

# **Brief for the Defense**

**State of Maryland vs. Robert A. McCutcheon**

**Case No. 0W680269**

**3/15/00 Charge Of Violating §21-1205, Paragraph (a), of the  
Maryland Vehicle Code (Failure to Ride as Near to the Right  
Side of the Roadway as Practicable and Safe)**

**(June 1, 2000)**

- **Brief Resume for R. A. McCutcheon**
- **MD Law Regarding Bicycle Roadway Lane Position**
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- **Interpretation of MD Law Regarding Bicycle Roadway Lane Position**
- **Conditions on Rt. 29 and Bicycle Lane Position at the Time of Citation**
- **Conclusion**
- **References**

- **22-year resident of Silver Spring, MD**
- **Astronomer in the Hubble Space Telescope Project.**
- **Extensive bicycling experience:**
  - **Year-round, day-and-night, all-weather bicycle commuter who has accumulated over 50,000 accident-free miles since 1990.**
  - **Active in promoting bicycle safety education --**
    - » **Certified as an Effective Cycling instructor (ECI) by the League of American Bicyclists (LAB). (LAB founded the Intl. Police Mountain Bike Association [IPMBA] in 1991.)**
    - » **Bicycle Merit Badge Counselor with BSA Troop 432 in Silver Spring.**
  - **Advocate for bicyclist rights --**
    - » **Member of the Transportation and Commuting Subcommittee of the MD Governor's Bicycle Advisory Committee (MBAC).**
    - » **Acting chair of *Friends of Rt. 29*, a grassroots bicyclist organization dedicated to preserving bicyclist rights on US Rt. 29 in Maryland.**

- **Bicycle lane position is covered in §21-1205, *Riding on roadways or on highway*. In particular §21-1205, paragraph (a), states:**

***Riding to right side of roadway.* -- Each person operating a bicycle on a roadway shall ride as near to the right side of the roadway as practicable and safe, except when making or attempting to make a left turn, when operating on a one-way street, or when passing a stopped or slower moving vehicle.**

**The key operational phrase in paragraph (a) is *as near to the right side of the roadway as practicable and safe*.**

- **In the case being heard today, Mr. McCutcheon contends that he was operating his bicycle *as near to the right side of the roadway as practicable and safe* at the time that he was cited for failure to comply with §21-1205, paragraph (a).**

## Bicycle Lane Positioning Guidelines (1 of 2)

- **Proper bicycle lane position is a function of roadway surface conditions, weather and lighting conditions, and lane width.**
- **Surface condition considerations:**
  - **A bicycle cannot be operated nearer than 2' to a curb face due to a bicycle's physical dimensions. This is the shy distance recognized by the American Association of State Highway and Transportation Officials (AASHTO) and by the PA Department of Transportation (Reference 1).**
  - **Storm grates, manhole covers, and surface irregularities near the roadway edge may make it physically impossible to operate a bicycle at the road's edge.**
- **Weather and lighting conditions: Degraded visibility due to inclement weather and/or night conditions make it difficult to judge surface conditions at a roadway's edge (Reference 2).**

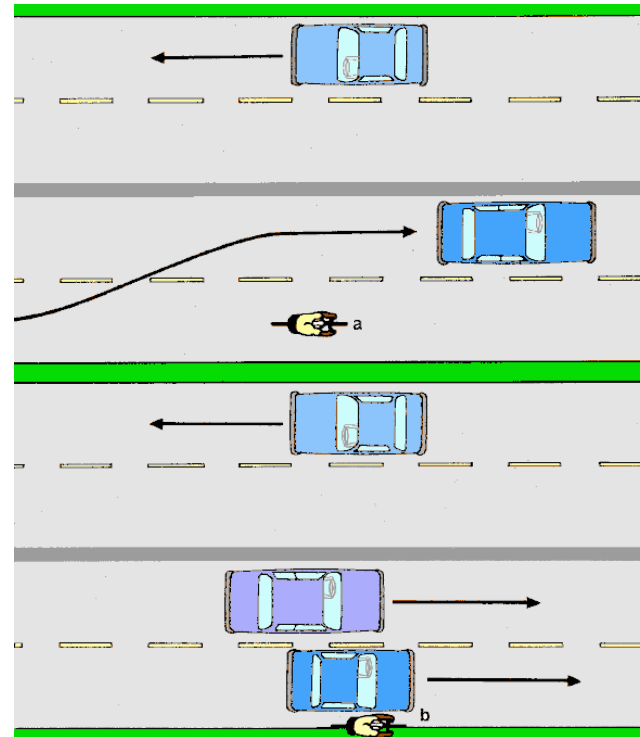
## Bicycle Lane Positioning Guidelines (2 of 2)

- **Lane width considerations:**
  - Under narrow lane conditions, a bicycle cannot be operated safely near a roadway's edge.
  - A narrow lane is defined to be any lane that is too narrow for motorized traffic to pass a bicyclist without crossing the lane's left demarcation line.
  - The 1999 AASHTO guidelines, which have been accepted and adopted by the MD SHA, define any lane narrower than 12' as too narrow to be shared between motorized and bicycle traffic (References 3 & 4). This minimum lane sharing width can be derived by adding together the following:
    - » 2' buffer between bicycle and roadway curb or edge
    - » 2' allowance for bicycle width
    - » 2' buffer for passing motor vehicles
    - » 6.5' allowance for width of motorized vehicles
  - When speed limits are higher than 40mph, traffic engineers recommend a minimum 14' width for shared use lanes (Reference 5).

## Roadways with More than One Narrow Lane in Each Direction (1 of 3)

- The *Pennsylvania Bicycle Driver's Manual* (Reference 6) provides the following statement and illustration regarding positioning on a roadway with more than one narrow lane in each direction:

“On a road with two or more narrow lanes in your direction . . . you should ride in the middle of the right lane at all times. You need to send the message to drivers to move to the passing lane to pass you. If you ride all the way to the right, two cars may pass you at the same time, side by side, and squeeze you off the road.”



On a multilane road with narrow lanes, a), ride in the middle of the right lane. You are likely to get squeezed out, b), if you hug the edge.

- **LAB instructs cyclists that “when lanes are too narrow to safely share, ride in the center of the lane or just to the right of the center (the right-hand tire track)” (Reference 7).**
- **IPMBA states (Reference 8) that “statutes allow you to leave the right side” under several circumstances, one of which is**

**“when the width of the street makes it unsafe (this is especially true in situations where riding close to the roadway edge would encourage a driver to pass despite insufficient room to do so).”**

**Moreover, under these narrow lane conditions IPMBA instructs cyclists to**

**“move to the left -- taking the entire lane -- to force the motorist to pass . . . legally, using the oncoming lane. . . . Cyclists have the right to the lane if they need it -- so take it if necessary.”**

- In the *Cycling Merit Badge Book* (Reference 9), the Boy Scouts of America state:  
“On roadways that have two narrow lanes for each direction, ride in the middle of the right lane at all times. Drivers need to get the idea that they must move into the passing lane if they want to pass you. In narrow-lane conditions, riding all the way to the right invites a car to try passing you in the same lane, possibly forcing you off the road.”
- **SUMMARY:** There is universal agreement that under narrow lane conditions, a bicycle should **NOT** be positioned near a roadway’s right edge or curb. Rather, the bicycle should be positioned near the center of the right-most lane.

## Interpretation of MD Law Regarding Bicycle Roadway Lane Position (1 of 2)

- California has provisions similar to those in MD requiring a bicyclist to ride *as close as practicable to the right-hand curb or edge*. California courts have interpreted *as close as practicable* “as a highly flexible directive, varying widely according to conditions; that positions well away from the edge of the road can still be in compliance” (Reference 10).
- The Uniform Vehicle Code (UVC) serves as the model from which most state vehicle codes are derived. §11-1205 of the UVC specifically lists “substandard lane width” as one of many conditions under which a bicyclist may move fully into the travel lane (Reference 11).
- The MD SHA Bicycle and Pedestrian Coordinator has expressed the opinion that lane positioning as described in §21-1205, paragraph (a), of the MD code is “open to interpretation by each cyclist and should be based on the condition of the roadway, the scope of existing traffic, and the rider’s skill levels” (Reference 12).

- **The Maryland Driver's Handbook (Reference 13) warns motorists that bicyclists are required to ride as far to the right as practicable**

**“only when the lane can be safely shared by a car and a bicycle, side by side.”**

**Furthermore,**

**“There are certain conditions that allow a bicyclist to ‘take the lane,’ such as . . . the lane is narrow in width making it unsafe for a motor vehicle and bicycle to share the lane side by side.”**

**Finally, the handbook instructs motorists**

**“Always allow at least three feet to the left of the bicycle when you are passing. . . . DO NOT attempt to share the lane with the bicycle when passing. Reduce your speed and move into the next or oncoming lane to pass.”**

- **SUMMARY: The right of bicyclists to full use of the travel lane under narrow lane conditions is well established both nationally and in MD.**

- **At 6:35pm on the night of 3/15/00, when cited for violating §21-1205, paragraph (a), Mr. McCutcheon --**
  - **Was traveling south on Rt. 29 approximately halfway between NW Paint Branch and University Blvd, approaching the traffic light at East Wood Ave.**
  - **Was positioned in the right half of the right-hand lane, approximately 4.1' from the roadway's edge.**
- **The 2-mile segment of Rt. 29 between New Hampshire Ave. and University Blvd. is characterized by --**
  - **Three lanes in each direction.**
  - **Narrow right-hand lane with curb and no shoulder. Width of lane as measured from curb face to center of lane dividing line is 10' 10".**
  - **Pavement cracks at a distance of approximately 15" from the curb.**
  - **22 storm grates in the southbound direction, each extending approximately two feet into the right lane as measured from the curb face with broken, crumbling pavement often extending 1-2' beyond the storm grate.**
  - **Frequent surface irregularities near the roadway edge.**

- **Due to surface conditions, it was not practicable for Mr. McCutcheon to ride near the roadway edge.**
- **Due to narrow lane conditions, Mr. McCutcheon could not safely operate his bicycle any closer to the roadway edge than just to the right of the center of the right lane.**

- 1) At the time and place of citation, Mr. McCutcheon's lane position complied with both the spirit and letter of §21-1205, paragraph (a). Mr. McCutcheon was operating his bicycle *as near to the right side of the roadway as practicable and safe* given surface, lighting, and lane width conditions.
- 2) Mr. McCutcheon should not have been cited with a violation of §21-1205, paragraph (a).

- 1) Memorandum from Thomas E. Bryer, P.E., (Director, Bureau of Highway Safety & Traffic Engineering, Commonwealth of Pennsylvania, Department of Transportation) to Mitchell Cohen (Torts Litigation Unit, Norristown Regional Office), 1 March 1995.
- 2) Kenneth D. Cross, *Bicycle Safety Education, Facts and Issues* (Anacapa Sciences, Inc., Santa Barbara, CA; AAA Foundation for Traffic Safety, Falls Church, VA, 1978).
- 3) *AASHTO Guide for the Development of Bicycle Facilities, 3rd ed.*, (American Association of State Highway and Transportation Officials (AASHTO), 1999), pp. 16-17.
- 4) "Making Maryland Roads Safer for Everyone," *Pro Actions (Periodic Report of the Maryland Bicycle Advisory Committee)*, December 1999.
- 5) John Forester, *Bicycle Transportation: A Handbook for Cycling Transportation Engineers* (The MIT Press, second edition, 1994), p. 236.
- 6) *Pennsylvania Bicycle Driver's Manual* (PA Department of Transportation, 1999), pp. 11 & 12.

- 7) ***Effective Cycling, Road I*** (League of American Bicyclists, 1996), p. 29.
- 8) **Governing Board of The International Police Mountain bike Association, *The Complete Guide to Police Cycling*** (Calibre Press, 1996), pp. 123-125 & p. 127.
- 9) ***Cycling -- Boy Scouts of America Merit Badge Series*** (Boy Scouts of America, 1996), p. 58.
- 10) **A. Wachtel, "Bicycles and the Law: The Case of California," *Environs Environmental Law and Policy Journal*** (University of California, Davis, Environmental Law Society), Vol. 18, No. 2, May 1995, pp. 105-124.
- 11) **National Committee on Uniform Traffic Laws and Ordinances, *Uniform Vehicle Code*** (U.S. Government Printing Office, 1992).
- 12) **Private communication from H. Muller, MD SHA Bicycle and Pedestrian Coordinator, to R. A. McCutcheon, 23 March 2000.**
- 13) ***Maryland Driver's Handbook*** (Maryland Motor Vehicle Administration, 1998), pp. 76-77.