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**WISCONSIN COURT OF APPEALS**

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**DISTRICT III**

December 30, 2014

To:

Hon. Paul J. Lenz  
Circuit Court Judge  
Eau Claire County Courthouse  
721 Oxford Avenue  
Eau Claire, WI 54703-5496

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Clerk of Circuit Court  
Eau Claire County Courthouse  
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You are hereby notified that the Court has entered the following order:

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2014AP1852-CR                      State of Wisconsin v. Joseph J. VanMeter (L.C. # 2011CM1147)

Before Stark, J.

Counsel for Joseph VanMeter filed a no-merit report concluding there is no arguable basis for VanMeter to challenge a judgment convicting him of third offense operating a vehicle while intoxicated and disorderly conduct. A potential issue for appeal is whether the horizontal gaze nystagmus test meets the *Daubert* standard. We cannot conclude that arguing this issue would be frivolous. Therefore, we reject the no-merit report and will require a merit brief to be filed on that issue. Because substitution of attorneys may be advisable, we will grant sixty days to file the merit brief.

IT IS ORDERED that the no-merit report is rejected. The appellant shall file a merit brief within sixty days of the date of this order.

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*Diane M. Fremgen*  
Clerk of Court of Appeals