinion "with one small addition," namely, that Malik died as a result of "cranial" cerebral injuries due to blunt head trauma from child abuse based upon the CT scan, which revealed a skull fracture.

¶ 24 Dr. Segovia testified that a drop of about three feet to a hard floor would not have caused Malik's injuries because there were two "very separate" areas of impact. Similarly, Dr. Segovia said Malik's injuries could not have been caused by a fall from a bed two weeks prior to his death because his bruises were more recent and "they all look about the same age." In addition, she said that a shaking Malik to wake him up would not be consistent with his injuries because the shaking would not cause a skull fracture or the front impact injuries. Dr. Segovia added that no single fall or shaking would have caused these injuries because there were multiple impact points. Finally, Dr. Segovia said that a virus did not cause Malik's injuries, stating: "[V]iral infections don't give you

subdural [hematomas]. They don't give you subarachnoid [hemorrhages]. ***. And they don't give you subgaleal [hematomas]. And they don't give you bleeding under the scalp. And they don't give you this kind of prominent optic nerve hemorrhage or blood that tracks down your spinal cord."

¶ 25 Dr. Richard Grostern, an eye pathologist and ophthalmologist at Rush University Medical Center, testified over defense counsel's objection as an expert in eye pathology and ophthalmology. Dr. Grostern said that he received both of Malik's eyes from the medical examiner. He observed blood surrounding the optic nerve, and when he opened the eyeball, the retina inside was covered with a lot of blood, he said was generally the result of "massive" trauma. The left eye had hemorrhaging in about half the retina, or somewhat less than the right eye.

¶ 26 The eyes were then sectioned and examined microscopically. Dr. Grostern noticed "massive wide-spread intraretinal hemorrhaging," which he reiterated was the result of massive trauma, such as "falling off a ten-story building," or "being thrown from a car." He then stated, "Casual trauma like being dropped from the parent's arm or rolling off the table or falling out of the bath, those things don't cause this extent of hemorrhage." He noted that adults generally do not suffer the same type of traumatic injury to the eye from shaking as an infant does because adults have stronger neck control. In Malik's case, the amount of hemorrhage was not consistent with a fall of "a few feet" or from a parent's arms. Dr. Grostern also testified that, while a viral infection causing high intracranial pressure could result in bleeding around the optic nerve, only "massive trauma" caused the extent of of intraretinal hemorrhaging present in Malik's eyes. Dr. Grostern concluded that the trauma triggering the hemorrhage occurred no more than three days prior–and could not have been

from a birth injury that occurred five months prior–because the blood around the optic nerve began to die, but the "clean up" stage (*i.e.*, the absorption of the blood by blood vessels) had not yet begun.

¶ 27 Defendant called Dr. Jan Leestma to testify as a defense expert in the field of neuroforensic pathology. Dr. Leestma stated that he was a board-certified neuropathologist, a former assistant medical examiner at the Cook County Medical Examiner's Office, and a professor of pathology and neurology at the University of Chicago medical school. Although he did not see or treat Malik, Dr. Leestma reviewed the postmortem report, microscopic slides from Malik's brain and other organs, photos, CT scans, medical records, and child protective services documents.

¶ 28 Dr. Leestma stated that since neither the postmortem report nor the radiologist's report indicated the presence of a skull fracture, Malik did not have a skull fracture. Dr. Leestma further claimed that Malik's forehead bruises could be incidental, and he considered the abrasion on the back of Malik's neck to be ambiguous. According to Dr. Leestma, some of the bleeding in Malik's brain was from medical invention and some of it was from the respirator when Malik was brain dead. After reviewing the CAT scans, Dr. Leestma testified that subdural hematoma was caused more than 72 hours prior to Malik being brought to the coroner's office. In fact, based on the brain slide, the subdural hematoma could have been 15 to 17 days old. Dr. Leestma found both old and new bleeding, and believed that the old bleeding could have been caused by Malik's vacuum birth. Dr. Leestma admitted, however, that it was "conceivable" that the hemorrhages could have been caused by some traumatic episode.

¶ 29 With respect to the retinal and optic nerve hemorrhages, it was Dr. Leestma's opinion that the cause of those hemorrhages was cerebral edema, not any alleged shaking of Malik. Dr. Leestma

did not believe that shaking a baby as hard as you could would cause these hemorrhages. He found no evidence that Malik was shaken so violently as to cause his death, but Dr. Leestma admitted that he had "grave doubts" as to the scientific validity of Shaken Baby Syndrome and that there was "no science out there to support that diagnosis."

¶ 30 Rather, Dr. Leestma testified that these hemorrhages could be caused by many things, such as an accident or tumor, but he also conceded that they could be caused by abuse, as well. Referring to Dr. Greenwald's report from Malik's clinical eye exam indicating papilledema (swelling of the eyes), Dr. Leestma inferred that Malik suffered from chronically high intracranial pressure that could have been present for one to three weeks or longer.

¶ 31 In his opinion, Malik's injuries were not caused by child abuse because the brain slides showed thickened blood vessels, which indicated that a viral infection caused the inflammation in Malik's brain. Dr. Leestma testified that the inflammation in the brain had been there for at least a week, which could have caused the brain to swell and could have increased the intracranial pressure.

¶ 32 Dr. Leestma did not think that a subdural hematoma alone caused Malik's death, but it could have been there since birth or caused by a fall of less than three feet, and if Malik already had a viral infection, a fall could have made it worse. Dr. Leestma clarified that he was not stating the viral infection caused Malik's death, but that a viral infection, in conjunction with a subdural hematoma caused by a fall of three or four feet, could have killed him. In his opinion, Malik could have died from several causes: natural disease, trauma, falls, a vacuum birth, brain inflammation, old and new bleeds, and increased pressure due to a viral infection.

¶ 33 Dr. Leestma said that Malik could have suffered from encephalitis and his parents would not

have noticed because the symptoms of a viral infection can share characteristics with other non-serious conditions. He believed that the cause of Malik's death was "increased cranial pressure due to subdural hematoma, probable viral encephalitis." After he wrote his report, he stated that he received a report from a transplant agency that the Epstein-Barr virus and cytomegalovirus were found in Malik's body, but he failed to file an addendum to his report because he did not feel it was important to do so. He admitted, however, that his report indicated that he "was unable to find pathologies that would be typical," and that he "was unable to find intranuclear viral inclusions." He also admitted that he was not aware of the fact that Malik had exhibited no symptoms of encephalitis.

¶ 34 Following closing arguments, the trial court took the matter under advisement and later found defendant guilty of first degree murder. The trial court specifically found that defendant, Malik's sole caretaker, caused Malik's death by severe blunt trauma within 72 hours of Malik's death. The trial court further found that defendant knew that defendant's actions would cause death or great bodily harm, and that Malik's injuries were caused by more than one impact. On September 14, 2011, the trial court denied defendant's motion for new trial, and the cause proceeded to sentencing.

¶ 35 At sentencing, several of defendant's family members, including Raven Wilson, his fiancee at the time, testified in mitigation. Wilson testified that defendant helped her with Malik and her five other children, defendant was a great father who was never violent toward any of the children, and he provided financially for their family, albeit through selling narcotics. Defendant's siblings, Iris Ousley, Lakenya Ousley, and Steven Green, also testified that defendant took care of their children often and was never violent with them. They added that defendant, as the oldest brother, was a father

figure to them. Harriet Anderson, a friend of defendant, similarly testified that defendant helped her with her children after the children's father died. Defendant then addressed the court, stating that he had five step-children and six biological children, including Malik. Defendant admitted making a mistake by not getting the proper medical treatment for Malik, and asked for mercy and leniency.

¶ 36 In aggravation, the State noted that defendant had prior convictions for criminal trespass to land (in 2002), criminal damage to property (in 1999), and possession of a controlled substance (in 1997, for which he was sentenced to prison). The State also claimed that defendant was a member of the "Mickey Cobra" gang and that he rose to the rank of "Sultan Supreme," or second-in-command. The State elaborated that, as a gang member, defendant was heavily involved in the sale of narcotics, earning between $5,000 and $6,000 per month. Finally, the State commented that defendant "killed a [5½-month-old] child. His child. And he broke the skull of the child and she shook the child so hard there [were] massive retinal hemorrhages."

¶ 37 Following arguments in aggravation and mitigation, the trial court stated that it considered the evidence presented at trial, the presentence investigation report, the evidence and arguments offered in mitigation and aggravation, as well as the statutory factors in mitigation and aggravation. The trial court added that it also considered the financial impact of incarceration, the arguments of counsel, the defendant's statement on his own behalf. The trial court sentenced defendant to 27 years in prison and gave him 1,121 days of presentence custody credit. Defendant's motion to reconsider sentence was subsequently denied. This appeal followed.

¶ 38 ANALYSIS

¶ 39 The Sufficiency of the Evidence

¶ 40 Defendant first contends that the evidence was insufficient to prove him guilty of intentional murder beyond a reasonable doubt. Specifically, defendant argues that defendant did not have the relevant state of mind for first degree murder because defendant "maintained that Malik accidentally fell from his arms, and afterwards he took care of Malik." Defendant thus concludes that, at most, he was guilty of involuntary manslaughter, and asks that we reduce his conviction accordingly and remand this matter to the trial court for resentencing.

¶ 41 When presented with a challenge to the sufficiency of the evidence, this court must determine " '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.' " (Emphasis in original.) *People v. De Filippo*, 235 Ill. 2d 377, 384-85 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). It is not the function of this court to retry the defendant. *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 113 (citing *People v. Evans*, 209 Ill. 2d 194, 209 (2004)). Rather, it is for the trier of fact to assess the credibility of the witnesses, determine the appropriate weight of the testimony, and resolve conflicts or inconsistencies in the evidence. *Id.* (citing *Evans*, 209 Ill. 2d at 211). The fact-finder is not obligated to accept the defendant's version of events as among competing versions, but may reject it. *People v. Villarreal*, 198 Ill. 2d 209, 231 (2001). The same holds true with respect to expert opinions: it is the role of the trier of fact to evaluate the testimony of the expert witnesses and assess their credibility, and the trier of fact is not obligated to accept the opinions of a defendant's expert witnesses over those opinions presented by

the State. *People v. Dresher*, 364 Ill. App. 3d 847, 855-56 (2006). As the State points out, "A mere conflict in expert testimony does not create a reasonable doubt of defendant's guilt." *People v. Peterson*, 171 Ill. App. 3d 730, 734 (1988). In essence, this court will not reverse a conviction unless the evidence is "so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt." *Evans*, 209 Ill. 2d at 209.

¶ 42 In this case, the evidence overwhelmingly establishes defendant's acts were intentional. Malik suffered multiple severe injuries, including: a fractured skull, swelling in the brain (cerebral edema), bleeding in the brain itself, bleeding in various protective layers covering the brain (an epidural hematoma, a subdural hematoma, and a subarachnoid hemorrhage), a nonresponsive left eye (which indicated brain trauma), bruising on his forehead, and extensive multilayered retinal hemorrhaging (*i.e.*, retinal tears). With respect to the retinal damage, there was blood surrounding the optic nerve, both retinas were covered with blood equivalent to a "massive" trauma, such as "falling off a ten-story building," or "being thrown from a car."

¶ 43 According to Dr. Glick, all of Malik's treating physicians came to a "[one] hundred percent consensus" that Malik was the victim of abusive head trauma, or Shaken Baby Syndrome, rather than an accidental fall from defendant's arms. Dr. Segovia, the testifying medical examiner, agreed that Malik's injuries were caused by child abuse, and noted that the opinion of Dr. Ralston, the nontestifying medical examiner who actually performed Malik's autopsy, also stated that Malik's cause of death was due to cerebral injuries resulting from blunt head trauma, which was caused by child abuse. Dr. Segovia flatly rejected the possibility that a virus caused Malik's brain injuries.

¶ 44 In addition to rejecting the possibility that a fall from a few feet high could have caused Malik's injuries, Dr. Glick, Dr. Thompson, and Dr. Segovia all agreed that a substantial amount of force caused the injuries. In particular, Dr. Glick stated that the person who caused the injury "knew that they were injuring the child," that Malik "was violently shaken," and that a "tremendous" amount of force was needed to create Malik's injuries. Dr. Glick reiterated that the shaking had to have been "extremely violent and extreme" to such an extent that "anybody witnessing this would say it's violence." Dr. Thompson stated that "some degree of force" would be required to create the skull fracture, and Dr. Segovia characterized as "significant" the amount of force that caused the injuries.

¶ 45 Viewing the evidence in this case in the light most favorable to the State, as we must (*De Filippo*, 235 Ill. 2d at 384-85), the aforementioned evidence presented at trial clearly establishes that injuries suffered by the infant victim were made intentionally and not recklessly. Since the evidence was not "so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of defendant's guilt" (*Evans*, 209 Ill. 2d at 209), this court will not reverse defendant's conviction. Defendant's claim is therefore without merit.

¶ 46 Nonetheless, defendant argues that his conviction should be reduced to the lesser charge of involuntary manslaughter because he "maintained that Malik accidentally fell from his arms, and afterwards he took care of Malik" by placing a cold towel on his head, performing CPR, and checking on Malik, and his failure to immediately seek medical care merely amounts to reckless conduct. As explained above, the State's evidence substantially outweighed defendant's self-serving

claims, and the trial court was not obligated to blindly accept the defendant's version of events; indeed, it was free to reject it. See *Villarreal*, 198 Ill. 2d at 231.

¶ 47 Nor does the testimony of defendant's expert witness, Dr. Leestma, advance defendant's claim. Dr. Leestma opined that, rather than abusive head trauma, Malik died as a result of a combination of "probable" viral encephalitis and the alleged fall from defendant's arms. Dr. Leestma's opinion, however, was contradicted by all of the State's expert witnesses, who, unlike Dr. Leetsma, physically examined Malik. As with defendant's version of events, the trial court was not required to accept the opinions of a defendant's expert witness over those of the State's expert witnesses, and a conflict in expert testimony does not give rise to reasonable doubt. See *Dresher*, 364 Ill. App. 3d at 855-56; *Peterson*, 171 Ill. App. 3d at 734. Defendant's claim thus fails.

¶ 48 Defendant's Sentence

¶ 49 Defendant next contends that his 27-year sentence is excessive. Specifically, defendant argues that a reduced sentence is warranted based upon the evidence, which showed a lack of premeditation and that the baby's "fall" was accidental, as well as the fact that defendant had been a caretaker for many other children–including his own–without incident, and that his prior criminal convictions were from several years ago and were for nonviolent crimes. Defendant asks that we either reduce his sentence to a term that better balances the punitive and rehabilitative aspects of sentencing, or remand the matter for a new sentencing hearing.

¶ 50 In imposing a sentence, the trial court must balance relevant factors, such as the nature of the offense, the protection of the public, and the defendant's rehabilitative potential. *People v. Alexander*, 239 Ill. 2d 205, 213 (2010). The trial court has a superior opportunity to evaluate and

weigh a defendant's credibility, demeanor, character, mental capacity, social environment, and habits. *Id.* In addition, a trial court is not required to expressly outline its reasoning for sentencing, and absent some affirmative indication to the contrary (other than the sentence itself), we must presume that the court considered all mitigating factors on the record. *People v. Perkins*, 408 Ill. App. 3d 752, 762-63 (2011). Since the most important sentencing factor is the seriousness of the offense, the court is not required to give greater weight to mitigating factors than to the seriousness of the offense, and the presence of mitigating factors neither requires a minimum sentence nor precludes a maximum sentence. *Alexander*, 239 Ill. 2d at 214. A sentence within statutory limits is reviewed for an abuse of discretion, and we may only alter such a sentence when it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Id.* at 212. So long as the trial court does not ignore pertinent mitigating factors or consider either incompetent evidence or improper aggravating factors, it has wide latitude in sentencing a defendant to any term within the applicable statutory range. *Perkins*, 408 Ill. App. 3d at 762-63. This broad latitude means that this court cannot substitute its judgment simply because it might have weighed the sentencing factors differently. *Alexander*, 239 Ill. 2d at 212-13.

¶ 51 Here, the trial court did not abuse its discretion. First degree murder is punishable by 20 to 60 years' imprisonment. 730 ILCS 5/5-4.5-20(a)(1) (West 2008). Since defendant's sentence falls within the sentencing range, we may only disturb the sentence if it varies greatly from the spirit and purpose of the law or is manifestly disproportionate to the nature of the offense. *Alexander*, 239 Ill. 2d at 212. Neither exception applies in this case.

¶ 52 At the outset, the trial court stated on the record that it considered not only the trial evidence, but also the evidence and arguments defendant presented in mitigation at his sentencing hearing, as well as the statutory mitigating factors and defendant's statement of regret. Moreover, the trial court rejected defendant's claim that this was merely a tragic fall that resulted in Malik's death. The evidence adduced at trial indicated that defendant's five-month-old son suffered injuries that were consistent with either "falling off a ten-story building," or "being thrown from a car." Notably, the victim, defendant's five-month-old son, had a fractured skull, a substantial amount of blood within both eyes, multiple hemorrhages on various layers of his brain, and bruising on his forehead. On these facts, and in light of defendant's prior criminal history, the trial court did not abuse its discretion in sentencing defendant to a 27-year prison term, an amount near the low end of the statutory range.

¶ 53 Although defendant cites numerous cases where the reviewing court reduced the defendant's sentence, the supreme court has expressly rejected the use of "comparative sentencing." *People v. Fern,* 189 Ill. 2d 48, 62 (1999) ("If a sentence is appropriate given the particular facts of that case, it may not be attacked on the ground that a lesser sentence was imposed in a similar, but unrelated, case."). Since the record does not reveal any basis to conclude that defendant's sentence was inappropriate, defendant's cited cases are unavailing.

¶ 54 Defendant's Mittimus

¶ 55 Finally, defendant contends, and the State concedes, that he is entitled to presentence custody credit of 1,211 days, rather than the 1,121 days that is current reflected in his mittimus. We agree with the parties. Defendant was arrested on May 21, 2008, and remained in custody until his

sentencing on September 14, 2011, which totals 1,211 days. Therefore, pursuant to Supreme Court Rule 615(b)(1) (Ill. S. Ct. R. 615(b)(1) (eff. Jan. 1, 1967)), we direct the clerk of the circuit court of Cook County to correct defendant's mittimus to reflect a credit of 1,211 days for time actually served in custody prior to sentencing. See also *People v. McCray*, 273 Ill. App. 3d 396, 403 (1995) (holding that remand is unnecessary because the court may directly order the clerk to correct the mittimus).

¶ 56 CONCLUSION

¶ 57 For these reasons, we affirm defendant's conviction for intentional murder and his sentence, but correct the mittmus as noted above.

¶ 58 Affirmed as modified.