

MEMORANDUM DECISION

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IN THE COURT OF APPEALS OF INDIANA

Mihail Ipatii,
Appellant-Defendant,

v.

State of Indiana,
Appellee-Plaintiff.

June 27, 2023

Court of Appeals Case No.
22A-IF-2353

Appeal from the Marshall Superior
Court

The Honorable Dean A. Colvin,
Judge

Trial Court Cause No.
50D02-2204-IF-772

Memorandum Decision by Judge Tavitias
Judges Bailey and Kenworthy concur.

Tavitias, Judge.

Case Summary

- [1] Mihail Ipatii, a commercial truck driver, was convicted of falsely reporting his duty status. Ipatii appeals and argues that: (1) the traffic stop was improper; (2) the State presented insufficient evidence that Ipatii falsely reported his duty status; and (3) the prosecutor violated Ipatii's First Amendment rights by suggesting that Ipatii plead guilty. We find that Ipatii's arguments are waived and, accordingly, affirm.

Issue

- [2] Ipatii raises three issues, which the State argues are all waived. We, thus, consolidate and restate the issues in this case as one: whether Ipatii's arguments are waived.

Facts

- [3] On April 22, 2022, Ipatii was transporting commercial freight in Marshall County when his semi-truck was stopped by Indiana State Police Corporal Robert Leffert for violating a lane restriction on semi-trucks. Corporal Leffert issued Ipatii a warning regarding the lane violation. Additionally, Corporal Leffert issued Ipatii a citation pursuant to Indiana Code Section 8-2.1-24-18, which incorporates federal regulations under 49 C.F.R. Section 395.8(e)(1), for

falsely reporting his duty status.¹ The ticket states: “False report of driver’s record of duty status: False Log on 4/20/2022.” Appellant’s App. Vol. II p. 4.

[4] The trial court held a bench trial regarding the citation on June 20, 2022. On September 6, 2022, the trial court found Ipatii guilty of falsely reporting his duty status. Ipatii now appeals.ind. ap

Discussion and Decision

[5] Ipatii proceeds in this appeal pro se. It is well established that, in Indiana, “[a]n appellant who proceeds pro se is held to the same established rules of procedure that a trained legal counsel is bound to follow and, therefore, must be prepared to accept the consequences of his or her action.” *See, e.g., McCullough v. CitiMortgage, Inc.*, 70 N.E.3d 820, 825 (Ind. 2017).

¹ 49 C.F.R. Section 395.8 provides, in relevant part:

(a)

(1) Except for a private motor carrier of passengers (nonbusiness), as defined in § 390.5 of this subchapter, a motor carrier subject to the requirements of this part must require each driver used by the motor carrier to record the driver's duty status for each 24-hour period using the method prescribed in paragraphs (a)(1)(i) through (iv) of this section, as applicable.

* * * * *

(b) The duty status shall be recorded as follows:

(1) “Off duty” or “OFF.”

(2) “Sleeper berth” or “SB” (only if a sleeper berth used).

(3) “Driving” or “D.”

(4) “On-duty not driving” or “ON.”

(c) For each change of duty status (e.g., the place of reporting for work, starting to drive, on-duty not driving and where released from work), the name of the city, town, or village, with State abbreviation, shall be recorded.

[6] We note at the outset that Ipatii did not request that a transcript of the proceedings below be included in the record. Pursuant to Appellate Rule 9(F)(5), “[i]f the appellant intends to urge on appeal that a finding of fact or conclusion thereon is unsupported by the evidence or is contrary to the evidence, the Notice of Appeal shall request a Transcript of all the evidence.”

[7] “[A]lthough not fatal to the appeal, failure to include a transcript works a waiver of any specifications of error which depend upon the evidence.” *Towne & Terrace Corp. v. City of Indianapolis*, 156 N.E.3d 703, 714 (Ind. Ct. App. 2020) (quoting *In re Walker*, 665 N.E.2d 586, 588 (Ind. 1996)), *trans. denied*. Here, Ipatii’s arguments all rely upon evidence, or the lack thereof, presented to the trial court, and the absence of a transcript hinders our review of those arguments. Accordingly, and for additional reasons discussed below, we find that Ipatii’s arguments are waived.

I. Traffic Stop

[8] Ipatii first argues that the traffic stop was not “justified” because “there [] are no road signs warning the drivers” regarding the lane restriction on semi-trucks. Appellant’s Br. p. 9. We find this argument waived.

[9] First, Ipatii’s argument consists of a single sentence, and it directs us to no legal authority suggesting that the absence of signage invalidates an otherwise legal stop. *See* Ind. App. R. 46(A)(8)(a) (requiring that the appellant’s argument be “supported by cogent reasoning” and “citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on”). Additionally, in the

absence of a transcript, we are unable to discern what evidence was presented before the trial court to suggest that the stop was illegal, let alone whether Ipatii even challenged the stop in the first place. *See, e.g., Shorter v. State*, 144 N.E.3d 829, 841 (Ind. Ct. App. 2020) (“[A] trial court cannot be found to have erred as to an issue or argument that it never had an opportunity to consider.

Accordingly, as a general rule, a party may not present an argument or issue on appeal unless the party raised that argument or issue before the trial court.”

(quoting *Washington v. State*, 808 N.E.2d 617, 625 (Ind. 2004)), *trans. denied*.

The record simply fails to provide us with the necessary information to review Ipatii’s argument. Accordingly, Ipatii’s challenge to the traffic stop is waived.

II. Sufficiency of the Evidence

[10] Ipatii next appears to challenge the sufficiency of the evidence to support his conviction for falsely reporting his duty status.² Ipatii argues that “the prosecuting attorney brought new accusations against [Ipatii] indicating that [the] falsifying [occurred] on April 19, 2022[,] and not April 20, 2022[,]” and that the trial court excluded evidence that Ipatii wished to present. Appellant’s Br. p. 9.

[11] We find that this argument is also waived. Ipatii does not direct us to anything in the record to suggest that the State “brought new accusations” against him.

² 49 C.F.R. Section 395.8(e)(1) provides, “[n]o driver or motor carrier may make a false report in connection with a duty status.”

See Ind. App. R. 46(A)(8)(a) (requiring that the appellant’s argument be supported by “the Appendix or parts of the Record on Appeal relied on”). Further, though Ipatii directs us to several “exhibits” in the record, in the absence of a transcript, we are unable to review the totality of the evidence presented to the trial court. Moreover, to the extent that Ipatii asks us to reweigh the evidence, “[w]e do not reweigh the evidence or assess the credibility of witnesses in reviewing a sufficiency of the evidence claim.” *Bell v. State*, 31 N.E.3d 495, 499 (Ind. 2015).

III. First Amendment Violation

[12] Lastly, Ipatii argues that his First Amendment rights were violated because the prosecutor “call[ed] Ipatii in reception office [sic] and without even asking [Ipatii] what testimony [Ipatii] brought, [the prosecutor] indicate[d] that [Ipatii] should sign for the fact that [Ipatii was] guilty and need[ed] to pay the ticket.” Appellant’s Br. p. 11.

[13] Again, we find this argument waived. Ipatii’s argument, which consists of three sentences, fails to make a coherent argument that his First Amendment rights were violated, and he directs us to no legal authority suggesting that the prosecutor’s conduct was improper, let alone constitutes a First Amendment violation. See Ind. App. R. 46(A)(8)(a) (requiring that the appellant’s argument be “supported by cogent reasoning” and “citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on”); *Dridi v. Cole Kline LLC*, 172 N.E.3d 361, 364 (Ind. Ct. App. 2021) (noting that the Court of

Appeals will not “address arguments which are either inappropriate, too poorly developed or improperly expressed to be understood”) (citation omitted).

Conclusion

[14] Ipatii’s challenges to the traffic stop, his sufficiency argument, and his First Amendment arguments are all waived. Accordingly, we affirm.

[15] Affirmed.

Bailey, J., and Kenworthy, J., concur.