



Crash course

Lessons learned from a bicycle accident

BY WINSTON W. MOODY

The worst bicycle accident of my life happened on a beautiful day in July of 2018. I was riding one of the many spectacular descents the Bay Area has to offer its cycling community: Conzelman Road in the Marin Headlands. Proceeding west from Hawk Hill, Conzelman Road turns into a single lane road with stunning views of the Pacific Ocean.

At the very top of the westward descent there is a yellow warning sign that says “Cyclists Use Extreme Caution. Steep and Winding Road Ahead. CHECK YOUR SPEED.” Below that, another sign indicates it is a one-way road.

Shortly into the descent, I was leaning into a right turn when I saw another cyclist riding toward me from around the corner. As this is a one-way stretch of road, that is not supposed to happen.

To avoid colliding head-on with the other cyclist, I instinctually slammed on my brakes. Although I succeeded in avoiding a collision, I skidded briefly before crashing into the pavement on my right side, fracturing my elbow, badly bruising my hip, and damaging my bike. I was able to hobble to the side of the road to sit on the guard rail, but I was in a lot of pain.

I have replayed this sequence of events in my mind many times, considering how I could have handled the situation differently. In hindsight, I probably would have been able to avoid an accident if I had not applied my brakes. Perhaps ironically, it may have been safer to slip past the oncoming cyclist without slowing down despite the relatively narrow width of the single-lane road. Those are the things that bother me as a cyclist.

Negligence per se and assumption of risk

As a plaintiff’s attorney, it seems obvious that my accident could have been avoided if the rules of the road were obeyed. California Vehicle Code section 21650.1 provides that “A bicycle operated on a roadway, or the shoulder of a highway, shall be operated in the same direction as vehicles are required to be driven upon the roadway.” As section 21650.1 was clearly violated, this appeared to be a case of negligence per se.

However, a review of California case law demonstrates that even clear Vehicle Code violations resulting in injuries to cyclists do not guarantee legal victories for plaintiff cyclists. In *Moser v. Ratinoff* (2003) 105 Cal.App.4th 1211, 1223, an injured cyclist (Moser) sued a fellow cyclist (Ratinoff) for negligence after they collided during an organized but noncompetitive group ride.

The *Moser* Court held that, “Although the facts show that Ratinoff violated provisions of the Vehicle Code designed to

protect persons using public roads, based on our conclusion as to the present state of the law, such violations do not nullify Moser’s assumption of the risk.” (*Id.* at 1226.) Limiting its holding to organized long-distance group bicycle rides on public highways with large numbers of riders, the Court declined to express any opinion as to other forms of recreational cycling like individual bicycle riding on public streets or on bicycle lanes or paths.

Thus, it is unclear how the *Moser* Court would have decided a case like mine, as my accident occurred during an unorganized short-distance ride with a small number of riders. The extent to which such distinctions should matter is debatable. Noting the difficulty in determining whether a given activity is subject to the primary assumption of risk doctrine, the Court of Appeal recently posed the question, “Should an injured cyclist be barred from recovery just because the cycling was competitive, or simply recreational, rather than for transportation?” (*Williams v. County of Sonoma* (2020) 55 Cal.App.5th 125, 130, reh’g denied (Oct. 22, 2020), review denied (Dec. 30, 2020).)

Unfortunately, in my case, issues presented by the assumption of risk doctrine were eclipsed by the fact that I could not identify my defendant. To his credit, he stopped and asked if I was OK after I crashed, but I was in too much shock and pain to respond, let alone ask to take a picture of his driver’s license before he left the scene.

Although it did not lead to the identification of my potential defendant, Strava can be an invaluable source of evidence for attorneys representing cyclists. Strava is an internet service for tracking exercise with social network features, and it is extremely popular among cyclists. As cyclists record and post data from their rides to their Strava feed, Strava can potentially help attorneys find witnesses and evidence to support their client’s claims.

Are bicycles vehicles?

When all else fails, many cycling accidents may give rise to uninsured or underinsured motorist claims under automobile liability insurance policies. Of course, this depends on the policy language and whether any automobiles were involved in the accident.

In *Chong v. California State Automobile Assn.* (1996) 48 Cal.App.4th 285, 287, as modified (Aug. 28, 1996), a pedestrian was crossing a street in a designated crosswalk when she was struck by a cyclist who had run a red light. The cyclist was uninsured, so the pedestrian submitted a claim to her automobile liability insurance carrier, California State Automobile Association (“CSAA”). The pedestrian then sought a declaration from the Superior Court that the uninsured motorist



provisions of her automobile policy provided coverage for her injuries.

Summary judgment was granted in favor of CSAA on the ground that the pedestrian's policy provided coverage for accidents involving "uninsured motor vehicles" and bicycles are not "motor vehicles." On appeal, the pedestrian argued that "motor vehicle" is defined more broadly under Insurance Code section 11580.06 as "any vehicle designed for use principally upon streets and highways and subject to motor vehicle registration under the laws of this state." The Court of Appeal easily rejected this argument and upheld the grant of summary judgment as bicycles are not subject to California motor vehicle registration laws.

The *Chong* Court also held that "a bicycle does not come within the definition of a motor vehicle under the Vehicle Code," which defines "motor vehicle" as "a vehicle that is self-propelled" under section 415. (*Id.* at 288.) However, in another case involving a collision between a pedestrian and a cyclist, the Court of Appeal held that a cyclist can be charged with recklessly driving a "vehicle" under Vehicle Code section 21200. (*Velasquez v. Superior Court* (2014) 227 Cal.App.4th 1471.)

The defendant, Jorge Velasquez, Jr., argued that bicycles are not "vehicles" under Vehicle Code section 670, which provides that a "vehicle" is "a device by which any person or property may be propelled, moved, or drawn upon a highway, *excepting a device moved exclusively by human power* or used exclusively upon stationary rails or tracks." (Emphasis added.) The Court recognized the tension between section 670 and section 21200, which subjects cyclists to "all the provisions applicable to the driver of a vehicle." As section 21200 specifically addresses cyclists, while section 670 only generally defines "vehicle" to exclude bicycles, the Court ruled against Velasquez, holding that the specific statute prevails over the general statute.

As electronic bicycles become more popular and more sophisticated, there may be further blurring of the lines between bicycles, vehicles, and motor vehicles. Vehicle Code section 406 requires every manufacturer of a motorized bicycle to disclose to buyers in 14-point boldface type that their insurance policies may not provide coverage for accidents involving the use of the bicycle.

Conclusion

As cyclists are not required to register bicycles or carry insurance, bicycle accidents can present difficult situations for injured parties seeking compensation. Further complicating matters are the broad spectrum of cycling activities that take place on public roads and the assumption of risk doctrine.

Colliding with a car is always my primary concern when I ride a bike, and hitting a pothole is a close second. However, as my own experience and the cases discussed above force me to admit, cyclists can also present serious dangers not only to other cyclists but also to pedestrians. Accordingly, the yellow sign on Conzelman Road provides sage advice to cyclists – use extreme caution.

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