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ARIZONA SUPERIOR COURT  
PIMA COUNTY

BY: R. ST. GERMAINE, DEPUTY

JUDGE TED B. BOREK

CASE NUMBER: <sup>CT</sup> E-20090065

COURT REPORTER: None

DATE: January 6, 2010

STATE OF ARIZONA,  
Appellee,

v.

JONATHAN A. ROBERTS,  
Appellant.

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**RULING**

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**IN CHAMBERS** – Under Advisement

Appellant was cited and found responsible by the Pima County Justice Court, Green Valley Division, for violating A.R.S. § 28-815(A), not riding his bike as close as practicable to the right. The Court has reviewed the record, including the transcript of the hearing on May 4, 2009, before Judge Wight, the appellant's and appellee's memoranda on appeal, and argument of counsel.

This Court, of course, must view the evidence and all reasonable inferences therefrom in the light most favorable to sustaining the judgment. *State v. Garza*, 196 Ariz. 210, (App. 1999).

In summary, at the hearing, Sheriff's Deputy Anderson testified that on about February 22, 2009, at 0950 hours he observed appellant for about 100 (one hundred) yards in a group of bicyclists riding two abreast. There was no passing being conducted by the individuals. Deputy Anderson identified appellant. "He was the front, outside, well not outside; but inside bicyclist." The deputy stopped the bicyclists. Appellant did not have his driver's license and identified himself as an attorney. Upon concluding no exception applied, Deputy Anderson cited appellant for violating A.R.S. § 28-815(A) for not riding as close as practicable to the right-hand edge of the roadway.

Appellant testified that he was not an attorney but that another of the (5) riders stopped was an attorney. He explained a passing movement used by

cyclists as a revolving pace line. He states he was passing another rider when stopped and was the lead front rider. He measured the road to be 11 (eleven) feet wide, too narrow for allowing two (2) feet for cyclist, three (3) feet vehicle to bike passing clearance (per A.R.S. § 28-735(A)) and nine and a half (9 ½) feet for a vehicle. He claimed the Arizona standard for a minimum shareable width is 16 ½ (sixteen and a half) feet. He argued that the statute allows two (2) riders to ride abreast, and therefore that exceptions to A.R.S. § 28-815(A) applied.

Near the end of the testimony, Deputy Anderson asked the Court to take the whole thing under consideration and reserve judgment, to get information from the Motor Vehicle Division (at least regarding road width) because if 16 ½ feet is the safe road width, appellant would be correct that the exception in A.R.S. § 28-815(A)(4) would be correct.

The Court stated she would not make judgment today (apparently May 4, 2009) and would get back the next day.

Appellant argues that as the roadway was too narrow to accommodate both bicycle and car/truck traffic, appellant was not required to ride as close as practicable to the right-hand side of the road.

A.R.S. § 28-815 provides in part:

**Riding on roadway and bicycle path; bicycle path usage**

A. A person riding a bicycle on a roadway at less than the normal speed of traffic at the time and place and under the conditions then existing shall ride as close as practicable to the right-hand curb or edge of the roadway, except under any of the following situations:

1. If overtaking and passing another bicycle or vehicle proceeding in the same direction.

\* \* \*

4. If the lane in which the person is operating the bicycle is too narrow for a bicycle and a vehicle to travel safely side by side within the lane.

A.R.S. § 28-735(A) provides:

A. When overtaking and passing a bicycle proceeding in the same direction, a person driving a motor vehicle shall exercise due care by leaving a safe distance between the motor vehicle and the bicycle of not less than three feet until the motor vehicle is safely past the overtaken bicycle.

With the width of a Ford crown Victoria being 6'6" (six feet, six inches) not including mirrors, the eleven foot road width was insufficient to accommodate two (2) feet for bike, three (3) feet for clearance, and six feet, six inches (6'6") for vehicle, totaling 12'6" (twelve feet, six inches), or perhaps 13' (thirteen feet) with mirrors. Appellant thus argues the exception § 28-815(A)(4) applies and his fine should be reversed.

Appellant argues also that as A.R.S. § 28-815(B) allows bicyclists to ride abreast, doing so could not be a violation of § 28-815(A) providing that a cyclist ride as far right as practicable.

A.R.S. § 28-815(B) provides:

- B. Persons riding bicycles on a roadway shall not ride more than two abreast except on paths or parts of roadways set aside for the exclusive use of bicycles.

Appellant also argues that as A.R.S. § 28-815(A)(1) provides for overtaking and passing another bicycle, this exception applies. Appellant urges that Deputy Anderson's short observation of 100 yards was insufficient to establish that he was not passing, which appellant's testimony contradicts.

Appellee makes no arguments to contradict appellant's legal arguments and rest on the record before the lower court. At oral argument the State argued use of the term vehicle in A.R.S. § 28-815(A)(4) was unclear.

This Court concludes that upon the facts in the record, the lower court erred as a matter of law in concluding exception A(4) does not apply. This Court will judicially notice the width of a Ford Crown Victoria, 78" (seventy-eight inches) per appellant's brief as a reasonable width for a vehicle. There was no dispute that the road width was about 11' (eleven feet). Given that bicyclists may ride abreast and pass one another, it is not contestable that when either riding abreast or passing the bicyclist on the left of the rider next to the edge of the road could not be closer to the edge than the cyclist next to the edge. This court must interpret A.R.S. § 28-815(A) and (B) consistently. The record supports that appellant was to the left of the rider who was next to the edge of the roadway, or

RULING

Page 4

Case No.: ~~020090065~~  
CT

Date: January 6, 2010

the inside rider as described by the deputy. Under these facts, A.R.S. § 28-815(A)(4) exception applies to appellant even if (A)(1) does not. Therefore,

**IT IS ORDERED** that the judgment of the Justice Court is **REVERSED**, and further that the case is **REMANDED** to vacate the fine and for other proceedings consistent with this ruling.

DATED this 6 day of January, 2010.



Hon. Ted B. Borek

cc: County Attorney – Clinton Stinson  
✓ Erik B. Ryberg, Esq.  
Appeals Unit – Civil  
Pima County Justice Court, Green Valley Division – Appeals (TP.20082121)  
Under Advisement Clerk

By: Joyce L. Burbridge, J.A.A.