



## Sheriff Gets It Dead Wrong In Cyclist Fatality Case, Says NY Bicycle Lawyer

By Jim Reed, Esq.

It is a sad day when a county sheriff totally misstates NY law in reaching the wrong conclusion about a cyclist death.

Rock 'n' Roll singer Ed Lakata was riding his bicycle last month from his home in Johnstown, NY, in Fulton County, to a camp on Caroga Lake when he was rear-ended by a pickup truck driven by John Damphier, 48, of Johnstown.



Musician and singer Ed Lakata of Fulton County, left, was killed while cycling recently.

(Photo from Gloversville leader-Herald.)

Lakata was killed instantly. He was 55. Damphier was driving north on Route 29A at the same time Lakata was riding north up a steep incline. According to Damphier, Lakata was struggling on the hill and veered into the side of Damphier's truck.

Fulton County Sheriff Thomas Lorey told the Schenectady Daily Gazette: "It was an accident in the truest sense of the word." He based that conclusion on this line of thinking in the Daily Gazette:

Lorey said the solid white line between the shoulder and driving lane is used to determine fault in such circumstances. He said if Damphier had crossed that line before the crash, he would be facing charges. Similarly, if Lakata crossed into the driving lane, he would be to blame. "We investigated the crash," he said. "The accident happened very near the white line, but we couldn't gather proof that anyone crossed over."

In the absence of such proof, it was ruled an accident, especially since Damphier was not exceeding the 55 mph speed limit. The sheriff is dead wrong on his analysis of fault in this scenario.

The sheriff mistakenly suggests that there is a "white line" analysis of fault in NY cycling cases saying that if the cyclist was to the right of the white line he is OK but if he is to the left of the fog line he would be at fault in causing the collision.

- First, NY law does NOT determine fault based solely upon which side of the fog line a collision occurs.
- Second, because NY law treats a cyclist like any other "vehicle," there are many occasions when a cyclist has a perfect legal right to be to the left of the fog line and is NOT at fault for being in the travel lane. In fact, a cyclist can legally use the ENTIRE lane when the circumstances require him or her to do so for his or her own safety reasons.

Furthermore, NY law is clear that any motorist approaching a cyclist from behind may only pass that cyclist when there is a safe distance to pass that cyclist. Vehicle and Traffic Law Sec. 1122-a requires "the operator of a vehicle overtaking, from behind, a bicycle proceeding on the same side of a roadway shall pass to the left of such bicycle **at a safe distance** until safely clear thereof."

In other words, a motorist is REQUIRED to slow or even stop behind a cyclist if there is not a reasonable safe distance to pass that cyclist. A motorist is NOT permitted to “squeeze” or “brush back” a bicyclist just because the bicyclist might be slowing them down.

Even though the NY law providing for a “safe passing distance” was a great first step for cycling safety when it was passed in 2012, I believe that NY would be better served by a law adopted in many other states which mandate a specific passing distance (usually 3 feet by 4 feet in some state), rather than the more abstract “safe passing distance” standard applied in NY.

As a member of the Board of Directors of the New York Bicycling Coalition, I am urging NYBC to advocate for an amended passing law in NY.

Our thoughts and prayers are with Mr. Lakata’s family.