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**DISTRICT III**

June 17, 2014

To:

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Circuit Court Judge  
Ashland County Courthouse  
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Clerk of Circuit Court  
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You are hereby notified that the Court has entered the following opinion and order:

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2014AP441-CRNM      State of Wisconsin v. Brian John Blum (L.C. #2013CM32)

Before Mangerson, J.<sup>1</sup>

Counsel for Brian Blum has filed a no-merit report concluding there is no arguable basis for Blum to appeal a judgment convicting him of violating a harassment injunction as a repeater. Blum died without filing a response to the report. Upon this court's independent review of the record as mandated by *Anders v. California*, 386 U.S. 738 (1967), no issue of arguable merit appears.

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<sup>1</sup> This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2011-12). All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

A jury convicted Blum based on evidence that he violated a harassment injunction by making heart-shaped footprints in the snow outside an apartment occupied by GERALYN Masterson. Masterson had a harassment injunction and order of protection entered against Blum requiring him to avoid her residence and avoid any contact that would harass or intimidate her. A deputy followed the footprints to Blum's duplex apartment. Masterson testified she was "scared" when she saw the footsteps in the snow.

After being advised of his right to testify, Blum elected not to testify. The defense called no witnesses.

The record discloses no arguable basis for challenging the sufficiency of the evidence. This court must sustain the jury's verdict if the evidence, viewed most favorable to the State, would allow a reasonable jury to find guilt beyond a reasonable doubt. *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). The uncontradicted evidence shows an injunction was in effect, Blum knew of the injunction, and he intentionally made the heart-shaped footprints in the snow near Masterson's apartment causing her to be frightened. That evidence is sufficient to establish all of the elements of the offense. *See* WIS JI—CRIMINAL 2040 (2011). Blum's repeater status was established by evidence that he was convicted of a felony less than five years before this incident. *See* WIS. STAT. § 939.62(2).

During the trial, the defense requested a mistrial, alleging Masterson's testimony regarding her conversation with a deputy on the morning of the incident violated the court's restriction on presenting other acts testimony. Masterson stated: "[H]e called to inform me there were heart things and footprints going up to my ...." At that point the testimony was interrupted by a defense objection, contending the testimony brought up Blum's prior acts of making

heart-shaped footprints. The court struck Masterson's statement and instructed the jury to disregard it. The court properly exercised its discretion by denying the request for a mistrial. See *State v Ross*, 2003 WI App 27, ¶47, 260 Wis. 2d 291, 659 N.W.2d 122.

Because Blum is now deceased, any issue regarding the propriety of the sentence is moot. See *State ex rel. Olson v. Litscher*, 2000 WI App 61, ¶3, 233 Wis. 2d 685, 608 N.W.2d 425.

Finally, no-merit counsel questions whether the conviction should be abated due to Blum's death while his appeal was pending. In *State v. McDonald*, 144 Wis. 2d 531, 536, 424 N.W.2d 411 (1988), the court concluded: "We disagree, however, that the appropriate remedy is to abate the criminal proceedings *ab initio*. Instead, we conclude that, when a defendant dies pending an appeal, regardless of the cause of death, the defendant's right to appeal continues." Therefore, Blum is not entitled to abatement of the conviction. Rather, he is entitled to completion of the no-merit process to determine whether he was properly convicted.

This court's independent review of the record discloses no other potential issue for appeal.

IT IS ORDERED that the judgment is summarily affirmed. WIS. STAT. RULE 809.21.

IT IS FURTHER ORDERED that attorney Donald Lang is relieved of his obligation to further represent Blum in this matter.

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*Diane M. Fremgen*  
*Clerk of Court of Appeals*