



evasion is conducted *before* a passenger is stopped and questioned. RTA's policy requires RTA law enforcement officers, decorated in the color of law, to stop passengers without having reasonable articulable suspicion that the crime of fare evasion has been committed. Mere presence on the bus, or having been a passenger, is insufficient evidence to stop *all* passengers on a particular bus or rapid train for investigation of fare evasion.

The court further recognizes the challenges of fare enforcement given the payment of fare process on particular routes. However, RTA's interest in policing its fare enforcement policy cannot supersede the guarantees of the United States and Ohio Constitutions. The Fourth Amendment to the Constitution guarantees "the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures."<sup>1</sup> It does not allow the government's interest of ensuring payment of fare to outweigh an individual's constitutional right to be undisturbed. The seminal case, *Terry v. Ohio*<sup>2</sup>, which arose in the City of Cleveland, assured individuals' rights to be free from unreasonable governmental intrusion. Additionally, it established the standard for law enforcement to legally encounter individuals.<sup>3</sup> Fare enforcement and the protection of individual rights must be appropriately balanced within the confines of the Constitution. Passengers should be left alone, in their private thoughts and spaces, as they travel to their destinations, until individualized, reasonable, articulable suspicion establishes that a specific passenger has committed the offense of fare evasion.

## FACTS

This case is before the court on a ruling for evasion of fare in violation of Cleveland Codified Ordinance § 605.11 Misconduct Involving a Public Transportation System, which

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<sup>1</sup> U.S. Const. Amend. IV.

<sup>2</sup> *Terry v. Ohio*, 392 U.S. 1 (1968).

<sup>3</sup> *Id.*

states in pertinent part, “No person shall evade the payment of the known fares of a public transportation system.”

On July 13, 2017, two RTA law enforcement officers, in full uniform, boarded the RTA HealthLine bus. The officers approached *every* passenger and demanded they show their fare cards. One of the officers testified that usually, passengers purchase a pass before boarding the HealthLine bus. He did not observe the defendant, Ronnie Williams (“Defendant”), board the bus.<sup>4</sup> When the officer stopped Defendant, he failed to produce a fare card and stated he did not buy one. At that point, the officer “pulled”<sup>5</sup> him off the coach. Once off the bus, the officer issued him a citation for fare evasion,<sup>6</sup> in violation of Cleveland Codified Ordinance § 605.11 Misconduct Involving a Public Transportation System.

The Defendant, *pro se*, testified that he boarded the RTA HealthLine bus route at the Superior and Euclid bus stop. He further stated that the fare card machine malfunctioned, and he was unable to purchase a fare card. As a result, he testified that he paid by cash when he boarded the bus.

In its post-trial brief, the City of Cleveland (“City”) argued that Defendant should be found guilty of Misconduct on Public Transportation “because Defendant did not produce a fare card when prompted by a fare enforcement officer on a proof of payment line” and that “his escape or avoidance of payment and/or retention of fare constitutes evasion of fare.”<sup>7</sup> In its *amicus curiae* brief, the Public Defender argued that the absence of having a fare card is insufficient evidence to find Defendant guilty of fare evasion because no evidence showed that

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<sup>4</sup> T.R. 7:24.

<sup>5</sup> *Id.* at 8:9.

<sup>6</sup> *Id.* at 7-8.

<sup>7</sup> *see* City’s Post Trial Brief, p. 9.

Defendant acted recklessly by deceiving or eluding payment.<sup>8</sup> Also, the court raised the concern on the constitutionality of the stop and asked the attorneys to brief the issue. No objection was made regarding the constitutional review.

The issues before this court first and foremost are the manner in which the payment of fare is enforced, and secondly, whether Defendant's failure to produce a fare card to ride the RTA HealthLine bus is sufficient for a finding of guilty in violation of C.C.O. § 605.11(a).

### LAW AND ARGUMENT:

#### **A. ENFORCEMENT OF RTA'S POLICY VIOLATES THE FOURTH AMENDMENT TO THE UNITED STATES CONSTITUTION.**

Ohio courts recognize that they are the leaders in administering justice in its response to the rights and interests of the prosecution, the accused, and victims.<sup>9</sup> Therefore, trial courts have the inherent power to regulate the practice before it," and therefore, may raise issues *sua sponte*.<sup>10</sup> This court recognizes the long standing constitutional avoidance doctrine.<sup>11</sup> This doctrine applies to constitutional challenges to legislative enactments. This court's concern is not regarding a legislative enactment, but rather the fare enforcement practice which results in countless Fourth Amendment violations to RTA passengers daily. Constitutional reviews are not only for defendants, but more importantly for law-abiding individuals whose rights are violated, but not subject to review, because no criminal charges are brought.<sup>12</sup> Consequently, this questionable practice can continue endlessly, especially on low level criminal cases where

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<sup>8</sup> See Memorandum of Amicus Curiae Cuyahoga County Public, p. 5.

<sup>9</sup> *State v. Apanovitch*, 2016-Ohio-2831 ¶ 53 (Ohio Ct. App., Cuyahoga County May 5, 2016), citing *State v. Busch*, 76 Ohio St.3d 613, 615 (1996); see also *State v. Hollins*, 2016 WL 4480654, 2016-Ohio-5521at P16, citing *State v. Busch*, 76 Ohio St.3d 613 at 615.

<sup>10</sup> *Id.*

<sup>11</sup> *First Merit Bank v. Gower*, 2012 WL 690292, 2012-Ohio-833 citing *State ex rel. Purdy v. Clermont Cty Board of Elections* 77 Ohio St. 3d 331,345 (Ohio 1997), quoting *State v. Dorso* 4 Ohio St. 3d 60,61(1983).

<sup>12</sup> See *Ker v. California*, 374 U.S. 23, 33 (1963) ("While the language of the Amendment is "general," it "forbids every search that is unreasonable; it protects all, those suspected or known to be offenders as well as the innocent").

defendants are *pro se* and unlikely to raise a constitutional violation. Also, the fare enforcement practice is not conducted by a single, random officer in an isolated incident, but by an entire police force (RTA) that confronts countless passengers, paid and unpaid, daily. Review of this practice by the court is necessary because this practice is a systemic attempt to arbitrarily “police” passengers and infringes upon their Fourth Amendment rights.

A law enforcement officer must have a reasonable articulable suspicion to stop passengers. The Fourth Amendment to the United States Constitution, as applied by the States through the Fourteenth Amendment, and Section 10 of the Ohio Constitution, provides for “the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures . . .”<sup>13</sup> It protects citizens from unreasonable searches and seizures by government actors.<sup>14</sup> At its core, it protects individuals from arbitrary police intrusions.<sup>15</sup> Every individual has the right to the control of their own person, “free from all restraint or interference of others, unless by clear and unquestionable authority of law.”<sup>16</sup>

A seizure occurs whenever a police officer, by physical force or authority, restrains a person’s freedom to walk away.<sup>17</sup> This police action constitutes a serious intrusion upon one’s being.<sup>18</sup> Even when a stop is brief for purposes of questioning, the intrusiveness constitutes a seizure under the Fourth Amendment.<sup>19</sup> Moreover, when determining the constitutionality of a seizure, the trier of fact must determine the kind of stop.

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<sup>13</sup> *City of Cleveland v. Buford*, 2016 Ohio Misc. LEXIS 142, 65 N.E.3d 335, citing *State v. Mays*, 119 Ohio St.3d 406, 408 (Ohio 2008), citing *State v. Orr*, 91 Ohio St.3d 389, 391 (Ohio 2001); see U.S. Const. Amend. IV.

<sup>14</sup> U.S. Const. Amend. IV; see Ohio Const. Art. I § 14; see also *United States v. Mendenhall*, 446 U.S. 544 (1980).

<sup>15</sup> *State v. Castagnola*, 145 Ohio St. 3d 1, 8-9 (Ohio 2015), citing *Wolf v. Colorado*, 338 U.S. 25, 27 (1949), overruled on other grounds; see also *Mapp v. Ohio*, 367 U.S. 643, 650 (1961) (security of a person’s privacy is implicit in the concept of ordered liberty as enforced against the States through the Due Process Clause).

<sup>16</sup> *Terry v. Ohio*, 392 U.S. 1, 9 (1968).

<sup>17</sup> *Terry*, 392 U.S. 1 at 16; see *United States v. Mendenhall*, 446 U.S. 544, 552 (1980).

<sup>18</sup> *Id.*

<sup>19</sup> *Kolender v. Lawson*, 461 U.S. 352, 364 (1983), Justice Brennan concurring, citing *Terry*, 392 U.S. 1 at 16.

seizure under the Fourth Amendment.<sup>19</sup> Moreover, when determining the constitutionality of a seizure, the trier of fact must determine the kind of stop.

It is well established that there are three acceptable stops by law enforcement: (1) Consensual encounters, (2) *Terry* investigatory stops, and (3) arrests. A consensual encounter occurs where a reasonable person would think they are able to leave and terminate the situation.<sup>20</sup> A valid warrantless investigatory stop occurs where a police officer has a reasonable suspicion that the defendant is, or has been, involved in criminal activity, which is imminent or in-progress.<sup>21</sup> A valid arrest occurs where an officer has probable cause that the defendant is involved in criminal activity.<sup>22</sup> The facts here require analysis for consensual and investigatory stops.

In the present case, the RTA police seized Defendant and *every* passenger on the bus. Pursuant to R.C. § 109.71, RTA police officers are peace officers, who are “member[s] of a police force employed by a regional transit authority under division (Y) of section 306.35 of the Revised Code.”<sup>23</sup> RTA police have the authority to protect passengers, enforce all laws of Ohio and ordinances of the Greater Cleveland area, and arrest.<sup>24</sup> The RTA officer, by his authority, restrained Defendant’s freedom to walk away from the scene, or be undisturbed on the bus, when he requested Defendant’s proof of payment. Not only did the officer restrain his freedom to walk away, but, he also “pulled him”<sup>25</sup> off of the bus. The City mischaracterized the law enforcement officer as a “fare enforcement officer.”<sup>26</sup> This mischaracterization is significant because mere fare enforcement officers would not invoke Fourth Amendment protection. As a matter of fact, if

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<sup>19</sup> *Kolender v. Lawson*, 461 U.S. 352, 364 (1983), Justice Brennan concurring, citing *Terry*, 392 U.S. 1 at 16.

<sup>20</sup> *Mendenhall*, 446 U.S. 544 at 554-555.

<sup>21</sup> *Terry*, 392 U.S. 1 at 21; *State v. Bobo*, 37 Ohio St. 3d 177, 178 (Ohio 1988).

<sup>22</sup> *Terry*, 392 U.S. 1 at 10.

<sup>23</sup> See also R.C. 2935.01(B).

<sup>24</sup> See R.C. 306.35(Y).

<sup>25</sup> T.R. p. 8:9.

<sup>26</sup> City’s Post-Trial Brief, p. 3, 9.

RTA utilized non-law enforcement officers, a constitutional analysis would be unnecessary. The utilization of police officers inappropriately removes the “middleman” or buffer between police and passengers. There must be an intermediary between police and passengers to prevent arbitrary and abusive police encounters. Passengers should only encounter police once reasonable articulable suspicion is established.

In essence, the RTA officers commandeered the bus when they entered and demanded that *everyone* produce their proof of fare. This stop does not fall within the scope of a consensual stop because a reasonable person, in Defendant’s position, would not think they were free to leave, or terminate the encounter, especially where police officers, in full uniform, as opposed to civilian RTA personnel, conducted the stop. Very few people feel free not to cooperate with the police by refusing to answer their questions because of their level of authority.<sup>27</sup> This is especially true in light of the presence of having not one, but two, law enforcement officers in full uniform aboard an enclosed bus, which has limited egress.

A constitutional investigatory stop occurs where an officer has reasonable articulable facts that a crime is imminent or has been committed.<sup>28</sup> An officer’s failure to articulate specific facts of a crime as the basis for stopping a defendant results in an unreasonable seizure.<sup>29</sup> Reasonable suspicion is more than a mere hunch or intuition.<sup>30</sup> The standard for evaluating specific and articulable facts is an objective test, in which a court must determine whether the

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<sup>27</sup> *Kolender*, 461 U.S. 352 at 364.

<sup>28</sup> *City of Cleveland v. Bluhm*, 37 N.E.3d 831, 833, 2015 Ohio Misc. LEXIS 161, citing *State v. Slider*, 11th Dist. No. 2007-P-0096, 2008-Ohio-2318, 2008 WL 2042828 (2008); *City of Cleveland v. Machnics*, 984 N.E.2d 1129, 1131, 2012 Ohio Misc. LEXIS 241 at \*2; *City of Cleveland v. Buford*, 2016 Ohio Misc. LEXIS 142, 65 N.E.3d 335 *see also Terry*, 392 U.S. 1 at 21.

<sup>29</sup> *Terry*, 392 U.S. 1 at 21.

<sup>30</sup> *Bluhm*, 37 N.E.3d 831 at 833, citing *Terry*, 392 U.S. 1 at 22.; *see Machnics*, 984 N.E.2d 1129 at 1131.

facts available to the officer at the time of the seizure warrant a reasonable person to believe that the action taken was appropriate.<sup>31</sup>

At the time of Defendant's seizure, the officer merely knew that the Defendant was a passenger on the HealthLine.<sup>32</sup> He did not observe the defendant board the bus.<sup>33</sup> He simply stated that he stopped the Defendant pursuant to RTA's fare enforcement policy. A reasonable person, with knowledge that Defendant was merely a passenger, cannot reasonably believe that the fare enforcement policy of stopping *all* passengers is appropriate. Consequently, once aboard the bus, one must presume payment has been made, unless there is evidence to the contrary.

However, the officer testified that RTA's method to ascertain whether a potential offender evaded fare is to request proof of payment from passengers *after* they have already entered the bus. Since the officer didn't observe Defendant get on the bus, he had no reasonable articulable facts to justify an investigatory encounter with Defendant. Defendant's "mere presence" on the bus is insufficient to support a reasonable suspicion of criminal conduct that would justify such an invasive intrusion and constitute a reasonable stop under the Fourth Amendment.<sup>34</sup> If a passenger's "mere presence" is enough to subject him to a search and/or seizure, then this practice, for all practical purposes, allows law enforcement to conduct a "fishing expedition".<sup>35</sup> If this practice is left unchecked by the judiciary, then passengers may be subject to arbitrary and abusive police conduct.

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<sup>31</sup> *Bobo*, 37 Ohio St.3d 177 at 179; see *Terry*, 392 U.S. 1 at 22.

<sup>32</sup> T.R. p. 6:19-22.

<sup>33</sup> *Id.* at 7: 24-25.

<sup>34</sup> Compare *State v. Locklear*, 2008-Ohio-4247, 2008 WL 3870613 at P29 (8th Dist. 2008) ("Acts that are essentially neutral or ambiguous do not become specifically criminal in character because they occur in a high-crime area); See also *State v. Vaughn*, 2008-Ohio-4585 at P14 (8th. Dist. 2008), citing *Florida v. J.L.*, 529 U.S. 266, 268 (2000) (reasoning that an accurate description of a subject's readily observable location...is reliable as a reasonable suspicion in this limited sense where there is a reliable tip reporting criminal conduct).

<sup>35</sup> *State v. Calimeno*, 2013-Ohio-1177, 2013 WL 1279744 at P39, citing *State v. Dieckhoner*, 8th Dist. No. 96694, 2012-Ohio-805, ¶ 13 ("The lawfulness of the initial stop will not support a 'fishing expedition' for evidence of crime").



Certainly, if the defendant's presence was in a restricted or prohibited area, then mere presence in such an area could create reasonable articulable suspicion. Since the defendant and all passengers have a presumed legal right to be on the bus, they cannot all be treated like suspects and be required by law enforcement to demonstrate their right to be on the bus by presentment of their fare cards. Passengers should not have to prove to law enforcement their right to be on the bus. In short, passengers should not be required to prove they did not violate the fare enforcement policy. Instead, law enforcement must independently articulate why a specific passenger is illegally on the bus *before* they investigate. Once aboard the bus, there is a presumption that each passenger is legally present unless the officer rebuts that presumption with reasonable articulable suspicion that a passenger has failed to pay. At that point, the officer can stop that specific passenger, while allowing all other passengers to enjoy their rights to be left alone.

RTA's interest to ensure payment of fare by all passengers cannot be at the expense of individuals' constitutional right to be free from unreasonable government intrusion. In the United States Supreme Court case, *Brown v. Texas*,<sup>36</sup> an officer stopped and ordered Mr. Brown to show his identification. Pursuant to a statute, individuals were required to produce identification upon demand.<sup>37</sup> However, the Court found that the presentment of identification was required once a person was *lawfully stopped*.<sup>38</sup> Brown was stopped because he looked suspicious and the officer had not seen him in the area before.<sup>39</sup> The Court determined that when the officers detained Brown for the purpose of requiring him to identify himself, they performed a seizure of his

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<sup>36</sup> *Brown v. Texas*, 443 U.S. 47 (1979).

<sup>37</sup> *Id.* at 49.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

person subject to the requirements of the Fourth Amendment.<sup>40</sup> Consequently, the intrusion was unreasonable and produced “the risk of arbitrary and abusive police practices [that] exceed tolerable limits.”<sup>41</sup>

The present case is analogous to *Brown* because both cases involved the police stopping individuals and requiring them to produce documents. In *Brown*, the officer demanded he show his identification and here, the RTA officer demanded the Defendant show his fare card. Also, in both cases, the officers failed to articulate facts to support an inference that the defendants engaged in criminal activity to justify their stops. So, as in *Brown*, this court finds the officer violated the Defendant’s Fourth Amendment right.

Recalling *City of Cleveland v. Gregory Fowler*,<sup>42</sup> Mr. Fowler was charged with disorderly conduct because of his reaction to the RTA officer stopping and detaining him. Mr. Fowler testified that when he showed the RTA officer his monthly pass as requested, the officer did not allow him to walk away.<sup>43</sup> He stated he got upset because the officer further detained him and stated he was “still investigating”.<sup>44</sup> Mr. Fowler further testified that it took him over two hours to get home from work.<sup>45</sup> Additionally, he stated that he told the officer he cleaned “shit all day”<sup>46</sup> and felt he should not have to take this “shit” (meaning the stop by the police) to get home.<sup>47</sup> In short, his travel on the bus was exhausting, he had paid his fare and should have been undisturbed. Mr. Fowler’s statement is significant because it demonstrates the impact these fare enforcement stops have on RTA passengers. These routine seizures of passengers by RTA law

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<sup>40</sup> *Id.* at 50.

<sup>41</sup> *Id.*

<sup>42</sup> 2011 CRB 041077.

<sup>43</sup> *Id.* at 6, 10.

<sup>44</sup> *Id.* at 10: 17-18.

<sup>45</sup> *Id.* at 11.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.* at 12.

enforcement officers are unconstitutional. Consequently, the charge against the Defendant is dismissed.

**B. EVASION**

Since the initial stop of Defendant was unconstitutional, the case is dismissed, and the issue of fare evasion is moot.

**C. CONCLUSION**

RTA's fare enforcement policy is unconstitutional. It encourages law enforcement officers to perform investigatory stops of passengers without possessing reasonable, articulable facts that passengers have committed the criminal offense of fare evasion under C.C.O. § 605.11(a). RTA police officers are decorated with the color of law, and therefore, prohibited from such conduct under the Fourth Amendment. RTA's fare enforcement policy encourages arbitrary and abusive police practices.

  
JUDGE EMANUELLA GROVES