

DEC 16 2009

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P. J. NOLAN  
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ARIZONA SUPERIOR COURT, PIMA COUNTY

JUDGE: HON. RICHARD E. GORDON

BY: R. ST. GERMAINE, DEPUTY

CASE NO. CT-20090070

COURT REPORTER: NONE

DATE:

December 15, 2009

STATE OF ARIZONA,

Plaintiff/Appellee,

vs.

COREY J. PISCOPO,

Defendant/Appellant.

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RULING

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**IN CHAMBERS RULING**

Before the Court is Appellant Cory J. Piscopo's appeal from the Pima County Green Valley Justice Court, Case No. TR-20090339. On February 21, 2009, Appellant was cited for failing to ride his bicycle close enough to the right hand side of the roadway in violation of A.R.S. § 28-815(A). On June 1, 2009, following a Civil Traffic Hearing before the Honorable Gail Wright, Appellant was found responsible for the violation. Appellant was fined \$95.00 plus \$38.50 for other fees. This appeal, which was perfected on November 2, 2009, followed.

**A. Discussion**

Appellant was riding with others at the time of the citation. At the traffic hearing and on now appeal, Appellant explained that there was not sufficient room in his lane to allow vehicles to pass him, alone, safely. Under Arizona law, a driver is required to provide at least three feet between his car and a bicyclist when passing. A.R.S. § 28-735(A). Given the width of Appellant (2 feet), the width of the vehicle in question (7 feet), and the room needed to safely pass (3 feet), Appellant argues that he needed a 12 foot wide lane to fall within A.R.S. § 28-815(A), but his lane was no more than 11 feet wide. According to Appellant, he thus fell

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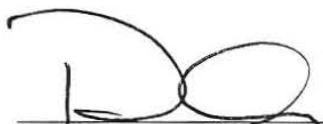
within the exception to A.R.S. § 28-815(A) because the lane in which he was riding was “too narrow for a bicycle and a vehicle to travel safely side by side.” A.R.S. § 28-815(A)(4). Appellee offers no response to the argument but, instead, rests on the record.

The Court finds that Appellant’s argument makes good sense. Under the facts presented at the hearing, Appellant was riding in such a place and in such a manner to be exempt under A.R.S. § 28-815(A) by A.R.S. § 28-815(A)(4).

**B. Conclusion**

Although the trial court is in the best position to judge credibility and weigh the evidence presented to it, see *Walters v. Industrial Comm. of Arizona*, 134 Ariz. 597, 599, 658 P.2d 250, 252 (App. 1982), credibility was not at issue and the salient evidence – the dimensions at play – appears undisputed.<sup>1</sup> Even viewing the evidence in a light most favorable to sustaining the judgment, the Court finds reversal is proper. Accordingly, for the forgoing reasons, **IT IS ORDERED** that the finding of responsibility by the Justice Court is **REVERSED**.

**IT IS FURTHER ORDERED** this matter is **remanded** to the Pima County Justice Court for further proceedings consistent with this Order.



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HON. RICHARD E. GORDON

cc: Case Management Services – Civil  
Clerk of Court – Appeals  
Pima County Justice Court (Docket CT-20090070)  
Erik Ryberg, Esq.  
County Attorney – Clinton R. Stinson, Esq.

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<sup>1</sup> The parties’ arguments and the judge’s ruling for some reason were not recorded. Neither party, however, has requested a new hearing based on insufficiency of the record. Superior Court Rule of Appellate Procedure 7(e). This Court, therefore, is basing its ruling solely on the record before it.

Mary Dimond  
Judicial Administrative Assistant