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that appeals under § 43-2,106.01(2)(d) be made to the Court of Appeals, that subsection would have referred to Neb. Rev. Stat. §§ 29-2315.01 to 29-2316 (Reissue 2008) instead of to §§ 29-2317 to 29-2319. *In re Interest of Sean H., supra*. When the language of a statute is plain and unambiguous, no interpretation is needed, and a court is without authority to change such language. *Id*. Because the State failed to follow the statutory procedures outlined in § 29-2317, as referenced in § 43-2,106.01, we lack jurisdiction to consider the merits of this appeal.

CONCLUSION

Because this case is not properly before this court, we dismiss for lack of jurisdiction.

APPEAL DISMISSED.

STATE OF NEBRASKA, APPELLEE, V.
JESSICA BURBACH, APPELLANT.
821 N.W.2d 215

Filed September 4, 2012. No. A-11-424.

1. **Criminal Law: Convictions: Evidence: Appeal and Error.** 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.
2. **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.
3. **Jury Instructions: Judgments: Appeal and Error.** Whether jury instructions given by a trial court are correct is a question of law. When dispositive issues on appeal present questions of law, an appellate court has an obligation to reach an independent conclusion irrespective of the decision of the court below.
4. **Sentences: Appeal and Error.** An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court.
5. **Criminal Law: Words and Phrases.** "Stealing" has commonly been described as taking without right or leave with intent to keep wrongfully.

6. **Theft: Intent.** The focus of Neb. Rev. Stat. § 28-324 (Reissue 2008) is on the intent to deprive the owner of his or her property permanently, to keep it from him or her.
7. **Aiding and Abetting: Proof.** Aiding and abetting requires some participation in a criminal act and must be evidenced by some word, act, or deed.
8. **Aiding and Abetting.** To be guilty of aiding and abetting, no particular acts are necessary, nor is it necessary that the defendant take physical part in the commission of the crime or that there be an express agreement to commit the crime. Mere encouragement or assistance is sufficient.
9. **Jury Instructions.** Whenever an applicable instruction may be taken from the Nebraska Jury Instructions, that instruction is the one which should usually be given to the jury in a criminal case.
10. **Jury Instructions: Appeal and Error.** An appellate court reviews a court's failure to give a jury instruction not requested by the complaining party only for plain error.
11. **Appeal and Error.** Plain error will be noted only where an error is evident from the record, 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.
12. **Sentences: Appeal and Error.** Sentences within statutory limits will be disturbed by an appellate court only if the sentences complained of were an abuse of judicial discretion.

Appeal from the District Court for Lancaster County: STEVEN D. BURNS, Judge. Affirmed.

Korey L. Reiman, of Reiman Law Firm, for appellant.

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

MOORE and PIRTLE, Judges, and CHEUVRONT, District Judge, Retired.

PIRTLE, Judge.

INTRODUCTION

Jessica Burbach was convicted in the district court for Lancaster County of aiding and abetting a robbery in connection with her actions when an undercover police officer tried to purchase drugs and the transaction went awry. On appeal, Burbach raises issue with the sufficiency of the evidence to support the verdict, certain jury instructions, and her sentence. Having found no merit to any of Burbach's arguments, we affirm her conviction and sentence.

BACKGROUND

On September 2, 2010, the State filed an information in the district court for Lancaster County charging Burbach with aiding and abetting a robbery that occurred on July 29. A jury trial was held, and the evidence presented at trial is summarized as follows:

On July 28, 2010, the day before the robbery, Lincoln police officer David Nelson was working undercover and made a controlled purchase of drugs at the residence of Charles Marrs in Lincoln, Nebraska. Nelson purchased $100 worth of crack cocaine from an individual named "Paul James" and then left the apartment.

The next day, July 29, 2010, Nelson, who was equipped with a hidden radio transmitter, attempted to make another controlled purchase of drugs at Marrs' apartment. Nelson knocked on the apartment door, and it was opened by Burbach and Marrs, who asked him who he was and what he wanted. Nelson asked for James, who then came to the door and said Nelson was "cool." Nelson testified that there were 10 to 12 people in the living room of the apartment when he arrived.

Nelson and James went into a bedroom, where Nelson gave James $150 in exchange for a piece of crack cocaine. After the transaction was complete, Nelson walked out of the bedroom and into the living room, where he was stopped by Marrs, who said he wanted a "hit" or "pinch" for the house, which Nelson understood to mean that Marrs wanted a small amount of the drug Nelson had just purchased for allowing the deal to take place in his residence. Nelson resisted at first, but testified that Marrs' tone went from asking for a hit to essentially demanding one. In an effort to avoid everyone else in the living room asking for a hit, Nelson led Marrs back to the bedroom, where he put a small amount of the crack cocaine in Marrs' pipe.

Nelson testified that other people in the apartment, including Burbach, began questioning his identity and suspecting that he was a police officer. Nelson testified that he heard Burbach say "make him take a blast," which Nelson understood to mean inhaling some of the crack cocaine from a pipe after the crack cocaine is ignited. James then came into

the bedroom and told Nelson to take a "blast" from the pipe. Marrs began putting the pipe close to Nelson's face. Burbach and two others then came and stood in the doorway of the bedroom, blocking the exit, and they were telling him to take a blast. Nelson testified that all the individuals in the bedroom were talking loudly and aggressively and repeatedly telling him to take a hit from the pipe to prove he was not a police officer.

Marrs continued putting the pipe by Nelson's face, and another individual started putting a second pipe by Nelson's face. Nelson testified that he kept making excuses as to why he would not take a hit. Nelson also tried to walk out of the bedroom, but was prevented from doing so by the individuals in the doorway. About that time, the individuals in the bedroom started accusing Nelson of being a police officer. Nelson insisted that he was not a police officer and eventually lifted his shirt to show them that he did not have any recording devices or wires taped to his chest. That action did not convince the group that Nelson was not a police officer, and the individuals continued to insist that he take a hit to prove that he was not a police officer.

Nelson testified that the people in the bedroom were getting closer and closer to him and that the situation was getting worse. James then grabbed Nelson's groin and felt the transmitter Nelson was wearing and declared that Nelson was a police officer. The other individuals began saying, "[D]on't sell to him. He's a cop." They continued to crowd around him, and Nelson testified that he was feeling very threatened at the time.

At that point, James told Nelson to give the drugs back. Nelson refused at first and tried to get out of the room again, but was unable to. He testified that by this time, the individuals were so close to him that he was physically pushing hands and bodies away from him. James then reached into his pocket, and Nelson feared that he was grabbing a gun, which he was not. James took a handful of cash out of his pocket and told Nelson to take his money back and to give the drugs back to James. Nelson took the money and gave the drugs back and then made his way out of the bedroom.

When he got to the apartment door, there was an individual standing at the door with his hand over the dead bolt. Nelson had to push him out of the way and unlock the door before he could leave. Nelson testified that during the encounter, he felt threatened and did not believe he would have been allowed to leave the apartment without giving up the drugs.

The recording from the transmitter Nelson was wearing was entered into evidence and played for the jury, and a transcription of the audio was provided for the jurors to allow them to read along as the audio was played. Burbach can be heard several times telling Nelson to "take a hit" and "take a blast" to prove that he is not a police officer, and she can be heard saying, "[L]ock the door." Nelson identified Burbach as the person on the audio saying, "[L]ock the door."

At the conclusion of trial, the jury found Burbach guilty of aiding and abetting a robbery. The trial court entered judgment on the verdict and sentenced Burbach to 4 to 6 years' imprisonment. Burbach appeals.

ASSIGNMENTS OF ERROR

Burbach assigns, restated, that the trial court erred in (1) finding that there was sufficient evidence to support the verdict, (2) failing to give certain jury instructions, and (3) imposing an excessive sentence.

STANDARD OF REVIEW

[1,2] 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. *State v. McGee*, 282 Neb. 387, 803 N.W.2d 497 (2011). And 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. *Id.*

[3] Whether jury instructions given by a trial court are correct is a question of law. When dispositive issues on appeal

present questions of law, an appellate court has an obligation to reach an independent conclusion irrespective of the decision of the court below. *State v. Nolan*, 283 Neb. 50, 807 N.W.2d 520 (2012).

[4] An appellate court will not disturb a sentence imposed within the statutory limits absent an abuse of discretion by the trial court. *State v. Sidzyik*, 281 Neb. 305, 795 N.W.2d 281 (2011).

ANALYSIS

Sufficiency of Evidence.

Burbach makes three arguments in regard to the sufficiency of the evidence. First, Burbach argues that the evidence was insufficient to show that James took the drugs back "'without right,'" suggesting that he maintained a possessory or ownership interest in the drugs. Brief for appellant at 13. Second, Burbach argues that the evidence was insufficient to show that James had an intent to steal. Third, Burbach argues that there was insufficient evidence to show that she aided and abetted James in getting the drugs from Nelson.

As to Burbach's first argument, that there was insufficient evidence to show that James took the drugs back without right, a rational trier of fact could conclude that once Nelson and James had each tendered his part of the bargain, the transaction was done and James no longer had any right or possessory interest in the drugs. Burbach contends that it is unclear whether James had an ownership or possessory interest in the crack cocaine when he asked for it back. However, the evidence shows that after Nelson entered Marrs' apartment on July 29, 2010, Nelson and James went to the bedroom where they negotiated the sale. James showed Nelson several pieces of crack cocaine he had in his hand, and James offered to sell one of the pieces for $300. Nelson told him that all he had was $150. After some discussion back and forth, James broke off a piece of crack cocaine and gave it to Nelson. Nelson put it in a cigarette wrapper and then gave James $150. At that point, the transaction was complete insofar as each party had tendered his part of the bargain and both had what they wanted. Believing the transaction was complete, Nelson walked out of

the bedroom and intended to leave the apartment, just as he had done the day before when he purchased drugs from James, until he was stopped by Marrs. The evidence is sufficient to show that James had no ownership or possessory interest in the crack cocaine after he gave it to Nelson in exchange for $150.

[5,6] In regard to Burbach's second sufficiency of the evidence argument, we determine that there is sufficient evidence for a rational trier of fact to conclude that James intended to steal the drugs from Nelson. The term "to steal" is not defined by the robbery statute, which provides that "[a] person commits robbery if, with the intent to steal, he forcibly and by violence, or by putting in fear, takes from the person of another any money or personal property of any value whatever." Neb. Rev. Stat. § 28-324(1) (Reissue 2008). "Stealing" has commonly been described as "taking without right or leave with intent to keep wrongfully." *State v. Barfield*, 272 Neb. 502, 519, 723 N.W.2d 303, 317 (2006), *disapproved on other grounds, State v. McCulloch*, 274 Neb. 636, 742 N.W.2d 727 (2007), quoting *State v. Aldaco*, 271 Neb. 160, 710 N.W.2d 101 (2006). The focus of the statute is on the intent to deprive the owner of his or her property permanently, to keep it from him or her. *State v. Barfield, supra*. Similarly, the Nebraska Jury Instructions define "to steal" as "to take the property of another with the intent to deprive . . . him . . . of it . . . permanently." NJI2d Crim. 4.4.

The evidence supports a conclusion that James, with the help of Burbach and others, forced Nelson to give James the crack cocaine before he would be permitted to leave the apartment. The evidence shows that James told Nelson to give him the drugs back and that Nelson refused at first and tried to get out of the bedroom to no avail. James then took money out of his pocket and insisted that Nelson take his money back and give the drugs to James. Nelson ultimately gave the drugs to James and took his money back. Nelson testified that he felt threatened during the incident and felt that he had no choice but to give the drugs to James. Further, as previously discussed, James had no right to the drugs after the transaction was complete. James obtained the drugs only by placing Nelson in fear

and then taking the drugs with the intent to keep them. There is sufficient evidence to support a finding that James intended to steal the drugs from Nelson.

[7,8] As to Burbach's third insufficiency of the evidence argument, we conclude there was sufficient evidence to show that Burbach aided and abetted James in getting the drugs from Nelson. Aiding and abetting requires some participation in a criminal act and must be evidenced by some word, act, or deed. *State v. Vela*, 279 Neb. 94, 777 N.W.2d 266 (2010). No particular acts are necessary, nor is it necessary that the defendant take physical part in the commission of the crime or that there be an express agreement to commit the crime. *Id*. Mere encouragement or assistance is sufficient. *Id*.

Burbach argues that the evidence shows that she was involved only in trying to determine if Nelson was a police officer and that there is no evidence that she helped James get the drugs from Nelson. However, Burbach was clearly involved in the process of placing Nelson in fear so that James could take the drugs from him. The evidence shows that Burbach was blocking the bedroom doorway so Nelson could not leave. Nelson also testified that Burbach told someone to "lock the door," preventing Nelson from leaving the apartment, and that the door was locked when Nelson went to leave the apartment. Burbach was involved in crowding around Nelson, closing in on him in a small confined space, and refused to step aside so he could get out of the bedroom. Burbach was instrumental in ensuring that Nelson did not leave until James had regained the drugs from him. The evidence is sufficient to support a finding that she aided and abetted the robbery of Nelson.

Burbach's assignment of error alleging that there was insufficient evidence to support a guilty verdict for aiding and abetting a robbery is without merit.

Jury Instructions.

Burbach argues that there were two errors in the instructions given to the jury. First, she argues that the trial court did not give the jury an adequate definition of "to steal" and that it should have used the alternate instruction she offered instead. The instruction given to the jury defined "to steal" as "to take

the property belonging to another with the intent to deprive the owner of it permanently." Burbach contends that this definition was inadequate and that the jury needed an instruction which further defined "to steal." Burbach's proposed instruction provided:

> **"Intent to steal"** partly means to take the property of another with the intent to permanently deprive him of it. Additionally, the State has the burden to prove beyond a reasonable doubt that at the time of the taking of property:
>
> 1) the property belonged to [Nelson]; and
>
> 2) [Burbach] knew:
>
> a) the property belonged to [Nelson], and
>
> b) the property did not belong to . . . James; and
>
> c) . . . James had no legal right to take the property.
>
> 3) [Burbach] intended to permanently deprive [Nelson] of the property.

[9] However, the definition of "to steal" used by the trial court is nearly identical to the pattern instruction found in the Nebraska Jury Instructions. Whenever an applicable instruction may be taken from the Nebraska Jury Instructions, that instruction is the one which should usually be given to the jury in a criminal case. *State v. Taylor*, 282 Neb. 297, 803 N.W.2d 746 (2011). Given that the trial court gave the jury the definition of "to steal" found in the Nebraska Jury Instructions, we cannot say that the trial court erred in giving such instruction and in failing to give the alternative instruction proposed by Burbach.

[10,11] Next, Burbach argues that the trial court erred in failing to give an instruction directing the jury to consider Burbach's intent in relation to the robbery. She contends that while her actions leading up to James' asking for the crack cocaine back from Nelson were relevant and allowable for the jury to hear, the jurors should have been instructed that they should determine whether those actions were to assist James in unlawfully demanding the crack cocaine back from Nelson. However, Burbach admits that she did not request such an instruction at trial. Because Burbach did not request this instruction, we review the court's failure to give it only

for plain error. See *State v. Kass*, 281 Neb. 892, 799 N.W.2d 680 (2011). Plain error will be noted only where an error is evident from the record, 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*. Having reviewed the record, we find no plain error in the trial court's failure to give an instruction in regard to Burbach's intent in relation to the robbery.

Burbach's assignment of error in regard to jury instructions is without merit.

Excessive Sentence.

Finally, Burbach argues that her sentence of 4 to 6 years' imprisonment is excessive. The crime of which Burbach was convicted, aiding and abetting a robbery, is a Class II felony, punishable by up to 50 years in prison.

[12] Sentences within statutory limits will be disturbed by an appellate court only if the sentences complained of were an abuse of judicial discretion. *State v. Payan*, 277 Neb. 663, 765 N.W.2d 192 (2009).

Burbach has an extensive adult criminal history dating back to 2001 and committed crimes as a juvenile before that. Much of her record consists of theft offenses, driving on a suspended license, and disturbing the peace, but interspersed are more serious offenses such as delivery of a controlled substance and escape. Given Burbach's criminal history and the fact that the sentence she received was on the lower end of the statutory range, we do not conclude that the trial court abused its discretion in the sentence it imposed. Burbach's final assignment of error is without merit.

CONCLUSION

We conclude that the evidence was sufficient to support a guilty verdict for aiding and abetting a robbery, that there were no errors in the jury instructions, and that Burbach's sentence is not excessive. Accordingly, the judgment of the district court is affirmed.

AFFIRMED.