

IN THE COURT OF APPEALS OF THE  
STATE OF OREGON

STATE OF OREGON,  
*Plaintiff-Respondent,*

*v.*

NICHOLAS DAKOTA TRYGG,  
aka Nicholas Trygg,  
*Defendant-Appellant.*

Jackson County Circuit Court  
17VI88359; A165620

Patricia Crain, Judge.

Submitted August 3, 2018.

Travis Eiva filed the brief for appellant.

Ellen F. Rosenblum, Attorney General, Benjamin Gutman, Solicitor General, and Carson L. Whitehead, Assistant Attorney General, filed the brief for respondent.

Before Ortega, Presiding Judge, and Egan, Chief Judge, and Powers, Judge.

PER CURIAM

Reversed.

**PER CURIAM**

Defendant appeals a general judgment convicting defendant of violating ORS 811.415, unsafe passing on the right. Defendant argues that the court erred in denying his motion for judgment of acquittal because the evidence was legally insufficient to show that defendant violated ORS 811.415. The state concedes error. We agree, accept the state's concession, and reverse defendant's conviction.

The relevant facts are undisputed. Defendant was riding an electric bicycle in a bicycle lane. A bus was traveling in the same direction in the lane to the immediate left of the bicycle lane in which defendant was traveling. The bus used its turn signal to indicate that it was going to turn right, and defendant continued to travel forward. The bus then turned right, crossing the bicycle lane. Defendant fell when he tried to avoid the bus, and the bus hit him. Defendant was cited for violating ORS 811.415.

ORS 811.415 provides, in part:

“(1) A person commits the offense of unsafe passing on the right if the person:

“(a) Drives a vehicle to overtake and pass upon the right of another vehicle at any time not permitted under this section.

“\*\*\*\*\*

“(2) For purposes of this section, a person may drive a vehicle to overtake and pass upon the right of another vehicle under any of the following circumstances:

“\*\*\*\*\*

“(b) Overtaking and passing upon the right is permitted if the overtaken vehicle is proceeding along a roadway in the left lane of two or more clearly marked lanes allocated exclusively to vehicular traffic moving in the same direction as the overtaking driver.

“(c) Overtaking and passing upon the right is permitted if the overtaking vehicle is a bicycle that may safely make the passage under the existing conditions.”

At trial, defendant moved for a judgment of acquittal, arguing that he was permitted to pass the bus on the

right under ORS 811.415(2)(b). The trial court denied that motion, concluding that defendant could only permissibly pass if it was safe to do so. Defendant appeals, and the state concedes that the trial court erred.

We agree with and accept the state's concession. Under ORS 811.415(2), passing on the right is permitted "under any of the following circumstances," one of which is when "the overtaken vehicle is proceeding along a roadway in the left lane of two or more clearly marked lanes allocated exclusively to vehicular traffic moving in the same direction as the overtaking driver." A marked bicycle lane is a lane of travel for bicycles, ORS 801.155; ORS 814.420, and bicycles are vehicles for purposes of the vehicle code, ORS 814.400(2). In this case, it is undisputed that defendant was riding in a clearly marked bicycle lane that was located to the right of the lane of travel of the bus and going in the same direction as the bus. Thus, the trial court erred in denying defendant's motion for judgment of acquittal.

Reversed.