

## Never Litigate as a Matter of Principle – Unless, of Course, You’re Being Accused of Speeding on a Bicycle

by Jon Schofield

Last summer, I got a speeding ticket for going 37 mph in a 25-mph zone. So what? Speeding tickets are given out all the time. Right? But I was on my bike. I mean, who gets a speeding ticket on a bicycle? After thinking about it, I began to question whether I was really going that fast, and even if I was, I had a legal argument that the speed limit should not apply to a cyclist. So, I decided to fight my ticket, and, after some time, my case finally went to trial (yes, the wheels of justice seem to turn about as fast as my cadence pedaling up Little Cottonwood Canyon). Here is how it all went down.

My wife and I had just finished an enjoyable early-morning ride in Emigration Canyon. We were on our way home, riding down Wasatch Drive behind the Zoo, when I noticed a motorcycle police officer parked on Michigan Avenue just before Wasatch splits Bonneville Golf Course. Seeing the officer and remembering that a sheriff had recently given some of my friends grief for riding side-by-side (which, by the way, I have learned is not against the law),<sup>1</sup> I slowly accelerated in front of my wife and assumed a single-file position. Within moments after passing the officer, I heard the sound of a revving engine and blaring siren. I was being pulled over. The conversation went something like this:

**Motocop:** You know the same laws apply to bicycles as automobiles?

**Me:** Yes, in fact, I try to be very aware of the traffic laws; I obey traffic signals; I ride on the right side of the road; I yield to traffic,....

**Motocop (who proceeded to pull out his ticket pad and pen):** Well, you were going 37 in a 25. What is your name?

**Me:** You know, it never occurred to me that speeding was an issue; I mean it’s not like a bike can really go that fast.

**Motocop:** Well, you were.

**Me:** Now that I am aware that this is an issue, I’ll be sure to watch the speed limit and be sure I’m in compliance. How about a friendly warning?

**Motocop:** Sorry, I guess you will be more careful next time. What is your name and address?

**Me (in my mind):** This is ridiculous; this guy is just jealous that he has to have a 1690cc motor to go that fast.

**Motocop (in his mind):** I’ll teach this spandex-clad-shaved-legged sissy what it means to be a real biker.

I left with a citation. A few days later, I received a letter from Salt Lake City, notifying me that I would need to pay a \$70 fine or appear in court regarding my “Bicycle Violation.” At the time I was given my ticket, I was so shocked that I didn’t really question whether I was really going that fast (besides arguing with Motocop was going nowhere). But, after pondering the alleged speeding incident, I began to question the whole thing. After all, I was on a leisurely ride with my wife (who, to her credit, is pretty fast, but not that fast), and we were carrying on a

conversation at what seemed to be a leisurely pace when I was allegedly clocked. And why did I get a ticket and my wife didn't (OK, I know she is much better looking than me, but isn't the law supposed to be blind). So, in an effort to save myself \$70, I went to the court to plead my cause. Surely, they would not really make a cyclist, who was doing his part to conserve fuel and save the environment, pay a fine for speeding. Well, the clerk didn't really care, or at least didn't have any authority to care, so I left the courthouse with an appointment for a pre-trial conference at which time I could plead my case to the prosecutor, who would actually have the discretion to recognize that this was a meritless ticket. Or, so I thought.

A few months later, I went to my pretrial hearing and met with the prosecutor. The conversation went something like this:

**Prosecutor:** Why are you here?

**Me:** Well I got a ticket on my bike for going 37 in a 25 and...

**Prosecutor:** Wait, your pedal bike?

**Me:** Yes, crazy huh?

**Prosecutor:** I've never heard of that before.

**Me (in my mind):** Sweet, I'm getting off.

**Prosecutor:** Well, I can cut your fine in half and put you on six months probation.

**Me:** Laughter (out loud).

**Prosecutor:** OK, how about no probation and \$35.

**Me:** This has nothing to do with the money; it's all about the principle. I was on a bike for Pete's sake.

**Prosecutor:** Well, that's the best I can do. Take it or leave it.

So, in the interest of justice, ego, preserving the unalienable natural rights of all cyclists, and having a really good story to tell, I violated the very advice I so often give clients – never litigate as a matter of principle – and told the prosecutor that I'd see them in court.

One thing you have to understand is that not only am I a lawyer, but also I'm a litigator. Because I am a litigator, I actually like going to court. Another thing you should understand is that birds of a feather flock together, and I have lots of lawyer friends who were willing to assist (as you know, no one likes to stoop to befriend or help lawyers, so we're forced to mingle with and assist each other). So, with the encouragement of several of my lawyer friends, I began to prepare for trial.

As with any case, I began assembling my defense team in preparation for the big day. Any lawyer knows that you should never represent yourself, so a long-time friend, former federal prosecutor, and now in-house corporate attorney volunteered to be my defense counsel. I would take the stand and tell my story. My wife would be my corroborating fact witness. Yet, in order to put on a convincing case, we would need more than just a sympathetic story. We would need an expert witness. So, another good friend and cycling partner, who is also a lawyer and a Cat 2 road racer who spends more time on his bike than billing hours, was selected to fill the role of the hired gun.

After my trial date was postponed once on account of Motocop not being able to attend, the big day finally came (remember how slow those pedals turn up Little Cottonwood). When my case was called, I had that feeling of excitement that bike racers get when they line up at the start of the race. I sat at the

defense table next to my sharply-dressed counsel, with my lean-and-mean expert witness and my beautiful wife/fact witness seated behind us. I sized up the competition. Across the aisle at the government's table, sat a young prosecutor maybe a couple years out of law school (who to her credit was also sharply dressed) with Motocop who was wearing his uniform complete with black, shiny knee-high boots. He seemed cocky, but wouldn't be for long. It was as if the other team had lined up with the wrong category. In bike racing standards, they were Cat 5s (not that there's anything wrong with that) who had mistakenly registered in the Pro/1/2 field, and they didn't even know it. I almost felt sorry for them, but not quite.

After brief opening statements, Motocop was called to the stand. He sauntered up, swore to tell the truth, and then proceeded to give his testimony, which included a nicely-drawn diagram and the following facts: (1) he was a cop; (2) he was a traffic cop; (3) he rode a motorcycle; (4) while being a cop on his motorcycle, and while he was purportedly enforcing traffic laws, he radar gunned me riding down Wasatch Drive; and (5) he "clocked" me at 37 mph.

On cross examination, my defense counsel elicited the following facts: (1) Motocop liked his job because he got to wear knee-high leather boots; (2) he liked the show "CHiPs" growing up; (3) he could ride his moto and eat a doughnut simultaneously; and (4) he felt that cyclists riding at 7:00 a.m. on a residential street posed a serious threat to the safety of sleeping citizens and therefore needed some law enforcement. Kidding. If I were defense counsel, these facts would have been on the top of my list. I guess that's why a lawyer should not represent himself. Really, the following key facts came out: (1) in over ten years of handing out tickets, he had given six speeding tickets to bicyclists; (2) he never

received any specific training on how to use a radar gun to clock a bicycle; (3) he was taught to shoot his radar gun at large non-moving reflective surfaces, like a car grill or windshield; (4) he believed he locked the radar on my bike as I was approaching (perhaps he was referring to the profile of my 23 mm tires or 1.5-inch head tube); (5) he did not believe the radar gun clocked the spinning wheels, the spinning cranks, or my moving legs and feet; and (6) he did not recall how fast I was pedaling or whether I was in an aerodynamic position, holding onto the drops of my handlebars.

Next, I was called to the witness stand. My testimony was basically, I'm an innocent man, I do not believe that I was going 37 mph, and similar iterations thereof. Clearly, the glove did not fit.

Our star fact witness was called to the stand. My wife, like me, testified that she didn't believe we were speeding and that we were on a leisurely ride carrying on a conversation while gently pedaling and sitting upright on our hoods in a non-aerodynamic position. When asked how she rated herself as a cyclist, she flipped her hair back and said, "pretty good for a girl" (note from proud husband: not only is she "pretty good for a girl," but she can take it to most guys on the bike). After the trial, the Judge, apparently impressed with my wife, commented that she could most likely drop him. We were not sure if he meant that she could drop him on a bike or just drop him...hmmm. I'll not comment on whether that was an appropriate comment. The fact that it was irrelevant was irrelevant since most of the testimony was bordering on irrelevant.

As our final witness, we called our expert to the stand. Expert on what you ask? Expert on arguably nothing. You see, we opted to employ an oft-used litigation tactic: if you can't beat them on the facts, then confuse and obfuscate. With the confidence of a true hired

gun, my expert testified all about gear ratios, aerodynamics, and bicycle speeds, noting that it is generally very hard for a cyclist to go 37 mph. Indeed, he testified that the fastest time-trialists in the world, who ride time-trial aero bikes, who wear aero helmets and skinsuits, and who generate a lot more watts than me don't sustain speeds in excess of 37 mph. Moreover, even at the Tuesday-night criterium races, where many of the fastest racers in Utah gather at the Rocky Mountain Raceway and sprint all-out in a 53x11 gear cross the finish line at speeds only in the 35-40 mph range. Thus, the "expert" opined that to be going 37 mph at the point in question, a cyclist would likely have to be in the drops and spinning a mean gear at a high cadence.

To the prosecutor's credit, she also made a few good points cross examining my expert. First, when she asked how he knew me (in attempt to show bias), he admitted that we were training partners and use to race together. Then utilizing the opportunity to take a jab at my wife, my expert said "but that was before Jon's wife made him quit racing his bike" (which isn't really true, but is illustrative of the tension that can exist between a man's wife and his riding buddies). Second, the prosecutor asked how fast my expert had traveled on his bicycle. Hearing no objection from defense counsel, my expert simply smiled and said with a bit of the same swagger exhibited by Motocop: "over 55 mph." I'm not sure, but I think Motocop started drooling on the table when he heard that testimony. Good thing my expert wasn't on trial, and, good thing the prosecutor didn't think to ask me that question when I was on the stand.

The evidence was in, but before a ruling was made, the Judge listened to closing arguments. Our argument was this: Utah law simply provides that bicycles may not operate at

speeds greater than reasonable and prudent. See Utah Code Ann. § 41-69-1106(4) (2005). The bike statute contains no specific prohibition that bicycles have to keep the speed limit. The law does state, however, that automobile laws apply to bicycles where "applicable."<sup>2</sup> The law states that an automobile may not be operated at a speed greater than is reasonable and prudent, and then states that the speed limit is prima facie evidence of what is reasonable and prudent. See id. § 41-69-601(1)-(3). Yes, bicycle riders have to stop at stop lights, etc., but obviously don't have to wear a seatbelt, because the seatbelt laws would not be "applicable" to a cyclist. So, we argued that the posted speed limits, just like the seat-belt laws, are not applicable to bicycles, because unlike an automobile (which must have a working speedometer, annual safety inspections, etc.), there is no requirement that a bicycle have a functioning speedometer. Bicycles are only required by law to have working brakes and reflective devices if ridden at night. See Utah Code Ann. § 41-61-1113-1114 (requiring working brakes, lights, and reflectors if used at night). Thus, we argued the speed limit should not be evidence as to what is a reasonable and prudent speed for a bicyclist; rather the cyclist simply should be left to his or her own judgment as to what is a reasonable and prudent speed. Indeed, why would a cyclist exceed what is a reasonable and prudent speed when he or she is essentially wearing nothing but his underwear? Additionally, as an alternative to our policy argument, we argued that based on the trial testimony, there was sufficient reasonable doubt as to whether I was actually going 37 mph.

In the end, the Judge ruled in my favor, determining that we had established reasonable doubt. The Judge said the prosecution had failed to prove its case and that there was some question as to whether I

was actually going 37 mph. The Judge made darn sure, however, that we understood he was not ruling that it's okay for cyclists to speed. It's hard to know what Motocop took away from the trial since he disappeared as soon as the Court said "case dismissed." Either he realized that he never should have given a ticket to a guy on a bike (especially a lawyer on a bike), or he is out for vengeance. So, here is some free legal advice for those of you who like to ride a bike: keep your eyes open and keep your speeds reasonable and prudent (whatever that means). And, if you do ever get a ticket, you'll probably save some time and money by simply paying the citation (but how fun would that be?).

1. Utah Code Section 41-6a-1105(3)(a)-(b) states that "[a] person riding a bicycle...may not ride more than two abreast with another person except on paths or parts of roadways set aside for the exclusive use of bicycles [and]...a person riding two abreast with another person may not impede the normal and reasonable movement of traffic and shall ride within a single lane." Utah Code Ann. § 41-69-1105(3)(a)(b) (2005).

2. Utah Code Section 41-6a-1102(1) states that "a person operating a bicycle...has all the rights and is subject to the provisions of [the Motor Vehicle Act] applicable to the operator of any other vehicle." Id. § 41-60-1102(1).

From the Utah Bar Journal, Vol. 22 No. 4 July/Aug 2009. Information presented in this article, as elsewhere on this website, is NOT legal advice.

