

[Cite as *State v. Cox*, 2009-Ohio-6688.]

IN THE COURT OF APPEALS FOR DARKE COUNTY, OHIO

STATE OF OHIO	:	
Plaintiff-Appellant	:	C.A. CASE NO. 1736
v.	:	T.C. NO. 07 TRD 001 3394
DAVID E. COX	:	(Criminal appeal from Municipal Court)
Defendant-Appellee	:	

OPINION

Rendered on the 18th day of December, 2009.

JESSE J. GREEN, Atty. Reg. No. 0040265, Assistant Prosecuting Attorney, Darke County Courthouse, Greenville, Ohio 45331
Attorney for Plaintiff-Appellant

DAVID E. COX, 1452 Carriage Trace Blvd., Dayton, Ohio 45459
Defendant-Appellee

DONOVAN, P.J.

{¶ 1} This matter is before the Court on the Notice of Appeal of the State of Ohio, filed April 8, 2008. On September 24, 2007, Cox received a traffic citation for driving under suspension, in violation of R.C. 4510.11, and for passing within an intersection, in violation of R.C. 4511.30(A)(3), and he was summoned to appear in Darke County

Municipal Court. On February 25, 2008, Cox filed a motion to dismiss. According to Cox, Darke County Detective Rodney Baker, who executed the traffic stop, was not in uniform nor did he show Cox his badge when he approached Cox's vehicle. Baker also was not in a marked vehicle identifying him as a police officer. Cox argued that Baker "should be found to be incompetent to testify against [Cox] due to his willing violation of O.R.C. Sections 4545.13 and 4549.15." The trial court sustained the motion to dismiss on April 2, 2008.

{¶ 2} The State of Ohio asserts one assignment of error. We note that Cox did not file a brief in response. The State's assignment of error is as follows:

{¶ 3} "THE TRIAL COURT ERRED IN FAILING TO HOLD THAT A POLICE OFFICER WHO, WHILE ENGAGED IN AN ASSIGNMENT UNRELATED TO THE ENFORCEMENT OF TRAFFIC LAWS, OBSERVES A VIOLATION OF SUCH LAWS IS NOT PRECLUDED BY R.C. 4549.14 AND R.C. 4549.16 FROM TESTIFYING WITH REGARD TO SUCH VIOLATION ON THE BASIS THAT HE WAS WEARING PLAIN CLOTHES AND DRIVING AN UNMARKED VEHICLE AT THE TIME OF ISSUING A CITATION."

{¶ 4} A trial court's procedural rulings will not be reversed absent an abuse of discretion. *Harmon v. Baldwin*, 107 Ohio St.3d 232, 837 N.E.2d 1196, 2005-Ohio-6264, ¶ 16. "'Abuse of discretion' connotes an unreasonable, arbitrary, or unconscionable attitude." *Id.* (citation omitted).

{¶ 5} According to the Municipal Court's Judgment Entry sustaining Cox's motion to dismiss, the parties stipulated to the following facts: "(1) Detective Rodney Baker

(arresting officer) was not in uniform and was not in a marked police cruiser at the time of the stop; and (2) Detective Rodney Baker, although on duty, was not employed in the course of traffic enforcement.”

{¶ 6} R.C. 4549.14 provides in relevant part: “Any officer arresting * * * a person charged with violating the motor vehicle or traffic laws of this state, * * * such officer being on duty exclusively or for the main purpose of enforcing such laws, is incompetent to testify as a witness in any prosecution against such arrested person if such officer at the time of the arrest was using a motor vehicle not marked in accordance with section 4549.13 of the Revised Code.”

{¶ 7} R.C. 4549.16 provides in relevant part: “Any officer arresting * * * a person charged with violating the motor vehicle or traffic laws of this state * * * such officer being on duty exclusively or for the main purpose of enforcing such laws is incompetent to testify as a witness in any prosecution against such arrested person if such officer at the time of the arrest was not wearing a distinctive uniform in accordance with section 4549.15 of the Revised Code.”

{¶ 8} Similarly, Evid.R.601(C) provides: “Every person is competent to be a witness except:

{¶ 9} * *

{¶ 10} “(C) An officer, while on duty for the exclusive or main purpose of enforcing traffic laws, arresting * * * a person charged with a traffic violation * * * where the officer at the time of the arrest was not using a properly marked motor vehicle as defined by statute or was not wearing a legally distinct uniform as defined by statute.”

{¶ 11} “It is important to consider the purpose behind R.C. 4549.14 and 4549.16 when determining competency of police officers to testify. The Ohio Supreme Court in *Dayton v. Adams* (1967), 9 Ohio St.2d 89 stated that the purpose of the statutes was to create uniformity in traffic enforcement, promote safe driving, and discourage speed traps.” *Dayton v. Gaston* (Aug. 11, 1987), Montgomery App. No. 10136. That purpose was not violated by Baker’s actions in this matter.

{¶ 12} The parties stipulated that Baker “was not employed in the course of traffic enforcement” at the time of the stop. Since his primary duty was not traffic enforcement, R.C. 4549.14 and R.C. 4549.16 do not render him incompetent to testify. See *Columbus v. Stump* (1974), 41 Ohio App.2d 81 (holding that on-duty officers, in an unmarked car and in plain clothes, conducting surveillance of a tavern, were not precluded from testifying regarding defendant’s arrest for reckless operation.)

{¶ 13} Since Baker is competent to testify regarding his citation of Cox, we see an abuse of discretion, and the State’s assignment of error is sustained. Judgment reversed and remanded.

.....

FAIN, J. and GRADY, J., concur.

Copies mailed to:

Jesse J. Green
David E. Cox
Hon. Julie L. Monnin

