

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

**THE STATE OF NEBRASKA,**

Plaintiff-Appellee,

vs.

**KELLY J. BICE,**

Defendant-Appellant.

Case No. CR03-24

**JUDGMENT ON APPEAL**

**DATE OF HEARING:** November 7, 2003.

**DATE OF RENDITION:** November 7, 2003.

**DATE OF ENTRY:** See court clerk's file-stamp date per § 25-1301(3).

**APPEARANCES:**

For appellant:

Appellant personally without counsel.

For appellee:

Eric A. Scott, Cherry County Attorney.

**SUBJECT OF JUDGMENT:** Appeal from county court (case number CR03-270).

**PROCEEDINGS:** See journal entry rendered on date of hearing.

**OPINION:**

1. The appellant appeals from the judgment and sentence of the county court upon a conviction after bench trial of possession of marijuana and possession of drug paraphernalia. For the reasons set forth below, this court affirms.

2. 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).

3. The appellant filed no statement of errors. Under Neb. Unif. Dist. Ct. R. 18, the district court's appellate jurisdiction is limited to review of errors assigned and discussed in the statement of errors. *State v. Nelson*, 2 Neb. App. 289, 509 N.W.2d 232 (1993). The district court also has jurisdiction to review the record for plain error not assigned. *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.* This court has examined the record and finds no plain error.

4. The content of the appellant's oral argument and the selected testimony requested by appellant to be included in the bill of exceptions suggest that appellant is attempting to claim that the conviction is not supported by sufficient evidence. In reviewing a criminal conviction, an appellate court does not resolve conflicts in the evidence, pass on the credibility of witnesses, or reweigh the evidence. *State v. Jackson*, 264 Neb. 420, 648 N.W.2d 282 (2002). 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.* 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. *Id.*

5. However, this court cannot conduct a review of the sufficiency of the evidence because the appellant did not request all of the evidence to be included. The defendant specifically requested only the "[c]ross examination of officer Hollander." T7. While the bill of exceptions includes the requested cross-examination, it naturally excludes the direct examination. The record does not show if other witnesses testified. The party appealing has the responsibility of including within the bill of exceptions matters from the record which the party believes are material to the issues presented for review. *State v. Bell*, 242 Neb. 138, 493 N.W.2d 339 (1992). A bill of exceptions is the only vehicle for bringing evidence before an appellate court. *Id.* Evidence which is not made a part of the bill of exceptions may not be considered. *Id.* Assignments of error requiring an examination of the evidence are not available on appeal in the absence of a bill of exceptions that includes that evidence. *Id.* Without all of the evidence, this court cannot review the sufficiency of the evidence.

6. Because the appellant filed no statement of errors and no plain error appears

in the record, the judgment should be affirmed.

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

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

Signed in chambers at **Ainsworth**, Nebraska, on **November 7, 2003**;  
DEEMED ENTERED upon file stamp date by court clerk.

**BY THE COURT:**

If checked, the court clerk shall:

- Enter judgment on the judgment record.  
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 \_\_\_\_\_.
- Note the decision on the trial docket as: [date of filing] **Signed "Judgment on Appeal" entered**.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.
- Mail a copy of this order to all counsel of record and any pro se parties **and deliver a certified copy to county court**.  
Done on \_\_\_\_\_, 20\_\_\_\_ by \_\_\_\_\_.

Mailed to:

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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  
CONVENIENCE 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, November 10, 2003, the last day for filing notice of appeal and depositing docket fee for appeal to the Nebraska Court of Appeals would be **Wednesday, December 10, 2003**.
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, December 11, 2003**.
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.