

COMMONWEALTH OF KENTUCKY  
SUPREME COURT  
2004-SC-000131-DG

NOLLAIG PREVIS

APPELLANT

v. **BRIEF FOR *AMICI CURIAE*, LEAGUE OF  
AMERICAN BICYCLISTS, LOUISVILLE BICYCLE CLUB,  
ASHLAND CYCLING ENTHUSIASTS, INC., BLUEGRASS CYCLING  
CLUB, BOWLING GREEN LEAGUE OF CYCLISTS, and CHAIN  
REACTION CYCLING CLUB OF PADUCAH**

PETE DAILEY

APPELLEE

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FROM KENTUCKY COURT OF APPEALS  
CASE NO. 2002-CA-001751-MR  
AFFIRMING  
BOURBON CIRCUIT COURT NO: 00-CI-00051  
HONORABLE ROBERT OVERSTREET, JUDGE

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**CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served via first class mail on March 28, 2005 upon the following: David A. Weinberg, 301 East Main Street, Suite 110, Lexington, Kentucky 40507; Thomas L. Travis, Chadwick A. Wells, Clark & Ward PLLC, 333 West Vine Street, Suite 1100, Lexington, Kentucky 40507; Honorable Robert Overstreet, Judge, Bourbon Circuit Court, 103 South Main Street, Room 304, Versailles, Kentucky 40383; Honorable Daniel T. Guidugli, Judge, Kentucky Court of Appeals, One Mook Road, Suite 4, Newport, Kentucky 41071-5448; and George Geogheghan, Clerk, Kentucky Court of Appeals, 360 Democratic Drive, Frankfort, Kentucky 40601-8209.



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## I. INTRODUCTION

This brief *amici curiae* is submitted by the League of American Bicyclists, the Louisville Bicycle Club, the Ashland Cycling Enthusiasts, Inc., the Bluegrass Cycling Club, the Chain Reaction Cycling Club of Paducah and the Bowling Green League of Cyclists. Each is a not-for-profit organization concerned with promoting bicycling in its various forms and with protecting the rights of the cycling public. Founded in 1880 as the League of American Wheelmen, the League of American Bicyclists (the "League") is a Washington, D.C.-based member organization dedicated to representing the interests of the nation's 57 million adult cyclists. With a current membership of 300,000 affiliated cyclists and 600 affiliated organizations, the League works to bring better and safer bicycling to communities throughout the United States. The Louisville Bicycle Club, Inc. and the Ashland Cycling Enthusiasts, Inc., the Bluegrass Cycling Club, the Chain Reaction Cycling Club of Paducah and the Bowling Green League of Cyclists are non-profit organizations dedicated to similar ends within Kentucky.

The purpose of this *amici* brief is to bring to the Court's attention the statutes and regulations that embody the strong public policy of the Commonwealth to maximize the use of the public roads, streets, parks and other publicly-owned lands in Kentucky for use by bicyclists, while promoting the safety of bicyclists, motorists and the public. In addition, these *amici* offer this brief so as to highlight the need for vigilance on the part of the trial and appellate courts when instructing juries regarding the rights and obligations of both cyclists and motorists and when reviewing jury verdicts for fairness and fidelity to the law and public policy of the state as expressed in the statutes and regulations. When, as in this case, a jury disregards undisputed evidence, or acts on the collective bias

of its members and disregards the legal rights and obligations of the parties to cases involving accidents between motorists and cyclists, it is essential for the verdict to be set aside, consistent both with the Kentucky Rules of Civil Procedure and with established precedent. As these *amici* demonstrate, when the courts fail in this duty, as the trial court and the Court of Appeals did here, not only are the rights of the individual cyclists involved denied, but also the public policy of the Commonwealth is thwarted.

**II. BICYCLISTS USE THE PUBLIC ROADS IN LARGE AND GROWING NUMBERS, CONSISTENT WITH THE PUBLIC POLICY OF KENTUCKY TO FOSTER AND ENCOURAGE THE USE OF THE PUBLIC ROADS BY CYCLISTS.**

According to the Bureau of Transportation Statistics, there are some 57 million adult Americans who ride a bicycle each year.<sup>1</sup> Some ride only sporadically, while others, numbering in the millions, ride thousands of miles each year on the public roads. And bicycling for both recreation and transportation has long been a part of the American culture, as demonstrated in part by the 125-year history of the League and the 108-year history of the Louisville Bicycle Club.

In recognition of the importance of bicycling in Kentucky, more than 30 years ago the General Assembly declared it to be the public policy of the state to promote bicycling and the safety of bicyclists on Kentucky's public roads. Kentucky Revised Statute 189.287, which authorizes the Transportation Cabinet to promulgate bicycle safety regulations and standards, declares its purpose to "encourage bicycling and bicycle touring in this state by enabling bicycle riders to make use of modern technology to make their presence known to other users of the road." Among other things, the statute

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<sup>1</sup> [http://www.walkinginfo.org/pdf/FinalBikePedSurveyHighlightsReport\\_v2.pdf](http://www.walkinginfo.org/pdf/FinalBikePedSurveyHighlightsReport_v2.pdf)

authorizes the Transportation Cabinet to enact rules “convenient for long distance bicycle riders.”

Acting pursuant to that grant of authority, the Transportation Cabinet in conjunction with the Kentucky Bicycle and Bikeways Commission (“KBBC”) has promulgated the “Bicycle Safety Standards” set forth in 601 KAR 14.020. Among other provisions, the regulations provide that “a bicycle shall be operated in the same manner as a motor vehicle,” except that a bicycle may be operated on the shoulder of a highway; a bicycle must use a designated bike lane if one is available whenever it is feasible; and no more than two bicycles may be operated abreast in a single highway lane.<sup>2</sup> These regulations are consistent with the provisions of KRS 189.010(19)(a), which includes bicycles within the definition of “vehicle” for purposes of using the public roads and highways in Kentucky. In addition, they are consistent with the universal understanding of cyclists everywhere that the safest way to ride a bicycle on the road is to ride as far to the right as is practicable (in light of obstacles or dangerous road hazards) in the right-most through lane, while traveling in the direction of traffic.

Some twenty years after declaring it to be the public policy of the state to encourage bicycling and bicycle touring in Kentucky, the General Assembly went further by enacting legislation designed to “maximize the use of roads for cycling and the development of bikeways.” Kentucky Revised Statute 174.120 provides in pertinent part as follows:

Statewide bicycle and bikeways program.

- (1) The Transportation Cabinet shall develop and coordinate a statewide bicycle and bikeways program and shall coordinate plans for promotion of bicycling and promotion of bikeways with other state agencies, and units

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<sup>2</sup> 20 Ky.R. 1508; Am. 2037; eff. 2-10-94.

of local government in order to maximize the use of roads, streets, parks and other publicly owned lands, abandoned road beds, and other resources in the development of bikeways.

- (2) The cabinet shall:
- (a) Assist and cooperate with local governments and other agencies in the development and construction of local and regional bikeway projects;
  - (b) Develop and publish policies, procedures, and standards for planning, designing, and constructing, maintaining, marking, and operating bikeways in the state, and for the safety of bicyclists, motorists, and the public;
  - (c) Develop bikeway demonstration projects and safety training programs; and
  - (d) Develop and construct a State Bikeway System.

To give force to its declaration of policy, with KRS 174.125 the General Assembly created the Kentucky Bicycle and Bikeway Commission (“KBBC”). The KBBC is directed:

- (a) To represent the interests of bicyclists in advising the secretary on all matters pertaining to bicycles, bikeways, and their use, extent, and location; and
- ....
- (c) Promote the best interests of the bicycling public, within the context of the total transportation system, to governing officials and the public at large.

The same statute requires the KBBC to report to the General Assembly on an annual basis. According to the 2004 report, acting pursuant to the declared policy of the state in the preceding two years the Commission accomplished all of the following: (i) implemented a uniform “Share the Road” sign policy in parts of the state, (ii) began work on adding bike routes to county highway maps used by district highway offices, (iii) implemented an official routine accommodation policy of pedestrians and bicyclists on

all new or reconstructed state-maintained roadways, which according to the KBBC “has put Kentucky at the forefront of national policy” and (iv) distributed more than 400,000 “Share the Road” brochures through county courthouses, driver license offices, schools, police headquarters and other venues.<sup>3</sup>

Kentucky’s commitment to encouraging bicycling and fostering a safe environment for cyclists is not limited to the state level. Many local governments have pursued complimentary approaches. The League awards the “bicycle-friendly community” designation to those cities that meet a well-defined set of objective and demanding criteria generally perceived as critical to creating an environment conducive to efficient and enjoyable use of bicycles for recreation and transportation. Among the many benefits of developing a bicycle-friendly community are enhanced economic prospects and environmental qualities for the area.<sup>4</sup> Communities that are bicycle-friendly are seen as places with a high quality of life. The League believes, based on extensive data and national experience that this often translates into increased property values, business growth and tourism.<sup>5</sup>

Recognizing this, the Louisville Metro government has recently adopted the “bicycle-friendly community” approach endorsed by the League, and has dedicated substantial local resources to implementing the infrastructure, policy,

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<sup>3</sup> A complete copy of the Annual Report of the Kentucky Bicycle and Bikeway Commission 2004 is on file with Statewide Bicycle and Pedestrian Coordinator, Paula Nye, at (502) 564-7686.

<sup>4</sup> Recognizing the popularity of cycling, several of Kentucky’s leading corporations have sponsored road racing teams, usually consisting of both men and women in their 20s, 30s and 40s. United Parcel Service, Inc., Kentucky’s largest private employer, was the principal sponsor of such a team during 2003 and 2004. At present, both Papa John’s International, Inc. and Texas Roadhouse, Inc., two of the leading food service and restaurant chains in the country and both based in Louisville, sponsor highly-competitive road racing teams. See, e.g., [http://texasroadhouse.com/content.php?menu=sports&display=sports\\_cycling](http://texasroadhouse.com/content.php?menu=sports&display=sports_cycling).

<sup>5</sup> The initiative and program discussed here is explained in detail at <http://www.bicyclefriendlycommunity.org>



legal and other changes needed to successfully obtain the designation no later than 2008. This policy was adopted at the highest levels of Louisville-Jefferson County metro government in the belief that increasing use of bicycles will “improve the environment ...reduce congestion ...save lives ...boost the economy... enhance recreation ...save city funds ...enhance public safety... and improve health.”<sup>6</sup> These goals were sponsored by a wide range of public and private organizations interested in ensuring that bicycles become an increasingly viable alternative to motor vehicle traffic in appropriate circumstances, consistent with the declared public policy of the state.<sup>7</sup>

These governmental efforts compliment a wide range of cycling-related events staged on the public roads in Kentucky and elsewhere. Each year in communities across the country, long distance touring rides are staged, some of them, such as the long-running RAGBRAI (the Des Moines, Iowa, “Register’s Annual Great Bicycle Ride Across Iowa”) last for more than a week and traverse entire states, while drawing thousands of bicyclists.<sup>8</sup> The Louisville Bicycle Club’s annual “My Old Kentucky Home” ride, which takes in a 100-mile course between Louisville and Bardstown on one day, and a 50-mile course returning the following day, draws thousands of cyclists from throughout Kentucky and other states each September. On a professional level, each

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<sup>6</sup> <http://www.louisvillebicyclesummit.com>.

<sup>7</sup> Among the sponsors of the Metro Louisville Bike Summit, held February 7 and 8, 2004, were the Jefferson County Air Pollution Control District, the Kentucky Transportation Cabinet, the Kentuckiana Regional Planning and Development Agency, the Louisville Metro government, the Louisville Olmsted Parks Conservancy, the Metropolitan Sewer District, and the Transit Authority of River City (TARC). The breadth of the governmental support for the multi-faceted effort to promote the safe and efficient use of bicycles in Metro Louisville demonstrates, among other things, the importance of ensuring that Kentucky’s judicial approach to protecting the rights of cyclists does not lag far behind, or worse, threaten to undermine completely the progress made on other fronts.

<sup>8</sup> See <http://www.ragbrai.org/info-index.html#Whatis>. The RAGBRAI event began in 1973 and is now so popular that applications are taken, a lottery is conducted and participation is limited to 10,000 riders.

April the Tour De Georgia, which was reported to have drawn more than three quarters of a million cycling enthusiasts in 2004, brings some of the leading professional teams from the United States and Europe together for a week-long stage race in that state. All of these events take place on the public roads, just as do countless unorganized rides.

### **III. DESPITE LAWS, POLICIES AND EFFORTS TO PROMOTE CYCLING, BICYCLISTS FACE A DANGEROUS AND OFTEN HOSTILE ENVIRONMENT.**

In 2001, the National Highway Traffic Safety Administration reported that 728 bicyclists were killed in crashes with motor vehicles, with ten in Kentucky, or about 1.2% of all fatal crashes in the Commonwealth. In addition, some 45,000 were injured.<sup>9</sup> In 2002, 48,000 were injured in traffic crashes. More recently, in 2003 there were 622 bicyclists killed nationwide, with five in Kentucky. These numbers represent some two percent of the total number of people killed and injured in traffic crashes nationwide. Since 1932, when record keeping began, more than 47,000 bicyclists have died in traffic crashes in the United States. By any measure this is a significant problem.

The Federal Highway Administration estimates that the comprehensive cost of each person killed in a traffic crash to be \$2,900,000. Multiplying this number by the 728 bicyclists killed in 2001 totals \$2.1 billion.<sup>10</sup> Estimates of the comprehensive cost of each person seriously injured in a crash with a motor vehicle are difficult to develop, but the available data suggests that the cost is very high, and that on an aggregate scale the cost is in the billions.

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<sup>9</sup> <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/nca/tsf2001/2001pedal.pdf>.

<sup>10</sup> <http://www.fhwa.dot.gov/////legsregs/directives/techadvs/t75702.htm>.

And in Kentucky, reflected by the fatality rates per million population, the costs are higher than in any of the surrounding states. The Kentucky fatality rate for cyclists involved in collisions with motor vehicles in 2002 was 2.20. In Indiana, however, the rate was 1.46. Illinois's rate was 1.75, while Ohio's rate was 1.31; West Virginia's rate was 0.55, and Tennessee's rate was just 0.52, almost 75% lower than Kentucky's rate.<sup>11</sup>

Bourbon County, where the Appellant in this case was injured, includes a mix of rural countryside, small towns and farms and developing suburbs. As the population in counties such as Bourbon County increases, the likely opportunities for drivers such as the Appellee in this case to encounter cyclists will increase, perhaps dramatically. Most accidents involving motor vehicles and bicycles in Kentucky, however, occur in the larger metropolitan areas, including Louisville Metro, Lexington-Fayette County, and the municipalities and counties of Northern Kentucky. In these areas, the accident rate involving bicycles and motor vehicles is many times greater than in the more rural counties. In Louisville, for example, statistics show that for the period 1999-2003, the number of injury accidents per 10,000 in population was 2.5, while in Bourbon County the number of such accidents for the same period was just 0.8.<sup>12</sup> The accident rate in more urban counties is more than three times as high as is the rate in more rural counties.

Even so, the League believes based on all the available data that bicycle crashes in rural areas, though less prevalent than in urban areas, are more likely to be fatal or to cause serious injury because of the relatively high rates of speed typically involved in

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<sup>11</sup>NHTSA Traffic Safety Facts, 2002 Table 3, <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2002/2002pcyfacts.pdf>.

<sup>12</sup> Kentucky Transportation Center, College of Engineering, Analysis of Traffic Crash Data in Kentucky (1999-2004), Research Report KTC-04-25-KSP2-04-1F, University of Kentucky, September 2004. The complete analysis can be found at [http://www.ktc.uky.edu/Reports%20Published%20Recently\\_Section.htm](http://www.ktc.uky.edu/Reports%20Published%20Recently_Section.htm).

rural crashes. And the victims of most crashes, like the Appellant Previs in this case, are working adults. While in 1992 the average age of cyclists killed in traffic crashes was 27.5 years, by 2002 the average age of cyclists killed in crashes with motor vehicles was 36.0 years.<sup>13</sup> The proportion of cyclists between the ages of 25 and 64 killed in traffic accidents was 40% greater in 2002 than in 1992. The typical fatal motor vehicle accident involving a cyclist is not the result of inattentive children using the road without regard to traffic regulations. Nor is it the result of a cyclist who fails to yield the right of way when required to do so, or who somehow interferes with passing motorists. This is entirely consistent with the experience of these *amici*, and with common sense. Cyclists are acutely aware of their relative vulnerability, with nothing between them and the pavement, and nothing to protect them from 5,000 pounds of on rushing steel, glass, chrome and plastic, except their wits and good judgment.

**IV. THE DECISIONS BELOW DO VIOLENCE TO THE RIGHTS OF THE APPELLANT, THE INTERESTS OF CYCLISTS AND THE DECLARED POLICY OF THE COMMONWEALTH.**

**A. The Verdict and Judgment Below Were Based Not on Evidence But on Prejudice.**

This case comes to the Court following what amounts to the exercise of arbitrary power by a Bourbon County jury. From the record below, it seems undeniable that that jury acted on its collective prejudices or feelings rather than on the evidence before it. That exercise of arbitrary power denied the Appellant, Nollaig Previs (“Previs”) her constitutional right to have her case decided on the merits, based on the evidence properly admitted at trial.

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<sup>13</sup> <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/ncsa/tsf2001/2001pedal.pdf>. See also <http://www-nrd.nhtsa.dot.gov/pdf/nrd-30/NCSA/TSF2002/2002pcyfacts.pdf>, DOT HS circular 809 613, Traffic Safety Facts 2002.

It strains credulity to believe that the jury verdict in this case was based on the evidence, as Appellant's brief demonstrates beyond doubt. Regrettably, neither the trial court nor the Court of Appeals acted consistent the precedent of this Court governing the disposition of motions for directed verdicts and motions for judgment notwithstanding the verdict.<sup>14</sup> As a consequence, the Appellant has been denied a fair trial, the cycling public in Kentucky has witnessed a miscarriage of justice that reflects an all-too common attitude ("bicycles don't belong on the road") among some Kentuckians, and the public policy followed for more than thirty years in this state has been brushed aside. It is therefore appropriate that this Court use the opportunity now before it to make clear that the rights of law-abiding cyclists to use of the public roadways is real and will be protected, while the personal prejudices of the jury will not support an arbitrary and unjust verdict. If Appellant is to be given due process, and if the tens of thousands of other cyclists in Kentucky are to have the law and policies applied to them fairly and even-handedly in the future, it is imperative that a rogue jury not be permitted to disregard its duties and its oath. As well, it is just as important that trial judges and the Court of Appeals give such verdicts no more deference than they are due.

While this principle in the abstract would be reason enough to reverse the opinion below, it is especially important that the Court take this opportunity to fully validate the rights of citizens like Previs, who is one of a growing number of people – in the tens of millions across the nation – who use the public roads for travel by bicycle. If Kentucky is to provide a reasonably safe environment for commuters and recreational bicyclists alike,

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<sup>14</sup> See, e.g., *Cassinelli v. Begley*, Ky., 433 S.W.2d 651 (1968) and *Crest Coal Co. Inc. v. Bailey*, Ky., 602 S.W.2d 425 (1980).

it is essential that the law and policy of the Commonwealth reflect due regard for the realities of the road.

**B. The Verdict Is Against All of the Evidence.**

The record below demonstrates that the trial court properly instructed the jury concerning the duties of a passing motorist. The instruction was based on KRS 189.340(1), which provides that, “vehicles overtaking other vehicles proceeding in the same direction shall pass to the left of them and shall not drive to the right until reasonably clear of those vehicles.” (Emphasis added). Yet the evidence demonstrates just as clearly that the Appellee in this case violated that duty. According to the Court of Appeals, “it is uncontroverted that [Dailey, the Appellee] had not fully passed Previs before directing his vehicle back into the right lane.” (Opinion at 5). Without more, this is negligence *per se*.

The record is also uncontroverted that Appellee did not look in his rearview mirror when he re-entered the right lane occupied by the cyclist. Dailey testified that if he made any mistake, that was it, for “*if I had looked* in my rearview mirror, at me making a turn in like this, I wouldn’t have probably seen Nollaig [the Appellant] anyhow.” (Transcript, Dailey at 23) (emphasis added). Although the Court of Appeals recounts this testimony by saying that Dailey “*all but admitted* that he did not look in his rear view mirror,” (Opinion at 5) (emphasis added), in reality it is impossible to read Dailey’s testimony as anything other than a frank admission of his failure to look in his mirror. His testimony – “if I had looked” – is stated in the conditional subjunctive mood and in plain English means that he in fact did not look.

Consequently, the record is undisputed. Nollaig Previs was a law-abiding cyclist at the time of the accident. She had a perfect right to be where she was, close to the right side of the right lane on the road. There is no evidence suggesting that she veered away from the right side of the right lane. There is no evidence that she accelerated her bicycle so as to interfere with Dailey's ability to pass her. In fact, the proposition that Previs did accelerate so as to interfere with Appellee's attempt to pass (which as Appellant points out was not "evidence" because it was not based on fact, see Appellant's Brief at 10 - 11), is not merely grossly speculative but also almost inconsistent with the physical realities. Traveling at a speed of just two miles per hour, it is extremely difficult for any cyclist to instantly overcome the force of inertia that works to keep a bicycle at rest, or moving at a slow speed. Even with the assistance of gravity, a slow-moving bicycle does not gain noticeable speed instantaneously.

But wholly apart from the science, there was simply no evidence that would allow a jury acting true to its oath to conclude that in this case it was the cyclist who had somehow – quite inexplicably – caused the contact with the moving truck and its trailers, to the exclusion of the driver who admitted violating his statutory duty under KRS 189.340 to stay out of the right lane until a safe distance separated him from the bicyclist. The only competent evidence regarding the action of Previs just before the contact came from Previs herself. She testified without contradiction that she did not accelerate, but actually applied her brakes to slow her speed. (Transcript, Previs at 10 - 11).

And Dailey's own testimony to the effect that he did not see the cyclist once he started passing her until he had passed her and looked up and saw her "doing just what she said," (Transcript, Dailey at 21 - 22) means that Dailey was disqualified from

offering testimony regarding possible acceleration. What Previs was doing was “holding on for dear life” (Transcript, Previs at 10 - 11), since Dailey had taken her lane with his trailers, and her handlebars had become caught underneath the second trailer. Because by his own admission Dailey saw nothing between the time he started to pass and the time his wagons had hooked Previs and taken the bicycle out of her control, Dailey was incompetent to offer any evidence on what might have happened in the meantime.

Kentucky Rule of Evidence 601 disqualifies a witness who lacked the capacity to perceive accurately the matters about which he proposes to testify. KRE 602 prohibits a witness from testifying to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Dailey’s own testimony established that he was neither qualified to offer the testimony, nor did he have personal knowledge about it. Once he started to pass, Dailey was ignorant about Previs’s speed, or about whether she accelerated, as he speculated she might have, or about whether she actually braked and slowed, as she testified. Appellant was well-justified in seeking to exclude the testimony at trial, and it was doubtless error for the trial judge to admit it. But any verdict reached on the strength of it, and any judgment entered as a result of it is fundamentally flawed, so much so as to amount to the denial of a fair trial within the meaning of CR 59.01, as well as under *Cassinelli v. Begley*, Ky., 433 S.W.2d 651 (1968), and *Crest Coal Co. Inc. v. Bailey*, Ky., 602 S.W.2d 425 (1980).

**C. Permitting So Flawed a Judgment to Stand Would Undermine Both Public Policy and Thirty Years of Progress in Kentucky.**

In the judgment of these *amici*, permitting a verdict for the driver to stand under these circumstances would be to nullify entirely the stated public policy of the Commonwealth. A trial court is duty bound to exercise an appropriate measure of



control over its proceedings so as to ensure that its judgment is based on evidence, not speculation and surmise, or perhaps worse, on prejudice. A trial court that fails to direct a verdict when no reasonable inference in favor of the party opposing the motion could be made, or one that fails to enter judgment notwithstanding the verdict when the evidence is not sufficient to sustain it denies the other party to the action a fair trial.<sup>15</sup> CR 50.02 authorizes the trial court to enter judgment when the verdict returned was not supported by sufficient evidence, and where it fails to do so it is the obligation of the appellate court to step in to see that justice is done. *Crest Coal*, 602 S.W.2d 425 (1980). CR 59 permits the trial court to alter, amend or vacate the judgment on any number of grounds, including irregularities in the jury. It is difficult to imagine a more fundamental irregularity than the disregard of one's oath to set aside preconceived prejudices and to decide the case on the evidence and the law.

## V. CONCLUSION

The General Assembly has declared it the policy of the state to maximize the statewide use of the public roads by cyclists, KRS 174.120, and to "encourage bicycling and bicycle touring in this state". KRS 189.287. Yet it is likely that each of the tens of thousands of active cyclists in Kentucky has at some time come perilously close to being in the same situation as the Appellant in this case. Cyclists in Kentucky are well aware of the tendency of motorists to overlook them because of distractions or simple inattention, or to become angry upon encountering them for no apparent reason, displaying road rage

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<sup>15</sup> Apart from the procedural rules governing the conduct of a trial and the disposition of a judgment following a trial, a strong case can be made for the proposition that permitting a jury to disregard the evidence and decide a case based on the collective biases, prejudices and pre-existing attitudes of the jurors constitutes a denial of due process and a violation of Section 2 of the Kentucky Constitution, which prohibits the exercise of arbitrary power. Section 2 declares that "absolute and arbitrary power over the lives, liberty and property of freemen exists nowhere in a republic, not even in the largest majority." The provision "is a statement about all of government, not just the legislative branch". Lewis, "Jural Rights under Kentucky's Constitution: Realities Grounded in Myth", 80 Ky. L.J. 953, 976 - 77 n. 106 (1991-92).

that leads to cyclists being cut off, pushed off or otherwise abused on the roadway. In one high profile case in Louisville in 2004, the founder of Papa John's International, Inc., John Schnatter, was hospitalized after a crash caused by a passenger in an oncoming vehicle threw a textbook at him and his riding companion. Schnatter recovered, while his companion, the winner of fourteen national championships at United States Cycling Federation events, suffered broken bones and endured immediate surgery to repair the damage.

Jurors may not ignore the evidence presented to them in cases like this and decide the matter on their personal passions. The trial court and the Court of Appeals must appreciate that rank speculation by the driver of a vehicle some 60 feet in length regarding possible conduct by a cyclist the driver could not see while he was passing her cannot constitute the sort of evidence needed to avoid a directed verdict or judgment notwithstanding the verdict. Consequently, the *amici* urge the Court to take the opportunity this case presents to make clear that the rights of cyclists and the policy of the Commonwealth will not be trampled because of inordinate deference to a jury acting in the absence of evidence, or because of a jury that chooses to disregard its duty to decide a case fairly, on the evidence and law, not on personal attitudes toward cyclists that are against the public policy.

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