Order filed July 16, 2019.
Modified upon denial of
rehearing August 15, 2019.

2019 IL App (5th) 150491-U

NO. 5-15-0491

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 14-CF-1912
	)	
KAMRYN KERR,	)	Honorable
	)	Kyle Napp,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Overstreet and Justice Chapman concurred in the judgment.

ORDER

¶ 1 *Held*: Although there was an error in the parental accountability instruction, the error was harmless under the circumstances presented in this case. There was sufficient evidence to support the jury's finding that the defendant was guilty beyond a reasonable doubt of three counts of aggravated battery to a child. The indictment adequately informed the defendant of the charges against him, and the indictment and convictions did not violate the one-act one-crime rule. The trial court did not err in imposing consecutive sentences.

¶ 2 Following a jury trial, the defendant, Kamryn Kerr, was convicted of three counts of aggravated battery to a child. The defendant was sentenced to eight years in prison on each count, and his sentences were to run consecutively. On appeal, the defendant raises several points, including challenges to the propriety of the jury instructions on

accountability, the sufficiency of the evidence, the sufficiency of the amended indictment, and the imposition of consecutive sentences. For reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 O.W. is the victim is this case. He was born July 17, 2014. As will be evident, O.W.'s journey through the first seven weeks of life was harrowing and brutal.

¶ 5 Ashlee Wethington is O.W.'s mother. Ashlee and the defendant began dating when Ashlee was two months pregnant. The defendant is not O.W.'s biological father, but he is identified as O.W.'s father on O.W.'s birth certificate.

¶ 6 On September 8, 2014, Ashlee and the defendant brought O.W., then just seven weeks old, to the emergency department at Gateway Regional Medical Center in Granite City, Illinois. X-rays of the baby's chest revealed two recent fractures on the left side of the rib cage, and some older, healing fractures on the right side of the rib cage. The medical staff reported suspected abuse to the Granite City Police Department. An officer was dispatched to interview Ashlee and the defendant. Meanwhile, the baby was transported to Cardinal Glennon Children's Hospital. After an extensive evaluation, the baby was found to have multiple rib fractures, an injury to the right tibia, a skull fracture, and a brain injury.

¶ 7 On September 10, 2014, the defendant was charged by information with one count of aggravated battery to a child (720 ILCS 5/12-3.05(b)(1) (West 2012)), a Class X felony, and one count of endangering the life or health of a child (720 ILCS 5/12C-5(a)(1) (West 2012)), a Class A misdemeanor. In the aggravated battery count, the

State alleged that on or about July 24, 2014, through September 8, 2014, the defendant, a person of at least 18 years of age, committed aggravated battery when, in committing a battery, he "knowingly and without legal justification caused great bodily harm to O.W. (D.O.B. 07/07/14), a person under the age of 13 years, in that defendant squeezed O.W.'s chest causing multiple rib fractures and pulled on O.W.'s leg causing fractures to the right tibia." The child endangerment count alleged that on or about July 24, 2014, through September 8, 2014, defendant caused or permitted the life or health of O.W., a child under the age of 18, to be endangered. Three weeks later, the grand jury in Madison County indicted the defendant on the same charges as set forth in the information.

¶ 8 On November 20, 2014, the grand jury returned an amended indictment, charging the defendant with four counts of aggravated battery to a child. Each count identified a separate injury. The indictment alleged that the offenses were committed during the period from July 24, 2014, through September 8, 2014.

¶ 9 Count I alleged that the defendant, a person of at least 18 years of age, committed aggravated battery when, in committing a battery, he "knowingly and without legal justification, caused great bodily harm to O.W. (D.O.B. 07/07/2014), a person under the age of 13 years, in that said defendant squeezed O.W.'s chest causing rib fractures on the right posterior side of his ribs in violation of 720 ILCS 5/12-3.05(b)(1), and against the peace and dignity of the said People of the State of Illinois."

¶ 10 Count II alleged that the defendant, a person of at least 18 years of age, committed aggravated battery when, in committing a battery, he "knowingly and without legal justification, caused great bodily harm to O.W. (D.O.B. 07/07/2014), a person under the

age of 13 years, in that said defendant squeezed O.W.'s chest causing rib fractures in violation of 720 ILCS 5/12-3.05(b)(1), and against the peace and dignity of the said People of the State of Illinois."

¶ 11 Count III alleged that the defendant, a person of at least 18 years of age, committed aggravated battery when, in committing a battery, he "knowingly and without legal justification, caused great bodily harm to O.W. (D.O.B. 07/07/2014), a person under the age of 13 years, in that said defendant caused trauma to O.W.'s leg causing a fracture at the tibia and fibula bone, in violation of 720 ILCS 5/12-3.05(b)(1), and against the peace and dignity of the said People of the State of Illinois."

¶ 12 Count IV alleged that the defendant, a person of at least 18 years of age, committed aggravated battery when, in committing a battery, he "knowingly and without legal justification, caused great bodily harm to O.W. (D.O.B. 07/07/2014), a person under the age of 13 years, in that said defendant caused trauma to O.W.'s [*sic*] causing a skull fracture, in violation of 720 ILCS 5/12-3.05(b)(1), and against the peace and dignity of the said People of the State of Illinois."

¶ 13 Prior to trial, the State was granted leave, over objection, to amend the amended indictment to correct a scrivener's error. The amended indictment had misprinted O.W.'s date of birth as July 7, 2014, rather than July 17, 2014. The case was tried before a jury in January 2015. During the trial, the State presented testimony from medical professionals who cared for O.W., investigators from the Granite City Police Department, members of Ashlee's family, and a digital video recording of the defendant's interview with police.

The defendant presented testimony from his mother, but he did not testify. A summary of the evidence follows.

¶ 14 As noted above, O.W. was born July 17, 2014. A certified copy of O.W.'s birth certificate was admitted into evidence. The birth certificate identified Ashlee Wethington as O.W.'s mother. Although the defendant is not O.W.'s biological father, Ashlee testified that defendant was present for O.W.'s birth and signed O.W.'s birth certificate. In support of this testimony, Exhibit 23, the St. Louis County birth certificate, lists defendant as O.W.'s father.

¶ 15 On July 18, 2014, Dr. Christine Hrach performed a complete physical examination on O.W. in the newborn nursery at Barnes Hospital. O.W. was in his first day of life. Dr. Hrach testified that O.W. had a systolic ejection heart murmur. She noted that this type of heart murmur is common in newborns, and usually resolves within a few days. O.W.'s murmur resolved the next day. O.W. developed jaundice on day two of life, but it resolved after phototherapy treatment. O.W. and his mother were discharged on July 21, 2014. The hospital stay was extended because the mother delivered by caesarian section. O.W. was healthy at the time of discharge. He did not have any fractures or other injuries. Upon discharge, Dr. Hrach recommended that O.W. be given a vitamin D supplement. She explained that the supplement is recommended for all newborn babies because they do not get enough vitamin D in breast milk or formula.

¶ 16 On August 11, 2014, Dr. John Giroux, a pediatrician practicing in Alton, Illinois, evaluated O.W. for a leg injury. Dr. Giroux testified that O.W. was accompanied by his mother and another woman. The mother reported that O.W. was not moving his right leg

and was having a problem gaining weight. Dr. Giroux stated that weight gain can be a problem when a young mother is breast feeding her baby. He recommended a formula supplement. Dr. Giroux examined O.W. and noted some discomfort with movement of the baby's hip, but no problems with the ankle and the knee. Dr. Giroux ordered an ultrasound of the hip. He expected that it would be done within a few days. The ultrasound, however, was not obtained until August 21, 2014. The mother gave no reason for the delay. During the follow-up examination on August 21, 2014, Dr. Giroux noted that O.W. was moving his leg normally, without tenderness, so he did not order additional tests. Dr. Giroux testified that he was not aware of any fractures to the baby's ribs or skull during either visit.

¶ 17 On September 8, 2014, at approximately 1:50 p.m., Ashlee and the defendant brought O.W., then seven weeks old, to the emergency room at Gateway Regional Medical Center in Granite City, Illinois. Elizabeth Connor, a registered nurse who had worked in the emergency department at Gateway Regional for 30 years, was the triage nurse that day. Connor testified that O.W. was called into the treatment room for an initial assessment at approximately 2 o'clock that day. Connor noted that O.W. was accompanied by two people whom she presumed were the parents. Connor recalled that O.W. cried continuously and was inconsolable. Connor asked what brought the baby to the hospital. Both mother and the defendant indicated they had heard a popping sound in the baby's side or chest that morning. While taking vital signs, Connor observed a bruise in the center of the baby's chest. She became concerned because infants generally do not get bruises in that area. When she asked about the bruise, the defendant stated that it had

been there for a couple of weeks. Connor recalled asking the defendant to allow her to wrap the baby in a warming blanket, and the defendant refused to let her hold the baby. Connor testified that both mother and the defendant became very defensive when she asked about the baby's injuries, and that the defendant did most of the talking. At one point during the assessment, the defendant told Connor that they were going to leave because she was not treating them well. Connor moved the family to a consultation room because she feared they would leave if she asked them to wait until a treatment room was available. She related her concerns to Dr. Jeffrey Arendell, an attending physician and the director of the emergency department at Gateway Regional.

¶ 18 Dr. Jeffrey Arendell testified that he was informed that a seven-week-old baby was in need of treatment. Upon learning that the baby's parents were upset with the triage nurse, he immediately went to evaluate the baby. When Dr. Arendell entered the consultation room, he noted the baby was not crying, but appeared to be in pain. Dr. Arendell testified that he has been a physician for 21 years, and that he would not forget the look of agony on the baby's face. Dr. Arendell observed bruises on the baby's chest. Dr. Arendell pressed on the baby's ribs and heard a clicking sound. His initial impression was broken ribs. He was concerned because seven-week-old babies do not break their own ribs. Dr. Arendell moved the baby to a treatment room. He ordered chest x-rays and a heart monitor.

¶ 19 The x-rays revealed two acute fractures, at the tenth and eleventh ribs, on the left side of the rib cage, with fresh margins and without a bridge of calcium. Dr. Arendell testified that the fractures were located in the area where the clicking sound was heard.

He explained that the fresh margins indicate new fractures. A bridge of calcium would indicate the fractures were healing. The x-rays also revealed some healing fractures on the right side of the rib cage. Dr. Arendell decided to transfer O.W. to Cardinal Glennon Children's Hospital for an extensive evaluation. When he informed the parents that O.W. had fractured ribs, neither parent could explain how the injuries occurred. Dr. Arendell acknowledged that he could not give an opinion as to the specific dates when the fractures occurred. He testified that the acute fractures likely occurred sometime within the week prior to the emergency room visit on September 8, 2014, and that the healing fractures could have occurred from the baby's date of birth until roughly one week prior to the emergency room visit.

¶ 20 Dr. Timothy Kutz, the director of the child protection team at Cardinal Glennon Children's Hospital, was working on September 8, 2014, when O.W. arrived. Dr. Kutz learned that the mother had reported that O.W. was fussy, breathing differently, and had a clicking sound on the side of his ribs, and that multiple rib fractures and bruises were discovered during an evaluation at a local hospital.

¶ 21 Dr. Kutz testified that the team at Cardinal Glennon conducted an extensive evaluation on the baby, including a complete physical examination, blood work, x-rays, and a skeletal survey. Dr. Kutz recounted the results of the evaluation. O.W. had bruises on his chest, back, and right knee. These injuries were of concern because the baby was seven weeks old and not yet ambulatory. X-rays of the skull revealed a fracture to the parietal bone of the left side of the baby's head. A CT scan showed soft tissue swelling on the left side of the head. There was also evidence of subarachnoid bleeding and a brain

injury which were in the process of healing. Chest x-rays revealed five or six healing rib fractures and three or four new fractures on each side of the rib cage. The x-rays showed that some ribs had been broken more than once. Additional x-rays revealed a healing injury to the right tibia, near the ankle. Results from the blood tests and a CT scan revealed evidence of a liver injury.

¶ 22 Dr. Kutz testified that the parietal skull fracture was caused by an impact with a hard, flat surface. He stated that the soft tissue swelling indicated that the head injury was recent, and "certainly less than a couple of weeks old," and that the brain injury was a few weeks to a month old, and likely caused by a shaking type of trauma. Dr. Kutz testified that it takes force to break an infant's ribs, and that it would be difficult to break ribs by swaddling a baby tightly. He explained that fractures in the front of the rib cage typically result from a direct blow to the chest, that fractures to the side of the ribs are typically caused by squeezing the chest tightly, and that rib fractures near the spine tend to be caused by grabbing an infant by the chest and pushing the chest toward the spine. Dr. Kutz testified that a tibia fracture can result from forcefully pulling or jerking a baby's leg or from shaking the baby. He stated that the injury to the tibia was most likely due to a fracture, but he could not give an opinion to a reasonable degree of medical certainty because of the delay in having the injury evaluated. Dr. Kutz opined to a reasonable degree of medical certainty that O.W.'s injuries were caused by abusive force. His opinion was based, in part, upon the sheer number of injuries and the types of injuries.

¶ 23 Jacob Koepp, a Granite City police officer, was dispatched to Gateway Regional Hospital at 3:12 p.m., on September 8, 2014, for a reported battery to an infant. When Officer Koepp entered the patient's room, he observed the defendant holding the baby. The baby's mother and medical personnel were also in the room. Officer Koepp testified that the baby appeared lethargic and did not react to any of the noises in the room. He observed bruising on the baby's chest and photographed the bruises. Officer Koepp stated that it was apparent that the baby had sustained injuries. When he asked the defendant about the injuries, the defendant stated that he did not know how the baby was injured. The defendant recalled that Ashlee told him that something was wrong at about 9 o'clock that morning, and that when he checked, he noticed that something was wrong with the baby's chest. Officer Koepp asked who cared for the baby, and the defendant stated that only he and Ashlee had been around the baby. Officer Koepp also talked with Ashlee. He noted that the information provided by Ashlee was not consistent with the information provided by the defendant. Officer Koepp testified that Ashlee's demeanor was evasive, and that she was unwilling to answer simple questions. He described the defendant as evasive and not forthcoming.

¶ 24 Detective Brad Skalsky arrived at Gateway Regional at approximately 3:30 p.m. When he entered the emergency room, he learned that the baby had been transferred to another hospital. Detective Skalsky met with the defendant and Ashlee, and asked if they would agree to be interviewed. Both agreed to submit to a formal interview. The defendant and Ashlee were placed in separate cars and transported to the Granite City Police Department. Detective Skalsky interviewed the defendant, and the interview was

digitally recorded. Detective Skalsky identified the disc containing the recording of the interview and verified its content. He noted that some portions of the interview had been redacted pursuant to orders of the court.

¶ 25 The redacted digital recording of the defendant's interview was admitted into evidence, over the defendant's objection, and shown to the jury. The interview began at approximately 4 p.m. on September 8, 2014. The defendant was provided with *Miranda* warnings prior to questioning. Near the beginning of the interview, Detective Skalsky asked the defendant to provide the baby's full name. The defendant was able to state O.W.'s full name, indicating that he and Ashley had decided to hyphenate the baby's last name as "Wethington-Kerr." During the interview, the defendant referred to himself as a new parent, and a 20-year-old dad, and he referred to O.W. as his son. Detective Skalsky asked when the defendant first knew that something was wrong with the baby. The defendant indicated that he, Ashlee and the baby had been staying with Ashlee's mother for the past few days. The defendant initially stated that he got up to feed and change O.W. around 4 o'clock that morning, and that O.W. was fine. At about 8:30 that morning, Ashlee felt something on O.W.'s chest and asked the defendant to check. The defendant put his hands on the baby's ribs and felt a little pop on the right side. He said that he and Ashlee took the baby to the hospital around 11:30 a.m. At a later time in the interview, the defendant stated that O.W. had thrown up during the early morning feeding, but he was okay at 8:30 a.m. The defendant indicated that O.W. slept on and off from 9 a.m. to noon. The defendant said he felt the clicking in O.W.'s ribs around 11:30 a.m., and that

they took O.W. to the hospital at 1:45 p.m. The defendant noted that one of the nurses was rude and treated him like he was abusing his baby.

¶ 26 During the interview, the defendant was asked about previous injuries to the baby. The defendant recalled that Ashlee took O.W. to a doctor in Alton because O.W.'s leg was a little swollen near the hip, and O.W. would not straighten it. The defendant stated that the swelling went down, and the doctor said the baby's leg was fine. The defendant recalled that Ashlee's mother, Peggy Wethington, had reported them to DCFS two times. The first time was because of the baby's leg and the second time was because they were living at the Hiway House Motel. The defendant said that the police checked on O.W. and did not find any problems.

¶ 27 Throughout the interview, Detective Skalsky asked the defendant to explain how O.W.'s ribs were broken. The defendant repeatedly stated that he did not know. The defendant cited a number of instances where he may have been a little rough with O.W., but he did not believe he harmed him. The defendant stated that he would swaddle the baby tightly when the baby was crying, but the defendant did not believe that caused any injury. The defendant recalled that a few days prior, the baby was crying, so the defendant held him tightly and gave him a hug. At that time, Ashlee asked if he had squeezed the baby too tightly, and the defendant indicated that he had not. The defendant also recalled that the baby slid off of a couch the preceding Friday, but was not injured. The defendant explained he, Ashlee, and O.W. were visiting Ashlee's friend, Deven. The defendant laid the baby down next to him on a wrap-around couch. When the defendant leaned down to get some baby wipes, the baby slipped off the couch, landed on his

bottom and rolled onto his side. The defendant did not believe that Ashlee hurt the baby. He never saw Ashlee squeeze or otherwise harm the baby. Near the end of the interview, Detective Skalsky was advised by another detective that O.W. had multiple injuries, including a skull fracture, old and new rib fractures, and a possible leg fracture. When the defendant was informed of the extent of O.W.'s injuries, he became very upset. He repeatedly stated he did not know how the baby was injured.

¶ 28 The State's evidence revealed that the defendant and Ashlee struggled. They did not have money or a place to live. They moved around, staying with Ashlee's relatives and friends. Following O.W.'s birth, the defendant and Ashlee stayed with Ashlee's mother for about two weeks. When Ashlee had a falling out with her mother, they stayed with Ashlee's brother, Eric Dodd, and his wife, Lacey Dodd.

¶ 29 Lacey Dodd testified that Ashlee, O.W., and the defendant stayed at her home from August 3, 2014, through August 6, 2014. Lacey recalled that the first night was rough. Ashlee was upset with her mother, and O.W. cried all night. The next day, Lacey noticed that the baby could not straighten his leg. When Lacey asked the defendant and Ashlee about it, they indicated they swaddled the baby too tightly. Lacey encouraged Ashlee and the defendant to take the baby to a doctor, but they kept putting it off. Finally, Lacey scheduled an appointment with Dr. Giroux. Lacey noted that she and Eric also had to push Ashlee and the defendant to get the ultrasound of the baby's leg. Lacey recalled that the defendant handled the baby and changed his diapers most of the time. She testified that once when O.W. was crying, the defendant held him around the chest, lifted him up and shook him a little bit, while saying in a soft voice, "I wish you would stop

crying." Lacey recalled that the baby was extremely upset throughout the three-day stay, and she thought something might be wrong with him. Eric Dodd's testimony corroborated Lacey's testimony.

¶ 30 Following the brief stay with Eric and Lacey, the family stayed with Ashlee's sister, Emily Booth. Emily testified Ashlee, O.W., and the defendant stayed at her home for a little over a week. Emily "kicked the defendant out" after she witnessed a fight between the defendant and Ashlee. Emily recalled that while they were out in the street arguing, the baby had been left alone in the basement. Emily testified that the defendant left, and that Ashlee and the baby stayed "off and on" for another week.

¶ 31 Emily testified that she noticed that something was wrong with the baby's leg. The baby kept his leg "locked up," and he would cry if someone tried to straighten it. Emily also noticed that O.W. was not "breathing right" and that his chest was "kind of caved in." Emily testified the defendant was impatient with the baby, that he did not like all of the crying, and that he was not as gentle as he should have been with an infant. Emily recalled that the defendant flopped the baby down instead of gently laying him down. She noticed that the defendant would hold O.W. closer and squeeze him tighter if anyone asked to hold the baby. She also noticed that the defendant became upset when Ashlee's friends commented that the baby looked like the biological father.

¶ 32 Ashlee's friend, Deven Fair, testified that she picked up Ashlee and the baby from Emily's house. The defendant was not with them at that time, but he joined them later that evening. Deven recalled that they all stayed overnight, and that the baby cried a lot. The next day, Deven and her boyfriend helped Ashlee and the defendant get a room at the

Hiway House Motel. Deven and her boyfriend paid for the first few nights. Deven testified that the defendant picked up a few shifts at a local waste management company, so he was able to pay for additional nights at the motel. Deven testified that she was concerned with the way the defendant and Ashlee handled the baby. She noticed that when they held the baby, they did not support his neck and they would let his head flop, and that when O.W. cried during diaper changes, they would throw a blanket over his head. Deven recalled that Ashlee, the defendant, and the baby came to visit one night in September 2014, shortly before the defendant was arrested. During that visit, the baby fell from the couch onto a carpeted floor. Deven did not see the baby fall, but she saw the defendant pick him up from the floor. The baby did not cry, and he did not appear to be injured.

¶ 33 Ashlee's mother, Peggy Wethington, testified that Ashlee, the defendant, and the baby stayed with her after the baby was born. Peggy observed that the defendant was overbearing; that he did not protect the baby's head and neck; that he held the baby exceptionally tightly; and that he would not let anyone else hold the baby. Peggy testified she called the DCFS hotline when she learned that Ashlee and the baby were staying at the Hiway House Motel. She stated that the motel was known for drugs and prostitution. She did not believe it was a proper place for a baby. Peggy also called DCFS after learning that Ashlee did not take the baby for the ultrasound that the doctor had ordered. Peggy testified that she noticed a mark on the baby's head on the Saturday before the defendant's arrest, and that she encouraged Ashlee to have it evaluated. Peggy recalled that when she came home for lunch on September 8, 2014, she saw that Ashlee and the

defendant were trying to feed the baby. She returned to work, unaware that Ashlee and the defendant intended to take the baby to the hospital.

¶ 34 Ashlee Wethington testified during the State's case. At the outset, Ashlee acknowledged that she had been charged with four counts of aggravated battery to a child. Ashley testified that the defendant signed O.W.'s birth certificate, but was not O.W.'s biological father. Ashlee stated that her relationship with the defendant had been rough because they had a baby, no money, and no place to stay. She acknowledged that she and the defendant often argued about who would get up with the baby during the night. Ashlee indicated that she first noticed a problem with O.W.'s leg while she was staying with her sister, Emily. Ashlee asked Emily to take them to the emergency room, and Emily advised her to wait and see if the swelling would subside by the next morning. Ashlee noted that her brother, Eric, and his wife, Lacey, also expressed concern about O.W.'s leg, and that Lacey helped schedule a doctor's appointment. Ashlee testified that she, the defendant, and the baby were always together. She stated that there was only one time when the defendant did not stay with her and the baby. It was shortly before they went to the Hiway House Motel. She and the defendant had a heated argument because the defendant came home drunk. Emily would not allow the defendant to stay at her home. That evening, the defendant stayed with his brother, and she stayed with her friend, Deven. The following day, Deven rented a room at the Hiway House Motel. Ashlee, O.W., and the defendant stayed at the motel for almost two weeks. Ashley recalled that police officers conducted a welfare check on the baby during the stay at the motel. The officers confirmed that there were adequate diapers and formula, but they did

not hold or examine the baby. Ashlee recalled that they visited Deven during the weekend prior to the emergency room visit. During the visit, the baby slid off of a couch and onto the floor, but he was not injured.

¶ 35 Ashlee testified about the events leading up the emergency room visit on September 8, 2014. She and the defendant had an argument during the evening hours on September 7, 2014. The defendant slept in the living room that night. Ashlee put the baby to bed around 11 p.m. The baby woke up around 1:30 a.m., and he was crying. The defendant tried to give the baby a bottle, but the baby would not take it. Ashlee watched as the defendant tried to force the bottle into the baby's mouth. The defendant was upset because she was watching him, so he took the baby outside. When the defendant came back inside, he had spit up all over his arm. They all went back to sleep. Ashlee and the defendant argued again the next morning. After Ashlee fed the baby, they went back to bed. Ashlee arose when her mother came home for lunch. Ashlee did not notice any problem with the baby at that time. Around 12:30 that afternoon, she noticed that the baby was grunting and that the ribs on his left side were popping in and out. When she told the defendant, he checked on the baby. A few minutes later, the defendant said something was wrong and they should go to the hospital. Ashlee and the defendant took O.W. to the hospital that afternoon. Ashlee testified that she had seen the defendant hold O.W. tightly, but she never thought that was enough to break the baby's ribs. She also testified that she did not do anything to cause the injuries to the O.W.'s leg, ribs, and head.

¶ 36 Jonathan Miller testified that he and the defendant were detained in the same pod at the Madison County jail in September 2014. Miller was the only person who talked with the defendant. The other detainees often picked on the defendant because he had been arrested for abusing a seven-week-old baby. Miller testified that he and the defendant had a conversation about what happened to the baby. The conversation occurred around September 12, 2014, shortly after Miller was detained. Miller noted that he was moved to another area shortly after this conversation. He had not spoken with the defendant since he was moved. Miller gave the following account of his conversation with the defendant. The defendant indicated that while he and Ashlee were staying at a motel, they were always arguing, and that the arguing led him to "rage out" on the baby the first time. One day after work, the defendant was trying to feed the baby, and Ashlee went off on him. The defendant got upset and threw the baby down on the bed. The baby hit his head and his head swelled up. Ashlee wanted to take the baby to the hospital, but the defendant told her they had to wait until the next day to see if the swelling would go down. The swelling went down, so the defendant did not think the baby's skull was fractured. During another fight, the defendant was holding the baby, and Ashley grabbed the baby's legs. The defendant yanked the baby away, and that is when the baby's ribs were fractured. The baby was screaming and would not take a bottle. Then, the defendant noticed the popping noise in the baby's chest. He knew he had to take the baby to the hospital.

¶ 37 Miller testified that he came forward after some of the other detainees advised that the baby had passed away and that the defendant was going to blame the mother. Miller

acknowledged that he was facing criminal charges for methamphetamine manufacturing, and possession of a stolen vehicle, and that he contacted the state's attorney because he wanted help with his charges. Miller testified he was offered six years in prison with an option of impact incarceration in exchange for his truthful testimony.

¶ 38 At the close of the State's case, the defendant moved for a directed verdict on all counts. The defendant argued that there was a complete lack of evidence that he struck or otherwise caused harm to O.W. The trial court found that there was sufficient evidence to submit the case to the jury and denied the defendant's motion for a directed verdict.

¶ 39 Wendy Hierman, the defendant's mother, was called as a witness for the defense. Hierman testified that during the period from August 20, 2014, through August 24, 2014, the defendant worked at a waste management company during the day, and stayed with his older brother, Kolyn, at night. At that time, Hierman was caring for Kolyn's son during the week. She picked up her grandson from Kolyn's home in the morning, and returned him in the evening. Hierman testified that she was at Kolyn's house for about an hour each day, and she did not see Ashlee or O.W. during those visits.

¶ 40 At the close of the evidence, the defendant moved for a directed verdict. The defendant's motion was denied, and the case was given to the jury. The jury found the defendant guilty on all four counts of aggravated battery to a child. The defendant moved for a judgment notwithstanding the verdict on all counts. The trial court entered a judgment notwithstanding the verdict as to count III, finding there was insufficient evidence to prove that the victim's tibia had been broken. The court sentenced the

defendant to a term of eight years in prison on counts I, II, and IV, and ordered the sentences to run consecutively.

¶ 41 II. ANALYSIS

¶ 42 Accountability Instructions

¶ 43 In this appeal, the defendant contends that the trial court did not properly instruct the jury on accountability. Initially, the defendant claims that the accountability instruction, as given, misstated the *mens rea* requirement, and invited the jury to find him guilty of an intentional act, based upon what he "should have known." The defendant asserts that in *People v. Pollock*, 202 Ill. 2d 189, 780 N.E.2d 669 (2002), the Illinois Supreme Court reviewed a similar instruction and determined that it misstated the law.

¶ 44 In this case, the trial court gave the following instruction on accountability:

> "A person is legally responsible for the conduct of another person when, either before or during the commission of an offense, and with the intent to promote or facilitate the commission of an offense, he knowingly solicits, aids, abets, agrees to aid, or attempts to aid the other person in the planning or commission of an offense."
>
> "A parent has a legal duty to aid a small child if the parent knows or should know about a danger to the child and the parent has the physical ability to protect the child. Criminal conduct may arise by overt acts or by an omission to act where there is a legal duty to do so."
>
> "Actual physical presence at the commission of a crime is not a requirement for legal responsibility."

"Intent to promote or facilitate the commission of an offense may be shown by evidence that the defendant shared a criminal intent of the principal or evidence that there was a common criminal design."

¶ 45 This instruction is taken from Illinois Pattern Jury Instructions, Criminal, No. 5.03, and the accompanying committee notes. See Illinois Pattern Jury Instructions, Criminal, No. 5.03 (4th ed. Supp. 2011). The second paragraph of the instruction addresses parental accountability. The language in the instruction was derived from *People v. Stanciel*, 153 Ill. 2d 218, 606 N.E.2d 1201 (1992).

¶ 46 In *Stanciel*, the Illinois Supreme Court addressed the consolidated appeals of two mothers, each of whom was held accountable for the murder of her child by a live-in boyfriend. Our supreme court held that the mother's knowledge of ongoing abuse by her boyfriend, coupled with the continued, sanctioned exposure of the child to the abuse, was sufficient to hold the mother accountable for the murder of the child. *Stanciel*, 153 Ill. 2d 237. The supreme court pointed out that it had long recognized the affirmative duties of parents to protect their small children from threats by third persons. *Stanciel*, 153 Ill. 2d at 236. The court found that while the defendant-mothers did not aid the principals in the pattern of abuse which resulted in the deaths of the children, the evidence presented against the defendant-mothers was sufficient "to provide the inference that they both either knew or should have known of the serious nature of the injuries which the victims were sustaining." *Stanciel*, 153 Ill. 2d at 237. The court held that under the circumstances presented, "the defendants had an affirmative duty to protect their children from the threat posed" by the perpetrators, and rather than fulfilling the duty, the defendants

entirely ignored the dangers and thereby aided the perpetrators in murdering the children. *Stanciel*, 153 Ill. 2d at 237. The supreme court specifically stated that intent remained a requirement of accountability, and that guilt must be proven through the knowledge and sanction of a danger. *Stanciel*, 153 Ill. 2d at 237.

¶ 47 A decade later, the Illinois Supreme Court addressed confusion regarding the *mens rea* requirement of parental accountability that had arisen in the wake of the *Stanciel* decision. *People v. Pollock*, 202 Ill. 2d 189, 213, 780 N.E.2d 669, 683 (2002). In *Pollock*, the defendant was the mother of a three-year-old child who was murdered by the mother's boyfriend. The boyfriend admitted that he had caused the child's death and he told police that the defendant was unaware of his actions. The defendant was charged with first degree murder and aggravated battery of a child based on the sole theory of accountability. *Pollock*, 202 Ill. 2d at 213. During the trial, there was no evidence that the defendant abused her child. In addition, there was no evidence that the defendant was present when her child was abused, and no evidence that the defendant was aware of any abusive acts committed by her boyfriend. Throughout opening and closing statements, the State repeatedly argued that the defendant "knew or should have known" about the abuse committed by her boyfriend, and that by allowing the boyfriend to have access to the child, the defendant was accountable for his actions. *Pollock*, 202 Ill. 2d at 206-07. Relying on language from *Stanciel*, the State tendered a nonpattern instruction which provided: " 'A parent has a legal duty to aid a small child if the parent knows or should have known about a danger to the child and the parent has the physical ability to protect the child.' " *Pollock*, 202 Ill. 2d at 208.

¶ 48 In addressing the *mens rea* element of parental accountability, the supreme court stated that it was a misconstruction of *Stanciel* to assert that a parent's legal duty to protect his or her child may be imposed if the parent does not know, but should know, of a danger. *Pollock,* 202 Ill. 2d at 215. The court explained that the term "knew or should have known" was used in *Stanciel* in reference to the mother's awareness of the severity of the injuries sustained by her child, not the mother's awareness of the existence of the abuse. *Pollock*, 202 Ill. 2d at 215. "Rather than diluting the knowing or intentional *mens rea* requirement for accountability, *Stanciel*, instead, stands for the proposition that when proof that a parent aided and abetted an offense is to be deduced from an omission to act, the parent must know of a serious and immediate threat to the welfare of the child." *Pollock*, 202 Ill. 2d at 215. The supreme court reiterated that accountability requires an intentional or knowing mental state and an intent to promote or facilitate the commission of the offense. *Pollock*, 202 Ill. 2d at 212. The court determined that the law of accountability was misstated, both in the instruction and when the prosecutor repeatedly told the jury that defendant could be held accountable if she did not know, but should have known, that her boyfriend was abusing her child. *Pollock*, 202 Ill. 2d at 213. The court reasoned that because the State's case was exclusively premised on the theory that the defendant was accountable for the acts of her boyfriend, the instructional error was not harmless. *Pollock*, 202 Ill. 2d at 216.

¶ 49 In this case, as in *Pollock*, the parental accountability instruction included the term "should have known," and misstated the element of *mens rea*. There are, however, substantial differences between this case and *Pollock*. Here, unlike *Pollock*, the case was

submitted to the jury on the theory that the defendant committed acts of battery on O.W., and alternatively, on a theory of accountability. During closing arguments, the State emphatically argued that the defendant intentionally abused O.W., and that defendant's acts caused O.W.'s rib fractures, the skull fracture, and the brain injuries. In an alternative argument, the State told the jurors that "even if" they believed the defendant did not hurt the baby, the defendant should be held accountable because he knew that Ashlee was inflicting serious injuries on the baby, he took no action to protect the baby, and he lied about the abuse when asked by doctors and the police. Significantly, the State did not argue that the defendant "should have known" that Ashlee was abusing the baby. Unlike *Pollock*, the prosecutors here did not argue, much less emphasize, the "should have known" portion of the parental accountability instruction. The State consistently proposed that the defendant was the principal actor who abused the baby, and alternatively, that defendant knew the baby was being harmed by Ashlee, and failed to protect the baby. In addition, there was sufficient evidence to find the defendant guilty beyond a reasonable doubt as the principal actor.

¶ 50 An error in the jury instructions will not warrant a new trial unless the result of the trial would have been different had the jury been instructed properly. *People v. Amaya*, 321 Ill. App. 3d 923, 929, 748 N.E.2d 1251, 1256 (2001). When a jury is improperly instructed regarding the principles of accountability, a new trial is not warranted if the evidence is sufficient to find the defendant guilty beyond a reasonable doubt as a principal. *Amaya*, 321 Ill. App. 3d at 929. The instructions, when considered as a whole,

fully and fairly announced the law applicable to the theories of the State and the defense. Under the circumstances presented here, we find that the instructional error was harmless.

¶ 51 The defendant next contends that the trial court erred in giving the instruction on parental accountability where the undisputed evidence showed that the defendant is not the biological father of O.W., that the defendant did not adopt O.W., and that the defendant was not awarded custody, visitation, or any rights to raise O.W. The defendant claims that he was merely the "paramour/boyfriend" of O.W.'s mother, and as such, had no legal rights or responsibilities for O.W. At trial, the defendant tendered a nonpattern instruction purporting to define "parent" in accordance with Illinois law. The defendant argued that the instruction would serve to alleviate or reduce any prejudice resulting from the improper parental accountability instruction. The defendant's instruction was rejected by the trial court. The rejected instruction does not appear to be in the record, but it was quoted in the trial court's order of August 26, 2015, addressing the defendant's posttrial motion. The defendant's proposed instruction defines a "parent" as follows: "A person is a parent only if they are the biological parent of a child, or has formally legally adopted a child, or has been given formal legal custody by a court order."

¶ 52 In this case, the defendant is not O.W.'s biological father. There was, however, evidence that the defendant was at the hospital for O.W.'s birth, and that the defendant regularly held himself out as O.W.'s father. The State offered into evidence a certified copy of O.W.'s birth certificate pursuant to Rule 803(9) of the Illinois Rules of Evidence (Ill. R. Evid. 803(9) (eff. Apr. 26, 2012)). Rule 803(9) governs certain exceptions to hearsay rule and states:

> "The following are not excluded by the hearsay rule, even though the declarant is available as a witness:
>
> * * *
>
> (9) *** Facts contained in records or data compilations, in any form, of births, fetal deaths, or marriages, if the report thereof was made to a public office pursuant to the requirements of law." Ill. R. Evid. 803(9).

Over the objection of defendant, the circuit court admitted the birth certificate into evidence, which identified the defendant as O.W.'s father. The court relied on Rule 803(9), as well as section 25 of the Vital Records Act (410 ILCS 535/25 (West 2014)) and *Ashford v. Ziemann*, 99 Ill. 2d 353, 459 N.E.2d 940 (1984).

¶ 53 Section 25(6) of the Vital Records Act provides that a birth certificate issued in accordance with this section "shall be considered as prima facie evidence of the facts therein stated, provided that the evidentiary value of a certificate or record filed more than one year after the event, or a record which has been amended, shall be determined by the judicial or administrative body or official before whom the certificate is offered as evidence." 410 ILCS 535/25(6) (West 2014).[1] In *Ashford v. Ziemann*, our supreme court held that a birth certificate constituted an exception to the hearsay rule and should have been admitted in a parentage action. *Ashford*, 99 Ill. 2d at 363.

¶ 54 The defendant correctly indicates that the State did not offer a voluntary acknowledgment of paternity at trial. In light of the statutes regarding the admissibility of

[1]The birth certificate was registered in St. Louis County, Missouri. The Missouri Uniform Vital Statistics Law contains similar provisions regarding the information contained on birth certificates and their admissibility in evidence. See Mo. Rev. Stat. §§ 193.255(2), 193.085(7) (2014).

birth certificates and the reliability of the information contained therein, the acknowledgement of paternity was not necessary to the proof of the State's case.[2] The trial transcript clearly shows that the State offered the certified copy of the Missouri birth certificate (Exhibit 23) identifying the defendant as the baby's father, and that defendant objected to its admission. Defendant offered no evidence to contradict the information contained in the birth certificate. In fact, as noted previously, during defendant's interview, he referred to himself as O.W.'s father. In this case, the trial court court correctly determined that a parent and child relationship had been established by consent, and that the defendant's nonpattern instruction, purporting to define a parent, did not accurately reflect the law in Illinois.

¶ 55 After reviewing the record, we conclude that the jury instructions given in this case, when considered as a whole, fully and fairly stated the law applicable to the respective theories of the State and the defense, and that the error in including the phrase "should have known," in the instruction on parental accountability, does not require reversal.

¶ 56 Sufficiency of the Evidence

¶ 57 Next, the defendant challenges the sufficiency of the evidence to support the convictions. The defendant argues that no matter how the evidence is viewed, it is

[2]In Illinois, if at the time of the child's birth the mother was not married, there is a statutory scheme that provides that the birth certificate shall contain the name of the father *only* if a voluntary acknowledgment of paternity has been signed by the individual to be named as the father. 410 ILCS 535/12 (West 2014). Missouri has a similar statute. See Mo. Rev. Stat. § 193.085(7) (2014).

insufficient to establish that he committed any form of battery on O.W., either directly or through others.

¶ 58 A criminal conviction will not be overturned unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 276 (1985). When presented with a challenge to the sufficiency of the evidence, it is not the function of the reviewing court to retry the defendant. *Collins*, 106 Ill. 2d at 261. The relevant question is whether, after viewing the evidence in a light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Collins*, 106 Ill. 2d at 261.

¶ 59 In this case, the jury heard testimony from several witnesses and viewed the defendant's interview. During the interview, the defendant stated that he had been with O.W. every day of the baby's life. The defendant also stated that he and Ashlee were the only people who cared for the baby, and that he was the one who got up most nights to feed the baby or change diapers. Family members and friends testified to concerns about how the defendant and Ashlee handled the baby. They noticed that the defendant held the baby more often than Ashlee. Witnesses testified that the defendant was aggressive and impatient with the baby, and that the defendant handled the baby roughly. Witnesses observed that the defendant would hold and squeeze the baby tighter when he was angry or did not want anyone else to hold the baby. There was testimony that the defendant flopped the baby down instead of gently laying him down, and that the defendant also shook the baby from time to time. Jonathan Miller testified that the defendant admitted

that he had fractured the baby's skull and fractured his ribs in fits of anger. There was also testimony that the defendant and Ashlee delayed seeking medical treatment for the baby's leg, and later for his ribs, and that the defendant lied about the injuries when confronted by investigators and medical providers. The resolution of the defendant's guilt turned on the credibility of the witnesses. The testimony, if believed, was sufficient to prove beyond a reasonable doubt that the defendant committed aggravated battery as a principal, and under an accountability theory. It is well settled that it is within the exclusive province of the trier of fact to assess the credibility of the witnesses and the weight to be given their testimony, to resolve conflicts or inconsistencies in the evidence, and to draw reasonable inferences from the evidence. *People v. Ortiz*, 196 Ill. 2d 236, 259, 752 N.E.2d 410, 425 (2001). After considering the testimony of the witnesses, the jury found beyond a reasonable doubt that the defendant was guilty of aggravated battery of a child. We cannot say that the jury's findings and conclusions are so unreasonable or improbable as to justify a reasonable doubt about the defendant's guilt.

¶ 60 Sufficiency of the Amended Indictment

¶ 61 The defendant next claims that the trial court erred in permitting the State to make a last minute amendment to the amended indictment. The defendant argues that the amendment was material to the charges, and that material amendments to an indictment can only be made by the grand jury.

¶ 62 Following jury selection, but prior to the swearing-in of the jurors, the State informed the court that there was a mistake in the amended indictment, and that O.W.'s date of birth was misprinted as July 7, 2014, rather than July 17, 2014. The State sought

leave to amend the amended indictment to correct a "scrivener's error," pursuant to section 111-5 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/111-5 (West 2014)). The defendant objected, arguing that the age of the victim is a material element of the offense of aggravated battery of a child, and that any material amendment to that charge must be made by the grand jury. After considering the arguments, the trial court concluded that the misstated date of birth was a technical error, and granted the State leave to amend to accurately state the date of birth. The court noted that the State was not required to include the victim's date of birth in the charging instrument, and that the amendment did not alter the required element that the victim be a person under the age of 13.

¶ 63 Once an indictment has been returned, it may not be broadened through amendment, except by the grand jury. *People v. Benitez*, 169 Ill. 2d 245, 254, 661 N.E.2d 344, 349 (1996). There is an exception to this rule to allow for the correction of a formal defect. Section 111-5(a) of the Code (725 ILCS 5/111-5(a) (West 2014)) provides that an indictment may be amended on motion of the state's attorney or a defendant at any time because of formal defects, including any "miswriting, misspelling or grammatical error." Formal defects are distinguished from substantive amendments that alter the nature or elements of the offense charged. *People v. Shipp*, 2011 IL App (2d) 100197, ¶ 21, 958 N.E.2d 1128. An amendment to correct a formal defect in an indictment is warranted where there is no surprise or prejudice to the defendant, or where the record clearly shows that the defendant was otherwise made aware of the actual charge against him. *Shipp*, 2011 IL App (2d) 100197, ¶ 21.

¶ 64 In this case, the State was permitted to amend the victim's date of birth from July 7, 2014, to July 17, 2014. The amendment did not change the identity of the victim. It did not broaden or otherwise alter the nature and elements of the charged offenses. The defendant has established no prejudice resulting from the amendment. The trial court correctly concluded that the amendment was offered to correct a formal defect. The court did not abuse its discretion in granting the State leave to amend the amended indictment.

¶ 65 The defendant next contends that the amended indictment was defective in that it failed to inform him that the State intended to proceed on an accountability theory. The defendant argues that the amended indictment alleged that he committed the offenses, and did not allege that he should be held accountable for the acts of another person. The defendant notes that a similar argument was rejected by the Illinois Supreme Court in *People v. Ceja*, 204 Ill. 2d 332, 361, 789 N.E.2d 1228, 1247 (2003), and candidly acknowledges that he has raised this issue to preserve it for higher review. The defendant further asserts that the Illinois Supreme Court has apparently never considered whether due process would require that the indictment include accountability as an element of the offense.

¶ 66 In this case, the amended indictment charged the defendant with four counts of aggravated battery of a child, and it made no reference to a theory of accountability. In *Ceja*, our supreme court held that it is proper to charge a defendant as a principal even though the proof is that the defendant was only an accomplice. *Ceja*, 204 Ill. 2d at 361. The supreme court indicated that this pleading practice is permissible because accountability is not an offense in itself, but merely an alternative method of proving a

defendant guilty of the substantive offense. *Ceja*, 204 Ill. 2d at 361. Illinois courts have long held there is no requirement that a defendant be charged with a crime in the language of accountability. See *e.g.*, *People v. Ruscitti*, 27 Ill. 2d 545, 546-47, 190 N.E.2d 314, 315 (1963); *People v. Williams*, 28 Ill. App. 3d 402, 404, 328 N.E.2d 682, 683 (1975). In *People v. Ruscitti*, the defendant asserted that he was denied due process based on the fact that he was indicted and convicted as a principal, while the evidence showed that he was an accessory. 27 Ill. 2d at 546. The supreme court held that it was not necessary that the indictment against an accessory "describe the circumstances as they actually occurred," and that the indictment was sufficient "if the accessory [was] charged with the legal effect of the acts performed by him." *Ruscitti*, 27 Ill. 2d at 546-47. The court determined there was sufficient evidence to prove the defendant's guilt as an accessory, and that the defendant's indictment and conviction as a principal was proper and did not violate any of his constitutional rights. *Ruscitti*, 27 Ill. 2d at 546-47.

¶ 67 Here, the amended indictment met all of the elements required under section 111-3 of the Code (725 ILCS 5/111-3 (West 2014)). The State prosecuted the defendant as a principal, and alternatively under a theory of accountability. As noted earlier in this decision, the evidence was sufficient to find that the defendant was guilty beyond a reasonable doubt both as a principal, and under a theory of parental accountability. The defendant has failed to establish that any alleged defect in the amended indictment resulted in unfair prejudice.

¶ 68 The defendant also contends that his indictment and conviction for multiple counts of aggravated battery violate the one-act, one-crime doctrine. The defendant argues that

the amended indictment failed to inform him that the State intended to treat each count as a separate and distinct act of battery to obtain multiple convictions. The defendant also claims that counts alleging broken ribs (counts I and II), constitute a single act, and that the court erred in sentencing him to serve two consecutive sentences for a single act. The defendant cites *People v. Crespo*, 203 Ill. 2d 335, 788 N.E.2d 1117 (2001), in support of his arguments.

¶ 69 Multiple convictions are improper if they are based on precisely the same physical act. *People v. Rodriguez*, 169 Ill. 2d 183, 186, 661 N.E.2d 305, 306 (1996); *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977). An "act," when used in this sense, means "any overt or outward manifestation that will support a different offense." *King*, 66 Ill. 2d at 566. When more than one offense arises from a series of incidental or closely related acts and the offenses are not, by definition, lesser included offenses, then multiple convictions and consecutive sentences can be imposed. *Rodriguez*, 169 Ill. 2d at 186-87.

¶ 70 In *People v. Crespo*, the defendant was convicted of armed violence and aggravated battery for stabbing the victim three times during an attack. On appeal, the defendant argued that the aggravated battery conviction could not stand because it was based on the same single act as the armed violence charge. *Crespo*, 203 Ill. 2d at 337. The supreme court examined the indictment and noted that the counts charging the defendant with armed violence and aggravated battery referred to the stabbing, without referencing each stab wound as a separate offense. *Crespo*, 203 Ill. 2d at 342. The supreme court also reviewed the trial transcript, and noted that the State portrayed the defendant's conduct as a single act, and did not argue that each stab wound supported a

separate offense. *Crespo,* 203 Ill. 2d at 343. After careful consideration of the indictment and the record, the court concluded that the single attack, as alleged in the indictment and argued at trial, would not support convictions for both armed violence and aggravated battery. *Crespo*, 203 Ill. 2d at 343.

¶ 71 In this case, the amended indictment alleged that the defendant committed four acts of aggravated battery, causing injuries to O.W. over a period of several weeks, from July 24, 2014, to September 8, 2014. Each count identified distinct skeletal fractures. During trial, the State presented evidence and argued that the injuries to O.W. were inflicted over the course of the seven weeks of the baby's life, and that the injuries resulted from distinct acts of battery. The medical testimony demonstrated that O.W. suffered multiple fractures to his ribs, and that some fractures were recent and others were healing. This evidence showed that O.W.'s ribs were not injured in a single act. Additional evidence indicated that the baby had both recent and older injuries to his brain and skull. The victim was an infant who could not testify as to when each of the injuries was inflicted. Given the facts and circumstances of this case, the dates provided in the indictment, spanning about six weeks, were as specific as they could be. After reviewing the record, we find that the amended indictment adequately informed the defendant of the State's intent to prosecute him for separate acts.

¶ 72 Finally, the defendant contends that the trial court erred in imposing consecutive sentences without finding that the defendant "inflicted severe bodily injury" as required under section 5-8-4(d)(1) of the Unified Code of Corrections (730 ILCS 5/5-8-4(d)(1) (West 2014)). The defendant argues that the trial court equated "great bodily harm" with

"severe bodily injury," and did not make a specific finding that the defendant had inflicted "severe bodily injury." We disagree.

¶ 73 Section 5-8-4(d) mandates consecutive sentences where one of the offenses for which the defendant was convicted was a Class X felony and the defendant inflicted "severe bodily injury." 730 ILCS 5/5-8-4(d)(1) (West 2014). During the sentencing hearing, the trial court indicated that it did not find a significant difference between "great bodily harm" and "severe bodily injury." The court pointed to the medical evidence which established that almost every one of the baby's ribs had been broken, that some ribs were broken multiple times, and that there were both new and healing injuries to the ribs and skull. The court found that multiple old and new rib fractures and a skull fracture constitute "severe bodily injury for this child" and "great bodily harm as alleged in the indictment." Thus, the trial court made a specific finding that the defendant inflicted "severe bodily injury," and this finding is supported by the record. The trial court did not err in imposing mandatory consecutive sentences.

¶ 74 Discovery Violations and Evidentiary Errors

¶ 75 The defendant contends that the trial court abused its discretion in failing to impose an appropriate sanction where the State failed to preserve a video taken of the defendant while he was in the booking room at the Granite City police station.

¶ 76 Illinois Supreme Court Rule 415(g) permits the trial court to impose sanctions for violations of the discovery rules. Ill. S. Ct. R. 415(g) (eff. Oct. 1, 1971). The rule provides that if a discovery violation is brought to the attention of the trial court, the court may order the noncompliant party to produce the discovery of material and information,

grant a continuance, exclude the evidence, or enter any other order the court deems just under the circumstances. Ill. S. Ct. R. 415(g). The decision on a sanction is within the discretion of the trial court, and its decision is reviewed for an abuse of discretion. *People v. Sutherland*, 223 Ill. 2d 187, 235, 860 N.E.2d 178, 212 (2006).

¶ 77 In this case, the defendant served a subpoena on the Granite City Police Department requesting copies of any and all video recordings of him. Rather than force compliance, the defendant relied on an assistant state's attorney's representation that she would procure the videos and produce them with discovery. The parties agreed that there were three video recordings of the defendant. One video recording was made while the defendant was awaiting processing the booking room. Two others contained statements made by the defendant during interviews with the police. The first interview occurred prior to booking. The second interview occurred at the request of the defendant, when he reinitiated contact with the police, after he was booked. While the videos of the defendant's interviews were tendered, the booking room video was not. The defendant raised the State's failure to produce the video during a pretrial hearing in November 2014. Following the hearing, the State requested the booking room video from the Granite City Police Department, but the video had not been preserved. The defendant filed a motion for sanctions, and requested a dismissal of the charges, or alternatively, an order barring the State from using all of the recorded statements at trial.

¶ 78 During a hearing, the trial court initially considered the nature of the discovery violation. The court found that the booking room video may have contained potentially useful information, but there was no indication that the video would have provided

material or exculpatory evidence. The court found no due process violation. The court concluded that the State was "sloppy" in its discovery practice, but found no evidence to indicate that the State had acted in bad faith. The trial court concluded that the exclusion of the first interview was not warranted, and that an order prohibiting the State from making reference to or introducing evidence of the defendant's second interview would be an appropriate sanction. Based on the record, we do not find that the court abused its discretion in imposing this sanction.

¶ 79 The defendant contends that the trial court erred in admitting into evidence almost all of the video of his interview with Detective Skalsky. The defendant argues that the video contained hearsay statements which were not admissible under any exception to the hearsay rule.

¶ 80 As a general rule, evidence is admissible if it is relevant. *People v. Bryant*, 391 Ill. App. 3d 228, 244, 907 N.E.2d 862, 876 (2009). Relevant admissions of a party are admissible when offered by the opponent as an exception to the hearsay rule. *Bryant*, 391 Ill. App. 3d at 244. The determination as to whether evidence is relevant and admissible is within the sound discretion of the trial court, and the court's ruling will not be reversed absent a clear abuse of discretion resulting in manifest prejudice to the defendant. *Bryant*, 391 Ill. App. 3d at 244. A statement made by an accused person, unless excluded by a claim of privilege against self-incrimination or another exclusionary rule, may be used against the accused as an admission, even if the statement is not inculpatory. *People v. Aguilar*, 265 Ill. App. 3d 105, 110, 637 N.E.2d 1221, 1224 (1994).

¶ 81 In this case, the defendant did not file a motion to suppress the video recording, and he made no claim of privilege. The defendant filed a motion *in limine*, and asked the court to exclude the entire video recording of the defendant's interview, except for purposes of impeachment or a specific admission, on grounds that the entire video was inadmissible hearsay. The trial court considered the contents of the recordings and counsel's objections. The court found that the defendant made a knowing, intelligent, and voluntary waiver of his rights, and that the defendant's statements constituted admissions by the defendant. After reviewing the record, we find no abuse of discretion in admitting the video recording of the defendant's first interview into evidence.

¶ 82 III. CONCLUSION

¶ 83 Accordingly, the judgment of the circuit court is affirmed.

¶ 84 Affirmed.