

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FIFTH DISTRICT

JANUARY TERM 2003

PATRICK FOSS,

Appellant,

v.

CASE NO. 5D01-2512

STATE OF FLORIDA,

Appellee.

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Opinion filed January 17, 2003

Appeal from the Circuit Court  
for Citrus County,  
Barbara Gurrola, Judge.

James B. Gibson, Public Defender,  
and Thomas J. Lukashow, Assistant  
Public Defender, Daytona Beach,  
for Appellant.

Charlie Crist, Attorney General,  
Tallahassee, and Pamela J. Koller,  
Assistant Attorney General,  
Daytona Beach, for Appellee.

PER CURIAM.

Patrick Foss appeals his conviction for four counts of sexual battery on a child under 16 and two counts of lewd or lascivious molestation pursuant to section 800.04, Florida Statutes (1999).

The amended information properly set forth the elements necessary to charge Foss with violations of sections 800.04(4)(a) and 800.04(5)(a), Florida Statutes (1999), but erroneously cited to section 800.04(2), Florida Statutes (1999). We do not find that the

erroneous references to the incorrect section of the statute is fatal. An erroneous reference to a statute in the information is not fatal to a conviction if the information properly pleads the necessary elements of the offense. *E.g., B. H. v. State*, 645 So. 2d 987 (Fla. 1994), *cert. denied*, 515 U.S. 1132 (1995); *Mosely v. State*, 688 So. 2d 999 (Fla. 2d DCA 1997).

The remaining issues raised on appeal were not preserved. We remand for correction of the errors in the judgment that made reference to the incorrect citations.

AFFIRMED but REMANDED.

PETERSON, PLEUS and PALMER, JJ., concur.