

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

STATE V. LAWSON

NOTICE: THIS OPINION IS NOT DESIGNATED FOR PERMANENT PUBLICATION
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STATE OF NEBRASKA, APPELLEE,

v.

JUSTIN L. LAWSON, APPELLANT.

Filed October 27, 2026. No. A-26-055.

Appeal from the District Court for Madison County: MICHAEL L. LONG, Judge. Affirmed.
Matthew H. Soltys and Annette Ruffcorn, Deputy Madison County Public Defenders, for
appellant.

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

RIEDMANN, Chief Judge, and BISHOP and WELCH, Judges.

RIEDMANN, Chief Judge.

INTRODUCTION

Justin L. Lawson appeals his conviction and sentence for theft by receiving stolen property over \$5,000, arguing that his motion for a mistrial due to prosecutorial conduct was improperly denied. He also argues that the evidence was insufficient to support his conviction and that his sentence was excessive. For the following reasons, we affirm his conviction and sentence.

BACKGROUND

Mara Rivera and her husband, Jose Parra, purchased a preowned 2015 enclosed trailer for their construction business on June 16, 2023, for \$5,500. The couple used the trailer to store their business equipment including shovels, power tools, air compressors, other day-to-day materials, as well as a microwave and cooler. The trailer was generally in good condition apart from a cosmetic stain from spilled oil.

The couple moved their trailer to a construction site to begin a project, but on the morning of August 9, 2023, they discovered it was missing. After confirming that their employees had not moved the trailer, the couple contacted law enforcement and posted about the missing trailer on social media.

Deputy Micah Finch of the Madison County Sheriff's office investigated the matter. On September 20, 2023, Finch received a call from the Nebraska State Patrol, who informed him that the stolen trailer was reported to be on Geno Planer's property and that Scott Hille was the individual who stole it and brought it there. This information served as the basis for a search warrant that was executed on September 21.

Law enforcement located the trailer on Planer's property and inventoried it. Officers observed various tools, clothing, and a make-shift bed in the trailer. They also found a Nebraska identification card belonging to Lawson in the trailer. Law enforcement subsequently arrested Lawson.

After the trailer had been recovered, Rivera and Parra went to the impound lot and identified the trailer and the items within it. The couple identified the trailer by its distinct oil spill stain and the matching VIN number.

Lawson was charged by information with theft by receiving stolen property in the amount of \$5,000 or more. A jury trial was held during which Hille testified that on August 8, 2023, he, Lawson, and Michael Zoubek planned to drive to Oakdale, Nebraska, to consume drugs. On the drive there, they saw the trailer. When they drove back from Oakdale, they decided to stop and steal the trailer on "open orders" from their acquaintance, Planer. Hille backed up his vehicle to the trailer while Lawson guided him to it. They took the trailer to Planer's property and later removed decals and distinguishing marks from the trailer.

Hille testified that he was convicted and served a prison sentence for his involvement in the theft. Although he had put this incident behind him, he explained that as part of his "recovery program" he was trying to "clean[] up the damage from [his] past," which required him to participate in doing so if asked.

Toni O'Dell, Hille's wife at the time, testified that the morning after the theft, she received a social media message from Planer regarding the stolen trailer. O'Dell stated that after showing Hille, Lawson, and Zoubek the message, they "got quiet, looked at each other and then they went out to the garage."

Rivera testified not only to the \$5,500 cost of the trailer but also to the \$19,830 replacement cost of the items within the trailer. She acknowledged that this was the replacement cost, which might not have been equal to the actual value of the items at the time they were stolen, but in any event, there were "thousands of dollars worth of tools in the trailer."

Lawson denied being with Hille and Zoubek on August 8 and 9, 2023. He admitted that he used the trailer to store his belongings, but denied knowing that the trailer was stolen until he was arrested.

At the close of evidence, the State made the following remarks during its closing argument:

- If living in a trailer is not, you know, retaining a trailer, I don't know what is.
- So I doubt there was much depreciation, if at all, in that time period, especially with the use that it garnered.

- Now, maybe it was just me, maybe it was you as well, but I found it honestly a little ridiculous that in regards to the whole ownership question.
- Then we come to [] Hille's testimony. Now, I have to say that [] Hille's testimony in regards to his recovery actually hit me pretty strongly. Him talking about how his steps that he has taken in his recovery, I think is either part of AA or Narcotics Anonymous like we sort of talked about.
- And in my experience, the dozen or so years I've had this position, as well as personal experience dealing with some friends of mine who have controlled substance issues in the past, is that there is no person more honest than a person who is actively working the steps in the recovery. Sometimes a little too brutally honest I have found in the past.
- But I believe [] Hille and what he testified here today.

Lawson moved for a mistrial based on the State's assertions during closing arguments. The district court acknowledged that there was prosecutorial misconduct because the State vouched for the credibility of a witness but nevertheless denied the motion, reasoning that the State did not opine as to Lawson's truthfulness, there was substantial evidence as to his guilt, the remarks were isolated, and a jury instruction would likely cure any prejudice. The district court issued a curative instruction, ordering the jury to disregard the State's comments as to Hille's credibility and his rehabilitation. Lawson then delivered his closing argument.

The jury found Lawson guilty of theft by receiving stolen property and valued the property at \$13,500. The district court accepted the verdict and adjudged Lawson guilty of theft by receiving stolen property valued at \$5,000 or more, a Class IIA felony. The district court sentenced Lawson to 3 to 4 years' imprisonment. Lawson received credit for 35 days for time previously served. Lawson now appeals.

ASSIGNMENTS OF ERROR

Lawson assigns, restated, that the district court (1) abused its discretion by denying his motion for a mistrial due to prosecutorial misconduct; (2) erred by finding him guilty of theft because the evidence was insufficient to sustain a finding of guilt, or, alternatively, erred in finding the evidence was sufficient to prove the value of the items stolen was over \$5,000; and (3) abused its discretion by imposing an excessive sentence.

STANDARD OF REVIEW

Decisions regarding motions for mistrial are directed to the discretion of the trial court and will be upheld in the absence of an abuse of discretion. *State v. Grant*, 293 Neb. 163, 876 N.W.2d 639 (2016).

In reviewing a sufficiency of the evidence claim, whether the evidence is direct, circumstantial, or a combination thereof, the standard is the same: 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. 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. See *State v. Lester*, 295 Neb. 878, 898 N.W.2d 299 (2017).

An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *State v. Rejai*, 320 Neb. 599, 29 N.W.3d 225 (2026). An abuse of discretion occurs when a trial court's decision is based upon reasons that are untenable or unreasonable or if its action is clearly against justice or conscience, reason, and evidence. *Id.*

ANALYSIS

Before reaching the merits of Lawson's assigned errors, we address the State's argument that we should review Lawson's appeal under a plain error review because the assignments of error in his brief are not separately numbered. Neb. Ct. R. App. P. § 2-109(D)(1)(e) requires that each assignment of error in the appellant's brief be separately numbered. Depending on the particulars of each case, failure to comply with the mandates of § 2-109(D) may result in an appellate court waiving the error, proceeding on a plain error review only, or declining to conduct any review at all. *State v. Buol*, 314 Neb. 976, 994 N.W.2d 98 (2023).

It is not uncommon for the appellate courts to conduct a plain error review when an appellant fails to assign errors in a separate section of its brief. See, e.g., *Swicord v. Police Stds. Adv. Council*, 309 Neb. 43, 958 N.W.2d 388 (2021); *Wilson v. Wilson*, 23 Neb. App. 63, 867 N.W.2d 651 (2015). Here, however, Lawson set forth his assigned errors in a separate section but failed to number each error. Although not strictly in compliance with our rules, we elect to waive Lawson's error and proceed to examine each assigned error under its relevant standard of review.

Motion for Mistrial.

Lawson assigns that the district court erred by denying his motion for a mistrial due to prosecutorial misconduct that occurred during the State's closing arguments. Because we find the district court's remedial measures were sufficient to alleviate any prejudice, we find no abuse of discretion in its denial of the motion for mistrial.

A mistrial is properly granted in a criminal case where an event occurs during the course of trial which is of such a nature that its damaging effect cannot be removed by proper admonition or instruction to the jury and thus prevents a fair trial. *Lester, supra*. An objection followed by an admonition or instruction is typically presumed to be sufficient to dispel prejudice. *State v. Gartner*, 263 Neb. 153, 638 N.W.2d 849 (2002).

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). Prosecutorial misconduct generally encompasses conduct that violates legal or ethical standards for various contexts because the conduct may undermine a defendant's right to a fair trial. *Id.* A prosecutor should not express his or her personal belief or opinion as to the truth or falsity of any testimony or evidence or the guilt of the defendant, and a lawyer shall not, in trial, state a personal opinion as to the credibility of a witness or the guilt or innocence of an accused. *State v. Cheloha*, 25 Neb. App. 403, 907 N.W.2d 317 (2018). See, also, *State v. Gonzales*, 294 Neb. 627, 884 N.W.2d 102 (2016); *State v. Embree*, 31 Neb. App. 609, 987 N.W.2d 297 (2023).

Lawson highlights the following remarks as constituting prosecutorial misconduct:

- If living in a trailer is not, you know, retaining a trailer, I don't know what is.
- So I doubt there was much depreciation, if at all, in that time period, especially with the use that it garnered.
- Now, maybe it was just me, maybe it was you as well, but I found it honestly a little ridiculous that in regards to the whole ownership question.
- Then we come to [] Hille's testimony. Now, I have to say that [] Hille's testimony in regards to his recovery actually hit me pretty strongly. Him talking about how his steps that he has taken in his recovery, I think is either part of AA or Narcotics Anonymous like we sort of talked about.
- And in my experience, the dozen or so years I've had this position, as well as personal experience dealing with some friends of mine who have controlled substance issues in the past, is that there is no person more honest than a person who is actively working the steps in the recovery. Sometimes a little too brutally honest I have found in the past.
- But I believe [] Hille and what he testified here today.

When a prosecutor's comments rest on reasonably drawn inferences from the evidence, the prosecutor is permitted to present a spirited summation that a defense theory is illogical or unsupported by the evidence and to highlight the relative believability of witnesses for the State and the defense. *Gonzales, supra*. We find no prosecutorial misconduct in the first two statements because they are reasonably drawn inferences from the facts. See e.g. *State v. Cullen*, 292 Neb. 30, 870 N.W.2d 784 (2015).

Regarding the remainder of the specified remarks, we agree that they constitute prosecutorial misconduct because they were personal opinions of the prosecutor, not persuasive summations of--or reasonable inferences drawn from--the evidence presented. The State's remarks convey the prosecutor's opinion as to the truth of one's testimony and a witness' credibility. Thus, these statements constitute prosecutorial misconduct.

Having concluded that these statements constitute prosecutorial misconduct, we next consider whether the misconduct prejudiced Lawson's right to a fair trial. See *State v. Barnes*, 317 Neb. 517, 10 N.W.3d 716 (2024). Prosecutorial misconduct prejudices a defendant's right to a fair trial when the misconduct so infects the trial that the resulting conviction violates due process. *Id.* In determining whether a prosecutor's improper conduct prejudiced the defendant's right to a fair trial, we consider the following factors: (1) the degree to which the prosecutor's conduct or remarks tended to mislead or unduly influence the jury, (2) whether the conduct or remarks were extensive or isolated, (3) whether defense counsel invited the remarks, (4) whether the court provided a curative instruction, and (5) the strength of the evidence supporting the conviction. *Id.*

After weighing the above factors, we find that the State's improper conduct did not prejudice Lawson's right to a fair trial. Nothing in the record suggests that the State's improper remarks unduly influenced the jurors to believe more in Hille's testimony. And, although defense counsel did not invite the State's improper remarks, these remarks were isolated comments made during the State's closing argument. Moreover, the district court offered a curative instruction, in which it pointedly advised the jurors that the prosecutor's statements as to Hille's credibility were improper and ordered them to disregard those comments. See *State v. Gartner*, 263 Neb. 153, 638 N.W.2d 849 (2002) (stating objection followed by instruction is typically presumed to be sufficient

to dispel prejudice). Finally, as more fully analyzed below, the strength of the evidence does not support a determination that Lawson was prejudiced by these comments.

Though there was prosecutorial misconduct, the district court did not abuse its discretion in failing to grant a mistrial because Lawson was not prejudiced.

Sufficiency of Evidence.

Lawson next assigns that the evidence was insufficient to prove the elements of theft by receiving stolen property valued at \$5,000 or more. Lawson's argument is twofold: first, he argues the evidence was insufficient to prove he knew the trailer was stolen; and second, he argues that the evidence was insufficient to prove the value of the stolen items was over \$5,000. We discuss each argument separately.

Theft by receiving stolen property, under Neb. Rev. Stat. § 28-517 (Reissue 2016), is defined as follows: "A person commits theft if he receives, retains, or disposes of stolen movable property of another knowing that it has been stolen, or believing that it has been stolen, unless the property is received, retained, or disposed with intention to restore it to the owner."

Although Lawson testified that he was not with Hille and Zoubek on the night of the theft and was unaware that the trailer was stolen until he was arrested, Hille's and O'Dell's testimony point to the contrary. Hille testified that he and Lawson had "open orders" from Planer to find an enclosed trailer, and that if they brought him a trailer, Planer would pay them for it. Hille stated that on August 8, 2023, after seeing an enclosed trailer on some land, they stopped to steal the trailer. Lawson helped guide Hille in backing the vehicle up to the trailer to remove it from the property. This demonstrates that Lawson knew that the trailer on Planer's property was stolen because he assisted Hille in its removal from the property where it was located.

Additionally, O'Dell testified that on the morning following the theft, she received a social media message from Planer regarding the stolen trailer. And, after showing Hille, Lawson, and Zoubek the message, they "got quiet, looked at each other and then they went out to the garage." This evidence, taken together and reviewed in the light most favorable to the prosecution, would allow a rational trier of fact to have found that Lawson knew that the trailer and its contents were stolen property. When the evidence is conflicting, the credibility and weight of witness testimony are for the jury to determine, and witness credibility is not to be reassessed on appellate review. See *State v. Archie*, 273 Neb. 612, 733 N.W.2d 513 (2007). Therefore, the evidence was sufficient to convince a rational trier of fact of the essential elements of theft by receiving stolen property beyond a reasonable doubt. See *State v. Lester*, 295 Neb. 878, 898 N.W.2d 299 (2017).

As to Lawson's assignment of error that the evidence was insufficient to prove the value of the items stolen was \$5,000 or more, we also disagree.

The State must prove, beyond a reasonable doubt, the value of the property that is the subject of the theft charge. See, Neb. Rev. Stat. § 28-518(8) (Reissue 2016); *State v. Gartner*, 263 Neb. 153, 638 N.W.2d 849 (2002). If the value of the item stolen is \$5,000 or more, it is a Class IIA felony. See § 28-518(1).

The value to be proved is market value at the time and place where the property was criminally appropriated. *State v. Dixon*, 306 Neb. 853, 947 N.W.2d 563 (2020). An item's market value at the time of the theft may be established by either direct or circumstantial evidence, and it presents a question of fact to be resolved by the fact finder. *Id.* Theft involving multiple items of

property stolen simultaneously at the same place constitutes one offense, in which the value of the individual stolen items may be considered collectively for the aggregate or total value of the property stolen to determine the grade of the theft offense. *State v. Garza*, 241 Neb. 256, 487 N.W.2d 551 (1992) *disapproved on other grounds*, *Dixon, supra*.

The purchase price paid by the owner is admissible as a factor for the jury to consider in determining market value when it is not too remote in time and bears a reasonable relation to market value. See *Gartner, supra*. Accordingly, the owner of the chattel may testify to its value. *Dixon, supra*. Evidence of cost together with evidence concerning age, condition, utility of stolen item may afford a basis for determining value. *Gartner, supra*. And, when a fact finder determines the value of property in a theft case, an appellate court will not set aside that finding unless it is clearly erroneous. *Dixon, supra*.

In *Gartner, supra*, the defendant challenged the sufficiency of the evidence regarding the value of items stolen. As to a digital camera, the evidence revealed it was stolen a month after it had been purchased for \$799, and it had never been opened. *Id.* The Nebraska Supreme Court found that the short amount of time between the purchase and the theft coupled with the evidence regarding the camera's condition at the time of the theft was sufficient for the jury to determine that the camera's fair market value at the time of the theft remained its purchase price. *Id.* As to the value of a fax machine that had been purchased 7 months prior to the theft, however, the Court determined that absent evidence regarding its condition at the time of the theft, the jury could not make any reasonable inference regarding depreciation. *Id.*

Similar to the camera in *Gartner, supra*, the trailer was stolen shortly after its purchase and remained in good condition, but for an oil stain on the floor. The evidence indicates it was purchased for \$5,500 and was 8 years old at the time of purchase. This evidence was sufficient for the jury to conclude that the value of the trailer alone remained \$5,000 or more at the time of the theft, thus satisfying the value requirement for a Class IIA felony. And because the value of individual stolen items may be considered collectively for the total value of the property stolen, the trailer's contents would also contribute to the \$5,000 threshold, given Rivera's testimony that the trailer contained thousands of dollars' worth of tools at the time of the theft.

Viewing the light most favorable to the prosecution, we find that a rational trier of fact could have found beyond a reasonable doubt that Lawson committed theft by receiving stolen property in an amount of \$5,000 or greater. This assignment of error fails.

Excessive Sentence.

Lastly, Lawson assigns that the district court abused its discretion by sentencing him to 3 to 4 years' incarceration as the sentence is excessive. We disagree.

When imposing a sentence, a sentencing judge should consider the defendant's (1) age, (2) mentality, (3) education and experience, (4) social and cultural background, (5) past criminal record or record of law abiding conduct, and (6) motivation for the offense, as well as (7) the nature of the offense and (8) the amount of violence involved in the commission of the crime. *State v. Jones*, 318 Neb. 840, 19 N.W.3d 499 (2025). A sentencing court is not limited to any mathematically applied set of factors, but the appropriateness of the sentence is necessarily a subjective judgment that includes the sentencing judge's observations of the defendant's demeanor and attitude and all the facts and circumstances surrounding the defendant's life. *Id.*

The district court relied on Neb. Rev. Stat. § 29-2260 (Supp. 2025) during sentencing, which authorizes a court, sentencing an offender convicted of a crime for which mandatory or mandatory minimum imprisonment is not required, to “withhold sentence of imprisonment unless, having regard to the nature and circumstances of the crime and the history, character, and condition of the offender,” the court finds that imprisonment is necessary to protect the public for one of three reasons. Section 29-2260(3) then specifies over a dozen grounds that, while not controlling the discretion of the court, weigh in favor of “withholding sentence of imprisonment.”

The district court reviewed each of those grounds on the record. It stated that although this was not a violent crime against another person, Lawson’s actions constituted a serious property crime, as the victims are working class people with a child on the way, which weighed in favor of imprisonment. It further found no provocation or justification for the crime and that Lawson’s lack of compensation to the victims as well as the district court’s need for imprisoning him to complete the presentence investigation interview weighed in favor of imprisonment. In contrast, the district court found Lawson’s “modest history” and its uncertainty as to the likelihood Lawson would commit this offense again weighed in favor of withholding imprisonment. Ultimately, considering the harm done to the family and Lawson’s failing to appear for his presentence investigation interview, the district court determined that imprisonment was appropriate. In its sentencing order, the district court found, in part, that imprisonment was necessary for the protection of the public because a lesser sentence than incarceration would depreciate the seriousness of the offense and promote disrespect for the law. We find no abuse of discretion in the district court’s decision to withhold probation. See *State v. Senteney*, 307 Neb. 702, 950 N.W.2d 585 (2020) (whether probation or incarceration is ordered is choice within discretion of trial court whose judgment denying probation will be upheld in absence of abuse of discretion).

Lawson was convicted of a Class IIA felony punishable by a maximum of 20 years’ imprisonment with no mandatory minimum imprisonment required. See Neb. Rev. Stat. § 28-105 (Supp. 2025). Lawson was sentenced to 3 to 4 years’ imprisonment, a sentence well within the statutory guidelines. Whenever a court considers a sentence for an offender convicted of a felony for which mandatory or mandatory minimum imprisonment is not specifically required, the court may consider the factors set forth in § 29-2260. Here, the district court expressly applied those factors. Lawson’s sentence was also within the statutory limit. Thus, there was no abuse of discretion. An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *State v. Flores*, 321 Neb. 284, 34 N.W.3d 106 (2026).

CONCLUSION

We find that the district court did not err when it denied Lawson’s motion for a mistrial; there was sufficient evidence to convict and sentence Lawson for theft by receiving stolen property, \$5,000 or more; and that Lawson’s sentence was not excessive.

AFFIRMED.