

After a motor vehicle/bicycle collision, Defendant was charged with violating ORS 811.050, "Failure to yield to rider on bicycle lane." That statute provides, in relevant part, as follows:

(1) A person commits the offense of failure of a motor vehicle operator to yield to a rider on a bicycle lane if the person is operating a motor vehicle and the person does not yield the right of way to a person operating a bicycle * * * upon a bicycle lane.

* * *

(3) The offense described in this section, failure of a motor vehicle operator to yield to a rider on a bicycle lane, is a Class B traffic violation.

The undisputed evidence at trial established that Defendant was driving an automobile eastbound in the southernmost of two eastbound lanes on Southeast Hawthorne Boulevard and made a right-hand (or southbound) turn at the intersection of Hawthorne and Southeast 10th Avenue. As Defendant made her turn, she collided in that intersection with a bicyclist also traveling eastbound on Hawthorne. The bicyclist, Carmen Piekarski, was positioned south of Defendant's vehicle and had been traveling in a marked bicycle lane that runs along Hawthorne from the east end of the Hawthorne Bridge to the intersection of Hawthorne and Southeast 12th Avenue. The street markings for the bicycle lane are discontinuous, however, and there are no markings in the intersection where Defendant and the bicyclist collided. The bicyclist intended to continue forward through that intersection which is unregulated

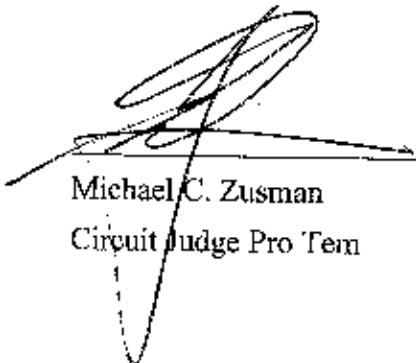
By Defendant's own admission, she made a last-minute decision to turn on 10th and did not check her blind spot before making the turn. It is disputed whether she used her turn signal prior to making her turn. She says she did. Ms. Piekarski and her witness, Mr. Daray (who was traveling on his bicycle in the same direction but somewhat behind Ms. Piekarski) saw no such signal. Other points of dispute that, frankly, have no direct bearing on this decision, but which were the subject of detailed testimony, were (1) whether the signal light at Hawthorne and 11th was red or yellow; (2) whether Ms. Piekarski was traveling at or above 20 miles per hour or at a more modest speed; and (3) whether Defendant hit Ms. Piekarski or *vice versa*. Defendant and Ms. Piekarski also disputed where Ms. Piekarski landed after the collision and what the two said to one another. While these facts may be relevant to an assessment of fault for the collision - a task that is beyond this Court's purview - they do not assist the Court in determining the dispositive issue in this case, namely whether, the bicyclist was riding her bicycle "upon a bicycle lane" when the crash occurred.

Resolution of the question is a matter of statutory construction. Consequently, the Court resorts to the controlling analytical framework set forth in *PGE v. Bureau of Labor and Industries*, 317 Or. 606, 610, 859 P.2d 1143 (1993) by considering the text and context of the statute at issue. "Bicycle lane" is not defined in ORS 811.050 or anywhere in ORS Chapter 811 which generally governs "Rules of the Road for Drivers," including motorists' "Duties to Pedestrians and Bicycles, ORS 811.005-.065. The applicable definition is instead supplied in

ORS Chapter 801, which provides a long list of definitions broadly applicable across the Oregon Vehicle Code. ORS 801.160 provides that "'bicycle lane' means that part of highway, adjacent to the roadway, *designated by official signs or markings* for use by persons riding bicycles except as otherwise provided by law." (Emphasis added).

In light of this definition, plain text statutory construction supports the conclusion that the violation charged here could only be established if the collision occurred in the marked area comprising the bicycle lane along Hawthorne which undisputedly did not occur. Moreover, it is clear from looking at other provisions of ORS chapter 811 that the Legislature generally accords significance to the presence of road markings in assessing the occurrence of various location-specific "rules of the road" violations. In ORS 811.346, governing "misuse of a special left turn lane," the violation can only occur in "a median lane that is marked for left turns by drivers proceeding in opposite directions." Likewise, in ORS 811.370 ("Failure to drive within lane") and ORS 811.380 ("Improper use of center lane on three-lane road"), the predicate for a violation is the existence "clearly marked lanes."

Because Defendant's alleged failure to yield to a bicyclist was in an unmarked portion of the roadway, a required element of the violation charged is absent and Defendant cannot be adjudged liable for the violation. I find Defendant not guilty and this case shall be dismissed.



Michael C. Zusman
Circuit Judge Pro Tem