

## Motoring Offences

### Using a hand held mobile phone whilst driving

Drivers need to be aware of a recent ruling which, if accepted as a correct interpretation of the law, casts a wide net over actions that constitute 'using a hand held mobile phone'.

Blake Laphorn's Motoring Offences team represented a driver in Sussex who was convicted of this offence because a judge ruled that the act of switching off an alarm on the phone constituted 'using the phone'.

A district judge sitting at Hastings Magistrates Court accepted the driver's evidence that the vehicle was stationary in traffic when he was observed by a police officer holding the phone and appeared to be making a call or sending a text. However, the judge ruled that he was still 'driving' for the purposes of the offence because he had control of the vehicle, the ignition was on and the car was in gear. This finding is consistent with decisions of higher courts, which have ruled that in such circumstances the driver can be held to be 'driving' even if the vehicle is not moving at that precise time.

What was really in issue was whether the act that the driver accepted he was doing actually constituted 'using' the phone. The argument being that he was not using the phone to make/receive a call or text. The police officer couldn't say for sure what the driver was doing, except that the phone was in the driver's hand and his thumb was moving across the keys as if typing a message or making a call.

The argument that we presented to the Court was that there could have been any number of functions being carried out by the driver, most of which had nothing to do with making or receiving a call or sending/receiving a text message. That was what the legislation was aimed at.

However, the district judge ruled that it didn't matter what the driver was doing – any use of the phone (such as switching off an alarm) amounted to 'using a hand held phone'. Notwithstanding that, the driver escaped having his licence endorsed with penalty points because the judge was persuaded that because he was stationary, he wasn't causing a danger to other road users or pedestrians.

This decision is not binding on other courts but certainly gives food for thought. If the judge is correct then this means that drivers, who own multi-purpose mobile devices that offer a range of functions including email, are prevented from undertaking any hand held function whilst driving. That could include holding the device and switching it on with a view to making a hands free call via bluetooth, or holding the device before placing it into a USB port to listen to music – these activities would, it seems, be classed as 'using the phone' and therefore have to be carried out whilst the vehicle is parked.

We can only repeat that this is one district judge's view on the law, but we encourage all employers to review their driving policies and consider the health and safety of all road users.

#### Contact

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