

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

ELIZABETH ANNE NUNEZ,

Defendant-Appellant.

UNPUBLISHED

May 11, 2004

No. 246787

Ionia Circuit Court

LC No. 2002-012205-FH

Before: Gage, P.J., and O’Connell and Zahra, JJ.

MEMORANDUM.

Defendant appeals of right her conviction following a jury trial for one count of malicious destruction of personal property worth more than \$200 and less than \$1,000, MCL 750.377a(1)(c)(1), and one count of malicious destruction of a building more than \$1,000 and less than \$20,000, MCL 750.380(3)(a). We affirm. This case arose when defendant, irate that her ex-husband refused to take her daughter to a band concert, went to his house and called for him to come out. When he refused, she repeatedly drove her car into his truck, eventually pushing it into his house.

Defendant argues that the trial court erred when it admitted evidence regarding the fact that she pushed the truck into the house. We find no abuse of discretion because the crime of malicious destruction of real property requires the introduction of this relevant evidence to prove its elements. Furthermore, the trial court did not err when it permitted the prosecutor to add malicious destruction of real property to the information, because the facts supported the charge. MCR 6.112(H). Defendant waived any prejudice that arose from the additional charge’s timing by waiving a preliminary examination on the charge and declining the trial court’s offer to adjourn so she could prepare for trial on both counts. MCL 767.42. Without some demonstration of prejudice or error, defendant’s argument fails. *People v Hunt*, 442 Mich 359, 362-365; 501 NW2d 151 (1993).

Next, defendant argues that the trial court erred when it failed to clarify the specific intent elements for each of the charges. We disagree. The record shows that after the trial court had thoroughly instructed the jury regarding the crimes’ elements and excused the jury for deliberations, the jury sent out a letter requesting further clarification of specific intent. Then the trial court called the jury back into the courtroom and carefully explained that the crimes’ specific intent elements meant that defendant must have intended to damage the car to be guilty of the personal property count, and she must have intended to damage the house to be guilty of

the real property count. Given the doctrine of transferred intent, this may have been an oversimplification in defendant's favor. Nevertheless, the instructions fairly recounted the law and adequately protected defendant's rights, so we find no error. *People v Piper*, 223 Mich App 642, 648; 567 NW2d 483 (1997).

Affirmed.

/s/ Hilda R. Gage
/s/ Peter D. O'Connell
/s/ Brian K. Zahra