

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLARD LEVI ADAMSON, JR.,

Defendant-Appellant.

UNPUBLISHED

January 4, 2000

No. 205007

Genesee Circuit Court

LC No. 96-054570 FC

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

WILLARD LEVI ADAMSON, JR.,

Defendant-Appellant.

No. 205009

Genesee Circuit Court

LC No. 96-054571 FC

Before: Doctoroff, P.J., and Holbrook, Jr., and Kelly, JJ.

PER CURIAM.

This is a consolidated appeal. In Docket No. 205007, defendant was charged with one count of first degree home invasion, MCL 750.110a(2); MSA 28.305(a)(2), and two counts of first-degree criminal sexual conduct (CSC I), MCL 750.520b(a)(2); MSA 28.788(2)(1). In Docket No. 205009, defendant was also charged with one count of first-degree home invasion and two counts of CSC I. Following a jury trial, defendant was convicted of all charges. In Docket No. 205007, defendant was sentenced as a third habitual offender, MCL 769.11; MSA 28.1083, to a twenty-five to forty year prison term for one home invasion conviction, along with two life terms for the CSC I convictions. Identical sentences were imposed for the corresponding convictions in Docket No. 205009. All sentences are to run concurrently. Defendant appeals as of right and we affirm.

The felony information filed in Docket No. 205007 indicates that the crimes charged occurred on or about August 16, 1996. The felony information filed in Docket No. 205009 indicates that the crimes charged occurred on or about August 28, 1996. With respect to the crimes charged in Docket No. 205007, the trial court instructed the jury in pertinent part as follows:

With regard to the first case, the crime alleged . . . on or about August 16, 1996. The Prosecutor does not have to prove that the crime was committed on that exact date, but only that it was committed reasonably near that date. And that gives rise to this terminology “on or about August 16, 1996.[”]

Defendant argues that he was denied a fair trial by this instruction. Specifically, defendant asserts that the court should have limited the jury’s consideration to the specific date of August 16, 1996, because to do otherwise deprived him of the ability to mount an alibi defense. Moreover, defendant argues that this error undermined his ability to present an effective defense for the crimes charged in Docket No. 205009. We disagree.

MCL 767.51; MSA 28.991 states:

Except insofar as time is an element of the offense charged, any allegation of the time of the commission of the offense, whether stated absolutely or under a videlicet, shall be sufficient to sustain proof of the charge at any time before or after the date or dates alleged, prior to the finding of the indictment or the filing of the complaint and within the period of limitations provided by law: Provided, that the court *may on motion* require the prosecution to state the time or identify the occasion as nearly as the circumstances will permit, to enable the accused to meet the charge. [Emphasis added.]

The record reveals that defendant never made a motion to have the occurrence date in Docket No. 205007 stated with more specificity. Instead, defendant went ahead with trial knowing that the felony information stated that the crimes charged occurred *on or about* August 16, 1996.¹ Defendant cannot proceed through trial with such knowledge and then argue at the last moment that the lack of specificity undermined his alibi defense. Further, given the circumstances of the case, we do not believe that defendant was denied due process of law by the prosecution’s failure to more precisely pinpoint the date of the offense. See *People v Sabin*, 223 Mich App 530, 532; 566 NW2d 677 (1997). Given that we see no error in Docket No. 205007, we reject defendant’s assertion that the results in Docket No. 205009 were undermined by this non-existent error.

Affirmed.

/s/ Martin M. Doctoroff
/s/ Donald E. Holbrook, Jr.
/s/ Michael J. Kelly

¹ “The . . . information shall contain . . . [t]he time of the offense as near as may be. No variance as to time shall be fatal unless time is of the essence of the offense.” MCL 767.45(1); MSA 28.985(1). In the circumstances of the case, there is nothing to indicate that time was of the essence or a material element of either first-degree home invasion or CSC I. See MCL 750.110a(2); MSA 28.305(a)(2); *Sabin, supra* at 532.