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STATE OF WISCONSIN
COURT OF APPEALS
DISTRICT I

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GLEN ARTHEUS BEAL,

Defendant-Appellant.

Appeal No. 14AP002534 CR

Milwaukee County Circuit Court
Case No. 2013CF004222

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ON NOTICE OF APPEAL TO REVIEW A
JUDGEMENT OF CONVICTION AND THE FINAL ORDER ENTERED IN
THE CIRCUIT COURT FOR MILWAUKEE COUNTY,
THE HONORABLE MEL FLANAGAN, PRESIDING

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# REPLY BRIEF
# OF DEFENDANT-APPELLANT

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## INTRODUCTION

For the reasons set forth in the Defendant's brief-in-chief, as well as in this reply brief, the Defendant respectfully asks this court to reverse his conviction for Physical Abuse of a Child-Party to a Crime and grant Mr. Beal a new trial.

## ARGUMENT

### I. BEAL DID NOT FORFEIT HIS CLAIM TO ASSERT THE JURY BE INFORMED OF THE COACTOR'S REASONABLE DISCIPLINE PRIVILEDGE BECAUSE HE DID MAKE THE ARGUMENT IN THE TRIAL COURT.

The State in its brief argues the defendant did not raise the issue of instructing the jury on Strong's reasonable discipline defense in the circuit court and so he is not entitled to address it on appeal. (State's brief at 4). The State is correct that trial counsel did not ask to argue that Beal was entitled to personally assert the reasonable discipline privilege in the trial court; however, that is not Beal's argument on appeal. Beal is not arguing that he was entitled to the reasonable discipline privilege he is arguing that since he was charged as party to a crime, including as an "aider and abettor" the jury should have been made aware of Strong's reasonable discipline privilege.

This was addressed by trial counsel in the circuit court when he stated "I think it's important that the jury knows that the mother of the alleged victim does enjoy the privilege." (46:40) The circuit court's ruling then eliminated any further argument on the issue when it ruled that Beal was prohibited from eliciting any testimony about whether Strong's actions amounted to reasonable discipline.

Trial counsel's position that he was not requesting or arguing that the jury be instructed that Beal had a reasonable discipline privilege in this case is not contrary to what Beal is arguing on appeal.

## III. BEAL SHOULD HAVE BEEN ABLE TO INFORM THE JURY OF STRONG'S REASONABLE DISCIPLINE PRIVILEGE.

The State argues that *State v. Caminiti,* does not support Beal's argument. (State's brief at 8) The State fails to cite a single case that holds anything contrary to *Caminiti*, whether published or unpublished. While the case is not binding precedent it is persuasive and it does show this Court that Beal's argument is not a completely novel one. It is an argument that was made in a circuit court, where the State, the defense, and the court all agreed the defendant was entitled to assert the parents' reasonable discipline defense.

Just because there is not ample published case law to support a position does not mean that this Court should not decide the issue.

1. Beal was entitled to have the jury know about the mother's privilege because the jury was instructed he could be convicted if they found he aided and abetted the mother.

The State's brief cites *Fritz v. State,* 25 Wis.2d 91 (1964), for the proposition that "[i]f a defendant can be convicted for aiding and abetting a person who committed a person who is acquitted of a crime, the defendant can also be convicted for aiding and abetting a person who can assert a defense of privilege to the crime." (State's brief at 10)

The major distinction between *Fritz* and this case is that in *Fritz*, the jury was only instructed on the conspiracy element of Wis. Stat. §939.05, but was not instructed on the aiding and abetting or other portions of the statute. *Id*. at 97. The court emphasized that the conviction in the case rested on the fact that the jury found that Fritz and the

codefendant were co-conspirators. *Id.* This case is distinguishable from *Fritz* because in this case the jury was instructed on the aiding and abetting portion of §939.05.

2. Beal was prohibited from eliciting testimony at the trial that would have required the court to instruct the jury on the reasonable discipline privilege.

The States argues in its brief that Beal did not establish that the facts of the case would have required the court to instruct the jury on the reasonable discipline privilege. (State's brief at 11)

The State then argues: "Strong's twice slapping JG in the head as part of an effort to take her home from her friend's house was not reasonable discipline. Nothing suggests that Strong was trying to correct anything JG did or that slapping her was a proper means of doing so." (States brief at 13) First, it is clear from the testimony and the circuit court's discussions with Strong that she was upset with her daughter for leaving the house and going to a location she was not allowed to be at. (40:31) This is the behavior that she was attempting to correct. Second, whether or not her actions were reasonable discipline of her daughter is a jury determination not a fact the State can simply assume.

The State not only makes a blanket assertion about what reasonable discipline of a thirteen year old entails it also completely ignores the fact that when Strong took the stand the court instructed her specifically that she was not to talk about if "this was reasonable discipline." (40:19) The court went on to instruct Strong "[i]t's not relevant that you thought you were disciplining this child." (40:30)

The circuit court's ruling prohibited any evidence coming in at trial regarding Strong's reasonable discipline privilege. Beal is requesting a new trial to elicit the exact testimony that the circuit court prohibited.

## CONCLUSION

For the aforementioned reasons, Mr. Beal requests that this Court reverse Mr. Beal's conviction for Physical Abuse of a Child-Party to a Crime and remand for a new trial for Mr. Beal.

Dated this ____ day of May, 2015.

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## CERTIFICATION OF FORM AND LENGTH

I hereby certify that this brief conforms to the rules contained in s. 809.19(8)(b) and (c) for a brief and appendix produced with a proportional serif font. The length of this brief is 924 words.

Dated this _____ day of May 2015 at Milwaukee, Wisconsin.

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**CERTIFICATION OF ELECTRONIC COPY OF BRIEF BEING IDENTICAL TO PAPER COPY OF BRIEF**

I hereby certify, pursuant to Wis. Stat. 809.19(12)(f), that the electronic copy of the brief filed in this case is identical to the text of the paper copy of the brief filed in this case.

Dated this _____ day of May, 2015 at Milwaukee, Wisconsin.

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