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The right lane

DISCOVERY IN CYCLING CASES: THERE'S MORE EVIDENCE THAN YOU THINK

Cycling-crash cases typically involve motor vehicle versus bike crashes but also, very often, involve claims against government entities for unsafe road conditions.

We start our cycling cases like any other case, by preparing a discovery roadmap. We utilize the standard jury instructions to identify the facts that we must prove. Then we identify the evidence necessary to prove these facts and brainstorm ways to obtain this evidence.

In preparing a roadmap, we always start with evidence necessary to prove defendant's liability. No matter the cycling case, it seems that one principle almost always rings true: The insurance company is going to blame your guy for something. If your client was in an intersection, they shouldn't have been there. In a bike lane? They were going "too fast." They will find something.

This is true even when our client was just riding along at a safe speed, in the designated bike lane.

With that in mind, our roadmap almost always includes evidence to prove liability and disprove the most common comparative fault arguments: speed and location.

In building our roadmap and brainstorming different avenues to obtain evidence to support our case, we often find ourselves looking toward technology and community. While there are plenty of other, more traditional sources for evidence, this article is intended to dive deeper into these two.

Technology in cycling cases

For as long as I can remember, technology has taken a prevalent seat within the cycling community. That has become even more true in the last five to ten years. Technology for cyclists usually takes the form of one, or a combination of, the following: 1) Bike computers; 2) mobile apps; and 3) video cameras.

For many years, GPS bike computers like Garmin®, and lesser-known Wahoo®, were the norm for cyclists. And for many cyclists, they still are. Typically, they take the shape of a device smaller than your cellphone, often mounted on the handlebars. They track location and speed, and sometimes physical attributes (like heartrate, cadence, and power) of the rider, sending the data to a satellite, which then sends the information to your account. These GPS monitoring systems can also come in the form of a wristwatch or, less commonly, in a handheld device.

When it comes to ride data, bike computers are by far the best at keeping detailed data. Since bike computers are so common and have such useful information, we ask our clients about the use of these devices first thing during intake and download the data as soon as possible.

Along with bike computers, cellphone applications like Strava®, Garmin Connect®, MapMyRide®, and Wahoo Elements® have exploded onto the cycling scene in the last 10 years. These apps track cyclists' rides, including speed of certain segments and location of route, while often saving progress and prior ride information. Typically, the data gathered and saved by these ride-tracking and mapping apps is not as detailed as what you can get from bike computers, but it can be very helpful, nonetheless.

Since cyclists often favor bike computers over mobile apps, yet still almost always use both, we have made it a practice to separate them in our intake questionnaires. During intake, we also ask our new clients if they or anyone they were riding with had a video recording device. We also have them check with anyone they were riding with at the time. More than a few times, this has led to video footage from someone else in the group.

Like with bike computers, various video recording devices have become prevalent amongst riders. Cameras may include helmet cameras, handlebar cameras, action cameras (like GoPro®), or even rearview cameras. Depending on the location of the crash, we often also look for nearby surveillance cameras and have even been known to reach out to local bike shops and cycling teams to see if they have heard of anyone witnessing the crash (more on that in the community section below).

We strongly suggest that any plaintiff's attorney handling cycling cases, identify the available technology early on and download any data as soon as practicable. Below are a few examples of how it can be invaluable in proving your case.

The bike's "black box"

When it comes to liability in bike cases, comparative fault is almost always going to be an issue. In general, speed and location often become the biggest issues of dispute when it comes to liability. In dealing with these two issues, we often turn to ride tracking and mapping technology. While I am not aware of a bike that comes equipped with an electronic data recorder, you will often find similar information on your client's GPS bike computer (like Garmin®) or cellphone mobile apps.

There are several examples in our practice of times that data from Garmin® and mobile apps, like Strava®, have helped us prove important facts. In one case, there was a dispute about the location of the crash and events immediately following the same. The defendant alleged that our cyclist, on a road bike, was riding on the wrong side of the street at the time of the crash. Defendant further alleged that our client quickly got up, brushed himself off, and proceeded to the side of the road.

After checking our client's Garmin® data and Strava® mobile app, we discovered something very interesting. We reviewed the information in both data trackers closely and compared the detailed Garmin® data to the Strava® route map. The route map showed a straight line up to the point where the crash occurred, then a jagged line, and then a line cutting sharply to the right. By comparing the data from the two applications, we were able to determine exactly where the crash occurred, how long our client was on the ground, that our client slowly moved (walked) to the side of the road, and that our client waited there for an ambulance to arrive. After running

through the evidence with defense counsel, the case quickly settled.

Speed is also a frequent issue that the defense loves to grasp on to assert comparative fault. We very often see the allegation that our client was riding too fast. We often see it in the context of a police report. Many times, independent witnesses will make this assertion. And commonly, this is alleged in a heavy traffic situation where cars are stopped in our client's direction and our client is traveling in the bike lane alongside the stopped cars. Unfortunately, in this situation, it is common for a car going the opposite direction to make a left turn across the stopped lanes and hit our client who is traveling straight. In these crashes, you almost always see a reference in the police report to the cyclist going too fast.

In situations where speed is an issue, bike computers are by far the best source. You will often get exact speeds of travel at specific times in the ride, including immediately before impact. Mobile apps are a little less straightforward. Apps like Strava® tend to auto-pause when the rider stops moving and the speed of the rider is more restricted to average speed of pre-determined "segments." While not exact, we have had a lot of luck pointing to the client's average speed on the ride, coupled with the environment (downgrade, uphill, flat, etc.), to provide less direct evidence of likely speed. When all else fails, we love asking witnesses and investigating officers the following question: If this was a car traveling in its own lane, going straight, would you still have the same opinion? You often find that "too fast" for a cyclist is more than reasonable for a car.

Candid cameras

As noted above, video cameras are becoming more commonplace in the cycling world. While we don't see them nearly as often as ride computers, many riders are beginning to utilize them. The great thing about video cameras is that they are direct, and the videos are easy to authenticate. We always ask a potential client if they had a camera on them

during their ride. We also ask if they were riding with anyone, if they were riding with a group, or if they noticed any groups riding by.

In one recent case, our client took a horrific spill due to a very dangerous portion of poorly patched asphalt in the bike lane of a local city. The client wound up losing consciousness and woke up in the hospital with a severe brain injury. Before our office was retained, the city had completed the asphalt repaving and the dangerous condition was no longer there. Equally bad, the photographs that witnesses took of the dangerous condition and our client were positioned in a way that made identifying the exact location nearly impossible.

While the client didn't remember anything from the ride or the crash, we were able to speak to the organizers of our client's ride, who then contacted organizers of another group riding behind them. Ultimately, we obtained video footage of the patched asphalt and the client laying on the ground just a few minutes after the crash. We were able to utilize information from our client's ride-tracking mobile app, compare it to the video and draw a conclusion to the near-exact speed and location of our client at the time of his crash. At that point, we really had what we needed to show the exact location of the crash and, more importantly, we obtained a real-time depiction of the dangerous condition at issue.

Utilizing technology to show damages

Whereas bike computers and mobile apps are great for proving the facts surrounding a crash, they are often invaluable in proving damages. Nothing tells an injured cyclist's story better than a Garmin® or Strava®. Both bike computers and mobile apps keep track of rides incredibly well and the data usually saves indefinitely. So, you can utilize these apps to show how often your client was previously riding their bike (or running in some cases), their average distance, and average speed. When compared to post-crash data from the same source, it can paint an awesomely effective picture.

Cyclists love to ride their bikes. So, we often see a reduced ability to ride as a dominant narrative in our clients' damage claims. In showing this impact on their lives, we love to utilize demonstratives. Specifically, we often input this data into a timeline/bar graph which shows a vast difference in frequency and distance of rides before and after. Our bar graphs typically have dates on the horizontal axis and distance on the vertical. If we are able to pull two years of rides before the crash, we input that in along with all rides after. By way of example, it's a very effective way of displaying the difference between a cyclist riding four times a week, averaging forty miles each ride, and a cyclist riding once a week, averaging twenty miles per ride. It's also a great way to respond to the "well, she's still riding her bike" assertion that we see being made constantly (it would take the world ending for an avid cyclist to stop riding altogether).

Technology biting back

While technology has mostly worked in a positive fashion to assist in obtaining information to help dispute bogus liability arguments, it's important to note that technology can be a double-edged sword. That is, on a few occasions it has worked in a negative way. There are the obvious situations where the bike computers, mobile apps, and video have ultimately showed our client riding too fast, riding in the wrong area, or riding in a reckless fashion. In those situations, we often feel relieved to obtain that adverse information early on. So, we accept it and we either own it or move on.

Another situation where these technological advances have not worked in our favor is where, in dangerousroadway cases, it's shown that our client has ridden over that condition enough times to have plenty of notice of its existence. If the evidence is available to plaintiff, it's fair game to the defense. So, it's best to obtain the ride history early in the case, as discussed in more detail below.

As a final thought on technology in cycling cases, it is important to note that

apps like Strava® also act as a social-media platform with riders following others. Usually, the profile defaults to public view. As a result, riders who use Strava®, for example, can often be found by any other user and their rides can be easily viewed. So, it's often best to advise your client to set their account to private and be cognizant of outsiders who may be looking in.

Help from the cycling community

In writing an article about unique sources of evidence in cycling cases, I would be remiss if I didn't talk about advantages of a close-knit cycling community. While cycling may be perceived as an individual sport, it tends to be quite the opposite. Most cyclists, even those who have no intention of racing, work and ride with teams. Teams and riding groups are typically local for amateur cyclists and are often tied to a bike shop nearby.

Even if your client was not riding with a group at the time of the crash, looking toward groups and other cyclists can uncover evidentiary gems. Groups and teams are also important to track, as they often provide public information that can be very attractive to the defense. Below are some examples of how cycling teams and groups have been used on both sides of our cases.

Using the cycling community to help your case

As noted above, we typically reach out to our client's bike teams or groups to help provide information to support our client's claims. Most commonly, crashes during group bike rides can lead to a plethora of information and evidence related to the circumstances of the crash. In the earlier story about the video, we reached out to our client's cycling group to try to obtain any evidence of the crash and dangerous condition that caused it. No one in his cycling group had video but someone recognized another group that rode by shortly thereafter, and that led to us getting video of the dangerous condition. Not mentioned above is the fact that reaching out to our client's

cycling group, and ultimately uncovering the other group as well, led to us identifying more than a dozen witnesses that could testify about the crash. In general, cyclists look out for each other and, considering the gravity of this crash, we had plenty of people who wanted to help.

Cycling groups and other cyclists, in general, can also make great damages witnesses. It's often the same people riding a series of different routes, so you can often find a number of other cyclists who have knowledge of, and can testify to, the impact the crash has had on your client's ability to ride.

Community resources that cut the wrong way

As with technology, there can often be drawbacks to your client's close involvement with cycling teams and groups. For one, other cyclists are going to be honest about their observations of your client. So, if your client's ability to ride hasn't really been impacted, the other side will have access to witnesses who will testify to the same. This is especially true with cyclists who frequently, or even occasionally, race.

Typically race results are found online and racers rarely ever stop racing altogether. So, a simple search of your client's name can lead to the identification of races they have competed in, their finishing times in those races, and other competitors (potential witnesses) they raced with. As you can imagine, whether they compete in races has also become a mainstay in our intake questionnaire.

Finally, it is important to be conscious of the fact that group and team rides are very often available for public view on that organization's website. It can therefore be a great way to identify where your client will be riding at a specific time. This has led to defense attorneys ordering sub rosa during these rides. Since rides are typically more than a few hours long, they give these "investigators" a lot of opportunity to catch a few moments of our clients at their best.

Also, when it comes to published information, its accuracy may not always be completely dependable. On one recent

occasion, a team publishing "race results" actually created quite the confusion between our office and defense counsel. Counsel provided a video purporting to be a race in which our client participated in weeks after their crash. It was the defense's "aha moment" and really impacted defense counsel's ability to get authority to resolve the case from their carrier.

The problem was that our client didn't actually compete in that race. Instead, he was listed as a racer by his prior team and the defense just assumed it was him as one of the riders in the video. This created a somewhat embarrassing moment for the other side when we asked them to point out our client and they couldn't.

To this day, I think the defense attorney still believes that our client competed in that event, but it was nothing more than an error on the part of whoever put together the roster and published the results. Moral of the story: Whatever information you obtain, make sure to check its accuracy with your client.

Conclusion

When it comes to handling cycling cases, a well-thought-out game plan is always the right idea. Anticipating potential liability arguments and identifying the facts that you need to prove should be done as soon as you open the file. In determining the potential source for evidence to prove those facts and disprove the defense's liability narrative, you should always look toward available technology and potential community sources. You will often find that the evidence you need is more readily available than you think.

Steve is the founder of Rosen Law Offices *in Dana Point. He also acts as litigation partner for Bike Legal. Since forming Rosen Law Offices, Steve has focused his energy on helping the people within Southern Orange County. He's a proud member of CAALA and Justice HQ. He received his J.D. from Loyola Law School and practices in both California and Nevada.*