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New Jersey drivers can press buttons on their cell phones without violating the state law requiring "hands-free" calls, an appellate court has ruled.

The decision in a Bergen County case did not overturn the law requiring drivers to use cell phones with hands-free attachments except in emergencies.

But Judges Linda G. Baxter and Edith K. Payne also said penalties are not automatic when police see a driver holding a cell phone. "The plain language of the statute" permits some manual phone operations while driving, they said.

The case began on April 7, 2010, when Elliott Malone drove past Tenafly Police Lt. Daniel Siegel, who observed him "pushing buttons" on his cell phone.

In municipal court, Siegel testified he had "no idea" whether Malone's phone was equipped with an earpiece, according to court documents. Siegel also told the court he did "not necessarily" believe Malone was dialing, because he could have been "doing anything else," including sending a text.

Malone defended himself. He offered his cell phone records to prove he was not texting or

otherwise sending messages, but the court rejected them because they had not been authenticated. He also argued the law allows drivers to activate, deactivate or launch a function on their cell phones.

Malone was fined \$106 plus \$33 in court costs, penalties upheld in Superior Court, where the judge said it "should not take the pressing of buttons to activate a cell phone."

But in their ruling, Payne and Baxter said that even the Bergen County Prosecutor's Office acknowledged the Legislature did not define what constitutes "activating, deactivating, or initiating a function of a cell phone." The judges pointed out the law specifically allows "the use of either hand" for these actions.

The prosecution cited a press release from then-Gov. James McGreevey, who described the law as "requiring drivers to keep both hands on the wheel." But the judges pointed out that is not what the statute says.

Instead, the ruling cites the legislative sponsor statement, "Hands-free designs or attachments should reduce the distractions associated with dialing." Clearly, motorists are still expected to dial, the judges said.

Even speed dialing requires a cell phone user to find a contact number and select it, so the lower courts were also wrong on this point, the appellate decision said. "Initiating a function" could involve a variety of buttons, the judges added.

Since the state did not prove Malone was doing anything wrong, the appellate judges reversed his conviction, but did not rule on his contention that the law as written is unconstitutionally vague.

The decision comes as state Sens. Richard Codey (D-Essex) and Paul Girgenti (D-Passaic) have pushed legislation to increase penalties on motorists who use hand-held cell phones. Although police have written 10,000 tickets a month for the offense since May 2008, the \$100 penalty has not been a sufficient deterrent, according to Codey.

The bill, and a parallel Assembly measure sponsored by Annette Quijano (D-Union) and L. Grace Spencer (D-Essex) would increase that to \$200 for a first offense, \$400 for a second, \$600 plus three points for a third.

It would also give courts discretion to impose a 90-day license suspension on drivers with multiple offenses.

In recent years, a number of studies have cited alarming links between "distracted" driving and accidents. But while a number of safety groups have called for tough restrictions on texting, there is less agreement on the relative safety of hands-free versus hands-on calls or other conversation while driving.

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