IN THE NEBRASKA COURT OF APPEALS

MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)

STATE V. CANTY-NEELY

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STATE OF NEBRASKA, APPELLEE,

V.

TAHASHAYE T. CANTY-NEELY, APPELLANT.

Filed November 3, 2026. No. A-25-853.

Appeal from the District Court for Madison County: JAMES G. KUBE, Judge. Affirmed.

Tahashaye T. Canty-Neely, pro se.

Michael T. Hilgers, Attorney General, and Teryn Blessin for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

FREEMAN, Judge.

INTRODUCTION

Following a jury trial, Tahashaye T. Canty-Neely appeals his convictions for driving under the influence of alcoholic liquor, possession of a controlled substance, and refusal to submit to chemical testing entered by the district court for Madison County. He argues that the district court erred in denying his motion for directed verdict, his counsel was ineffective, and there was prosecutorial misconduct. For the reasons explained below, we affirm.

BACKGROUND

Canty-Neely was charged via information with count I, driving under the influence of alcoholic liquor, refusal of test, fourth offense, a Class IIA felony; count II, possession of a controlled substance, cocaine, a Class IV felony; count III, refusal to submit to chemical testing, fourth offense, a Class IIA felony; and count IV, driving during a period of revocation, fourth offense, a Class I misdemeanor.

Through counsel, Canty-Neely filed a motion to suppress any evidence seized by police, claiming that he was unlawfully stopped, he was not provided an adequate and accurate advisement pursuant to Neb. Rev. Stat. § 60-6,197(5) (Reissue 2021), and his constitutional rights were violated. After a hearing on January 6, 2025, the district court overruled Canty-Neely's motion to suppress.

A jury trial was held on September 22, 2025, where Canty-Neely was self-represented. Before the trial began, the State dismissed count IV. The State explained that when Canty-Neely was arrested and his license was run through the database, information was returned that the license was both suspended and revoked. But at the time of trial, the State could not confirm that Canty-Neely's license was revoked at the time of the offense. The following evidence was adduced at trial regarding the remaining charges.

Officer Dylan Vieth testified that he was on patrol in Madison County when he observed Canty-Neely driving a vehicle. Vieth confirmed with dispatch that Canty-Neely had a suspended or revoked driver's license before conducting a traffic stop of the vehicle. Upon speaking with Canty-Neely, Vieth observed the odor of alcohol, and that Canty-Neely had bloodshot, hazy, and glossy eyes. Vieth also observed Canty-Neely moving his hand in between the driver's seat and center console. Canty-Neely was detained and taken to the police station.

While at the police station, Vieth performed a horizontal gaze nystagmus (HGN) standardized field sobriety test on Canty-Neely. Canty-Neely showed positive signs for six out of six indicators for being under the influence of alcohol. A vertical gaze nystagmus (VGN) standardized field sobriety test was also performed on Canty-Neely, but there were no indicators observed. Vieth explained that it is common to see HGN indicators and not VGN indicators. He indicated that VGN is more typical when a person is under the influence of drugs.

Vieth asked Canty-Neely to submit to a preliminary breath test, but he refused. Following his refusal, Vieth formally placed Canty-Neely under arrest for driving under the influence of alcohol.

Afterward, Vieth reviewed a Post Arrest Chemical Test Advisement Form with Canty-Neely. The form stated:

> Pursuant to law, I am requiring you to submit to a chemical test or tests of your breath or urine to determine the concentration of alcohol or drugs in your body. Refusal to submit to such a test or tests is a separate crime for which you may be charged.

Canty-Neely signed the form. Canty-Neely was then offered the chance to submit a breath sample through a DataMaster testing device, but he refused.

Officer Joel Vonderohe testified regarding the evidence found in Canty-Neely's vehicle. While conducting an inventory search, Vonderohe discovered an opened tequila bottle that was approximately a quarter full. Additionally, Vonderohe discovered a small bag in between the driver's seat and center console that contained a white powdery substance. The substance was field tested and later confirmed at a laboratory as cocaine.

At the close of the State's case, Canty-Neely moved for directed verdict. The district court overruled his motion, and Canty-Neely called Vieth as his first witness. Canty-Neely also testified.

The jury found Canty-Neely guilty of all three counts. At the sentencing hearing, the district court received evidence of Canty-Neely's prior convictions for enhancement. The district

court found the prior convictions valid, and Canty-Neely's charges for driving under the influence of alcoholic liquor, refusal of test, and refusal to submit to chemical testing were each enhanced to a fourth offense. The district court then sentenced Canty-Neely to a combined term of 4 to 7 years' imprisonment.

Canty-Neely, self-represented, appeals.

ASSIGNMENTS OF ERROR

Canty-Neely assigns that (1) the district court erred by overruling his motion for directed verdict, (2) his counsel was ineffective, and (3) there was prosecutorial misconduct.

Canty-Neely attempted to assign additional errors and modify his previous errors in his reply brief. The purpose of an appellant's reply brief is to respond to the arguments the appellee has advanced against the errors assigned in appellant's initial brief. *Linscott v. Shasteen*, 288 Neb. 276, 847 N.W.2d 283 (2014). Errors not assigned in an appellant's initial brief are thus waived and may not be asserted for the first time in a reply brief. *Id.* Therefore, we will address the errors assigned in Canty-Neely's initial brief.

STANDARD OF REVIEW

In an appellate court's consideration of a criminal defendant's motion for a directed verdict, the State is entitled to have all its relevant evidence accepted as true, every controverted fact resolved in its favor, and every beneficial inference reasonably deducible from the evidence. *State v. Childs*, 309 Neb. 427, 960 N.W.2d 585 (2021).

Whether a claim of ineffective assistance of trial counsel may be determined on direct appeal is a question of law. *State v. Evans*, 321 Neb. 841, 37 N.W.3d 641 (2026). In reviewing claims of ineffective assistance of counsel on direct appeal, an appellate court decides only whether the undisputed facts contained within the record are sufficient to conclusively determine whether counsel did or did not provide effective assistance and whether the defendant was or was not prejudiced by counsel's alleged deficient performance. *Id.*

When a defendant has not preserved a claim of prosecutorial misconduct for direct appeal, we will review the record only for plain error. *State v. Garcia*, 315 Neb. 74, 994 N.W.2d 610 (2023). We apply the plain error exception to the contemporaneous-objection rule sparingly. *Id.*

ANALYSIS

Directed Verdict and Sufficiency of Evidence.

Canty-Neely argues that the district court erred by overruling his motion for directed verdict at the close of the State's case. But Canty-Neely waived this argument. The record shows that after Canty-Neely's motion was denied, he put on evidence in his defense. A defendant who moves for a directed verdict at the close of the evidence in the State's case in chief in a criminal prosecution, and who, when the court overrules the dismissal or directed verdict motion, proceeds with trial and introduces evidence, waives the appellate right to challenge correctness in the trial court's overruling the motion for a directed verdict, but may challenge sufficiency of the evidence for the defendant's conviction. *State v. Pauly*, 311 Neb. 418, 972 N.W.2d 907 (2022). We therefore review Canty-Neely's argument as a challenge to the sufficiency of the evidence. See *id.*

Canty-Neely next argues that there was insufficient evidence that he was driving under the influence of alcoholic liquor. He states that there was no evidence of "erratic driving," and no other standardized field sobriety tests were performed on him besides HGN. Brief for appellant at 9-10.

Regardless of whether the evidence is direct, circumstantial, or a combination thereof, and regardless of whether the issue is labeled as a failure to direct a verdict, insufficiency of the evidence, or failure to prove a prima facie case, the standard is the same: 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; such matters are for the finder of fact, and a conviction will be affirmed, in the absence of prejudicial error, if the evidence admitted at trial, viewed and construed most favorably to the State, is sufficient to support the conviction. *State v. Pauly, supra.*

Here, the record reflects that Vieth observed the odor of alcohol emitting from Canty-Neely and that he had bloodshot, hazy, and glossy eyes. Canty-Neely showed positive signs for six out of six indicators on the HGN test for being under the influence of alcohol. Also, Vonderohe discovered a quarter full alcohol bottle in Canty-Neely's vehicle. Either a law enforcement officer's observations of a defendant's intoxicated behavior or the defendant's poor performance on field sobriety tests may constitute sufficient evidence to sustain a conviction of driving while under the influence of alcoholic liquor. *State v. Falcon*, 260 Neb. 119, 615 N.W.2d 436 (2000).

Therefore, in viewing the evidence in the light most favorable to the State, there is sufficient evidence to support Canty-Neely's driving under the influence of alcoholic liquor conviction.

Ineffective Assistance of Counsel.

Canty-Neely assigns that he "was denied effective assistance of counsel." Canty-Neely argues in his brief that he received ineffective assistance of counsel regarding several errors that occurred during his motion to suppress hearing. This error is insufficiently assigned.

An assignment of error must, standing alone, permit an appellate court to determine if the claim can be decided upon the trial record and also permit a district court to later recognize that the claim was raised on direct appeal. *State v. Rupp*, 320 Neb. 502, 28 N.W.3d 74 (2025). This requires a description of the specific conduct alleged to constitute deficient performance. *Id.* An assignment is specific when it addresses a specific issue that does not require additional information to understand precisely what the assignment attacks. *Id.* The argument section of the brief is to elaborate on these claims by discussing legal authority and its application to the trial record, not to set forth, for the first time, what the allegedly deficient act was. *Id.*

Here, Canty-Neely provided no description of the specific conduct alleged to constitute deficient performance. This error does not meet the specificity required for assigning error to counsel's performance on direct appeal. We therefore do not address this assigned error.

Prosecutorial Misconduct.

Canty-Neely argues that the State engaged in prosecutorial misconduct when it proceeded with the charge for driving during a period of revocation until right before trial.

Canty-Neely failed to object to the prosecutor's actions or move for mistrial based on prosecutorial misconduct. See *State v. Childs*, 309 Neb. 427, 960 N.W.2d 585 (2021) (failure to make timely objection waives right to assert prejudicial error on appeal). Consequently, he requests

that we review the matter for plain error. An appellate court may find plain error on appeal when an error unasserted or uncomplained of at trial, but plainly evident from the record, prejudicially affects a litigant's substantial right and, if uncorrected, would result in damage to the integrity, reputation, and fairness of the judicial process. *State v. Childs, supra.*

When considering a claim of prosecutorial misconduct, an appellate court first considers whether the prosecutor's acts constitute misconduct. *State v. Barnes*, 317 Neb. 517, 10 N.W.3d 716 (2024). A prosecutor's conduct that does not mislead and unduly influence the jury is not misconduct. *Id.* Here, the State dismissed Canty-Neely's charge for driving during a period of revocation before the trial began, so the charge was never presented to the jury. Therefore, based on our plain error review, we find no misleading or influence of the jury, so no prosecutorial misconduct occurred.

CONCLUSION

We conclude that there was sufficient evidence to support Canty-Neely's driving under the influence of alcoholic liquor conviction; Canty-Neely's assignment for ineffective assistance of counsel is insufficiently assigned; and there was no prosecutorial misconduct.

AFFIRMED.