

City Court, City of Troy.

The PEOPLE of the State of New York, Plaintiff,

v.

Stephen G. BOZAK, Defendant.

No. 734102C8MB.

Sept. 8, 2010.

Matthew Foley, Esq., Assistant Corporation Counsel, Troy.

D. Jeremy Rase, Esq., Esperance, for Defendant.

MATTHEW J. TURNER, J.

*1 Defendant seeks dismissal of a traffic ticket which alleges "Talking on Mobile Device While Driving" in violation of Section 1225-c [2][a] of the Vehicle and Traffic Law on May 30, 2010. Defendant argues that his use of a hand held amateur radio does not fit the definition of a mobile telephone and as such the present charge should be dismissed. The People have not submitted a response in opposition.

The Vehicle and Traffic Law defines a "Mobile Telephone" as a "device used by subscribers and other users of wireless telephone service to access such service" (VTL § 1225-c [1][a]). A "Wireless Telephone Service" is defined as "two-way real time voice tele-communications service that is interconnected to a public switched telephone network and is provided by a commercial mobile radio service, as such term is defined by 47 C.F.R. § 20.3 (VTL § 1225-c [1][b])(emphasis added). A review of 47 C.F.R. § 20.3 reveals that Citizens Band Radio Service is defined under private mobile radio service not commercial mobile radio service. Therefore, the Court finds that the use of an amateur radio device does not fit the definition of a mobile telephone as defined under the Vehicle and Traffic Law and grants the defendant's motion to dismiss.

This shall constitute the Decision and Order of the Court.

N.Y.City Ct.,2010.

People v. Bozak

--- N.Y.S.2d ----, 2010 WL 3490031 (N.Y.City Ct.), 2010 N.Y. Slip Op. 20361

• Turner, Hon. Matthew

State of New York City Court, City of Troy, New York