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STATE OF WISCONSIN

COURT OF APPEALS

DISTRICT III

Case No. 2015AP374-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

GAVIN S. HILL,

Defendant-Appellant.

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On Appeal from a Judgment and an Order Entered  
in the Vilas County Circuit Court, the  
Honorable Neal A. Nielsen, III, Presiding

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SUPPLEMENTAL BRIEF OF DEFENDANT-APPELLANT

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## **ARGUMENT**

In an order dated November 17, 2015, this Court asked the parties to address whether the PSI in this case constitutes prima facie evidence that Hill meets the statutory definition of a domestic abuse repeater. In its supplemental brief, the state conceded that it does not. (State's Supplemental Brief at 2). According to WIS. STAT. § 939.621(1)(b), a domestic abuse repeater is "[a] person who is convicted, on 2 separate occasions, of a felony or a misdemeanor for which the court imposed a domestic abuse surcharge...or waived a domestic abuse surcharge." Although some prior offenses are described as "Domestic Abuse" on the PSI, that designation is insufficient to prove that Hill meets the statutory definition of a domestic abuse repeater. As the state conceded, the PSI in this case makes no mention of the imposition or waiver of the domestic abuse surcharge. (State's Supplemental Brief at 2).

The state also argued in its supplemental brief that Hill personally admitted to the offenses underlying the domestic abuse repeater allegation at both the plea hearing and in his own PSI. (State's Supplemental Brief at 3). Hill has fully briefed the issue of his supposed admission at the plea hearing and relies on his Brief-in-Chief and Reply Brief on that point. (Brief-in-Chief at 12-15; Reply Brief at 2-4).

Regarding Mr. Hill's own PSI, as noted in his Brief-in-Chief and Reply Brief, the table of prior offenses appears to be identical in both PSIs. (Brief-in-Chief at 15; Reply Brief at 4). If the state concedes that its own PSI is not prima facie evidence of the necessary convictions, it is unclear why it still believes that the same table of offenses

constitutes an admission specific enough to satisfy the personal admission requirement under WIS. STAT. § 973.12(1).

Furthermore, case law has already determined that an attorney's admission on behalf of a client is insufficient to satisfy § 973.12(1). *See State v. Saunders*, 2002 WI 107, ¶22, 255 Wis. 2d 589, 649 N.W.2d 263. Based on that case law and § 973.12(1), the defense PSI cannot serve as a personal admission. Finally, even if a defense PSI could in theory be sufficient, this one is not because—like the record as a whole—it fails to indicate which offenses form the basis of the penalty enhancement or demonstrate that the penalty enhancement was validly applied in this case.

## **CONCLUSION**

As the state conceded, the PSI in this case is not prima facie evidence that Hill meets the definition of a domestic abuse repeater according to WIS. STAT. § 939.621(1)(b). For the reasons set forth in his Brief-in-Chief, Reply Brief and Supplemental Brief, Hill respectfully ask that this court reverse his conviction as a domestic abuse repeater and the trial court's decision on his postconviction motion, and remand to the trial court with directions to commute the sentence to the maximum allowable by law without the domestic abuse repeater enhancer.

Dated this 15<sup>th</sup> day of December, 2015.

Respectfully submitted,

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## **CERTIFICATION AS TO FORM/LENGTH**

I certify that this brief meets the form and length requirements of Rule 809.19(8)(b) and (c) in that it is: proportional serif font, minimum printing resolution of 200 dots per inch, 13 point body text, 11 point for quotes and footnotes, leading of minimum 2 points and maximum of 60 characters per line of body text. The length of the brief is 485 words.

## **CERTIFICATE OF COMPLIANCE WITH 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 § 809.19(12). I further certify that:

This electronic brief is identical in content and format to the printed form of the brief filed on or after 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 15<sup>th</sup> day of December, 2015.

Signed:

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