

**IN THE COURT OF APPEALS OF IOWA**

No. 6-698 / 06-0015  
Filed October 11, 2006

**STATE OF IOWA,**  
Plaintiff-Appellee,

**vs.**

**BRIAN RAY JOHNSON,**  
Defendant-Appellant.

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Appeal from the Iowa District Court for Jefferson County, Lucy J. Gamon,  
District Associate Judge.

Brian Johnson appeals following his convictions for assault with intent to  
commit sexual abuse and false imprisonment. **AFFIRMED.**

Linda Del Gallo, State Appellate Defender, and James G. Tomka,  
Assistant Appellate Defender, for appellant.

Thomas J. Miller, Attorney General, Sharon K. Hall, Assistant Attorney  
General, and Timothy W. Dille, County Attorney, for appellee.

Considered by Sackett, C.J., and Vaitheswaran, J., and Robinson, S.J.\*

\*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2005).

**VAITHESWARAN, J.**

The State charged Brian Johnson with (1) assault with intent to commit sexual abuse and (2) false imprisonment. Iowa Code §§ 709.11, 710.7 (2005). The case was tried to a jury. At the close of the State's evidence and, again, at the close of all the evidence, Johnson moved for a judgment of acquittal. The district court overruled the motions and sent the case to the jury, which found Johnson guilty as charged.

On appeal, Johnson raises a single issue: "whether the district court erred in denying Johnson's motion for judgment of acquittal based upon the insufficiency of the evidence." Our review of this issue is for errors of law. *State v. Williams*, 695 N.W.2d 23, 27 (Iowa 2005).<sup>1</sup>

The jury was instructed that the State would have to prove the following elements of assault with intent to commit sexual abuse:

1. On or about the 3<sup>rd</sup> day of June, 2005, the defendant assaulted Suzanne Burns.
2. The defendant did so with the specific intent to commit a sex act by force or against the will of Suzanne Burns.

"Assault" was defined for the jury as "an act which is meant to cause pain or injury to, or which is intended to result in physical contact which would be insulting or offensive to another person, when coupled with apparent ability to do the act."

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<sup>1</sup> The State argues Johnson failed to preserve error in that he did not make specific reference to the elements of either offense. See *Williams*, 695 N.W.2d at 27. The *Williams* court recognized an exception to the general error preservation rule "when the record indicates that the grounds for a motion were obvious and understood by the trial court and counsel." *Id.* We conclude this exception applies here. Accordingly, we proceed to the merits.

On the false imprisonment charge, the jury was instructed that the State would have to prove:

1. On or about the 3<sup>rd</sup> day of June, 2005, the defendant intentionally confined Suzanne Burns.
2. Suzanne Burns was confined against her will.
3. The defendant did not have a reasonable belief that he had a right or authority to confine Suzanne Burns.

A jury could have found the following facts. Johnson became acquainted with Suzanne Burns and, one evening, asked her to meet him at a bar. She agreed, but spent most of the time talking to someone else. As Burns was leaving the bar, Johnson asked her for a ride home. Burns said yes. When they arrived at his apartment house, he invited her to come in. She agreed to a brief visit. On entering the apartment, Johnson shut the door, knocked Burns to the ground, sat on her torso, threatened to hit her with a dumbbell, said “he was going to rape and kill” her, and called her vulgar names. He also “smashed” his mouth into hers “at least four or five” times.

Johnson did not stop until a friend, Frank Zuehlke, knocked on the door approximately 30 to 45 minutes later. At this point, Johnson got off Burns, turned on the light, and let Zuehlke in. Burns told Zuehlke what had happened. Then, she left.

At trial, Burns testified she “[a]bsolutely” did not make any overture that would have led Johnson to believe he had a right to take these actions. She also testified she was “[v]ery scared” when all this happened. Zuehlke corroborated this testimony, stating she appeared “[s]cared, frightened, shook up.”

This evidence was sufficient to support the jury's finding of guilt on the two charges, notwithstanding evidence that (1) Burns was intoxicated when the incident occurred, (2) Burns's estimate of the length of the assault changed over time, (3) Burns had no visible injuries, (4) Burns misrepresented Johnson's relationship to her in an effort to obtain a restraining order against him, and (5) Zuehlke did not hear her scream when he approached the door of Johnson's apartment. As our courts have often stated, credibility assessments and the weighing of evidence are for the fact finder. *Williams*, 695 N.W.2d at 28; *State v. Liggins*, 557 N.W.2d 263, 269 (Iowa 1996).

We conclude the district court did not err in denying Johnson's motions for judgment of acquittal.

**AFFIRMED.**