Note: Decisions of a three-justice panel are not to be considered as precedent before any tribunal.

ENTRY ORDER

SUPREME COURT DOCKET NO. 2010-072

OCTOBER TERM, 2010

State of Vermont	}	APPEALED FROM:
	}	
	}	
v.	}	District Court of Vermont,
	}	Unit No. 3, Orleans Circuit
	}	
Julie Perry	}	DOCKET NO. 617-12-08 Oscr
		Trial Judge: Walter M. Morris, Jr.

In the above-entitled cause, the Clerk will enter:

Defendant Julie Perry appeals from a judgment of conviction, based on a jury verdict, of violating an abuse prevention order. She contends the court erred in: (1) approving a jury verdict form that omitted the date of the offense; and (2) responding to jury questions. We affirm.

An information charged that, on or about October 1, 2008, defendant violated an abuse prevention order prohibiting her from coming within 500 feet of her former husband's place of business, an auto repair shop located on East Main Street in the City of Newport. At trial, defendant's former husband testified that, on October 1, 2008, he saw defendant drive very slowly past his shop and look into the driveway. The investigating officer corroborated the report and testified that the shop is within 50 to 100 feet of East Main Street. The officer also recalled that he had received a number of prior complaints that defendant was violating the order. Defendant testified in her own behalf, acknowledging that she was aware of the abuse-prevention order and frequently drove down East Main Street in the vicinity of the shop, but she could not recall specifically driving there on the date in question. She also testified that her attorney had told her that she was permitted to drive there so long as she did not harass her former husband. A jury returned a verdict of guilty. This appeal followed.

Defendant contends the trial court erred in submitting an erroneous jury verdict form. The verdict form in question outlined the essential elements of the offense as requiring proof beyond a reasonable doubt that defendant placed herself within 500 feet of the shop in violation of the order, having been served notice of its contents. The court rejected defendant's request to add the phrase "on or about October 1, 2008," ruling that it was not an element of the offense, and that defendant had not raised any defense which made it material.

The trial court's ruling was clearly correct. See State v. Infante, 157 Vt. 109, 111-12 (1991) (reaffirming the rule that time is generally not considered an element of an offense, and the jury need not be instructed to find that the offense occurred on a specific date, unless defendant "[asserts] a defense that makes time critical" such as an alibi defense). Defendant here testified that she could not specifically recall driving by the shop on October 1, 2008, but did not assert any defense suggesting that the offense could not have occurred on or about that date. Accordingly, we find no error. Equally without merit is defendant's related claim that the trial

court erred in instructing, in response to a jury question, that time was not an essential element of the offense.

Defendant further contends the court erred in responding to a jury question as to whether defendant's former attorney's "permission" to drive near the shop was relevant. The trial court, in response, stated that the attorney's alleged advice could not alter the terms of the abuse-prevention order, and further explained that the charged offense was not a specific intent crime. Defendant contends the court's response somehow constituted an impermissible comment on the evidence, but this objection was not raised below and, therefore, not preserved for review on appeal. See State v. Fisher, 167 Vt. 36, 43 (1997) (timely objection at trial is required to preserve issue for review on appeal). We note, furthermore, that the trial court's response was consistent with the decisions of this Court. See State v. Mott, 166 Vt. 188, 196 (1997) (holding that violation of an abuse-prevention order does not require specific intent and that nothing in the law requires that "defendant must have known that the conduct would violate the order"). Accordingly, we discern no grounds to reverse the judgment.

Affirmed.

BY THE COURT:

_____
John A. Dooley, Associate Justice

_____
Denise R. Johnson, Associate Justice

_____
Brian L. Burgess, Associate Justice