

MEMORANDUM DECISION

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IN THE
Court of Appeals of Indiana

Mohamed R. Nawwar,
Appellant-Defendant

v.

State of Indiana,
Appellee-Plaintiff



March 21, 2024

Court of Appeals Case No.
23A-IF-2684

Appeal from the Boone Superior Court

The Honorable Bruce E. Petit, Judge

The Honorable Mark X. Sullivan, Commissioner

Trial Court Cause No.
06D02-2302-IF-758

Memorandum Decision by Judge Tavitias
Judges Mathias and Weissmann concur.

Tavitas, Judge.

Case Summary

- [1] Mohamed Nawwar appeals the trial court’s judgment that he committed speeding in a worksite without workers present, a Class B infraction. Nawwar argues that the evidence is insufficient to support the judgment. We conclude, however, that the evidence is sufficient, and we affirm.

Issue

- [2] Nawwar raises two issues, which we consolidate and restate as whether the evidence is sufficient to support the trial court’s judgment that Nawwar committed speeding in a worksite without workers present, a Class B infraction.

Facts

- [3] On February 8, 2023, Trooper Evan Joyner of the Indiana State Police was working traffic enforcement in a construction zone on I-65 in Boone County. The construction zone was located between mile marker 130 and mile marker 134, and the construction had been underway in this area for approximately three years. The speed limit in the construction zone was 55 mph. Construction zone and speed limit signs were placed on both sides of the road at mile marker 134. Warning signs were also placed prior to the construction zone signs.
- [4] Trooper Joyner was outside of his vehicle at mile marker 132 using his Lidar device to measure the speed of vehicles and measured the speed of Nawwar’s

vehicle at 90 mph. Trooper Joyner initiated a traffic stop on Nawwar's vehicle, and Nawwar explained that he had been passing a truck. Trooper Joyner issued Nawwar a citation for speeding in a worksite without workers present, a Class B infraction.

[5] Nawwar denied the violation, and the trial court held a bench trial on September 8, 2023. At the bench trial, Nawwar admitted that he was speeding to pass a truck; admitted that he "take[s] this route . . . a lot"; claimed that the truck in front of him was slowing and the truck behind him was "closing on [him]," so he moved to the left lane to pass the trucks; and denied that he was driving 90 mph. Tr. Vol. II pp. 9-10. Nawwar also claimed that he did not see the construction and speed limit signs.

[6] The trial court found:

The Court has no doubt that Defendant was operating his vehicle at a speed beyond the posted speed limit when targeted by Officer Joyner's handheld Lidar device. Defendant admitted as much. That leaves only one issue for the Court to rule upon, that being whether Defendant's excessive speed was excused by reason of the allegedly dangerous circumstances that he encountered. The Court finds that Defendant's speeding was not excused. In so ruling, the Court was not at all convinced that the situation which Defendant confronted and which allegedly caused him to speed was as dangerous as he would have the Court believe. Nevertheless, even if the situation Defendant encountered was one which truly involved certain and imminent danger, Defendant had other options besides speeding to avoid the danger. The most obvious option was to do just what he did, which was to change lanes and get out of the way of the truck approaching the rear. Once Defendant changed lanes, the danger

from behind was clearly averted. At that point, the Court sees no reason why Defendant could not have slowed his vehicle and complied with the posted speed limit. However, he did not do so. Per his own testimony, Defendant sped up and passed the truck to his front, exceeding the posted speed limit in the process. The Court does not view this as having been necessary or excused.

Appellee's App. Vol. II pp. 16-17. The trial court, thus, entered judgment against Nawwar for speeding in a worksite without workers present, a Class B infraction, and entered a fine of \$1,000 plus court costs of \$160.50. Nawwar now appeals.

Discussion and Decision

[7] We note that Nawwar proceeds pro se in this appeal, and we, therefore, reiterate that “a pro se litigant is held to the same standards as a trained attorney and is afforded no inherent leniency simply by virtue of being self-represented.” *Zavodnik v. Harper*, 17 N.E.3d 259, 266 (Ind. 2014). “This means that pro se litigants are bound to follow the established rules of procedure and must be prepared to accept the consequences of their failure to do so.” *Picket Fence Prop. Co. v. Davis*, 109 N.E.3d 1021, 1029 (Ind. Ct. App. 2018) (citing *Basic v. Amouri*, 58 N.E.3d 980, 983-84 (Ind. Ct. App. 2016)), *trans. denied*. Although we prefer to decide cases on their merits, arguments are waived where an appellant's noncompliance with the rules of appellate procedure is so substantial that it impedes our appellate consideration of the errors. *Id.*

- [8] Indiana Appellate Rule 46(A)(8)(a) requires that the argument section of a brief “contain the contentions of the appellant on the issues presented, supported by cogent reasoning. Each contention must be supported by citations to the authorities, statutes, and the Appendix or parts of the Record on Appeal relied on” We will not consider an assertion on appeal when there is no cogent argument supported by authority and there are no references to the record as required by the rules. *Id.* “We will not step in the shoes of the advocate and fashion arguments on his behalf, nor will we address arguments that are too poorly developed or improperly expressed to be understood.” *Miller v. Patel*, 212 N.E.3d 639, 657 (Ind. 2023) (internal quotations omitted).
- [9] Nawwar’s briefs contain no citations to authority or references to the record as required by our appellate rules. We conclude that Nawwar has waived his arguments. *See, e.g., id.* (finding arguments waived on appeal for failure to provide cogent briefing and failure to cite legal authority).
- [10] Waiver notwithstanding, Nawwar argues that the evidence is insufficient to support the judgment entered against him. “[T]raffic infractions are civil, rather than criminal, in nature and the State must prove the commission of the infraction by only a preponderance of the evidence.” *Rosenbaum v. State*, 930 N.E.2d 72, 74 (Ind. Ct. App. 2010), *trans. denied*. When reviewing a challenge to the sufficiency of the evidence, we will neither reweigh the evidence nor judge the credibility of witnesses. *Id.* Rather, we look to the evidence that best supports the judgment and all reasonable inferences to be drawn therefrom. *Id.*

If there is substantial evidence of probative value supporting the trial court's judgment, it will not be overturned. *Id.*

[11] Nawwar did not dispute that he was speeding in a worksite; rather, Nawwar argues that his conduct should be excused because: (1) the worksite was not properly marked or visible to Nawwar in the middle lane of the traffic; and (2) he was speeding to protect himself from the truck behind him. According to Nawwar, the trial court failed to consider all of the evidence.¹

[12] We note that “[t]here need be no showing of mens rea before judgment may be entered in an infraction case because it is not a criminal matter. A mere showing the statute was violated by the defendant suffices.” *Hevenor v. State*, 784 N.E.2d 937, 941 (Ind. Ct. App. 2003) (quoting *Pridemore v. State*, 577 N.E.2d 237, 239 (Ind. Ct. App. 1991)). Accordingly, the State was not required to show that Nawwar intended to violate the statute.

[13] To the extent that Nawwar argues that his conduct was excused, the trial court did not find Nawwar's testimony persuasive. To find otherwise, we would have to reweigh the evidence and judge the credibility of the witnesses, which we cannot do. *See Rosenbaum*, 930 N.E.2d at 74. The State presented evidence that Nawwar was driving 90 mph in a construction zone while passing a truck. The construction in this area had been ongoing for approximately three years,

¹ Nawwar also argues that the trial court erred by entering default judgment against him. Although the trial court initially entered default judgment in the Chronological Case Summary, the trial court later corrected the entry.

and Nawwar conceded that he drove on I-65 often. As the trial court noted, if Nawwar feared for his safety due to the truck behind him, he could have merely switched lanes. Nawwar was not required to drive 90 mph to pass the trucks in front of him. Accordingly, we conclude that the trial court's judgment is supported by substantial evidence of probative value.

Conclusion

[14] The evidence is sufficient to support the trial court's judgment that Nawwar committed speeding in a worksite without workers present, a Class B infraction. Accordingly, we affirm.

[15] Affirmed.

Mathias, J., and Weissmann, J., concur.

APPELLANT PRO SE

Mohamed Nawwar
Elk Grove Village, Illinois

ATTORNEYS FOR APPELLEE

Theodore E. Rokita
Attorney General of Indiana

Alexandria Sons
Deputy Attorney General
Indianapolis, Indiana