

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

RAGHAD KHAMOU,

Defendant-Appellant.

UNPUBLISHED

June 20, 1997

No. 196887

Oakland Circuit Court

LC No. 95-141322 FH

Before: Markman, P.J., and Holbrook, Jr. and O’Connell, JJ.

PER CURIAM.

Defendant was convicted by jury of fourth-degree criminal sexual conduct. MCL 750.520e(1)(b); MSA 28.788(5)(1)(b). He was sentenced to two years’ probation, the first sixty days to be served in the Oakland County Jail. He now appeals as of right. We affirm.

The victim testified that on June 26, 1995, she went to a video store to rent some movies. While at the store, defendant, who was an employee of the store, led her to the adult section of the store where he forcibly kissed her and fondled her breasts.

Defendant argues that his conviction must be reversed because the information charging him with fourth-degree criminal sexual conduct cited the incorrect subsection of the statute and used the language of the statute to explain the charge. Where a defendant fails to object to a defect in the information, a subsequent conviction will be reversed only if manifest injustice resulted from the defect. *People v Covington*, 132 Mich App 79, 86; 346 NW2d 903 (1984).

Here, we find that the error did not cause manifest injustice and the language used in the information provided adequate notice to defendant of the charge against him. Both the complaint and the information cited MCL 750.520e(1)(a); MSA 28.788(5)(1)(a). Under subsection (a), a defendant is guilty of fourth-degree criminal sexual conduct if “[the victim] is at least 13 years of age and under 16 years of age, and the actor is 5 or more years older than that other person.” MCL 750.520e(1)(a); MSA 28.788(5)(1)(a). Under subsection (b), a defendant is guilty if “[f]orce or coercion is used to accomplish the sexual contact.” MCL 750.520e(1)(b); MSA 28.788(5)(1)(b).

“The mere erroneous citation of a statute [sic] in an information does not mandate reversal . . .” *People v McGill*, 131 Mich App 465, 477; 346 NW2d 572 (1984); MCR 6.112(F). Both the complaint and the information stated that defendant used “force or coercion to accomplish the sexual contact.” Neither document alleged circumstances covered by subsection (a) of the statute. Clearly, the prosecution intended to cite subsection (b) of the statute and not subsection (a). In fact, at the preliminary examination, defense counsel acknowledged that the prosecution had to prove force or coercion. Therefore, defendant could not have been misled as to the nature of the charge against him.

Defendant also contends that more specific language was required in the information to explain what force or coercion was used to accomplish the act. However, this Court has held that “[w]here statutory language is used in an information in charging an offense, it is sufficient if it adequately informs a defendant of ‘the nature and character’ of the charged offense.” *People v Benjamin*, 101 Mich App 637, 643; 300 NW2d 661 (1980). While the information did not explain the force or coercion used, the statute lists specific circumstances which constitute force or coercion, including “[w]hen the actor achieves the sexual contact . . . by the element of surprise.” MCL 750.520e(1)(b)(v); MSA 28.788(5)(1)(b)(v). Therefore, the information adequately informed defendant of the crime for which he was being charged.

Affirmed.

/s/ Stephen J. Markman
/s/ Donald E. Holbrook, Jr.
/s/ Peter D. O’Connell