

# Judge: Woman hit in unpainted bike lane is not protected by law

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[Bikeportland: Judge: Woman hit in unpainted bike lane is not protected by law](#)

Posted by Jonathan Maus (Editor-in-Chief) on December 18th, 2009 at 10:26 am

When Portlander Rob Daray witnessed a right-hook collision on his commute home last summer he thought it was obvious who was at fault. So did the police officer who cited the operator of the motor vehicle for "failure to yield to a bicycle." Even the woman driving the car admitted she made an abrupt right turn without checking her blind spots.

But when the case came up in traffic court, the judge came to a different conclusion and now Mr. Daray and others familiar with this are worried that people who ride bicycles are vulnerable — not just on the street, but in the legal system as well.

On June 10th, Mr. Daray was riding his bicycle eastbound on SE Hawthorne Blvd just before 5:00 pm when he looked up and saw a gray Toyota Prius turn right onto SE 10th. The Prius, driven by Ellen Metz, collided with a woman on a bicycle who was traveling in the same direction. The woman on the bike was Carmen Piekarski a cartographer who works for the City of Portland's Bureau of Planning and Sustainability. She was thrown from her bike and sustained serious road rash and is still in physical therapy for a shoulder injury.

Portland Police Officer Dean Hedges cited Ms. Metz for violation of ORS 811.050 which states that: "A person commits the offense... if... the person does not yield the right of way to a person operating a bicycle... upon a bicycle lane."

According to court documents which we've obtained, during the resulting traffic court trial, Ms. Metz admitted that she "made a last-minute decision to turn on 10th and did not check her blind spot prior to making the turn." It seemed like an open-and-shut case. But when Mr. Daray, the lead witness in the case, received the final judgment in the mail yesterday he was shocked to learn that the judge found Ms. Metz not guilty and dismissed her ticket.

According to the official judgment written by Multnomah County Circuit Court Judge Pro Tem Michael Zusman, the ruling came down to this: Was Ms. Piekarski "upon a bicycle lane" when the collision occurred?

To find his answer, Zusman considered the "statutory construction" of the statute. For guidance he looked to ORS 811.060 which states [emphasis mine] "'bicycle lane' means that part of a highway, adjacent to the roadway, designated by official signs or markings..."

With that definition in mind, Zusman found that the collision did not occur "in the marked area comprising the bicycle lane." His thinking was further bolstered by other Oregon statutes where he found 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 the final chapter of Zusman's judgment, he writes:

"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 the Defendant cannot be adjudged liable for the violation."

Mr. Daray was outraged (his wife Wendy wrote about the case on her blog). "This was such a cut and dry accident," he said, "that it is shocking it was ruled this way in a "cycling" city like Portland."

We checked in with three experienced lawyers to get their opinion. All three feel Judge Zusman has made an error in his interpretation of the law.

Here's the reaction from Mark Ginsberg, a partner in the Portland law firm Berkshire Ginsberg, LLC: "For the judge to find that bike lanes don't continue through the intersection, he'd have to find that car lanes don't continue either... We have statutes that say it's illegal to change lanes in an intersection. I believe that lanes continue through intersections. The fact that the lane is not painted doesn't mean it doesn't exist." Ginsberg was also concerned at the message this ruling sends to police officers, who often make their citation decisions based on what they think will stick in court: "What does this tell the cop who goes through the trouble of finding the proper citation and then gets it overturned?"

**Bob Mionske**, an author and legal columnist for Bicycling Magazine, told us "The court's reasoning ignores the Legislature's obvious intent to protect cyclists from drivers who are turning across the bike lane." Mionske also pointed out that the Oregon Department of Transportation's traffic manual "implies that bike lanes do indeed continue across the intersection."

Ray Thomas, who is on the legislative committee of the Bicycle Transportation Alliance and is a partner in the law firm of Swanson, Thomas and Coon, said that he also disagrees with the judges ruling. "Even if the judge feels the bike lane doesn't exist in the intersection, which I think is wrong, she [Ms. Metz] was still guilty of an illegal right turn."

Thomas said the definition of a bike lane through an intersection is not clear enough in the ORS and he'd like to see it changed. He recommended that Piekarski file a citizen's citation for the illegal right turn. However, since the collision occurred on June 10th, the six-month statute of limitations has just

recently expired.

Wendy Daray, wife of lead witness Rob Daray wrote about the case on her blog yesterday. She said when her and her husband opened the mail and read the judgment it "...filled us with emotion. Confusion, frustration and anger are at the top of the list."

"Why doesn't the protection extend into the intersection?" Wendy wrote on her blog, "The ORS should be updated to provide better legal protection for cyclists who are hit by negligent or ignorant drivers. If "Every Corner is a Crosswalk" in Oregon, then every intersection should "Contain the Lane" for cyclists."

Piekarski told us this morning that she was "surprised" at the judge's ruling. "I was riding straight, not doing anything radical. If I'd been in an automobile, she would have been at fault." With a shoulder that still "doesn't work like it used to" Piekarski said this whole saga has been "really disheartening."

"I didn't want this to be hard. I didn't want to be greedy. I just want to be well. It feels like adding insult to injury. She [the woman who hit Piekarski] was completely remorseless and completely lied in court [Metz claimed Piekarski hit her]. She had to replace her hubcap, I had to replace my shoulder."

Since this was a traffic court trial, Piekarski could file a civil suit to recoup damages for her injuries. She told us she's weighing her options. Regardless of whether or she decides to proceed, it seems clear that the definition of a bike lane must be clarified as soon as possible.