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She argues that some similar cases involving nonminorities resulted in more lenient sanctions. We do not note in our disciplinary opinions the race of the attorney under discipline, because that is not relevant. As discussed above, disbarment is frequently the sanction in any case involving misappropriation of client funds, failure to cooperate with Counsel for Discipline, and lying during a disciplinary investigation. This is true regardless of an attorney's gender, race, ethnicity, or religion. Comparing Crawford's conduct to other attorneys disciplined by this court, we conclude that disbarment is the appropriate sanction.

VI. CONCLUSION

It is the judgment of this court that Crawford should be and hereby is disbarred from the practice of law in the State of Nebraska, effective immediately. Crawford is directed to comply with Neb. Ct. R. § 3-316, and upon failure to do so, she shall be subject to punishment for contempt of this court. Crawford is directed to pay costs and expenses in accordance with Neb. Rev. Stat. §§ 7-114 and 7-115 (Reissue 2012) and Neb. Ct. R. § 3-323(B). We overrule the miscellaneous motions made by Crawford's attorney at oral arguments.

JUDGMENT OF DISBARMENT.

STATE OF NEBRASKA, APPELLEE, V.
AUTUMN EAGLE BULL, APPELLANT.
827 N.W.2d 466

Filed March 1, 2013. No. S-11-1072.

1. **Criminal Law: Convictions: Evidence: Appeal and Error.** 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.
2. **Criminal Law: Directed Verdict.** In a criminal case, a court can direct a verdict only when there is a complete failure of evidence to establish an essential

element of the crime charged or the evidence is so doubtful in character, lacking probative value, that a finding of guilt based on such evidence cannot be sustained.

3. **Directed Verdict.** If there is any evidence which will sustain a finding for the party against whom a motion for directed verdict is made, the case may not be decided as a matter of law, and a verdict may not be directed.
4. **Trial: Presumptions.** Triers of fact may apply to the subject before them that general knowledge which any person must be presumed to have.
5. **Appeal and Error.** An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error to be considered by an appellate court.
6. **Jury Instructions: Appeal and Error.** The failure to object to instructions after they have been submitted to counsel for review will preclude raising an objection on appeal, unless there is a plain error indicative of a probable miscarriage of justice.

Appeal from the District Court for Sheridan County, TRAVIS P. O'GORMAN, Judge, on appeal thereto from the County Court for Sheridan County, CHARLES PLANTZ, Judge. Judgment of District Court affirmed.

Michael T. Varn for appellant.

Jon Bruning, Attorney General, Carrie A. Thober, and James D. Smith for appellee.

HEAVICAN, C.J., WRIGHT, CONNOLLY, STEPHAN, MCCORMACK, and MILLER-LERMAN, JJ.

STEPHAN, J.

Autumn Eagle Bull was convicted in the Sheridan County Court of misdemeanor child abuse as the result of an incident in which she left her three children unattended in her home. The Sheridan County District Court affirmed her conviction. She appeals, contending the evidence at trial was insufficient to support a conviction for the charged offense. We affirm.

FACTS

On April 19, 2011, Eagle Bull was living in Gordon, Nebraska, with three of her children: Rayhan C., who was 10 years old and in the fourth grade; Toby C., who was almost 8 years old and in the second grade; and Petra P., who was 6 weeks old.

At approximately 5 p.m., Toby telephoned her grandfather, who lived in Pine Ridge, South Dakota, and told him she needed an adult to accompany her to a school event that evening. The grandfather was concerned because Toby seemed excited and nervous, and he thought someone should go to Eagle Bull's home. At some point between 5 and 5:30 p.m., the grandfather called his wife, Lynnell Eagle Bull (Lynnell), at her workplace in Pine Ridge to tell her about Toby's call.

Lynnell called Susan Kaplan, who lived across the street from Eagle Bull and sometimes stayed with Eagle Bull's children. Lynnell asked Kaplan to check on the children. Lynnell then drove to Gordon and arrived at Eagle Bull's home 35 or 40 minutes later. When Lynnell arrived, Toby was in the front yard riding her bike and Eagle Bull's car was in the driveway. Lynnell entered the home and found Eagle Bull, Kaplan, Rayhan, and Petra.

Lynnell asked Eagle Bull whether she had left the children alone. Eagle Bull said she had not, but when asked, she did not identify any adult who had been with them. Lynnell noticed that Eagle Bull was "kind of swaying" and smelled of alcohol. Lynnell called the police, and when an officer arrived, Lynnell insisted that Eagle Bull be arrested. Lynnell admitted that she and Eagle Bull did not get along well. Although the children wanted to stay in Gordon with Eagle Bull, Lynnell took them home with her that night.

Approximately 2 weeks prior to April 19, 2011, Petra had been hospitalized for 2 or 3 days with a respiratory disorder. Petra was discharged without any medication, but Eagle Bull was given a "breathing machine" to treat Petra at home "when she needed it."

Kaplan testified that after Lynnell called her, she went to Eagle Bull's home and found the children home with no adult in the house. The two older children were sitting on the couch, and the baby, Petra, was awake and lying on the couch by her siblings. About 30 minutes after Kaplan arrived, Eagle Bull came home. Lynnell arrived within 5 or 10 minutes, and she and Eagle Bull argued.

Officer Clay Heath of the Gordon Police Department was dispatched to the Eagle Bull residence at 6:50 p.m. He met

Lynnell on the porch and followed her into the house. He described both Eagle Bull and Lynnell as "emotional," and he testified that it "appeared that they had been arguing." He talked with Eagle Bull and observed that her speech was slurred, her eyes were bloodshot and watery, she smelled of alcohol, and she was having trouble standing. Eagle Bull submitted to a preliminary breath test administered by Heath at the home. The test indicated she was intoxicated.

Eagle Bull told Heath she left the residence about 5 p.m. She said that she was driving around and drinking with friends and that their car got stuck on a dirt road. She assured Heath that someone had been watching her children. Eagle Bull initially said Kaplan was watching them, but when Heath told her Kaplan was not present until 6 p.m., Eagle Bull said Mindy Janis, her roommate at the time, had been watching the children.

Heath walked through the house with Eagle Bull. He saw that there was food in the cupboards and refrigerator; that the house was clean; and that the children appeared healthy, clean, and appropriately clothed. He saw no dangerous conditions in the home, such as loose wires or firearms, and testified that he had no concerns with the children's environment. Ultimately, however, he issued a citation to Eagle Bull for child neglect because she left baby Petra for "one hour unattended."

Janis testified that she was living with Eagle Bull on April 19, 2011. On that day, Janis went to work at 11 a.m. and returned home about 6:30 p.m. Janis said Eagle Bull had not asked her to babysit the children, but did call her at approximately 3 p.m. and asked whether Janis could go and open the house for the children. Janis told Eagle Bull that she could not leave work. She did not open the house. Janis did not know how the children got into the home on April 19.

Eagle Bull was charged with misdemeanor child abuse and tried by a jury. After the State presented its evidence, Eagle Bull moved for a directed verdict, arguing the State failed to present sufficient evidence to prove the charge against her. Her motion was overruled. Eagle Bull presented no evidence and then renewed her motion for directed verdict, which was again

overruled. The jury returned a verdict of guilty, and the county court sentenced Eagle Bull to 30 days in jail. She appealed to the district court, which affirmed the conviction and sentence. The district court reasoned the evidence was sufficient to establish that Eagle Bull acted negligently, because she left the children home alone for a period of more than 1 hour while she went drinking with friends. And it found the evidence was sufficient to support a finding that she denied Petra necessary care under Neb. Rev. Stat. § 28-707(1)(c) (Cum. Supp. 2010), because

> [Eagle Bull] left unattended her 45 day old, 10 year old and eight year old children with no supervision for at least one hour. The 45 day old child was two weeks removed from a hospital stay for RSV. Although the child was no longer on medication, a breathing machine was in the home in the event breathing trouble recurred. A reasonable jury could conclude that the infant was not being watched over or provided for during this period of time sufficient for conviction.

In reaching this conclusion, the district court relied on the dictionary definition of "care" as "'to pay attention to, watch over, take care of; look after; provide for.'" It concluded that there was "no question" that Eagle Bull did not "'pay attention to, watch over, take care of or look after'" her children while she was away from home. It concluded that because the evidence was sufficient to show a denial of necessary care under § 28-707(1)(c), it did not have to resolve whether the evidence was also sufficient to show endangerment under § 28-707(1)(a).

Eagle Bull perfected this timely appeal, which we moved to our docket on our own motion pursuant to our statutory authority to regulate the caseloads of the appellate courts of this state.[1]

ASSIGNMENTS OF ERROR

Eagle Bull assigns, restated, that the district court erred in concluding (1) that the county court did not err in overruling

[1] See Neb. Rev. Stat. § 24-1106(3) (Reissue 2008).

her motion for directed verdict and (2) that the evidence was sufficient to support her conviction.

STANDARD OF REVIEW

[1] 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.[2] 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.[3]

[2,3] In a criminal case, a court can direct a verdict only when there is a complete failure of evidence to establish an essential element of the crime charged or the evidence is so doubtful in character, lacking probative value, that a finding of guilt based on such evidence cannot be sustained.[4] If there is any evidence which will sustain a finding for the party against whom a motion for directed verdict is made, the case may not be decided as a matter of law, and a verdict may not be directed.[5]

ANALYSIS

Eagle Bull's assignments of error have merit only if no rational trier of fact could have found on the evidence presented by the State that the essential elements of the crime she was charged with were met.[6] We therefore must examine both the charge against her and the evidence presented by the State.

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[2] *State v. Kitt*, 284 Neb. 611, 823 N.W.2d 175 (2012); *State v. Freemont*, 284 Neb. 179, 817 N.W.2d 277 (2012).

[3] *Id.*

[4] *State v. Segura*, 265 Neb. 903, 660 N.W.2d 512 (2003); *State v. Canady*, 263 Neb. 552, 641 N.W.2d 43 (2002).

[5] *Id.*

[6] See, *State v. Kitt, supra* note 2; *State v. Freemont, supra* note 2; *State v. Segura, supra* note 4; *State v. Canady, supra* note 4.

Eagle Bull was charged with negligent child abuse pursuant to § 28-707(1), which provides:

> A person commits child abuse if he or she knowingly, intentionally, or negligently causes or permits a minor child to be:
>
> (a) Placed in a situation that endangers his or her life or physical or mental health; [or]
>
> . . . .
>
> (c) Deprived of necessary food, clothing, shelter, or care.

Because the offense was alleged to have been committed negligently and there was no allegation that it resulted in serious bodily injury or death, the charge against Eagle Bull was a Class I misdemeanor punishable by a jail sentence of up to 1 year, a fine of up to $1,000, or both.[7] The jury was instructed that it could find Eagle Bull guilty if it found beyond a reasonable doubt she violated either subsection (1)(a) or (1)(c) of § 28-707 and that it was required to find her not guilty if the State failed to prove the elements of both subsections. Eagle Bull was thus charged in alternative ways with committing the act of negligent child abuse. The jury could convict if it found there was sufficient evidence of either, and thus the judgment of conviction must be affirmed if the evidence is sufficient to support either of the State's alternative theories of guilt.

In analyzing whether there is sufficient evidence in the record to support the conviction, we view the evidence in the light most favorable to the State.[8] The district court reasoned the evidence was sufficient to support a finding that the children, and in particular Petra, were denied necessary care under § 28-707(1)(c) because Eagle Bull did not "'watch over, take care of or look after'" them while she was absent from the home. We begin our analysis by reviewing this determination.

Section 28-707(1)(c) criminalizes the failure to provide *necessary* care. We addressed the meaning of necessary as used

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[7] § 28-707(3); Neb. Rev. Stat. § 28-106(1) (Reissue 2008).

[8] *State v. Kitt*, *supra* note 2; *State v. Freemont*, *supra* note 2.

in § 28-707(1)(c) in *State v. Crowdell*.[9] In that case, we held the term "necessary" was not vague, because its "ordinary meaning . . . supplies a constitutionally sufficient standard."[10] We specifically noted that the dictionary definition of "necessary" is

> "items (as of food, clothing, shelter, medical care, equipment or furnishing) that cannot be done without: things that must be had (as for the preservation and reasonable enjoyment of life [and items] that cannot be done without: that must be done or had: absolutely required."[11]

We also cited with approval cases from other jurisdictions finding that the term "necessary" used in similar statutes "'relates to [a] minimum standard'" of the quality of care.[12] Thus, under *Crowdell*, the State had the burden to show that Petra was denied some aspect of care that she reasonably could not do without as a result of Eagle Bull's actions.

The evidence, in particular Janis' testimony, supports a reasonable inference that Eagle Bull left her children, who were 10 years old, almost 8 years old, and 6 weeks old, unattended from 3 p.m. until she returned to her home at approximately 6:30 p.m. There was thus a 3½-hour time period during which the children were subject to no direct adult supervision. Although a 10-year-old and an 8-year-old are not inherently unable to provide necessary care for themselves for a certain amount of time, their ability to so provide necessarily correlates at least to some degree with the amount of time they are unsupervised.

[4] And here, the older children were not simply left alone, but were left in charge of a 6-week-old infant. Triers of fact may apply to the subject before them that general knowledge

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[9] *State v. Crowdell*, 234 Neb. 469, 451 N.W.2d 695 (1990).

[10] *Id.* at 479, 451 N.W.2d at 702.

[11] *Id.* at 477, 451 N.W.2d at 701, citing Webster's Third New International Dictionary, Unabridged 1510-11 (1981).

[12] *Id.* at 478, 451 N.W.2d at 701, citing *Caby v. State*, 249 Ga. 32, 287 S.E.2d 200 (1982); *State v. Joyce*, 361 So. 2d 406 (Fla. 1978); and *State v. Brown*, 52 Wash. 2d 92, 323 P.2d 239 (1958).

which any person must be presumed to have.[13] It is within the general knowledge of triers of fact that infants necessarily require regular, special care in the form of supervision, diaper changing, and feeding. Although there is no specific evidence as to whether the elder siblings were capable of providing this care to Petra, a reasonable juror could properly infer from the totality of the circumstances that they were not.

The evidence also supports a reasonable inference that Petra required additional specialized care, because she had recently been hospitalized for a respiratory disorder and was discharged with a breathing machine to be used as needed. A rational trier of fact could conclude the infant's 8- and 10-year-old siblings were not capable of determining when the infant would need the breathing machine or of utilizing the machine if the need arose.

Moreover, from the fact that the 8-year-old called her grandfather in another state when she needed an adult, a rational trier of fact could reasonably infer that Eagle Bull was not only absent but was also unreachable by her children. Eagle Bull's admission to Heath that she had been out drinking with friends and her inebriated state upon her eventual return home further support a reasonable inference that she would have been of little assistance to the children in an emergency even if they had been able to reach her. And although a trusted neighbor lived directly across the street, it is clear that the neighbor was unaware that the children were unsupervised until she was advised by Lynnell. Thus, a finder of fact could reasonably conclude that Eagle Bull left her children unattended and without any means of contacting her or a nearby responsible adult if the need arose.

Based upon all of these facts, a rational finder of fact applying common knowledge could have concluded that Eagle Bull denied Petra necessary care. Because we conclude that the evidence, when viewed in a light most favorable to the State,

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[13] *McIntosh v. Omaha Public Schools*, 249 Neb. 529, 544 N.W.2d 502 (1996), *overruled on other grounds, Bronsen v. Dawes County*, 272 Neb. 320, 722 N.W.2d 17 (2006), and *abrogated on other grounds, Heins v. Webster County*, 250 Neb. 750, 552 N.W.2d 51 (1996).

is sufficient to support a verdict that Eagle Bull was guilty of negligent child abuse as defined by § 28-707(1)(c), we need not determine whether it was also sufficient to support a guilty verdict under § 28-707(1)(a).

[5,6] For the sake of completeness, we note that Eagle Bull argues that the county court should not have instructed the jury on the alternative means of committing negligent child abuse, because there was insufficient evidence to support either alternative means. However, Eagle Bull did not object to the jury instruction before it was given and did not assign error with respect to the giving of the instruction in either her appeal to the district court or the current appeal to this court. An alleged error must be both specifically assigned and specifically argued in the brief of the party asserting the error to be considered by an appellate court.[14] The failure to object to instructions after they have been submitted to counsel for review will preclude raising an objection on appeal, unless there is a plain error indicative of a probable miscarriage of justice.[15] We find no such error here.

CONCLUSION

For the reasons discussed, we conclude the district court sitting as an intermediate appellate court correctly concluded that the county court did not err in denying Eagle Bull's motion for directed verdict and that the evidence was sufficient to support her conviction. We therefore affirm the judgment of the district court.

AFFIRMED.

CASSEL, J., not participating.

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[14] *State v. McGhee*, 280 Neb. 558, 787 N.W.2d 700 (2010); *State v. Thompson*, 278 Neb. 320, 770 N.W.2d 598 (2009).

[15] *State v. Sanders*, 269 Neb. 895, 697 N.W.2d 657 (2005).