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STATE OF WISCONSIN  
COURT OF APPEALS  
DISTRICT 1

Appeal No. 2015-AP-1784-CR

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STATE OF WISCONSIN,

Plaintiff-Respondent,

v.

MARGUERITE ALPERS,

Defendant-Appellant.

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**DEFENDANT-APPELLANT MARGUERITE ALPERS'  
REPLY BRIEF**

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On Appeal from an Order Entered in Milwaukee County  
Circuit Court By the Honorable John Siefert

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## Argument

**I. Because the State admitted that the IID Order was an abuse of the circuit court's discretion, this Court should order the IID removed.**

The State has conceded that the IID Order is unlawful and an abuse of the circuit court's discretion. State's Resp. Br. at 7-9. Accordingly, no further briefing of the issue is needed from Defendant-Appellant Marguerite Alpers ("Marguerite") and this Court should order the IID to be removed from her husband's car.

**II. The IID Order violates Byron Alpers' due process rights and the issue is properly before this Court.**

Marguerite also argues on appeal that the IID Order should be rescinded because it violates Byron Alpers' ("Byron") constitutional rights. *See* Alpers' App. Br. at 18-21. Because Marguerite anticipates that this issue is now moot due to the State conceding error on the first issue, she will only briefly address it.

Contrary to the State's assertion, the issue of the IID Order violating Byron's rights is properly before this Court. The issue involves both constitutional and jurisdictional questions, neither of which must be first raised with the trial court to be considered on appeal. *State v. Knapp*, 2005

WI 127, ¶ 56, 285 Wis. 2d 86, 700 N.W.2d 899 (providing that appellate courts may “decide a constitutional question not raised below if it appears in the interests of justice to do so and where there are no factual issues that need resolution”) (quoting *Bradley v. State*, 36 Wis. 2d 345, 359–59a, 153 N.W.2d 38 (1967)); *see also Kochel v. Hartford Acc. & Indem. Co.*, 66 Wis. 2d 405, 415, 225 N.W.2d 604 (1975) (appellate court considered jurisdictional issues in an exercise of its discretion). Because the IID Order raises both constitutional and jurisdictional questions, it is properly before this Court.

As argued in Marguerite’s initial brief, the interests of justice require the rescission of the IID Order. Byron was not a party to the underlying lawsuit and the circuit court had no jurisdiction over him. Nevertheless, the Order chiefly punishes and aggrieves Byron. Unlike the situations posited by the State wherein a person suffers collateral effects of their spouse’s criminal sentence, Byron is primarily aggrieved by the IID Order, and Marguerite suffers only corollary consequences. The IID directly causes Byron significant physical and mental distress, places him in significant danger, and curtails his freedom of movement. These are not the typical side effects of a criminal sentence that a spouse can be expected to tolerate. As a result, the IID Order violates Byron’s due process rights and should be removed.

### **Conclusion**

The IID Order should be removed because, as the State has admitted, the circuit court abused its discretion when it imposed the Order. In addition, this Court may properly consider that the Order chiefly punishes Byron Alpers, a non-party to the case, and therefore violates Byron's due process rights.

Dated at Milwaukee, Wisconsin, this 30th day of November, 2015.

*Patrick T. O'Neill*

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## **Certifications**

### **I. Certification as to Form and Length**

I hereby certify that this 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 475 words.

### **II. Certification of Compliance with Wis. Stat. § 809.19(12)**

I hereby certify that I have submitted an electronic copy of this brief which complies with the requirements of Wis. Stat. § 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.

### **III. Certification as to Mailing**

I hereby certify that that I have submitted paper copies of this brief in compliance with the requirements of Wis. Stat. § 809.80(3). On November 30, 2015, ten copies of the brief were deposited in the United States mail for delivery by first-class mail to the clerk of the Court of Appeals, and three copies were deposited in the United States mail for delivery by first-class mail to the State of Wisconsin, by the Milwaukee County District Attorney.

Dated this 30th day of November, 2015.

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