STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

HENRY L. RIDNER,

Defendant-Appellant.

UNPUBLISHED
April 23, 2002

No. 229698
Wayne Circuit Court
LC No. 00-004693-01

Before: White, P.J., and Murphy and Fitzgerald, JJ.

PER CURIAM.

Defendant appeals as of right his bench trial convictions of malicious destruction of police property, MCL 750.377b, and resisting and obstructing a police officer, MCL 750.479. Defendant was sentenced to five years' probation. We affirm.

Defendant first argues that his convictions must be reversed because the trial court erred in applying MCL 750.377b, the statute proscribing the malicious destruction of personal property of the police, to this case where real property was involved. We disagree.

Defendant did not raise this issue before the trial court; hence, this issue has not been properly preserved for appellate review. *People v Knapp*, 244 Mich App 361, 374 n 4; 624 NW2d 227 (2001). In order to avoid forfeiture of an unpreserved issue, defendant must establish that errors occurred, the errors were plain, i.e., clear or obvious, and the errors affected defendant's substantial rights. *People v Carines*, 460 Mich 750, 761-764; 597 NW2d 130 (1999).

Defendant argues that his conviction should be reversed because his actions could not be punished under MCL 750.377b, which statute requires the destruction or injury to personal property, while the intercom system that he damaged is a fixture or real property. In *People v Fox*, 232 Mich App 541, 553; 591 NW2d 384 (1998), this Court determined that "personal property" consists of "everything that is the subject of ownership not coming under denomination of real estate." The Court defined "real property" as "'[l]and, and generally whatever is erected or growing upon or affixed to the land.'" *Id*. The Court indicated that a fixture is not personal property, but rather, falls under the definition of real property. *Id*. The Court described a three-pronged test that may be used in determining whether property is a fixture: (1) the property is annexed to the realty, whether the annexation is actual or constructive; (2) its adaptation or application to the realty being used is appropriate; and (3) there

is intent to make the property a permanent accession to the realty. *Id*. The prosecutor does not argue that the intercom was not personal property.

Although the intercom was a fixture and not personal property for the purposes of MCL 750.377b, defendant's conviction also related to the destruction or injury to a mattress, which is not a fixture.[1] Therefore, defendant has failed to demonstrate plain error affecting his substantial rights.

Defendant next argues that there was insufficient evidence to support his conviction of malicious destruction of police property.[2] We disagree. When reviewing a claim regarding the sufficiency of the evidence, this Court examines the evidence in a light most favorable to the prosecution to determine if a rational factfinder could find that the essential elements of the offense were proved by a reasonable doubt. *People v Joseph*, 237 Mich App 18, 20; 601 NW2d 882 (1999).

To prove malicious destruction of police property the prosecutor must show that defendant (1) willfully and maliciously destroyed or injured; (2) personal property belonging to the police department. *People v Richardson*, 118 Mich App 492, 494; 325 NW2d 419 (1982). This Court has determined that, for purposes of malicious willful and malicious destruction, the words "willful and malicious" require a specific intent to damage property or injure its owner. *People v Culp*, 108 Mich App 452, 458; 310 NW2d 421 (1981).

Defendant contends that he did not act maliciously when he damaged a mattress located in a cell because he was using the mattress cover to warm himself because his clothes were taken from him. There was testimony that defendant destroyed an intercom system in his first cell, and that he had to be moved to a second cell. Defendant then assaulted an officer while he was being escorted to the second cell. Defendant admitted that he was drunk and belligerent, which led to the officers restraining defendant. Although defendant was naked in the second cell, where he tore the cover off the mattress, there was testimony that his clothes were not taken away from him until he was moved to a third cell. His clothes were removed at that time because defendant was using the buttons on the clothes to unscrew screws.

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[1] Defendant was first charged with two counts of malicious destruction under MCL 750.377b. In closing, the prosecutor asked the court to find defendant guilty of only one count, stating

> there's cases [sic] that say when somebody is engaged in a transaction like that involving multiple items, you can only have one count., So I would ask the Court to find him guilty of one count of malicious destruction of police property, and one count of resisting and obstructing a police officer.

[2] Defendant's second and third issues alternatively state that the verdict was against the great weight of the evidence. However, defendant's arguments were based entirely on whether the evidence was sufficient, rather than that the verdict was against the great weight of the evidence. Therefore, we review defendant's claims for sufficiency of the evidence, as defendant has failed to argue the merits of his allegations that the verdict was against the great weight of the evidence. See *People v Jones* (*On Rehearing*), 201 Mich App 449, 456-457; 506 NW2d 542 (1993).

Thus, there was evidence from which the trial court could have concluded that defendant was acting out of malice throughout, and that if he was cold he could have put his clothes back on or told the officers that he was cold.

Third, defendant argues that there was insufficient evidence to support a verdict of guilt for his conviction of resisting and obstructing a police officer. We disagree. Defendant argues that he wanted to move to a private cell, and therefore had no reason to assault the officer when the officer was transferring him to such a cell, which raises a reasonable doubt as to whether defendant resisted or obstructed the officer. The officer testified that as he was taking defendant from the first cell to the second cell, defendant pulled away, turned, swung, and punched the officer in the chest. After defendant hit the officer, it took two officers to restrain defendant. In reviewing the sufficiency of the evidence, this Court will not interfere with the factfinder's role of determining the credibility of the witnesses. *People v Lee*, 243 Mich App 163, 167; 622 NW2d 71 (2000). The officer's testimony, apparently believed by the trial court, was sufficient evidence to support defendant's conviction of resisting and obstructing an officer.

Affirmed.

/s/ Helene N. White
/s/ William B. Murphy
/s/ E. Thomas Fitzgerald