

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT JACKSON
MARCH SESSION, 1998

FILED

April 1, 1999

Debi Crowson, Jr.
Appellate Court Clerk

STATE OF TENNESSEE,)	C.C.A. NO. 02C01-9709-CC-00341
)	
Appellee,)	
)	
VS.)	HENRY COUNTY
)	
JAMES ROBERT FIELDS,)	HON. JULIAN P. GUNN
)	JUDGE
Appellant.)	(Direct Appeal - Class B Misdemeanor Assault)

CONCURRING OPINION

I agree that the conviction should be affirmed. Assault is not a lesser included or lesser grade offense of statutory rape. I disagree, however, with footnote 3 which suggests that a special request by the defendant for an instruction on a lesser offense would serve to amend the indictment. See State v. Leland Ray Reeves, No. 01C01-9711-CR-00515 (Tenn. Crim. App., at Nashville, Mar. 23, 1999).

Gary R. Wade, Presiding Judge