

Consultant, Graham Walker advises on how to defend prosecutions involving the use of mobile phones whilst driving.

“I recently appeared on behalf of a client who was summonsed to appear at the Macclesfield Magistrates’ court for using a mobile phone whilst driving his car.

The proceedings were brought under regulation 110(1) of the Road Vehicles (Construction and Use) Regulations 1986. The offences were punishable under Section 41D of the Road Traffic Act 1988. The offence carries an obligatory endorsement of three penalty points and discretionary disqualification.
The offence could have been dealt with by way of a fixed penalty to avoid court appearance.

For the offences to be proved it must be established that a mobile telephone was held at some point during
the course of making or receiving a call or performing any other “interactive communication function” which
includes the sending or receiving of text messages, faxes or pictures and accessing the internet.
The expression ‘interactive communication function” is not specifically defined so that it will continue to
embrace future technological changes.

In this case the police officer had seen my client with the mobile telephone in his hand whilst driving also
holding the steering wheel with the same hand and had assumed he was making a telephone call.
I was able to prove at court by production of telephone logs, that no call had been made or received nor
any text or message sent or received at the time my client was seen holding the telephone.
The offence was not committed unless the motorist drives a motor vehicle on a road whilst using a
hand held mobile telephone.

It was accepted that it was insufficient for the purposes of a successful prosection for my client to be
simply holding a telephone in his hand and that it was an essential element of the offence that the
prosecution satisfy the court beyond reasonable doubt that the mobile phone was being used to make

or receive a call or message.

It should be noted that under Regulation 110 two other offences can be committed – causing or permitting a person to drive a motor vehicle on a road whilst using a hand held mobile telephone
or device; supervising a provisional licence holder where the driver commits the offence.

there is statutory defence if one can show all of the following three criteria are fulfilled:-
a). That the call is to an emergency service using 112 or 999 and,
b). That the caller is acting in response to a genuine emergency and,
c). That it is unsafe or impractical to cease driving in order to make the call.

While the regulations set out the specific offence of driving whilst using a mobile phone, it is also
the case that the use of a mobile phone while driving can be an important constituent part of other
offences – causing death by dangerous driving, causing death by careless driving and careless driving.

Although driving while using a hand-held mobile phone was made illegal in Britain in 2003, Bluetooth technology and devices with headphones and speakers are still legal. However, according to the Department for Transport, hands-free phones can still be considered a distraction
and drivers risk legal action if they drive erratically whilst using one.

It is imperative when advising clients in relation to these offences that before any pleas are entered,
careful examination is made of the requisite logs that are available on almost all mobile phone systems.
I would anticipate that where a police officer is prepared to give evidence to a court that the motorist
is seen using the phone with it held to his ear, then to defend such an allegation, the defendant will
have to produce independent evidence most usually in the form of a phone log to support his case.

In this case my client had been seen by a police officer, whose job it was on this occasion to stand
at the side of the road and “spot” motorists using their mobile phones. He telephoned his colleague,
three to four hundred yards further down the road, who flagged down my client and issued a fixed
penalty notice. It became clear in cross examination that the officer who stopped my client failed:-

a.) To ascertain the number of the phone.
b.) To check the phone for information stored within the phone as to received or recently

made calls.

Further, after a not guilty plea had been entered, the prosecution made no attempt to request sight
of my client's phone log.

The evidence they obtained at the scene of the alleged offence was non-existent and it is clear that,
as with speed cameras, most of these cases will be dealt with by way of a quick guilty plea and a
fixed penalty fine.

Given however that three points are obligatory, it is important that any motorist who genuinely believes that they were not using their phone does not simply accept the fixed penalty and looks

to defend their case with the assistance of telephone log information.

If you require further information regarding this article or any Road Traffic Act prosecution matter,
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