

FUBAR in OC

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By Rick Bernardi, J.D.

[Road rage](#) is nothing new to cyclists. Sooner or later, every cyclist will be accosted by some driver who is focused on dishing out some abuse, when he (or she) *should be focused* on safely operating their vehicle. And when the vehicle itself is the violent driver's weapon of choice, safely operating the vehicle is the exact opposite of what the driver has in mind.

Most drivers aren't hostile, and many are even courteous and friendly. But still, some drivers are extremely hostile, and they will go out of their way to express their hostility, and even endanger our lives. It's common enough that, as [bicycle accident lawyer Bob Mionske](#) reports, [many cyclists are now riding with video equipment](#).

Now, just to be clear, we aren't talking about drivers who are feeling a little annoyed because [they saw some cyclist break a law](#). We're talking about drivers who become angry simply because of a cyclist's presence on the road—and then acting on that anger. These are the drivers who decide to take the law into their own hands and do something about that cyclist on the road. Never mind that the cyclist is obeying the law. These violent drivers don't care about that. Never mind that the cyclist has a right to be on the road (and may even be prohibited by law from riding anywhere but the road). *These violent drivers don't care what the law says* They think the law is wrong, and they are willing to take the law into their own hands to enforce their own warped ideas about what the law should be.

So they will do things like slow and yell "Get off the road!" as they pass. [They will honk their horn loudly and repeatedly](#). They will tailgate the cyclist while revving their engine. They will buzz the cyclist. They will swerve at the cyclist. They will throw things. They will "[roll coal](#)." They will push (or even pull) the cyclist off the bike. They will pull a "[brake check](#)." They will use [weapons](#). Although we tend to think of road rage as being a violent physical assault, all of these examples are actually varying types and degrees of road rage—and even the ones that start out with something that may seem "harmless" to some people—for example, yelling or buzzing—can quickly turn into [more serious violence](#).

And of course, nothing about road rage is "harmless." Cyclists have been seriously injured in falls that began with the cyclist getting startled by a motorist who attempted to scare them. And if a cyclist falls while being buzzed, the cyclist will likely be hit by the driver that was doing the buzzing. It's virtually certain that some "accidental" deaths began with a buzz, but with the only witness now dead, who is going to tell what really happened?

The driver who buzzed and killed him? So no, these road rage incidents are not just ["harmless" fun](#). They are serious, unprovoked assaults, and need to be taken seriously.

So it's reasonable to expect that [when Bryan Larsen was assaulted while riding his bike on the Pacific Coast Highway](#) (aka "the PCH"), our law enforcement and criminal justice system would take the assault seriously and make sure that a message was sent to other would-be assailants that there are consequences for assault. And yet the response from our law enforcement and criminal justice system was quite different from what reasonable people would expect. In fact, it was the exact opposite of what reasonable people would expect.

But then again, they say that truth is stranger than fiction. Maybe it is, because this strange, Kafkaesque tale is not fiction. It really happened, and is still unfolding at this moment.

It began with a ride on May 31st, a Saturday. Bryan Larsen and a friend were on the PCH in southern Orange County, California. [As Larsen recounted](#), traffic was bad, and the two cyclists kept leapfrogging the vehicles stuck in traffic, including a pick-up truck. And before too long, they began noticing that the pick-up driver "rolled coal" on them as they passed. It happened three times. Larsen explains that "We just kind of passed it off as the guy is frustrated with traffic and he's taking it out on us."

Then, miles down the road, the driver did it a fourth time. That's when Larsen got out his cell phone and began recording video. And just in time. The driver swerved his truck into the bike lane, towards Larsen. The female passenger called Larsen a "faggot" before throwing a full Gatorade bottle at him. The bottle missed, but [the assault was captured on video](#)—a fact which Larsen pointed out to the passenger as the assault continued. Finally disengaging, the truck driver rolled coal again on Larsen as it sped away. Larsen caught that on video too, and more—he had already captured a clear image of the truck (a white Dodge Ram 2500 Turbo Diesel 4X4), the occupants (alleged to be a husband, driving, and wife, the passenger), and now he had a clear image of their license plate (Virginia license plate number TX65-500).

For any law enforcement professional, and any District Attorney, that is what is known as solid, admissible evidence—the kind of evidence that results in confessions and guilty pleas. Video evidence has been successfully used by law enforcement and prosecutors around the country:

- When [Keith Maddox](#) of Piedmont, Alabama recorded [videos](#) of himself buzzing cyclists while expressing his intense hatred of cyclists, he was arrested and charged with "reckless endangerment" after posting his videos on social media. [He pleaded guilty and was ordered to attend anger management classes](#).
- When two teens repeatedly buzzed [Anders Swanson](#) in Marion County, Tennessee, and then returned to assault him with pepper spray, the incident was captured on video. The teens confessed, and then changed their story, but with everything captured on video, [the truth eventually came out](#), and [both teens](#) were [successfully prosecuted](#) on several traffic

and criminal charges.

- When James Ernst of Erie, Colorado slowly tailed two cyclists who were riding on the shoulder, [loudly honking his horn over a period of several minutes](#), the video the cyclists recorded was used to [arrest and prosecute him on charges of harassment and "improper use of a horn."](#)
- When Joel Chandler and Michael Brad Russell, both of Canton, Mississippi, recorded video of themselves rolling coal on cyclists on the Natchez Trace, their video was used as evidence to [arrest and prosecute them on state and federal charges.](#)

In each of these cases, law enforcement agencies and prosecutors did the job they are supposed to do when presented with evidence of assault, and they should be commended for their work to apprehend miscreants and make our roads safer. Even in the Anders Swanson case, where there was some initial reluctance to charge the assailants, and seemed to be official efforts to pressure Swanson to drop the charges, authorities eventually conceded that the evidence was irrefutable, and did their job. In an earlier age, they may well have succeeded in protecting what by appearances seemed to be a well-connected local family. But in the age of video everywhere, and the power of social media and the internet, the truth came out. Video is admissible evidence, and it is increasingly being relied upon to successfully bring dangerous drivers to justice.

So after capturing his own assailants on video, Bryan Larsen presented his video to the Orange County Sheriff's Department.

And nothing happened.

While the Calhoun County Sheriff was using video evidence to bring Keith Maddox to justice for buzzing cyclists in Calhoun County, Alabama, there was dead silence from law enforcement in Orange County.

June rolled by.

Nothing.

July began, and still nothing. What was going on in Orange County, cyclists across the country wondered? How hard could it be to find the perps when the Sheriff had video evidence of the assault, including clear images of the driver and passenger, a clear image of their vehicle, and a clear image of the license plate?

By July, an Arizona firefighter and bicycle safety advocate named [Brendan Lyons](#) had tired of wondering about the silence from the Orange County Sheriff's Department, and penned an [open letter](#) asking the Sheriff's Department to bring the driver and passenger to justice. And that's when things got really interesting.

The next day, the Los Angeles Times reported that the Orange County Sheriff's Department would be filing charges.

[Against the cyclist.](#)

Coincidence?

If it was just coincidence, it had to be the worst case of tone deaf messaging and bad timing since "a great princess" was alleged to have made a little *bon mot* about [starving peasants and cake](#).

So what crime was the cyclist alleged to have committed? [Using "offensive words in public, likely to provoke a violent reaction."](#)

When Larsen got out his phone and started recording, the passenger yelled "faggot" before throwing the Gatorade bottle. And Larsen replied "Look at that! You got fucking on video right now." Then, as they approached again, he said "That's you on video! See you later!"

But that one little F-Bomb is not what the OCSD detectives are claiming amounted to a crime. Instead, Lt. Jeff Hallock says that ["officials" suspect that Larsen made "rude, disparaging comments"](#) before the incident was recorded on his cell phone.

Uh, evidence?

There isn't any.

Well, unless the perps are telling that story. And if that is the evidence that unnamed "officials" are relying on, good luck trying to make that charge stick.

What's really happening here isn't easy to clearly decipher. While the OCSD has been catching the full brunt of the blame for the recommendation to charge the assault victim, there's more to the story. Lt. Hallock says that the case was submitted to the D.A. with a recommendation to file an assault and battery charge against the passenger, but the D.A. sent it back to the Sheriff's Dept for [further investigation](#)." The OCSD then made a decision to resubmit the case to the D.A. So what's new about the resubmitted case? The recommendation to file a criminal charge against the cyclist.

This set of facts strongly suggests that the D.A. refused to prosecute the passenger unless Larsen was also prosecuted. If so, are prosecutors in the D.A.'s office among the unnamed "officials" who "suspect" that Larsen made "rude disparaging comments" before recording the assault?

And why isn't anybody in law enforcement or the D.A.'s office interested in the driver in this incident? After all, he was the one who swerved at the cyclist. He was the one who repeatedly approached the cyclist so that the passenger could commit assault and battery. And he was the one who repeatedly and intentionally blasted the cyclist with thick clouds of diesel exhaust. He committed several crimes in this incident, and yet "officials" are clearly not interested in prosecuting him.

The obvious question in all of this is: Why?

So far, "officials" aren't talking. But this incident isn't going to go away, and the truth will come out.

