

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 9, 1999

Marilyn L. Graves
Clerk, Court of Appeals
of Wisconsin

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62, STATS.

No. 98-1649-CR

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JESSIE L. HOLLIMON,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Marinette County:
CHARLES D. HEATH, Judge. *Affirmed.*

Before Cane, C.J., Myse, P.J., and Hoover, J.

PER CURIAM. Jessie Hollimon appeals a judgment convicting him of sexually assaulting his brother's girlfriend. He argues that the trial court improperly admitted other acts evidence. Because we conclude that the error, if any, was harmless, we affirm the judgment.

Hollimon was charged with second-degree sexual assault of Julia W. During the trial to the court, the State presented evidence that several hours earlier, Hollimon had an encounter with another woman who testified:

I started to get up because I thought we were leaving. And as I was getting up, he grabbed my wrists and tried --and walked forward and tried to pull me to him....

I fell back in the chair....

He said, 'What's the matter? Are you scared? What do you have to be scared about?'...

I said, 'Yes, I'm scared. I'm in a strange situation. I'm uncomfortable, and I don't know who you are.' And I said I wanted to leave...

He let go of my wrist and went and sat on the couch again...

...[H]e patted on the couch to get me to come sit by him on the couch....

Right after that ... he got up and we left.

Hollimon testified that this incident did not occur. He admitted intercourse with Julia W., but claimed it was consensual. The trial court found Hollimon guilty of the lesser included offense of third-degree sexual assault, finding that the intercourse was not consensual but that it was not the product of force.

Error in admitting other acts evidence is subject to harmless error analysis. *See, e.g., State v. Grant*, 139 Wis.2d 45, 52-53, 406 N.W.2d 744, 747 (1987). Error is harmless if there is no reasonable possibility that it made a difference in the judge's verdict. *See State v. Dyess*, 124 Wis.2d 525, 543, 370 N.W.2d 222, 231 (1985).

The nature of the other acts evidence and the trial court's detailed explanation of its verdict persuade us that the challenged evidence had no effect

on the verdict. Evidence that Hollimon grabbed a woman's wrists while suggesting intimate relations and released her upon request is not so inflammatory that it might cause a trained judicial mind to find him guilty based on his bad character or criminal tendency. More significantly, the court's detailed discussion of the evidence and its resolution of credibility issues included no mention of the earlier incident. Rather, the court noted that Hollimon initially lied to police and lied at trial while trying to explain the first lie.¹ The court also found that Julia W.'s behavior was consistent with rape, that redness on her wrists confirmed her testimony, and that Hollimon's prior convictions and drug use adversely affected his credibility. In fact, the court found against the State regarding the very issue on which the prosecutor sought admission of this evidence – use of force. We are satisfied that the error, if any, in admitting evidence of the earlier incident had no effect on the verdict.

By the Court.—Judgment affirmed.

This opinion will not be published. See RULE 809.23(1)(b)5, STATS.

¹ Hollimon attempted to explain his denial that he had sex with Julia W. by testifying that he had been with two women that night and that he did not know which one the officer was referring to, even though Julia W. accused him of rape before she left and a friend of hers told Hollimon that Julia W. had gone to the police.

