COURT OF APPEALS
DECISION
DATED AND FILED

February 8, 2001

Cornelia G. Clark
Clerk, Court of Appeals
of Wisconsin

No. 00-0854-CR

STATE OF WISCONSIN **IN COURT OF APPEALS**
DISTRICT IV

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

EUGENE STONE,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Rock County: JOHN W. ROETHE, Judge. *Affirmed.*

Before Dykman, P.J., Deininger and Leineweber, JJ.[1]

[1] Circuit Judge Edward E. Leineweber is sitting by special assignment pursuant to the Judicial Exchange Program.

¶1 PER CURIAM. Eugene Stone appeals a judgment of conviction on one count of possession of a controlled substance with intent to deliver. The issue is whether the trial court erred by admitting certain expert opinion testimony by a police officer. We affirm.

¶2 Stone's case was tried to a jury. His argument on appeal focuses on a particular passage of testimony by a police officer, testifying as an expert on the practices of controlled substance dealers. After describing the way the substance in this case was packaged as individual pieces, and stating that this would not be typical for personal use, the officer was asked whether he had an opinion as to whether the cocaine was "held for resale or personal use." The officer testified that he did, and that his opinion "would be that it was held for resale purposes."

¶3 Stone argues that this was essentially testimony that he possessed the cocaine with intent to deliver, which is one of the ultimate facts to be decided by the jury. He argues that expert testimony on this specific point is not permitted because the jury is capable of deciding intent for itself, without the assistance of an expert.

¶4 We believe the issue is controlled by precedent. In ***State v. Williams***, 168 Wis. 2d 970, 989-91, 485 N.W.2d 42 (1992), the court addressed a similar argument regarding similar testimony by a police officer. In ***Williams***, the officer testified that based on the currency, packaging, scales, and other paraphernalia, it was his opinion that "the persons residing at [the apartment] were involved in the sale of controlled substances." ***Id.*** at 990 (brackets in original). In allowing this testimony, the supreme court said that the officer "testified not that the defendant possessed drugs with the intent to deliver but that the items seized from the apartment indicated that the residents of the apartment were involved in

the sale of controlled substances." ***Id.*** The court said that because this testimony was based on the officer's specialized knowledge, "it was not merely a lay opinion on the determination of whether Williams actually intended to deliver the drugs." ***Id.*** at 991.

¶5 We believe that the challenged testimony in Stone's case is close enough to the testimony in ***Williams*** so that ***Williams*** controls the outcome here. We see little practical distinction between the testimony in ***Williams*** that somebody was "involved in the sale of controlled substances," and the testimony in this case that the substance was "held for resale." Nor do the supreme court's statements of its analysis in ***Williams*** give us a basis to distinguish that case from the present one.

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5.