

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**June 26, 2002**

Cornelia G. Clark  
Clerk of Court of Appeals

**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 WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 01-1730-CR  
STATE OF WISCONSIN**

**Cir. Ct. No. 98-CF-82**

**IN COURT OF APPEALS  
DISTRICT II**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**SCOTT ELVERS,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment of the circuit court for Walworth County:  
JOHN R. RACE, Judge. *Affirmed.*

Before Brown, Anderson and Snyder, JJ.

¶1 PER CURIAM. Scott Elvers appeals from the judgment of conviction entered against him. He argues on appeal that the circuit court improperly allowed other acts evidence to be presented against him at trial. We conclude that even if the evidence was improperly admitted, the admission of the evidence was harmless error. Therefore, we affirm.

¶2 Elvers was convicted after a jury trial of one count of substantial battery and one count of disorderly conduct, both as a repeater. At trial, the victim recanted her testimony that Elvers had injured her. As a result of the underlying incident, the victim suffered a fractured shoulder and a bruised elbow, nose, cheek, and lip. She initially told the police and others that Elvers had caused all of her injuries. At trial, she testified that her injuries were caused when she tripped over a telephone cord and fell into an entertainment center. In order to demonstrate that the victim had a motive to recant, the State asked the victim whether Elvers had threatened her prior to the incident. The defense objected on the grounds that this was other acts evidence. The court allowed the evidence not as other acts evidence, but to show a motive for the victim to have recanted her testimony.

¶3 Elvers argues on appeal that the testimony was other acts evidence and was improperly admitted. The State concedes that the evidence was other acts evidence but argues that the trial court's error was harmless. We accept, without deciding, the State's concession that the testimony concerned other acts evidence.<sup>1</sup> We agree with the State, however, that any error in admitting the evidence was harmless.

¶4 The test for harmless error is "whether there is a reasonable possibility that the error contributed to the conviction." *State v. Dyess*, 124 Wis. 2d 525, 543, 370 N.W.2d 222 (1985). We conclude that there is not a reasonable probability that the jury would have reached a different verdict if the testimony that Elvers had previously threatened the victim had not been allowed.

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<sup>1</sup> However, we are not necessarily convinced that the State's concession is correct. See *State v. Schaller*, 199 Wis. 2d 23, 43-44, 544 N.W.2d 247 (Ct. App. 1995); *State v. McMahon*, 186 Wis. 2d 68, 96, 519 N.W.2d 621 (Ct. App. 1994).

The recantation testimony by the victim that she suffered these severe injuries when she tripped and fell into an entertainment center is plainly and simply incredible. No reasonable juror would have found Elvers to be innocent based on this testimony. The testimony of others, including the police officer with whom the victim initially filed a complaint, was sufficient to support the jury's verdict that Elvers was responsible for the victim's injuries. Consequently, if it was error to admit the evidence that Elvers had previously threatened the victim, this error was harmless. We affirm the judgment of the circuit court.

*By the Court.*—Judgment affirmed.

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

