[Cite as *Columbus v. Miller,* 2010-Ohio-1384.]

IN THE COURT OF APPEALS OF OHIO

TENTH APPELLATE DISTRICT

City of Columbus,	:	
Plaintiff-Appellee,	:	
		No. 09AP-770
v.	:	(M.C. No. 09-CR-04965)
James W. Miller,	:	(REGULAR CALENDAR)
Defendant-Appellant.	:	

D E C I S I O N

Rendered on March 31, 2010

Richard C. Pfeiffer, City Attorney, *Lara N. Baker,* City Prosecutor, and *Melanie R. Tobias,* for appellee.

Yeura R. Venters, Public Defender, and *John W. Keeling,* for appellant.

APPEAL from the Franklin County Municipal Court.

BRYANT, J.

{¶1} Defendant-appellant, James W. Miller, appeals from a judgment of the Franklin County Municipal Court finding him guilty, pursuant to a bench trial, of misconduct involving a public transportation system in violation of Columbus City Code 2317.41(J)(2), a first-degree misdemeanor. Because (1) legally sufficient evidence

supports the judgment, (2) the municipal court had jurisdiction to render judgment against defendant for violating the Columbus ordinance, and (3) the Columbus ordinance is valid and enforceable, we affirm.

I. Procedural History

{¶2} By complaint filed March 3, 2009, defendant was charged with one count of misconduct involving a public transportation system. He entered a not guilty plea, and the matter was tried to the municipal court.

{¶3} At the bench trial, held July 14, 2009, the prosecution presented the testimony of Ronald Whatley, Jr., a bus driver for the Central Ohio Transit Authority ("COTA"). Whatley testified that defendant was a passenger on his bus on March 3, 2009, the date of the events from which the charge against defendant arose. Whatley stated that he recognized defendant that day from an incident that occurred a few weeks earlier when defendant, while carrying bundles, attempted to board the bus. Whatley stated he was looking down at defendant and trying to determine if, as a courtesy, the bus needed to be kneeled for defendant when defendant said to him, "What the F are you looking at, B-I-T-C-H?" (Tr. 10.) Whatley testified he told defendant to get his things, as he could not board and ride the bus. Whatley stated the incident led to defendant's filing a complaint with Whatley's employer that asserted Whatley had been rude and should be fired.

{¶4} Whatley testified his next encounter with defendant was on March 3, 2009, when Whately again was driving a COTA bus and saw defendant lying on the ground at a bus stop located at Champion and Broad Streets in the city of Columbus in Franklin

County. According to Whatley, he stopped to pick up defendant. As defendant got up to board the bus, he told Whatley, "I got you this time." (Tr. 10.) Defendant boarded the bus but did not pay his fare.

{¶5} Whatley testified the floor of the 30-foot bus was wet and slippery due to snow and ice tracked in from the outside, so he was not going to pull away from the bus stop and drive until defendant paid the fare and took a seat. When other passengers asked defendant if he was going to pay his fare so the bus could move, defendant responded, "I'll pay my fare when I get God damn good and ready." (Tr. 10.) Whatley said defendant then swiped his key card and his monthly pass to pay his fare but did so "with an attitude," telling Whatley "he had it out for [Whatley] to either quit or get fired." (Tr. 11.) Whatley believed defendant was intoxicated because he smelled alcohol on defendant as defendant neared to pay his fare, and he saw defendant "stagger" when defendant walked.

{¶6} Whatley stated that as the bus continued on its route, defendant not only directed profanity at other passengers, but repeatedly called Whatley "a few bitches, mother fuckers, full of shit." (Tr. 15.) When Whatley announced on the loud speaker, in response to defendant's foul language, that no profanity is to be used on the bus, defendant told Whatley, "You're full of shit" and "I don't have to listen to you." (Tr. 15.) Whatley stated that defendant's behavior continued for approximately 25 minutes, during which time defendant repeatedly cursed at the bus driver, threatened to have him fired, and incessantly rang the stop request bell, requiring the other passengers to walk up the slippery aisle to the front of the bus to tell Whatley their stop destination.

{¶7} Whatley testified that when the bus arrived at defendant's stop, it slid on the ice past the stop, at which defendant became irate and said to Whatley, "You knew I wanted that stop, you asshole. You're full of shit, and I'm going to ride to the end of the line with you. You're going to get fired. You're not going to be here long." (Tr. 13.) Whatley ordered defendant to exit the bus, but defendant refused, telling Whatley, "No, I'm not exiting because I have a monthly pass, and I'm going to ride with you until you quit." (Tr. 14.) At that point Whatley called for assistance and flagged down a passing Columbus police cruiser. The cruiser stopped, and two Columbus police officers removed defendant from the bus and detained him at a bus stop located on McGuffey and Hudson. Another Columbus police officer, Robert Viduya, who was working special duty for COTA and responded to Whatley's call for assistance, questioned defendant and then issued him a misconduct citation. Viduya testified that defendant was belligerent, was cursing, and appeared intoxicated during the questioning.

{¶8} On direct and cross-examination, Whatley testified that defendant's conduct made him feel insulted and belittled in front of the other passengers, but his main concern was for the safety and comfort of the elderly people and children who were on the bus. Commenting he gets paid to deal with difficult passengers, Whatley explained that COTA trains its bus drivers not to use physical force against a passenger causing a disturbance unless the passenger is in the driver's personal space, the driver feels threatened, and the passenger is initiating a physical attack on the driver. Whatley stated he personally considered defendant's behavior "nothing," he had never used physical force against a

passenger during the almost two years he worked for COTA, and he would not attack a passenger who was insulting him unless the passenger was "swinging" at him.

{¶9} The defense rested without presenting any evidence. The trial court found defendant guilty as charged and sentenced him to 180 days in jail. The court, however, suspended the jail term for one year of non-reporting probation upon the condition that defendant not commit a same or similar offense during the one-year period.

II. Assignments of Error

{¶10} Defendant appeals, assigning three errors:

> ASSIGNMENT OF ERROR NUMBER ONE
>
> THE TRIAL COURT ERRED WHEN IT ENTERED JUDGMENT AGAINST THE DEFENDANT ON THE CHARGE OF MISCONDUCT INVOLVING A PUBLIC TRANSPORTATION SYSTEM WHEN THE EVIDENCE WAS INSUFFICIENT TO SUSTAIN THE CONVICTION AND THE CONVICTION WAS AGAINST THE MANIFEST WEIGHT OF THE EVIDENCE WHEN THE CITY FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT'S CONDUCT WAS LIKELY TO PROVOKE A VIOLENT RESPONSE WHERE ITS OWN WITNESS INDICATED THAT HE HAD NOT BEEN PROVOKED TO RESPOND VIOLENTLY AND WHEN ANY SUCH VIOLENT RESPONSE WOULD BE A VIOLATION OF THE LAW AND INHERENTLY UNREASONABLE. ADDITIONALLY, THE CITY FAILED TO PRESENT ADEQUATE PROOF THAT THE INCIDENT OCCURRED ON A PUBLIC TRANSPORTATION SYSTEM AS IS NARROWLY DEFINED BY LAW AND IS AN ELEMENT OF THE OFFENSE.
>
> ASSIGNMENT OF ERROR NUMBER TWO
>
> THE TRIAL COURT LACKED SUBJECT MATTER JURISDICTION TO RENDER JUDGMENT AND IMPOSE SENTENCE UPON THE DEFENDANT WHEN THE CITY FAILED TO ESTABLISH THAT THE OFFENSE OCCURRED WITHIN THE CITY OF COLUMBUS SINCE THE COURT HAS NO

> JURISDICTION TO ENFORCE COLUMBUS CITY ORDINANCES OUTSIDE OF THE TERRITORIAL LIMITATIONS OF COLUMBUS.
>
> ASSIGNMENT OF ERROR NUMBER THREE
>
> THE CITY OF COLUMBUS HAS NO POWER TO ENACT OR ENFORCE AN ORDINANCE PURPORTING TO REGULATE SPECIFIC CONDUCT OCCURING ON VEHICLES BELONGING TO A REGIONAL TRANSIT AUTHORITY BECAUSE THE HOME RULE PROVISION, ALLOWING MUNICIPALITIES TO EXERCISE ALL POWERS OF LOCAL SELF-GOVERNMENT, DOES NOT ALLOW MUNICIPALITIES TO REGULATE REGIONAL TRANSIT AUTHORITIES. THIS POWER HAS BEEN PREEMPTED BY THE STATE AND BY THE SPECIFIC GRANT OF POWER TO REGIONAL TRANSIT AUTHORITIES TO ACT AS THEIR OWN POLITICAL SUBDIVISIONS AND TO PROMULGATE AND ENFORCE THEIR OWN RULES OF CONDUCT ONBOARD THEIR VEHICLES.

III. First Assignment of Error – Sufficiency and Manifest Weight of the Evidence

{¶11} In his first assignment of error, defendant challenges the sufficiency and weight of the evidence supporting his conviction.

{¶12} Defendant was convicted of misconduct involving a public transportation system in violation of Columbus City Code 2317.41(J)(2), which provides that "[n]o person shall cause inconvenience, annoyance or alarm to an operator, driver, or passenger on a public transportation system vehicle, by * * * [i]nsulting, taunting, or challenging another under circumstances, in which such conduct is objectively likely to provoke a violent response."

A. Sufficiency of the Evidence

{¶13} Defendant claims the prosecution failed to present sufficient evidence to establish two elements of misconduct involving a public transportation system: (1) the

alleged misconduct was "likely to provoke a violent response" and (2) the alleged misconduct occurred on a "public transportation system vehicle" as defined by law.

{¶14} Whether the evidence is legally sufficient to sustain a verdict is a question of law. *State v. Thompkins* (1997), 78 Ohio St.3d 380, 386. Sufficiency is a test of adequacy. Id. We construe the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could have found the essential elements of the offense proven beyond a reasonable doubt. *State v. Jenks* (1991), 61 Ohio St.3d 259, paragraph two of the syllabus; *State v. Conley* (Dec. 16, 1993), 10th Dist. No. 93AP-387.

1. Likely to Cause a Violent Response

{¶15} Defendant contends the prosecution failed to prove his conduct, even if insulting and offensive, was "likely to provoke a violent response" under the circumstances, because (1) the evidence established that Whatley did not personally feel threatened or provoked to violence in response to defendant's misconduct, and (2) by virtue of training by COTA, Whatley and COTA bus drivers in general are less likely than the average person to respond violently to such misconduct.

{¶16} A person may not be punished for speaking rude, abusive, offensive, derisive, vulgar, insulting or profane words, even with the intent to annoy or taunt another, unless the words are likely to provoke an average person to a violent response. See *State v. Hoffman* (1979), 57 Ohio St.2d 129, paragraph one of the syllabus, following *Cincinnati v. Karlan* (1974), 39 Ohio St.2d 107, paragraph one of the syllabus. When such words, used in a public place and directed at another, are likely to provoke an average person to a violent response, the words are "fighting words," are not constitutionally

protected and may be punished as a criminal act. *Hoffman* at 133; *Karlan*, paragraph two of the syllabus. "In determining whether language rises to the level of 'fighting words,' courts look at the circumstances surrounding the statements." *Urbana v. Locke,* 170 Ohio App.3d 246, 2006-Ohio-6606, ¶43.

{¶17} In prohibiting insulting, taunting, or challenging "conduct" "likely to provoke a violent response," Columbus City Code 2317.41(J)(2) proscribes "fighting words" but, by its language, does not limit the proscription to verbal misconduct. The Columbus ordinance proscribes nonverbal, as well as verbal, misconduct. See *Columbus v. Hatfield* (Mar. 22, 1994), 10th Dist. No. 93APC09-1275, discretionary appeal not allowed, 70 Ohio St.3d 1425 (upon construing virtually identical language in a disorderly conduct statute, court determined "a person may be insulting, taunting or challenging by his or her nonverbal, as well as verbal, misconduct"); *Locke* at ¶44 (considering spoken words and physical conduct and demeanor in making a similar determination).

{¶18} To determine whether the conduct is likely to provoke a violent response, the Columbus ordinance, consistent with well-established law in this state, utilizes an "objective" standard, rather than the subject standard defendant urges. The subjective standard ignores the "average person touchstone" and depends upon the reaction of a particular individual. *Columbus v. Davis* (Dec. 24, 1984), 10th Dist. No. 84AP-512, citing *Cincinnati v. Karlan* (1973), 35 Ohio St.2d 34, 42. In contrast, under the objective standard, the subjective belief or feelings of the person or persons to whom insulting, taunting or challenging conduct is directed does not determine the issue and is but one factor to be considered in deciding whether, under all the circumstances, the alleged

conduct would be likely to provoke a violent response. *Davis; Urbana* at ¶33-35; *Cleveland v. Smith* (Oct. 28, 1993), 8th Dist. No. 62560.

{¶19} The evidence here, viewed in a light most favorable to the prosecution, is legally sufficient to support the trial court's conclusion that defendant's conduct was likely to provoke a violent response from an average person under the circumstances. Over a period of approximately 25 minutes, defendant directed profane language at Whatley, calling him an "asshole," a "mother fucker," a "bitch," and telling him he was "full of shit." He directed profane language at the other passengers, who included elderly persons and children, and he did not desist using the offensive language after Whatley announced that profane language was not allowed on the bus. He taunted Whatley by repeatedly threatening to have him fired, was belligerent, and appeared intoxicated. He continuously rang the stop request bell, disrupting the other passengers' ability to signal their stops and putting them at risk by requiring them to walk up the slippery bus aisle to tell Whatley their stop destination. Finally, he refused to exit the bus when Whatley repeatedly told him to do so.

{¶20} Even after defendant was removed from the bus, he continued to curse and act belligerently during the police officer's questioning. The trial court properly found defendant's conduct was likely to provoke a violent response under the circumstances present here. Cf. *Columbus v. McKarn* (Apr. 14, 1994), 10th Dist. No. 93AP-984 (evidence was sufficient to support conviction under disorderly conduct ordinance where defendant was belligerent and directed slurs, obscenities, hostile and insulting comments to police officers for approximately 20 minutes); *Hatfield,* supra (affirming conviction for

disorderly conduct where defendant engaged in course of verbally abusive and irate conduct toward police officers); *Smith,* supra (finding defendant violated disorderly conduct ordinance where she was upset and repeatedly directed abusive profane epithets toward police officer during after hours inspection in tavern owned by defendant); *Davis,* supra (finding defendant guilty of violating Columbus disorderly conduct ordinance where defendant appeared intoxicated, was belligerent, and directed offensive and insulting language at police personnel in a public place).

2. Public Transportation System Vehicle

{¶21} Defendant next contends the prosecution failed to present any proof that the bus on which his alleged misconduct occurred was a "public transportation system" vehicle as defined by law.

{¶22} Columbus City Code 2317.41(N) defines a "public transportation system" as "a county transit system operated in accordance with Sections 306.01 to 306.14 of the Revised Code, a regional transit authority operated in accordance with Sections 306.30 to 306.71 of the Revised Code, or a regional transit commission operated in accordance with Sections 306.80 to 306.90 of the Revised Code."

{¶23} R.C. 306.31 provides, in pertinent part, that a "regional transit authority" is a body corporate "comprised of the territory of one, or two or more counties, municipal corporations, townships, or any combination thereof" created for the purpose of operating transit facilities. A "transit facility" includes a "street railway, motor bus, * * * or other ground or water transportation having as its primary purpose the regularly scheduled

mass movement of passengers between locations within the territorial boundaries of a regional transit authority." R.C. 306.30(A).

{¶24} When viewed in a light most favorable to the prosecution, the evidence is sufficient to support a finding that the bus on which defendant's misconduct took place was a "public transportation system" vehicle as defined in Columbus City Code 2317.41(N). The prosecution presented evidence that defendant's misconduct occurred on a bus operated by the Central Ohio Transit Authority ("COTA"). The use of "Central Ohio" and "Transit Authority" in COTA's name, together with Whatley's testimony that he was employed by and drove the bus for COTA in the city of Columbus in Franklin County, constitutes evidence that COTA operates buses in one or more counties, municipal corporations, or townships, and therefore is a "regional transit authority," as provided in R.C. 306.31. Whatley's testimony that the COTA bus picked up and dropped off multiple fare-paying passengers at various designated bus stops and shelters located within the city of Columbus and Franklin County, constitutes evidence that the bus was a "transit facility" vehicle, as provided in R.C. 306.30(A).

{¶25} While the prosecution could have presented more definitive evidence, the evidence it presented at trial is competent evidence that COTA is a "regional transit authority" that operated the "transit facility" vehicle on which defendant's misconduct occurred. Accordingly, a rational trier of fact properly could have found that defendant's conduct occurred on a "public transportation system" vehicle as defined in Columbus City Code 2317.41(N).

B. Manifest Weight of the Evidence

{¶26} Defendant's appeal also challenges the weight of the evidence supporting his conviction. Unlike a challenge to the sufficiency of the evidence, which attacks the adequacy of the evidence presented, a challenge to the manifest weight of the evidence attacks the credibility of the evidence presented. *Thompkins* at 387. In a manifest-weight challenge, the reviewing court independently reviews "the entire record, weighs the evidence and all reasonable inferences, considers the credibility of witnesses and determines whether in resolving conflicts in the evidence," the trier of fact "clearly lost its way and created such a manifest miscarriage of justice that the conviction must be reversed and a new trial ordered." Id. "The discretionary power to grant a new trial should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." Id.

{¶27} In his appeal, defendant does not explain how his conviction is against the weight of the evidence. Instead, he merely suggests insufficient evidence exists, a contention we considered and rejected. We nonetheless have reviewed the record and weighed the evidence and all reasonable inferences. The testimony of the state's witnesses, COTA bus driver Whatley and Columbus Police Officer Viduya, was undisputed, and cross-examination did not so undermine the prosecution's evidence that a reasonable trier of fact could not accept it as true. Accordingly, our review reveals no basis for defendant's manifest weight argument.

{¶28} As both sufficient evidence and the manifest weight of the evidence support defendant's conviction, we cannot say the trial court lost its way in finding defendant guilty

of misconduct involving a public transportation system. Defendant's first assignment of error is overruled.

IV. Second Assignment of Error – Jurisdiction of Municipal Court to Render Judgment Against Defendant

{¶29} In his second assignment of error, defendant contends the municipal court lacked subject matter jurisdiction to enforce Columbus City Code 2317.41(J)(2) against him because (1) a municipal ordinance cannot be enforced against conduct that occurs outside the municipality's territorial limits and (2) the prosecution failed to prove that defendant engaged in the complained of misconduct while he was within the city of Columbus.

{¶30} To the extent defendant challenges for the first time on appeal the trial court's subject matter jurisdiction, we address his argument because "issues concerning subject matter jurisdiction are not waived and will be considered by a reviewing court, even if objections to the jurisdiction of the subject matter have not been raised in the trial court." *Columbus v. Spingola* (2001), 144 Ohio App.3d 76, 79, n.1.

{¶31} "[M]unicipal courts are statutorily created, R.C. 1901.01, and their subject-matter jurisdiction is set by statute." *Cheap Escape Co., Inc. v. Haddox, L.L.C.,* 120 Ohio St.3d 493, 2008-Ohio-6323, ¶7. " 'Subject-matter jurisdiction of a court connotes the power to hear and decide a case upon its merits' and 'defines the competency of a court to render a valid judgment in a particular action.' " Id. at ¶6, quoting *Morrison v. Steiner* (1972), 32 Ohio St.2d 86, 87. With regard to criminal matters, R.C. 1901.20(A)(1) provides that a municipal court has subject-matter jurisdiction "of the violation of any ordinance of any municipal corporation *within its territory* * * * and of the violation of any

misdemeanor committed *within the limits of its territory*." (Emphasis added.) See *Cheap Escape* at ¶18. The territorial jurisdiction of the Franklin County Municipal Court extends to all of Franklin County. R.C. 1901.02; *Spingola* at 80. Because the instant case involved an alleged misdemeanor violation of a municipal ordinance of the city of Columbus, which is located within Franklin County, the municipal court properly had subject matter jurisdiction to hear and decide the charge against defendant.

{¶32} Defendant is correct, however, that a city cannot regulate conduct outside its boundaries, except as explicitly authorized by law. Section 3, Article XVIII of the Ohio Constitution; see, e.g., R.C. 715.50 (granting power to municipalities to regulate and police municipal property that lies outside a municipality's territorial limits). Thus, the municipal court would lack jurisdiction in this case to enforce Columbus City Code 2317.41(J)(2) against defendant if his conduct giving rise to the alleged misdemeanor violation of the municipal ordinance occurred entirely outside the territorial limits of Columbus. See *Pepper Pike v. Garson* (1997), 117 Ohio App.3d 473, appeal not allowed, 78 Ohio St.3d 1512 (concluding a municipal court lacks jurisdiction to hear charge of disorderly conduct in violation of a municipal ordinance for conduct that occurred "wholly" within a *different* municipality).

{¶33} Here, upon examining the facts and circumstances in a light most favorable to the prosecution, a rational trier of fact could have found beyond a reasonable doubt that defendant's criminal conduct occurred in Columbus, Ohio. Whatley testified that defendant's insulting, taunting, and challenging behavior began when he entered the COTA bus at Champion and Broad Streets located in Columbus in Franklin County, and

his insulting, taunting, and challenging conduct continued for approximately 25 minutes, culminating when two Columbus police officers removed defendant from the bus and a third Columbus police officer issued defendant a misconduct citation. Although defendant argues the evidence does not establish his misconduct occurred wholly within the Columbus city limits, nothing in the statute suggests the conduct must occur wholly within the city of Columbus. As long as some of the objectionable conduct, even if not all, occurred within the Columbus city limits, the statute governs the conduct so occurring. Cf. *Pepper Pike*. Indeed, to suggest otherwise would leave no jurisdiction with the power to regulate defendant's conduct, as in no jurisdiction would all of the conduct have occurred.

{¶34} The uncontroverted evidence demonstrates that defendant's misconduct began and continued within the territorial limits of Columbus in Franklin County, even if at the end of the incident the bus was outside the city limits. The municipal court thus had jurisdiction to enter judgment against defendant for a misdemeanor violation of Columbus City Code 2317.41(J)(2). Defendant's second assignment of error is overruled.

V. Third Assignment of Error – Validity of Columbus Ordinance

{¶35} In his third assignment of error, defendant asserts the City of Columbus lacks the power and authority to adopt and enforce an ordinance purporting to regulate conduct occurring on vehicles belonging to a regional transit authority such as COTA. Defendant contends the regulation and control of conduct on a regional transit system is within the sole authority of both the state and the regional transit system itself in the exercise of powers the state granted to it.

{¶36} The power of municipalities to adopt and enforce ordinances regulating conduct is derived directly from the Ohio Constitution. Specifically, Section 3, Article XVIII of the Ohio Constitution, commonly referred to as the Home Rule Amendment, grants municipalities primary "authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws." See *W. Jefferson v. Robinson* (1965), 1 Ohio St.2d 113, paragraph one of the syllabus; *Fondessy Ent., Inc. v. City of Oregon* (1986), 23 Ohio St.3d 213, 215. The constitutional authority conferred upon municipalities to adopt and enforce local ordinances proscribing unlawful conduct is limited only by general state statutes that conflict with such local regulations. Id., paragraph one of the syllabus, approving and following *Akron v. Scalera* (1939), 135 Ohio St. 65, paragraph one of the syllabus; *Cincinnati v. Hoffman* (1972), 31 Ohio St.2d 163, 169; *Columbus v. Barr* (1953), 160 Ohio St. 209, 212; *Struthers v. Sokol* (1923), 108 Ohio St. 263, paragraph one of the syllabus.

{¶37} In order for a conflict between a general state statute and a local ordinance to arise, the state statute must positively permit what the ordinance prohibits, or vice versa. *Fondessy,* paragraph two of the syllabus, approving and following *Sokol,* paragraph two of the syllabus; *Hoffman* at 169. Accordingly, "[t]here can be no conflict unless one authority grants a permit or license to do an act which is forbidden or prohibited by the other." *Sokol* at 268.

{¶38} Defendant asserts that regulating conduct onboard regional transit authorities is not a proper function for municipalities because such regulation is not purely

local but is of regional or statewide interest. He contends the enactment of R.C. 2917.41, which prohibits misconduct on a public transportation system, preempts the Columbus ordinance in question because it is directed at the same subject. According to defendant, the state did not intend for misconduct of the type defendant allegedly committed here to be subject to punishment as a criminal act, because the state statute is more narrowly drafted than the city's ordinance and does not set forth any prohibition with respect to "insulting, taunting, or challenging another" person under circumstances likely to provoke a violent response.

{¶39} Defendant correctly observes that Columbus City Code 2317.41(J)(2) and R.C. 2917.41 are both directed at the same subject: misconduct involving a public transportation vehicle. Indeed, the Columbus ordinance incorporates and declares unlawful all the conduct declared unlawful in the state statute, see R.C. 2917.41(A) - (E). The Columbus ordinance, however, also declares unlawful additional specific acts which are not declared unlawful, or even referred to, in the state statute.

{¶40} A police ordinance is not in conflict with a general law upon the same subject merely because certain specific acts the ordinance declares unlawful are not referred to in the general law. *Sokol,* paragraph three of the syllabus; *Barr* at 214-15; *Spingola* at 80-81 (affirming validity of city's ethnic intimidation ordinance that was more expansive than state ethnic intimidation statute). Accordingly, although Columbus City Code 2317.41 declares unlawful several specific types of conduct that are not referred to or declared unlawful in R.C. 2917.41, no conflict between the ordinance and the statute is created. Id.

{¶41} Defendant also argues a conflict exists between the Columbus ordinance and the state statute because of differences in the penalty for the same misconduct, both in the degree of misdemeanor offense involved and the imposition of fines. Compare Columbus City Code 2317.41 (designating a violation to be a first-degree misdemeanor and not providing for fines) and R.C. 2917.17 (creating varying degrees of misdemeanor offenses and the possibility of fines). A municipal ordinance, however, does not conflict with a state statute because different penalties are provided for the same acts, even if the municipal ordinance imposes greater penalties. *Toledo v. Best* (1961), 172 Ohio St. 371, at syllabus; *Sokol,* paragraph three of the syllabus; *Cleveland Hts. v. Wood* (1995), 107 Ohio App.3d 616.

{¶42} In sum, the Columbus ordinance does not permit what the state forbids; nor does it prohibit what the state statute expressly allows. *Fondessy; Hoffman; Sokol; Spingola.* "Where state and local regulations concerning unlawful conduct do not conflict, the state and municipality have concurrent authority under the police power to enforce their respective directives inside the corporate limits of the city." *Weir v. Rimmelin* (1984), 15 Ohio St.3d 55, syllabus. Accordingly, because R.C. 2917.41 and Columbus City Code 2317.41 do not conflict, the state statute and the municipal ordinance have the same force and effect, and both are enforceable, within the Columbus city limits. Id. at 58; *Spingola* at 81.

{¶43} Defendant argues further that municipalities, such as the city of Columbus, cannot regulate or control conduct onboard a regional transit vehicle. According to defendant, because the state has created a statutory framework in R.C. Chapter 306

granting regional transit authorities status as independent political subdivisions of the state with their own rule-making and enforcement powers, they are free of local regulation and control. See R.C. 306.31 (providing that a regional transit authority created under the statute is a "political subdivision of the state"); R.C. 306.35(D)(2) (granting a regional transit authority the power to adopt rules for the protection and preservation of life, property and good order on transit vehicles); R.C. 306.35(D)(4) (providing no person shall violate a rule so established); and R.C. 306.35(Y) (granting a regional transit authority the power to provide for and maintain its own police department).

{¶44} Although the state has granted regional transit authorities, such as COTA, the power to regulate conduct on their transit vehicles, nothing in R.C. Chapter 306, which creates and sets forth the powers of regional transit authorities, suggests a regional transit authority's police power is exclusive or preempts municipal regulation of conduct on transit vehicles. To the contrary, R.C. 306.35, which grants police power to regional transit authorities, specifically provides that "regional transit authority police officers shall have the power and duty * * * to *enforce all laws of the state and ordinances and regulations of political subdivisions in which the transit authority operates*." (Emphasis added.) R.C. 306.35(Y). The plain language of the provision indicates a legislative intent that both state and municipal regulations are enforceable with regard to unlawful conduct on regional transit authority vehicles operating within a respective municipality.

{¶45} Furthermore, contrary to defendant's contention, the Columbus ordinance in question does not regulate or govern a regional transit authority itself or the operations or agents of a regional transit authority. The ordinance simply prohibits citizens from

engaging in certain types of misconduct while riding on a public transportation system vehicle. The cases defendant cites to support his argument are not instructive because they do not involve enforcement of a local police regulation, the subject here. See *Village of Willoughby Hills v. Bd. of Park Commrs.* (1965), 3 Ohio St.2d 49 (concluding a municipality cannot tax state owned golf course); *Cupps v. Toledo* (1959), 170 Ohio St. 144 (deciding a city cannot regulate the jurisdiction of courts established by state law); *Schultz v. Upper Arlington* (1950), 88 Ohio App. 281 (determining municipal voters cannot vote to annex land located outside the muncipal territory).

{¶46} Here, as expressly allowed under R.C. 306.35(Y), Officer Viduya, while acting as a Columbus police officer and assigned to special duty as a COTA police officer, issued the citation to defendant charging him with misconduct on a COTA bus in violation of Columbus City Code 2317.41(J)(2). Because the Columbus ordinance does not conflict with R.C. 2917.41 or the statutes in R.C. Chapter 306 that create regional transit authorities and grant them a police power to regulate conduct on their vehicles, the Columbus ordinance is valid and enforceable against defendant in this case. Defendant's third assignment of error is accordingly overruled.

{¶47} Having overruled each of defendant's assignments of error, we affirm the judgment of the trial court.

Judgment affirmed.

KLATT and McGRATH, JJ., concur.

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