

**IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA**

**THE STATE OF NEBRASKA,**

Plaintiff-Appellee,

vs.

**ROD N. FIX,**

Defendant-Appellant.

Case No. CR00-26

**JUDGMENT ON APPEAL**

**DATE OF HEARING:** October 16, 2000.

**DATE OF RENDITION:** October 16, 2000.

**DATE OF ENTRY:** Date of filing by court clerk (§ 25-1301(3)).

**TYPE OF HEARING:** Oral arguments on appeal from county court.

**APPEARANCES:**

For appellant: No appearance.

For appellee: Thomas P. Herzog, Holt County Attorney.

**SUBJECT OF JUDGMENT:** Appeal from county court (case number CR99-447).

**PROCEEDINGS:** At the hearing, these proceedings occurred:

The bill of exceptions, as filed with the clerk of this court, is deemed as admitted in evidence pursuant to NEB. REV. STAT. § 25-2733(2) (Reissue 1995).

Arguments of counsel on the merits were heard or waived. The decision was pronounced.

**OPINION:**

1. The appellant appeals from the judgment and sentence of the county court upon a jury verdict for third degree assault. No statement of errors has been filed.

2. It is incumbent upon the party appealing to present a record which supports the errors assigned; absent such a record, as a general rule, the decision of the lower court is to be affirmed. *In re App. of Sanitary and Improvement District No. 384*, 259 Neb. 351, \_\_\_ N.W.2d \_\_\_ (2000).

3. Both the district court and a higher appellate court generally review appeals from the county court for error appearing on the record. *State v. Patterson*, 7 Neb. App. 816, 585 N.W.2d 125 (1998).

4. Appellate review is limited to those errors specifically assigned in the appeal to the district court and again assigned as error in an appeal to a higher appellate court. *Miller v. Brunswick*, 253 Neb. 141, 571 N.W.2d 245 (1997). Although an appellate court ordinarily considers only those errors assigned and discussed in the briefs, the appellate court may, at its option, notice plain error. *Id.* Plain error exists where there is an error, plainly evident from the record but not complained of at trial, which prejudicially affects a substantial right of a litigant and is of such a nature that to leave it uncorrected would cause a miscarriage of justice or result in damage to the integrity, reputation, and fairness of the judicial process. *Id.*

5. When reviewing a criminal conviction for sufficiency of the evidence to sustain the conviction, the relevant question for an appellate court is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *State v. Abbink*, 260 Neb. 211, \_\_\_ N.W.2d \_\_\_ (2000). Regardless of whether the evidence is direct, circumstantial, or a combination thereof, an appellate court, in reviewing a criminal conviction, does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. Such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the properly admitted evidence, viewed and construed most favorably to the State, is sufficient to support the conviction.. *Id.*

6. The defendant failed to file a statement of errors. That failure limits this court's review to a search for plain error. Finding no plain error, the judgment must be affirmed.

**ORDER:** IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The judgment of the county court is AFFIRMED.
2. Costs on appeal are taxed to the defendant-appellant.
3. The mandate shall issue as provided by law.

Signed at O'Neill, Nebraska, on October 16, 2000.  
DEEMED ENTERED upon filing by court clerk.

If checked, the Court Clerk shall:

- Mail a copy of this order to all counsel of record and to any pro se parties, **and deliver a certified copy to county court.**  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- Mail postcard/notice required by § 25-1301.01 within 3 days, **stating “Judgment of county court AFFIRMED”.**  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.
- If not already done, immediately transcribe trial docket entry dictated in open court.  
Done on \_\_\_\_\_, 20\_\_ by \_\_\_\_.

Mailed to:

BY THE COURT:

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William B. Cassel  
District Judge

**THE FOLLOWING DOES NOT CONSTITUTE ANY PORTION OF THE ABOVE  
JUDGMENT OR ORDER AND IS INCLUDED SOLELY FOR THE CONVE-  
NIENCE OF THE CLERK OF THE DISTRICT COURT:**

1. Assuming that the clerk of the district court places the file stamp and date upon this order (the “entry” defined by § 25-1301) on Monday, October 16, 2000, the last day for filing notice of appeal and depositing docket fee for appeal to the Nebraska Court of Appeal would be **Wednesday, November 15, 2000**.
2. If further appeal **is** timely perfected, issuance of the mandate of this court would await the mandate of the higher appellate court.
3. If **no** further appeal is timely perfected, within 2 judicial days after expiration of time for appeal, § 25-2733(1) requires the clerk of the district court to issue the mandate and to transmit the mandate to the clerk of the county court together with a copy of the decision.
4. The clerk of the district court should be prepared to transmit the mandate on **Thursday, November 16, 2000**.
5. In anticipation, at the clerk’s earliest convenience, the clerk should prepare a draft mandate for review to assure that it is properly completed as to form. The form is provided in the form book. The space for the district court decision would be filled in as “**AFFIRMED**”.
6. The mandate should be prepared in **two** duplicate originals. Both copies would be properly dated as to date of issuance, signed by the clerk, and the district court seal affixed.
7. **One** of the duplicate originals would be filed in the district court file. It would, of course, be file-stamped and docketed.
8. The **other** would be transmitted to county court on the **same day** that it is **issued**. The clerk of the district court would physically hand carry it to the county court clerk for filing in that court. **Attached** to the county court copy should be a **copy of the above judgment or order**. That attached copy does not have to be specially certified. The judge realizes that, pursuant to the court’s instructions, the district court clerk will have already transmitted a certified copy of the judgment or order to the county court at the time of entry. But the statute (§ 25-2733(1)) specifically requires that a copy of the decision be attached to the mandate.