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DISTRICT IV

January 2, 2013

To:

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Circuit Court Judge
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You are hereby notified that the Court has entered the following opinion and order:

2011AP2738-CR State of Wisconsin v. Ellen Katherin Wunnicke (L.C. # 2011CF69)

Before Lundsten, P.J., Sherman and Blanchard, JJ.

Ellen Wunnicke appeals a judgment of conviction. Based upon our review of the briefs and record, we conclude at conference that this case is appropriate for summary disposition. *See* WIS. STAT. RULE 809.21 (2009-10).¹ We affirm.

Wunnicke first argues that the officer lacked reasonable suspicion to stop her vehicle on the ground of a cracked windshield. She argues that the evidence was not sufficient to establish

¹ All references to the Wisconsin Statutes are to the 2009-10 version unless otherwise noted.

reasonable suspicion that the crack extended into the “windshield critical area,” or more than eight inches from the frame, either of which would be necessary for the crack to be a violation.

We conclude the officer’s testimony was adequate on this point. The officer testified that the crack “ran the complete distance of the windshield there up into the driver’s area, the driver’s view.” It is not necessary, before making the stop, that the officer be able to determine with precision whether a crack meets the above standards. It is difficult to imagine how a crack fitting that description would not pass through “the areas normally swept by a factory installed windshield wiper system.” *See* WIS. ADMIN. CODE § Trans 305.05(43).

Wunnicke also argues that the officer lacked probable cause to request a preliminary breath test. We disagree. The officer testified that he detected the possible odor of alcohol, that Wunnicke’s eyes were red, that she appeared nervous, and that he knew Wunnicke was subject to a .02 limit. Those were sufficient indicators of alcohol use to be probable cause at the .02 level. Wunnicke argues that the officer did not testify that he was aware that it takes only a small amount of alcohol use to reach .02. However, we are satisfied that such testimony is not required because this fact is common knowledge among police officers.

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

Diane M. Fremgen
Clerk of Court of Appeals