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> with sufficient postage attached and deposited in such receptacle was regularly transmitted and presents a question for the trier of fact to decide.

Houska v. City of Wahoo, 235 Neb. 635, 641, 456 N.W.2d 750, 754 (1990). MRE's evidence concerning its mailing procedure created only an inference that its tax return was "regularly transmitted." See *id.* TERC rejected this inference. Accordingly, because the assessor otherwise did not receive the tax return until after September 1, 2009, the penalty was properly imposed.

CONCLUSION

Although MRE mailed its protest of the penalty to the county assessor rather than the county clerk, the county clerk had clearly received, i.e., filed, the protest prior to the deadline for filing of the appeal. Thus, the Board timely had notice of the protest and was not deprived of subject matter jurisdiction. TERC also had jurisdiction to consider MRE's appeal from the Board's decision, and we have jurisdiction of the appeal from TERC's decision. Because we conclude that TERC's decision conforms to the law, is supported by competent evidence, and is neither arbitrary, capricious, nor unreasonable, we affirm its order.

AFFIRMED.

STATE OF NEBRASKA, APPELLEE, V.
FRANCIS M. ZIMMERMAN, APPELLANT.
810 N.W.2d 167

Filed January 10, 2012. No. A-10-922.

1. **Convictions: Evidence: Appeal and Error.** 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.
2. **Courts: Time: Appeal and Error.** Where no timely statement of errors is filed in an appeal from a county court to a district court, appellate review is limited to plain error.

3. **Rules of the Supreme Court: Courts: Appeal and Error.** The purpose of Neb. Ct. R. § 6-1452(A)(7) (rev. 2011) is to specifically direct the attention of the reviewing court to precisely what error was allegedly committed by the lower court and to advise the nonappealing party of what is specifically at issue in the appeal.
4. ____: ____: ____. When an appellant fails to file a statement of errors in the district court, an appellate court may at its discretion consider errors assigned in the appellate court, provided that the record shows that those errors were also assigned in the district court.
5. **Criminal Law: Motor Vehicles.** Knowledge that an accident has happened and that an injury has been inflicted is an essential element of the crime of leaving the scene of a personal injury accident.
6. ____: ____. A driver is not criminally liable when he does not know that an accident has happened, an injury has been inflicted, or a death has occurred. Lack of such knowledge constitutes a proper defense. It is a question of fact and not of law.
7. ____: ____. Knowledge of the occurrence of an accident is an essential element of the crime of leaving the scene of a property damage accident.
8. **Criminal Law: Motor Vehicles: Proof.** Knowledge that an accident occurred may be proved by circumstantial evidence, and the fact finder may consider all of the facts and circumstances which are indicative of knowledge.

Appeal from the District Court for Saunders County, MARY C. GILBRIDE, Judge, on appeal thereto from the County Court for Saunders County, MARVIN V. MILLER, Judge. Judgment of District Court affirmed.

Thomas J. Klein, Saunders County Public Defender, of Haessler, Sullivan & Klein, Ltd., for appellant.

Jon Bruning, Attorney General, and Kimberly A. Klein for appellee.

IRWIN, MOORE, and CASSEL, Judges.

MOORE, Judge.

INTRODUCTION

Francis M. Zimmerman was convicted in the county court for Saunders County of leaving the scene of a property damage accident and failure to appear. The district court for Saunders County upheld his conviction. On appeal to this court, Zimmerman argues that the State failed to prove he had knowledge an accident occurred and that therefore, the evidence was insufficient to convict him of leaving the scene.

Although we hold that knowledge is an essential element of the crime of leaving the scene of a property damage accident, we find there was sufficient evidence to show that Zimmerman had knowledge of the occurrence of the accident. Therefore, we affirm.

BACKGROUND

On September 19, 2009, Cynthia Tylski parked her red car in a grocery store's parking lot in Ashland, Nebraska, between 6 and 6:30 p.m. While Tylski was in the grocery store, she learned that her car had been hit in the parking lot. Tylski observed that the right rear bumper had "popped" off and was hanging from the car and that there was plastic on the ground. There was no note or contact information left at her car explaining how the damage was done or whom she could contact.

Kristen Cooper witnessed the accident as she was walking up to the grocery store. Cooper was walking through the store's parking lot when she first heard a loud sound of "scraping metal." She looked up and saw a white pickup backing out of a parking stall and saw the bumper coming off of the car parked next to the driver's side of the pickup. Then, the pickup pulled back into the parking stall so the vehicles were parked next to each other. Cooper saw the driver of the pickup get out of his driver's-side door. Cooper next saw the driver talk to Chad Johnson and then walk into the store. While in the store, Cooper saw the driver exit the store. Cooper testified that she saw the driver of the pickup drive away from the store without leaving a note on the damaged car.

Johnson, an acquaintance of the driver, testified that as he was leaving the store, Zimmerman was entering the store. They had a brief conversation, but Zimmerman did not mention an accident.

At approximately 6:45 p.m., Officer Daniel Ottis was dispatched to the parking lot. Ottis observed that the "skirting" of the passenger-side rear bumper of Tylski's car was torn and hanging. Cooper was able to identify the driver of the pickup from the security footage provided by the store. Ottis recognized the driver as Zimmerman from previous contacts.

On September 21, 2009, Ottis made contact with Zimmerman. Zimmerman told Ottis he was not involved in any accidents on September 19. Although Zimmerman admitted being at the grocery store that day, he denied speaking with anyone while inside the store. Ottis inspected Zimmerman's pickup and observed red paint on the driver's-side front bumper. Ottis described it as a "pencil sized" paint transfer on the bumper. The total damage to Tylski's car was $978.98.

Zimmerman testified at trial that he did not know that he was in an accident at the time it occurred. Zimmerman said he was not aware of the accident until he was contacted by Ottis. He testified that he did not notice the damage to his pickup until he looked at it with Ottis. Zimmerman stated that his radio is always on when he is in his pickup, but he thought he would have heard the metal sound described by Cooper if it were that loud. Zimmerman testified that he pulled back into the parking stall because he wanted to get a drink, that he then saw Johnson, and that he wanted to talk to him. Zimmerman testified that he did not get out of his driver's-side door because it does not work. A few days after the accident, Zimmerman called Tylski's home to apologize, although he told Tylski that he did not remember hitting her car.

The State filed a complaint in the county court for Saunders County charging Zimmerman with one count of leaving the scene of a property damage accident under Neb. Rev. Stat. § 60-696(2) (Cum. Supp. 2008). A charge of failure to appear was added to the State's amended complaint when Zimmerman was not present at a hearing on January 4, 2010. A bench trial was held before the court on April 22, and Zimmerman was found guilty of both counts. On June 17, Zimmerman was sentenced to a fine and court costs. Additionally, Zimmerman's license was subject to a mandatory revocation for a period of 1 year according to § 60-696(3). Zimmerman appealed to the district court, which affirmed his conviction and sentence. Zimmerman timely appealed to this court.

ASSIGNMENT OF ERROR

On appeal, Zimmerman's assertion of error challenges the sufficiency of the evidence adduced by the State at trial

to prove beyond a reasonable doubt that he had violated the statutory provision for which he was cited, § 60-696(2). Specifically, he alleges the State failed to demonstrate that he had knowledge an accident occurred and that such knowledge is an essential element of the crime of leaving the scene of an accident.

STANDARD OF REVIEW

[1] 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. Collins*, 281 Neb. 927, 799 N.W.2d 693 (2011).

ANALYSIS

[2-4] We first address the State's argument that because Zimmerman failed to file a statement of errors in his appeal to the district court, we are limited to a plain error review. The record before this court does not contain a statement of errors when Zimmerman appealed the judgment of the county court to the district court, as required by Neb. Ct. R. § 6-1452(A)(7) (rev. 2011). Where no timely statement of errors is filed in an appeal from a county court to a district court, appellate review is limited to plain error. *State v. Harper, ante* p. 93, 800 N.W.2d 683 (2011). The purpose of the rule is to specifically direct the attention of the reviewing court to precisely what error was allegedly committed by the lower court and to advise the nonappealing party of what is specifically at issue in the appeal. *State v. Griffin*, 270 Neb. 578, 705 N.W.2d 51 (2005). When an appellant fails to file a statement of errors in the district court, an appellate court may at its discretion consider errors assigned in the appellate court, provided that the record shows that those errors were also assigned in the district court. *State v. Lindsay Ins. Agency v. Mead*, 244 Neb. 645, 508 N.W.2d 820 (1993). See, also, *First Nat. Bank of Omaha v. Eldridge*, 17 Neb. App. 12, 756 N.W.2d 167 (2008) (despite

failure to file statement of errors in district court, higher appellate court may still consider errors actually considered by district court).

A review of the record and the order issued by the district court in this case clearly indicates that the issue of insufficiency of the evidence was considered by the district court. For these reasons, we elect to consider Zimmerman's assigned error.

The citation issued to Zimmerman specifically charged him with a violation of § 60-696(2), which provides as follows:

> The driver of any vehicle involved in an accident upon a public highway, private road, or private drive, resulting in damage to an unattended vehicle or property, shall immediately stop such vehicle and leave in a conspicuous place in or on the unattended vehicle or property a written notice containing [his or her name, address, telephone number, and operator's license number]. In addition, such driver shall, without unnecessary delay, report the collision, by telephone or otherwise, to an appropriate peace officer.

[5] Zimmerman argues that the evidence was insufficient to convict him of leaving the scene, because the State failed to meet its burden of proving that he had any knowledge that an accident occurred. Knowledge is not an explicit element of § 60-696(2), nor has the question of whether knowledge of the occurrence of a property damage accident is a necessary element of the crime been previously addressed in appellate case law. However, the Nebraska Supreme Court has determined that knowledge that an accident has happened and that an injury has been inflicted is an essential element of the crime of leaving the scene of a *personal injury accident*, which is now codified under Neb. Rev. Stat. § 60-697 (Reissue 2010). See, *State v. Snell*, 177 Neb. 396, 128 N.W.2d 823 (1964); *Behrens v. State*, 140 Neb. 671, 1 N.W.2d 289 (1941).

The language of § 60-697(1), leaving the scene of a personal injury accident, is nearly identical to that of § 60-696(2), leaving the scene of a property damage accident. Both statutes require that the driver involved in an accident immediately stop his or her vehicle and give or leave his or her personal

information, including the driver's name, address, and vehicle and driver's license information.

[6] In *Behrens v. State, supra*, the Nebraska Supreme Court reversed the conviction of a driver for failure to stop at an accident which resulted in a death. The primary reason for the reversal was the failure of the State to establish that the deceased was struck or injured by the defendant's vehicle. The Supreme Court went on to note that the question of lack of knowledge of the driver that an injury or death had occurred was also raised. The Supreme Court held that a driver is not criminally liable "when he does not know that an accident has happened, an injury has been inflicted, or a death has occurred." 140 Neb. at 678, 1 N.W.2d at 293. "Further, lack of such knowledge constitutes a proper defense. . . . It is a question of fact and not of law." *Id.* The Supreme Court noted the conflicting evidence regarding the defendant's knowledge and found that the trial court's refusal to submit to the jury the defendant's "theory of [the] transaction" by a proper instruction constituted error. *Id.* at 679, 1 N.W.2d at 293. We note that the statute in question at the time of this decision contained both the offense of failure to stop at the scene of an accident resulting in injury or death and the failure to stop at the scene of an accident resulting in damage to property. In *State v. Snell, supra*, the Supreme Court, in applying the *Behrens* case, held that knowledge that an accident has happened and that an injury has been inflicted is an essential element of the crime of leaving the scene of a personal injury accident. Because the jury had been improperly instructed that it could find the defendant guilty even if it found that the defendant did not know that he had been involved in an accident in which a person had been injured, but should have known, the Supreme Court reversed the conviction and remanded the cause for a new trial.

[7] We find that the same rationale should apply in the case of leaving the scene of a property damage accident under § 60-696. Therefore, we hold that knowledge of the occurrence of an accident is an essential element of the crime of leaving the scene of a property damage accident. In the present case, the question of Zimmerman's knowledge was presented to the

trial court as well as to the district court. Because this was a bench trial, however, we do not have the issue of jury instructions before us as was present in the cases noted above.

[8] Based upon our review of the record, we find that the evidence in this case was sufficient to sustain a finding of knowledge of an accident on the part of Zimmerman. Knowledge that an accident occurred may be proved by circumstantial evidence, and the fact finder may consider all of the facts and circumstances which are indicative of knowledge. See *State v. Snell*, 177 Neb. 396, 128 N.W.2d 823 (1964). While Zimmerman insisted that he did not know an accident had occurred, Cooper testified that the sound of scraping metal was loud and caused her to stop and look in the direction of the vehicles. Further, Cooper testified that Zimmerman exited his pickup on the driver's side after the accident, which would have allowed him to observe the significant damage to Tylski's car. Viewing and construing the evidence most favorably to the State, we find that the evidence was sufficient to support a finding that Zimmerman was aware of the occurrence of the accident and was guilty of leaving the scene of a property damage accident.

CONCLUSION

We conclude that knowledge of the occurrence of an accident is an essential element of leaving the scene of a property damage accident. We find that the evidence was sufficient to establish that Zimmerman had knowledge of the occurrence of the accident and was guilty of leaving the scene of a property damage accident.

AFFIRMED.