

THE SELZ CASE REVISITED – AN IMPORTANT DECISION FOR THE NATION’S BICYCLE OPERATORS

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In the summer of 1999 I was asked to become involved with a young man who had received a traffic ticket for “impeding traffic” in Trotwood, Ohio. Little did I know that the case would ultimately garner international attention, cause countless emails to be sent to the City of Trotwood, and generate an appellate court ruling that is extremely favorable to the nation’s cyclists!

On May 14, 2001, the court of appeals decision in the case of *Trotwood v. Selz* was officially “published” in Ohio’s law books. Virtually every lawyer in the State of Ohio had the decision on their desks with the other cases published on May 14. However, more importantly, publication of the case greatly increases its precedential value to future cyclists who wish to challenge traffic citations.

Publication of the case gives us reason to review the facts and history of the case as well as take a closer look at the court of appeals decision and the decision to pursue the appeal.² This review may be helpful to those who find themselves in a similar position in traffic court.

I. THE FACTS PRESENTED AT TRIAL

The trial of this case, like most traffic matters, was quick and to-the-point. The Selz case was on the docket with dozens of other matters, but was the only serious trial of the evening on the Area One docket of Judge Connie Price. The prosecution’s case consisted of the testimony of the officer who gave Steve his ticket. I presented Steve Selz and an expert witness, Allan Byrum.

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² If you would like to review my trial brief, court of appeals brief, the trial transcript and the court of appeals decision please log on to www.ohiobike.org, the website of the Ohio Bike Federation.

On July 16, 1999, Steven Selz was operating his bicycle along State Route 49 in Trotwood, Ohio, a five lane roadway with a speed limit of 45 mph. He had stopped a light and was going uphill from the light when Trotwood Police Officer Vance, with lights and siren blaring, pulled him over.

Officer Vance issued a citation to Mr. Selz for "impeding traffic" under a local Trotwood ordinance. At the February 7, 2000 trial, Officer Vance testified that Mr. Selz "...was driving in the middle of the lane..." and was going "...no more than 15 miles per hour..." She further testified that "...cars had to stop and ... go over to the other lane to get around him..."

It should be noted that State Route 49 at this point consisted of FIVE lanes, two in each direction with a universal turning lane between them. It should also be noted that Mr. Selz was charged with violating Trotwood Municipal Code Section 333.04(a), for "impeding traffic" and was **not** charged with a violation of Ohio Revised Code Section 4511.55(A), which requires cyclists to ride "as near to the right side of the roadway as practicable..." This ended up as a critical distinction in the eyes of the court of appeals, as will be discussed below.

My cross examination of Officer Vance focused on attempting to show that Mr. Selz was traveling as a reasonable CYCLIST, as opposed to a reasonable MOTORIST. She admitted that he was traveling at a reasonable speed "for a cyclist." She also showed a lack of knowledge of the law governing the operation of bicycles on the roadway³. Officer Vance also admitted that there was no posted minimum speed on State Route 49.

One of the critical exchanges on cross-examination was as follows:

"Q. Now, is it your testimony that Mr. Selz was riding at a slower speed than he could have otherwise ridden?"

"A. A slower speed than he -- no.

"Q. He was riding at a reasonably normal bicycling speed, wasn't he?"

"A. Yes, sir."

³ Officer Vance testified that a cyclist has "... X amount of feet you're allowed from the curb, but he was clearly in the middle of the roadway."

Officer Vance had some vague notion that Mr. Selz was somehow in danger because he was riding on State Route 49, a roadway that is, admittedly not for everyone. Officer Vance candidly testified as follows on cross-examination:

Q: I take it your opinion is that State Route 49 is simply a dangerous place for bicycles to be?

A: Honestly, yes.

It became clear as the trial progressed that the City of Trotwood was going to take the position that if you can't ride 45 mph then you can be charged with "impeding traffic." Further, the prosecution simply felt that it was "unsafe" to ride on this stretch of State Route 49 and, therefore, was trying to "protect" Mr. Selz from his own foolishness.

Mr. Selz disputed some of the facts during his testimony. He testified that he was "...going as fast as he could go..." as he chugged up the hill. He denied that he was in the "...middle of the lane..." as the officer testified. During the prosecution's cross examination Mr. Selz admitted that some traffic probably did slow down for him, stating "If they can't make a lane change, *yes, they would have to slow down and not run over me!*"

I also tried to establish the plain silliness of the prosecution's position. Mr. Selz testified that he had only gone 45 mph once in his entire life, and then only on a long downhill run. He testified that it was physically impossible for him to travel 45 mph on a normal flat road, let alone from a standing start at the bottom of a hill!

I also presented "expert testimony" in the form of an extremely experienced cyclist, Allan Byrum. The prosecution stipulated that the expert would testify that Mr. Selz was operating his bicycle in a reasonable fashion and in a competent manner for a bicycle operator on State Route 49 at that point in time. The expert also offered the opinion that Mr. Selz was traveling at a reasonable speed for a bicycle operator and that 45 mph is "...not only an unreasonable speed for a bicycle, it's an unsafe speed for bicycles ..." due to a variety of factors.

Once the facts were before the court, the court heard the arguments of counsel as to whether the City had proved its case against Mr. Selz.

II. THE LEGAL ARGUMENTS

The City of Trotwood Ordinance §333.04(a) states that

"No person shall stop or operate a vehicle at such a slow speed as to impede or block the normal and reasonable movement of traffic, except when stopping or reduced speed is necessary for safe operation or to comply with law."

The Prosecutor argued that, in essence, if you can't go 45 mph on Salem Avenue, you should not ride on the road. The argument was that was "absurd" for bicycle operators to be allowed to "impede traffic" because they can only go "...ten, fifteen, twenty, whatever, miles per hour and therefore become a danger to himself..." This concept of "protecting" the poor bicycle operator came through loud and clear from both the Prosecutor and the Court!

I argued that the most important word in the Trotwood ordinance was the word "traffic." "Traffic" cannot be impeded, so just what is "traffic." State law tells us that traffic includes far more than cars and trucks and buses. "Traffic" is defined to include "...pedestrians, ridden or herded animals, vehicles, streetcars, trackless trolleys, and other devices either singly or together while using any highway for purposes of traveling." Thus a bicycle operator IS traffic -- the bicycle operator is part of the class of people PROTECTED by the statute.

"Traffic" is a broad piece of fabric, with many different threads. Not all "traffic" goes, or is capable of going, 45 mph. By including these slower moving objects in the definition of "traffic" the legislature is allowing for varying speeds of vehicles on the roadways. If something is going as fast as it can on a roadway on which it has a right to proceed, how can it be "impeding" traffic?

The trial court, of course, did not buy this argument. The court found Mr. Selz guilty as charged, stating

"...I certainly understand the impassioned defense on this case because I do believe that bicyclists need a place to ride and it is not safe a lot of times to ride it on the streets on 49. I don't even think I'd ride there at 2:00 a.m. just because of the traffic. I don't think it's safe."

Mr. Selz was convicted of "impeding traffic fined \$100.00, plus costs. A discussion with Mr. Selz and various bicycling folks then ensued over the question of whether this was a case to appeal.

If the case was appealed and lost, it could be a terrible blow. A loss would mean that a community could basically ban bikes from any road on which a bicycle could not meet the speed limit. This would amount to virtually every road in the state as how many of us can maintain a 25 mph pace -- the speed limit of virtually every subdivision in Ohio?

I liked the odds of appealing the case. The Second Appellate District has a reputation for being fair and scholarly. I liked our case on both the law and the facts. Checking with a friend of mine who once clerked for the Second Appellate District, I discovered that two of the five judges were avid outdoorsy/bike riding types of folks who might be sympathetic to the arguments. Of the remaining three, only one was likely to be opposed to our view. The other two would keep an open mind and look closely at the legal arguments. Given this scenario, we decided to proceed with an appeal.

This is the first time that I had cooperated so closely with an advocacy group -- The Ohio Bike Federation. Chuck Smith and the OBF were fabulous and I would do it again in a heartbeat. Chuck publicized the case, sent emails out around the world, and agreed to publish the various court documents on the OBF website, www.ohiobike.org. Further, he started a Steven Selz Legal Defense Fund that collected money to help cover the cost of an appeal. I agreed to handle the appeal at a tremendously reduced rate. However, we still had to "buy" a copy of the transcript and file it with the court. Further, there were other miscellaneous expenses that go along with legal research and filing an appellate brief.

I understand that the City of Trotwood was virtually inundated with emails about the case. There were various versions of "the facts" now floating around. The OBF paid for the trial transcript and we published that on the OBF website. I openly invited comments, criticism and ideas for the appeal and received dozens of emails, mostly friendly, about the case.

Ultimately, the brief was prepared and filed. This was a rather unique brief in that, in addition to typical legal arguments, I described the history of cycling in the United States and the impact cyclists, specifically the League of American Wheelmen, had in paving our roadways. We added the brief to the website.

The City's brief was also filed. This provided us with some surprises. The City virtually abandoned the view it took at trial. Rather the City now argued that it

was Mr. Selz's position on the roadway as described by the officer, in combination with his "slow speed," that made the conviction reasonable. This was quite a change from the "get off the road if you can't do 45mph" attitude the City had taken at trial.

I requested oral argument in the court of appeals. I thought this would be a good way to really push our best points. The City gave notice that its attorneys would NOT be appearing at the oral argument – another surprise and a signal that perhaps they were not going to fight TOO hard on this one.

Oral argument was in Dayton on October 2, 2000. Chuck Smith from the OBF was in the audience. Steve Selz had to work that day. I thought it went extremely well. I was able to toss in several historical "tidbits" about the development of paved roads without worrying about what the other side would say, since the other side elected not to show up!

On October 20, 2000, the Court of Appeals released its decision – a victory for Steven Selz. The court found a case in Georgia involving a slow moving farm combine. In that case, the Georgia court found that operator of a slow moving vehicle, which was traveling at or near its top speed, could not be convicted of "impeding traffic" under a similar law. The Court of Appeals compared the Georgia case to this one and stated"

"In either case, holding the operator to have violated the slow speed statute would be tantamount to excluding operators of these vehicles from the public roadways, something that each legislative authority, respectively, has not clearly expressed an intention to do."

Publication of the court's decision on May 14, 2001, gives the opinion increased importance and precedential value. Further, virtually every lawyer in Ohio had the opportunity to take a look at it when it hit his or her desk.

The appeal was not without risk. However, a reasoned analysis of the risk was undertaken and, with perfect 20-20 hindsight, it looks like we made a smart move. I hope this review of the case helps out someone considering a trial on their bicycling traffic matter! In a future column I will discuss some tactics, techniques and tricks you can use in fighting bicycle traffic tickets.