2011 IL App (2d) 090071-U
No. 2—09—0071
Order filed August 26, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Winnebago County.
Plaintiff-Appellee,	)	
v.	)	No. 08—CF—1200
CHRISTOPHER L. CHANDLER,	)	Honorable Joseph G. McGraw,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices McLaren and Hudson concurred in the judgment.

ORDER

Held: (1) Where the State proved beyond a reasonable doubt that defendant and his battery victim had a dating relationship and resided together, the victim qualified as a family or household member under either criteria, and defendant's convictions of aggravated domestic battery and domestic battery were affirmed; (2) where extended-term sentences on the convictions for the two less serious offenses were not statutorily authorized, defendant's sentence was reduced to the maximum nonextended-term sentence.

¶ 1 Following a jury trial, defendant, Christopher L. Chandler, was found guilty of aggravated domestic battery (720 ILCS 5/12—3.3 (West 2008)), aggravated battery (720 ILCS 5/12—4 (West 2008)), and two counts of domestic battery (720 ILCS 5/12—3.2(a)(1) (West 2008)). The trial court

sentenced him to concurrent terms of 14 years, 10 years, 6 years, and 6 years, respectively. Defendant timely appealed. Defendant argues: (1) he was not proved guilty beyond a reasonable doubt of aggravated domestic battery and domestic battery because the State failed to prove that the victim was a family or household member; and (2) alternatively, defendant's extended-term sentences for aggravated battery and domestic battery should be reduced to nonextended-term sentences because an extended-term sentence can be imposed only on the most serious felony, which in this case is aggravated domestic battery. We initially affirmed defendant's convictions, but reduced his extended-term sentences for domestic battery and aggravated battery to the maximum nonextended-term sentences. *People v. Chandler*, No. 2—09—0071 (2010) (unpublished order under Supreme Court Rule 23). The Illinois Supreme Court issued a supervisory order on May 25, 2011, denying defendant's petition for leave to appeal and directing us to vacate our September 22, 2010, order and to reconsider our decision in light of *People v. Almore*, 241 Ill. 2d 387 (2011). In accordance with the supervisory order, we hereby vacate our prior order. Upon reconsideration, we conclude that *Almore* only addressed the criteria of residency, that a different result is not warranted as to either criteria, and again affirm as modified.

¶ 2 BACKGROUND

¶ 3 On July 25, 2008, defendant was indicted on two counts of aggravated domestic battery (720 ILCS 5/12—3.3 (West 2008)), two counts of aggravated battery (720 ILCS 5/12—4 (West 2008)), and three counts of domestic battery (720 ILCS 5/12—3.2(a)(1) (West 2008)). The State later dismissed one count of each offense.

¶ 4 Defendant's jury trial commenced on September 23, 2008, at which the following relevant testimony was adduced. Nora Jansen testified that she was a drug addict and that she had previously

been convicted of several drug and prostitution charges. She currently had charges pending against her, which included prostitution, forgery, theft, and possession of drug paraphernalia. According to Jansen, defendant was her boyfriend. She began "dating" him in January 2008. At that time, Jansen was addicted to drugs and worked as a prostitute to earn money for drugs. She had known defendant for about a month before they started dating. Their relationship "wasn't real serious at first." She knew she had become defendant's "girlfriend" after a conversation they had in defendant's "baby's mama's car." She "had told him that [she] cared about him and that [she] liked him and that [she] wanted to be his girl." He asked her, " 'Are you sure you want to do that,' " and she said, " '[Y]es.' " According to Jansen, "normally [she] didn't get involved with people because of what [she] did." She stated that "[t]he prostitution and the drugs *** pretty much took up everything." She told defendant that she did not want a "pimp/hoe [*sic*] relationship" with him. She told him that she "really did care about him and that [she] wanted a boyfriend/girlfriend relationship." According to Jansen, defendant said "okay." She could not recall his exact words but "that's basically what it boiled down to." Jansen testified that, during the course of their relationship, she and defendant "lived together," but they did not have their "own place." They stayed in various hotels and at other people's homes. She stated that they "stayed at Town and Country for a little while, and Travelodge." They stayed at a friend's house together, Meat Man's house on 12th Avenue in Rockford, for "[p]robably a couple weeks." She gave defendant the money that she earned as a prostitute, and he used it to pay for hotel rooms and food.

¶ 5 The incident upon which the charges in the present case are based took place on March 23, 2008. However, Jansen testified that defendant had become physically violent with her on prior occasions during their relationship. The first incident occurred approximately three weeks prior to

March 23, 2008. Jansen and defendant were at a house where "a lot of people hung out." Jansen left to go to the liquor store. Defendant followed Jansen out of the house and asked her where she was going. Jansen told defendant where she was going, and defendant said, " 'Why are you playing with me?' " When Jansen replied that she was not " 'playing with' " defendant, defendant struck Jansen in the jaw with a glass bottle and said, " 'Bitch, quit playing with me.' " Jansen backed up and tried to get away from defendant. As she did so, a car pulled up, and defendant told the driver to " 'Run this bitch over.' " Jansen ran down the street to the liquor store. Jansen saw defendant the next day. He told her that he wanted to take her shopping because she was his " 'girl.' " She asked, " 'Really? You really think so?' " And defendant responded, " '[Y]es.' " Jansen asked defendant if he was going to be "physically hurtful" to her again. She told him that it was not something that she "was accustomed to." Defendant told her, " 'I'll never do that to you again.' "

¶ 6 Jansen further testified that, at about 1 or 2 p.m. on the Thursday prior to March 23, 2008, she went to her mother's workplace. Her mother gave her $2,000 in cash so that she could leave Rockford. Jansen put $1,500 in her bra and $500 in her boot. Jansen was then picked up by a friend, and they went to the friend's house. Jansen told the friend that she had money and that she was planning on leaving the area. On the way to the friend's house, they picked up "Little C." When Jansen tried to leave her friend's house to go shopping, Little C. began to wrestle Jansen in an attempt to get the money out of Jansen's bra. They wrestled and fought for five minutes until Little C. was able to get the money from Jansen's bra. Jansen was upset and walked to a "crack house" where she purchased $60 worth of crack cocaine. She then went to several clothing stores and purchased clothing. While doing so, Jansen ran into Officer Schissel and told him that she had been robbed by Little C. Officer Schissel told her that there was nothing that he could do about it. Jansen

continued walking and ran into defendant. Jansen and defendant went to "Meat Man's" house, and from there they went to a Travelodge hotel, where they spent the night.

¶ 7 According to Jansen, a second physically violent incident took place the next morning at the Travelodge hotel. As they lay in bed together, Jansen decided to smoke a cigarette. Defendant asked Jansen to put her cigarette out, and she complied. Thereafter, defendant choked her until she almost passed out, telling her, " 'You're going to die, bitch.' " They lay together for a little while longer and, eventually, Jansen took a shower, got dressed, and left. As she was getting ready to leave, defendant said, " 'Maybe I should beat you up before you leave and give you a reason not to come back.' "

¶ 8 Jansen testified that she next saw defendant early in the morning of Sunday, March 23, 2008. She was walking on 8th Street when defendant pulled up in a car driven by someone else. Defendant told her to get in the car. Jansen did not want to go with defendant, so she lied to him and told him that she had a "trick" waiting for her around the corner. He said, " 'Bitch, get in the car.' " Jansen got in the car and went with defendant to Meat Man's house. When they arrived at Meat Man's house, she and defendant fell asleep on the floor in one of the rooms. Sometime later, Jansen woke up and went into the bathroom. When she exited the bathroom, she found defendant talking to "Silk" and "MC." Jansen stood nearby as defendant was talking to the other individuals. As he was talking, defendant turned and hit Jansen with his fist. She fell into the wall and slid down on to the floor. He came over to her and again hit her with his fist. He also kicked her and "stomp[ed]" her with his foot. Defendant stopped kicking Jansen and continued his conversation with MC. Then, defendant picked up a piece of "trim" and starting hitting Jansen in the head with the trim. At some point, defendant told Jansen to go clean herself up. He grabbed her by the hair and pulled her. When

defendant finally let go of Jansen's hair, she walked into the kitchen and defendant struck her with the trim again. When defendant stopped hitting her, Jansen went into the bathroom, removed her clothes, and entered the shower. After Jansen exited the shower and got dressed, defendant punched her in the face several times. He then made her clean up the blood in the living room and the kitchen. When Jansen finished cleaning up, defendant brought her to a bedroom where she lay on the floor and fell asleep. When she woke up, defendant asked her to perform oral sex on him. She complied until he told her to stop. Thereafter Jansen and defendant had sex.

¶ 9 Jansen testified that at about noon, she heard defendant's "baby's mom's car" pull up in front of the house. She explained that "baby's mom" means the mother of defendant's children. Julie Ann was defendant's "baby's mom." When Julie Ann knocked on the door, defendant told Jansen to answer the door and to tell Julie Ann that defendant was not there. Jansen did as she was instructed. Julie Ann asked Jansen, " 'What happened to you? Who did that to you?' " Jansen could not recall what she told Julie Ann, but she did not tell her that defendant had hit her. According to Jansen, Julie Ann often came to the house looking for defendant, because defendant usually stayed with Jansen until early in the morning.

¶ 10 Jansen testified that after Julie Ann left, she and defendant went to the store to get food and then returned to the house. When they returned, defendant talked with Silk and Meat Man for awhile, and Jansen went into another room. Later, defendant asked Jansen if she could go get them some money so that they could get something to eat and go somewhere else to stay. Jansen agreed and left for about 10 to 15 minutes. When she returned she gave defendant the money and asked him if he would buy her some crack. Defendant went to buy the crack and when he returned, they smoked it together. Defendant told her that she could "go around the block." She did so, and when

she was picked up the second time, she "had the guy just take [her] over to [her] friend's house." Jansen spent the night with her friend, Jody Woods, and the next day Woods took her to Rockford Memorial Hospital, where she was treated for multiple injuries.

¶ 11 Tyanne Kennedy-Etes testified that, on March 24, 2008, she was working as a registered nurse at Rockford Memorial Hospital and was Jansen's primary nurse in the emergency department. Kennedy-Etes testified that Jansen had a variety of injuries but that she appeared alert and oriented and did not appear to be intoxicated.

¶ 12 Following the testimony of Jansen and Kennedy-Etes, the State rested.

¶ 13 The following testimony was presented on behalf of defendant. Detective Mary Ogden and Officer Mark Danner both testified that they worked for the Rockford police department and spoke with Jansen on separate occasions. Both testified that Jansen told them that defendant had hit her with a gin bottle. She did not tell either of them about other incidents.

¶ 14 Steven Eisman, Jr., testified that he saw Jansen on Wednesday or Thursday prior to March 23, 2008, at a friend's house. He told her that he wanted the $100 that she owed him. She paid him the money. When he went downstairs, he saw and spoke to Little C. Little C. went upstairs and Eisman next heard Jansen saying, " 'Help me, Stevie. Help me, Stevie.' " He also heard "the commotion, the fighting and stuff." Eisman did not help Jansen, but he saw her a few minutes later. Jansen had "a little blood" on her head and "her eye was a little swolled [*sic*] up, and she was crying."

¶ 15 Everett Clay testified that he saw Jansen at about 7:30 p.m. on March 22, 2008, at his uncle's house. He saw blood on Jansen's hair, face, and shirt. She also had black eyes. When he asked her what had happened, she told him that she had been "jumped on by Shortie C." He later saw Jansen

at about 10 p.m. at Meat Man's house. He heard her arguing with someone about drugs. He looked into a room and saw Jansen swinging at defendant. Defendant grabbed Jansen's hand, and Jansen "started to jerk away from him." Jansen "fell backwards and hit her head." Clay left.

¶ 16 Julia Ann Leach testified that defendant is the father of her two children and that she had known defendant for about 20 years. On Saturday, March 22, 2008, defendant was living with her. She knew that he had a girlfriend. She often had to go out looking for him. On that Saturday, Leach twice went to a specific house, Meat Man's house on 12th Avenue, to find defendant. The first time was at 7 or 8 a.m.; the second time was at 2 or 3 p.m. Each time, Jansen answered the door and told Leach that defendant was not there. Leach testified that when she first saw Jansen, Jansen "had a black eye. She had blood coming out of her hair, and she had some bruises on her." Leach returned to the house on Sunday, March 23, 2008, and was again greeted by Jansen and told that defendant was not there.

¶ 17 The defense rested, and the State called three witnesses in rebuttal. Jody Woods testified that she saw Jansen at the liquor store on Saturday, March 22, 2008, at 7 or 8 p.m. Jansen looked "[f]ine." Jansen was not bleeding, and she did not have black eyes. Her lips were not swollen. Woods next saw Jansen the following Monday. Jansen's face was black and blue, her lips were swollen, her head was split open, her hair was bloody, her hand was swollen, and she had bruises all over her. Woods took Jansen to Rockford Memorial Hospital.

¶ 18 Rockford police officer Michael Schissel testified that on Thursday, March 20, 2008, at about 5:30 p.m., he was approached by Jansen who told him that she had been robbed by Marlow Chapman. She was upset and crying, but she did not have any injuries. When Schissel asked Jansen whether she had any injuries, she replied that she did not.

¶ 19 The jury found defendant guilty of aggravated domestic battery (720 ILCS 5/12—3.3 (West 2008)), aggravated battery (720 ILCS 5/12—4 (West 2008)), and two counts of domestic battery (720 ILCS 5/12—3.2(a)(1) (West 2008)). The trial court sentenced him to concurrent terms of 14 years, 10 years, 6 years, and 6 years, respectively. Defendant timely appealed.

¶ 20 ANALYSIS

¶ 21 Defendant contends that the State failed to prove him guilty beyond a reasonable doubt of aggravated domestic battery or domestic battery. Specifically, defendant argues that the State failed to prove an element of those offenses, *i.e.*, that Jansen was a "family or household member."[1]

¶ 22 A defendant's conviction will not be set aside 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 (1985). It is not the function of this court to retry the defendant. *Collins*, 106 Ill. 2d at 261. Rather, " 'the relevant question is 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.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact must assess the credibility of the witnesses and the weight of their testimony, resolve conflicts in the evidence, and draw reasonable inferences from that evidence, and this court will not substitute its judgment for that of the trier of fact on these matters. *People v. Ortiz*, 196 Ill. 2d 236, 259 (2001).

¶ 23 To convict defendant of domestic battery and aggravated domestic battery, the State had to prove that Jansen was a "family or household member" (720 ILCS 5/12—3.2(a)(1) (West 2008)).

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[1]Defendant does not contest the sufficiency of the evidence for the other elements of aggravated domestic battery or domestic battery.

Section 112A—3(3) of the Code of Criminal Procedure of 1963 defines "family or household members" as follows:

> ¶ 24 " 'Family or household members' include spouses, former spouses, parents, children, stepchildren and other persons related by blood or by present or prior marriage, persons who share or formerly shared a common dwelling, persons who have or allegedly have a child in common, persons who share or allegedly share a blood relationship through a child, persons who have or have had a dating or engagement relationship, persons with disabilities and their personal assistants, and caregivers ***. For purposes of this paragraph, neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts shall be deemed to constitute a dating relationship." 725 ILCS 5/112A—3(3) (West 2008).

¶ 25 Defendant correctly maintains that there are only two possible theories that would support a finding that Jansen was a "family or household member" with defendant: (1) that he and Jansen were "persons who have or have had a dating *** relationship," or (2) that he and Jansen were "persons who share or formerly shared a common dwelling." 725 ILCS 5/112A—3(3) (West 2008). According to defendant, neither theory is supported by the evidence. The first criteria was not discussed in *Almore* as there was no basis to conclude that Almore had such a relationship with his two-year-old victim. However, with regard to the second criteria, the supreme court held, based on its detailed analysis, that Almore shared a common dwelling with the victim.

¶ 26 We first address whether the evidence was sufficient to establish that defendant and Jansen were persons who have or have had a dating relationship. As the State notes, there is no express definition for "dating relationship." However, this court has interpreted a "dating relationship" to

be a "serious courtship." *Alison C. v. Westcott*, 343 Ill. App. 3d 648, 653 (2003). "[S]erious courtship" has been further interpreted to mean "an established relationship with a significant romantic focus." *People v. Young*, 362 Ill. App. 3d 843, 851 (2005). Relying on *Alison C.* and *Young*, defendant argues that his relationship with Jansen was not a dating relationship. According to defendant, his relationship with Jansen was a "business opportunity" that did not have a romantic focus. As *Alison C.* and *Young* are instructive, we will address each in turn.

¶ 27 In *Alison C.*, the State petitioned for a plenary order of protection under the Illinois Domestic Violence Act of 1986 (Act) (750 ILCS 60/101 *et seq.* (West 2002)), and the defendant moved to dismiss the petition, arguing that the parties were not involved in a "dating relationship" and that the plaintiff was not a person protected under the Act. *Alison C.*, 343 Ill. App. 3d at 650. The evidence established that the parties attended the same high school. The defendant telephoned the plaintiff and invited her to lunch the next day. The plaintiff agreed. The parties left the school grounds and, after driving around for about 10 minutes, the defendant told the plaintiff that he did not have money for lunch. He drove to a deserted parking lot and touched the plaintiff's breasts and attempted to put his hand down her pants. The trial court denied the defendant's motion to dismiss, and the defendant appealed. *Alison C.*, 343 Ill. App. 3d at 650. On appeal, this court examined the definition of "dating relationship" in section 103(6) of the Act, which provided that " '[f]amily or household members' include *** persons who have or have had a dating or engagement relationship" but only if the relationship was "neither a casual acquaintanceship nor ordinary fraternization between 2 individuals in business or social contexts." 750 ILCS 60/103(6) (West 2002). We found that the parties were not engaged in a "dating relationship." We emphasized the fact that the parties, who attended the same high school, had only spoken on the phone one time and that they went on only

a single lunch date. We concluded that their relationship was "brief and not exclusive." *Alison C.*, 343 Ill. App. 3d at 653. Accordingly, we reversed.

¶ 28 In *Young*, the defendant appealed from his conviction of two counts of domestic battery, arguing that the State failed to prove beyond a reasonable doubt that the victim was a family or household member. *Young*, 362 Ill. App. 3d at 847. The victim testified that she had met the defendant at a homeless shelter. She denied that she had a dating relationship with the defendant. Instead, she suggested that their relationship was " 'social,' " for instance, she stated that they " 'went out for a beer and watched a football game.' " *Young*, 362 Ill. App. 3d at 845. The victim further testified that they had spent the night at the same homeless shelter on the evening before the incident. On the day of the incident they had gone to a bar to watch a football game. *Young*, 362 Ill. App. 3d at 845. That evening, when the defendant attacked her, he tried to kiss her. *Young*, 362 Ill. App. 3d at 846. On appeal, this court found that the evidence failed to establish that the two were in a dating relationship. We found that "evidence of a romantic element in the relationship is scant, and none of it suggests that such elements were a significant focus." *Young*, 362 Ill. App. 3d at 852. We noted that the only direct evidence of "romantically oriented behavior" was limited to the defendant's attempt to kiss the victim and that "[a]ny inference that the parties' relationship had been consummated because they spent the night together is wholly negated by the fact that the place they spent the night was a homeless shelter." *Young*, 362 Ill. App. 3d at 852. We further emphasized that the victim's choice of the word " 'social' " to describe her relationship with the defendant was direct evidence of an absence of a romantic focus. *Young*, 362 Ill. App. 3d at 852.

¶ 29 Also instructive, and relied on by the State, is *People v. Irvine*, 379 Ill. App. 3d 116 (2008). In *Irvine*, the defendant was convicted of domestic battery. On appeal, he argued that the evidence

was insufficient to prove that the victim was a family or household member. *Irvine*, 379 Ill. App. 3d at 117. The victim testified that she and the defendant were ex-girlfriend and ex-boyfriend, that their relationship lasted about a month and a half, and that they had had a sexual relationship up to and including the day of the offense. *Irvine*, 379 Ill. App. 3d at 118. The First District affirmed the conviction. The court found *Alison C.* and *Young* distinguishable, noting that "[i]n *Young*, the complaining witness denied the existence of a dating relationship but claimed a social relationship" and that "[i]n *Alison C.*, the parties went on one date." *Irvine*, 379 Ill. App. 3d at 125. To the contrary, the parties in *Irvine*, spent six weeks in a dating and sexual relationship, which, according to the court, qualified as a "serious courtship." *Irvine*, 379 Ill. App. 3d at 125.

¶ 30 We find that the evidence in the present case was sufficient to establish that defendant and Jansen were "persons who have or have had a dating *** relationship" (725 ILCS 5/112A—3(3) (West 2008)). Unlike in *Alison C.*, where the victim and the defendant had been on a single lunch date, Jansen testified that she and defendant had begun dating in January 2008 and dated through the time of the incident in March. Unlike in *Young*, where the victim described her relationship with the defendant as " 'social' " (*Young*, 362 Ill. App. 3d at 852), in the present case Jansen expressly stated that defendant was her boyfriend and that they were "dating." Although Jansen stated that their relationship "wasn't real serious at first," she stated that she eventually became his "girlfriend." Jansen told defendant that she "really did care about him and that [she] wanted a boyfriend/girlfriend relationship," and defendant agreed. Jansen also testified that defendant told her that he wanted to take her shopping because she was his "girl." She asked, " 'Really? You really think so?' " And defendant responded, " '[Y]es.' " In addition, Leach, the mother of defendant's children, testified that she knew that defendant had a girlfriend.

¶ 31 Moreover, unlike in *Young*, where the victim and the defendant spent the night in a homeless shelter, Jansen testified that she and defendant "lived together" but did not have their "own place," often staying together in hotels and at other people's homes. The money that Jansen earned as a prostitute was used to pay for the couple's hotel rooms and food. Indeed, the present case is more like *Irvine*, where the parties had been dating for several weeks prior to the offense and were engaging in sexual relations through the time of the offense.

¶ 32 Accordingly, viewing the evidence in the light most favorable to the prosecution, the jury could have found that Jansen and defendant were "persons who have or have had a dating *** relationship" and that therefore Jansen was a "family or household member[]" (725 ILCS 5/112A—3(3) (West 2008)) for purposes of proving defendant's guilt beyond a reasonable doubt of aggravated domestic battery and domestic battery.

¶ 33 Consistent with our supreme court's directive, concerning *Almore*, we now reconsider and address whether or not defendant and Jansen were "persons who share or formerly shared a common dwelling." In *Almore*, the defendant was convicted of involuntary manslaughter (720 ILCS 5/9—3(f) (West 2006)) following the death of his girlfriend's two-year-old son. *Almore*, 241 Ill. 2d at 389-90. The trial court sentenced the defendant to an extended term of 12 years' imprisonment based on its finding that he and the victim were "family or household members" as defined by section 112A—3(3) of the Code of Criminal Procedure of 1963. *Almore*, 241 Ill. 2d at 389. On appeal, the appellate court affirmed the defendant's conviction but vacated his sentence and remanded to the trial court for resentencing, holding that the trial court's finding that the defendant and the victim were family or household members was not supported by the evidence. *Almore*, 241 Ill. 2d at 389-90.

¶ 34 Our supreme court granted the State's petition for leave to appeal and reversed the appellate court. *Almore*, 241 Ill. 2d at 392, 398. The supreme court noted that "it is clear that the legislature attempted to capture all of the myriad types of 'familial' relationships, both past and present, as well as various situations of cohabitation and shared living arrangements." *Almore*, 241 Ill. 2d at 396. The court determined that the statutory definition was broad and that each case must be decided on its specific facts. *Almore*, 241 Ill. 2d at 396.

¶ 35 In *Almore*, the only possible basis under section 112A—3(3) for concluding that the defendant and the victim were family or household members was the sharing of a common dwelling. *Almore*, 241 Ill. 2d at 393. The factors that may be considered in deciding whether parties shared a common dwelling include the length of time the parties resided together, the nature of their living arrangements, whether the parties had other living accommodations, whether they kept personal items at the shared residence, and whether they shared in the duties and privileges of a common dwelling such as contributing to expenses or maintenance. *Almore*, 241 Ill. 2d at 396. The court reasoned that the defendant and the victim shared a common dwelling within the meaning of section 112A—3(3) because, among other factors, the victim and his mother had stayed with the defendant at his temporary residence for five days prior to the victim's death, some of the victim's personal belongings were kept there, and the victim's mother relied on the defendant to provide child care while she worked. *Almore*, 241 Ill. 2d at 397.

¶ 36 Applying *Almore* to the instant case, we conclude that that a rational trier of fact could have found that defendant and Jansen shared or formerly shared a common dwelling. Jansen testified that, since they began dating about two months prior to the offense, they lived together in hotels and friends' homes. They stayed at Meat Man's house on 12th Avenue for a couple of weeks. As in

Almore where the defendant and the victim's mother were engaged in a dating relationship (*Almore*, 241 Ill. 2d at 397), in the present case, defendant and Jansen had a dating relationship. They also slept in the same bed or bedroom when they were together, and engaged in sexual relations. Furthermore, Jansen gave her earnings to defendant to secure food and shelter. Albeit not in a traditional sense, this sharing of household responsibilities evinced an interdependence similar to that in *Almore* where the victim's mother sometimes relied on the defendant to provide child care for the victim. Given the supreme court's broad interpretation of section 112A—3(3), we determine that the nature of defendant's and Jansen's living arrangements constituted the sharing of a common dwelling.

¶ 37 Defendant argues that the evidence showed that there was no degree of permanence in the parties' living arrangements and that defendant lived with Leach. Leach testified that defendant lived with her on March 22, 2008, which was the day before the incident upon which the conviction was predicated. This testimony does not preclude a finding that prior to that defendant lived with Jansen. The statutory definition of family or household member encompasses those who "share or *formerly* shared a common dwelling." (Emphasis added.) 725 ILCS 5/112A—3(3) (West 2008). In *Almore*, the victim and his mother "ordinarily" lived with a family member and defendant had a temporary residence with his aunt. *Almore*, 241 Ill. 2d at 390. They all stayed together at one of these locations on "several occasions" over the preceding year and a half. *Almore*, 241 Ill. 2d at 397. Neither the lack of a permanent residence nor even the fact that the defendant and the victim and his mother sometimes lived separately compelled a different result in *Almore*. Here, Leach testified that she "usually" dropped defendant off at the house on 12th Avenue, which was Meat Man's house. When Leach went to look for defendant at that house three times on March 22 and 23, 2008, Jansen

answered the door each time. These facts support the inference that defendant sometimes lived with Jansen at Meat Man's house. That another possible inference may be drawn from the facts does not compel reversal. *People v. Stewart*, 406 Ill. App. 3d 518, 525 (2010) ("The trier of fact is responsible for assessing the credibility of the witnesses, weighing the testimony, and drawing reasonable inferences from the evidence."). We will not substitute our judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 38 Accordingly, viewing the evidence in the light most favorable to the State, we hold that a rational trier of fact could have found beyond a reasonable doubt that defendant and Jansen were family or household members within the meaning of section 112A—3(3) based on either their dating relationship or their sharing a common dwelling. Thus, after considering *Almore* in its proper context, both criteria would sustain defendant's convictions.

¶ 39 Defendant next argues that his sentences should be reduced. Defendant's aggravated domestic battery is a Class 2 felony (720 ILCS 5/12—3.3(b) (West 2008)), which normally carries a sentencing range of not less than three and not more than seven years' imprisonment. 730 ILCS 5/5—8—1(a)(5) (West 2008). However, the trial court found that defendant was eligible for an extended term and sentenced defendant to 14 years' imprisonment. Defendant's aggravated battery is a Class 3 felony. 720 ILCS 5/12—4(e)(1) (West 2008). A Class 3 felony is generally punishable by a term of not less than two and not more than five years' imprisonment. 730 ILCS 5/5—8—1(a)(6) (West 2008). The trial court sentenced defendant to an extended-term of 10 years' imprisonment. Defendant's two domestic batteries are Class 4 felonies. 720 ILCS 5/12—3.2(b) (West 2008). A Class 4 felony is generally punishable by a term of not less than one and not more

than three years' imprisonment. 730 ILCS 5/5—8—1(a)(7) (West 2008). The trial court sentenced defendant to a extended-term sentence of six years' imprisonment on each conviction.

¶ 40 Defendant maintains that it was error for the trial court to sentence him to extended-term sentences for aggravated battery and for domestic battery and asks that we reduce the sentences to the maximum nonextended terms. The State agrees.

¶ 41 When a defendant is convicted of multiple offenses that are part of a single course of conduct, he may be sentenced to an extended-term sentence only for those offenses that are within the most serious class. 730 ILCS 5/5—8—2(a) (West 2008); *People v. Barcik*, 357 Ill. App. 3d 1043, 1047 (2005), *vacated in part on other grounds*, 217 Ill. 2d 569 (2005); *People v. Smith*, 345 Ill. App. 3d 179, 190 (2004). A sentence that does not conform to a statutory requirement is void and may be attacked at any time. *People v. Arna*, 168 Ill. 2d 107, 113 (1995); *People v. Linwood*, 243 Ill. App. 3d 744, 745 (1993).

¶ 42 The parties do not dispute that these offenses were part of a single course of conduct. Thus, since the aggravated domestic battery, a Class 2 felony, is a more serious offense than the aggravated battery, a Class 3 felony, and the domestic batteries, Class 4 felonies, it was improper for the court to sentence defendant to extended terms for the less serious offenses. Where a court having jurisdiction over both the person and the offense imposes a sentence in excess of what the statute permits, the legal and authorized portion of the sentence is not void; only the excess portion is void. *People v. Pittman*, 316 Ill. App. 3d 245, 253 (2000). Therefore, as we are authorized to do under Supreme Court Rule 615(b)(4) (134 Ill. 2d R. 615(b)(4)), we reduce defendant's extended-term sentence for aggravated battery to the maximum allowable term of five years' imprisonment, and we reduce defendant's extended-term sentence for each domestic battery to the maximum allowable

term of three years' imprisonment, with the sentences to run concurrently with each other and with defendant's prison term of 14 years for aggravated domestic battery. See *Smith*, 345 Ill. App. 3d at 190; *Pittman*, 316 Ill. App. 3d at 253; *Linwood*, 243 Ill. App. 3d at 745.

¶ 43 Based on the foregoing, the judgment of the circuit court of Winnebago County is affirmed as modified.

¶ 44 Affirmed as modified.