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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT III

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**CLERK OF COURT OF APPEALS  
OF WISCONSIN**

Case No. 2015AP374-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GAVIN S. HILL,

Defendant-Appellant.

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APPEAL FROM A JUDGMENT OF CONVICTION AND  
DECISION DENYING POSTCONVICTION RELIEF  
ENTERED IN VILAS COUNTY CIRCUIT COURT, THE  
HONORABLE NEAL A. NIELSEN, III, PRESIDING

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SUPPLEMENTAL BRIEF OF PLAINTIFF-RESPONDENT

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**ISSUE TO BE ADDRESSED**

This Court entered an order on November 17, 2015,  
requesting supplemental briefing on the following issue:

Does the presentence investigation constitute  
prima facie evidence that Hill meets the statutory  
definition of a domestic abuse repeater – that is, that he  
was convicted, on two separate occasions, “of a felony or  
a misdemeanor *for which a court imposed a domestic*

*abuse surcharge under s. 973.055(1) or waived a domestic abuse surcharge pursuant to s. 973.055(4), during the 10-year period immediately prior to the commission of” the disorderly conduct to which Hill pled no contest? See Wis. Stat. § 939.621(1)(b)[.]*

(Emphasis in order).

The State appreciates this Court’s order allowing it to respond to this argument.

### THE STATE’S RESPONSE

Wisconsin Stat. § 939.621(1)(b) provides that a “domestic abuse repeater” means, in relevant part, the following:

A person who was convicted, on 2 separate occasions, of a felony or a misdemeanor *for which a court imposed a domestic abuse surcharge under s. 973.055(1) or waived a domestic abuse surcharge pursuant to s. 973.055(4), during the 10-year period immediately prior to the commission of the crime for which the person presently is being sentenced, if the convictions remain of record and unreversed.*

(Emphasis added).

The PSI report in this case does not indicate whether the trial courts imposed or waived a domestic abuse *surcharge* in Hill’s prior convictions. Rather, the PSI report indicates that Hill’s prior convictions were for “Battery Domestic Abuse Rptr” (21:3). So, to answer this Court’s issue directly, no, the PSI report in this case does not constitute *prima facie* evidence that Hills meets that statutory definition of a “domestic abuse repeater” under Wis. Stat. § 939.621(1)(b).

However, because Hill personally *admitted* to the qualifying prior convictions, the circuit court correctly applied the repeater status. The State relies upon its initial brief on this topic (State’s Brief at 7-8), but to briefly reiterate, to prove the repeater status, a defendant “must

personally admit to a qualifying prior conviction, *or* the State must prove the existence of the qualifying prior conviction beyond a reasonable doubt.” *State v. Kashney*, 2008 WI App 164, ¶8, 314 Wis. 2d 623, 761 N.W.2d 672 (emphasis added) (citing *State v. Saunders*, 2002 WI 107, ¶19, 255 Wis. 2d 589, 649 N.W. 2d 263). *See also* Wis. Stat. § 973.12(1), which provides in relevant part, “If the prior convictions are admitted by the defendant *or* proved by the state, he or she shall be subject to sentence under s. 939.62” (emphasis added).

At the plea hearing, Hill personally admitted that he understood he had “been convicted on two separate occasions of either a felony or a misdemeanor *in which the Court did impose, or could have imposed a domestic abuse surcharge*. In other words, two prior domestic abuse incidents during the ten years immediately prior to the commission of this offense” (17:8; R-Ap. 108) (emphasis added). Hill also stated that he understood that this “repeater enhancer changes the status of the conviction here from a misdemeanor to a felony” (*id.*). Finally, Hill also admitted his prior convictions through the submission of his own PSI report, which noted the repeater allegation and the dates, county, and case numbers of the relevant prior convictions (21:2-4, 7-8). As the postconviction court found, “[t]he record in this case amply supports a finding that Mr. Hill fully understood and appreciated the charges and penalties, including the domestic abuse repeater enhancer” (20:9; A-Ap. 109).

## CONCLUSION

The PSI report in this case does not constitute prima facie evidence that Hill meets the statutory definition of a “domestic abuse repeater” under Wis. Stat. § 939.621(1)(b). However, because Hill personally admitted to the qualifying prior convictions, the circuit court did not err when it determined that Hill was properly sentenced with the domestic abuse repeater enhancer.

Dated this 1st day of December, 2015.

Respectfully submitted,

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## **CERTIFICATION**

I hereby certify that this supplemental brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 632 words.

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Sara Lynn Shaeffer  
Assistant Attorney General

## **CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)**

I hereby certify that:

I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12).

I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 1st day of December, 2015.

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