

IN THE SUPREME COURT OF FLORIDA

JOSEPH MAGNOTTI,)
)
 Petitioner/Appellant,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent/Appellee.)
 _____)

CASE NO.
(4th DCA Case No. 4D02-300)

PETITIONER’S BRIEF ON JURISDICTION

CAREY HAUGHWOUT
Public Defender

JEFFREY L. ANDERSON
Assistant Public Defender
Florida Bar No. 374407
Attorney for Joseph Magnotti
The Criminal Justice Building
421 Third Street/Sixth Floor
West Palm Beach, Florida 33401
(561) 355-7600

TABLE OF CONTENTS

<u>CONTENTS</u>	<u>PAGE</u>
TABLE OF CONTENTS	i
AUTHORITIES CITED	ii
PRELIMINARY STATEMENT	1
STATEMENT OF THE CASE AND FACTS	2
SUMMARY OF THE ARGUMENT	3

ARGUMENT

<u>THIS COURT HAS JURISDICTION TO REVIEW <u>MAGNOTTI V. STATE</u>, 28 FLA. L. WEEKLY D809 (FLA. 4TH DCA MARCH 26, 2003), WHERE THE DECISION IS IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT’S DECISION IN <u>MONTSDOCA V. STATE</u>, 84 FLA. 82, 93 SO. 157 (FLA. 1922).</u>	4
CONCLUSION	9
CERTIFICATE OF SERVICE	9
CERTIFICATE OF FONT COMPLIANCE	10

AUTHORITIES CITED

<u>CASES</u>	<u>PAGE(S)</u>
<u>Flagler v. State</u> , 198 So. 2d 313 (Fla. 1967)	6
<u>Kincaid v. World Insurance Co.</u> , 157 So. 2d 517 (Fla. 1963)	4
<u>Mancini v. State</u> , 312 So. 2d 732 (Fla. 1975)	4
<u>Montsdoca v. State</u> , 84 Fla. 82, 93 So. 157 (Fla. 1922)	5, 7
<u>Nielson v. City of Sarasota</u> , 117 So. 2d 731 (Fla. 1960)	4
<u>Robertson v. State</u> , 829 So. 2d 901 (Fla. 2002)	5
<u>Schram v. State</u> , 614 So. 2d 646 (Fla. 2d DCA 1993)	7
<u>Smithson v. State</u> , 689 So. 2d 1226 (Fla. 5 th DCA 1997)	6

FLORIDA CONSTITUTION

Article V, Section 3(b)3	4
--------------------------------	---

FLORIDA RULES OF APPELLATE PROCEDURE

Rule 9.030(a)(2)(A)(iv) app	4
-----------------------------------	---

PRELIMINARY STATEMENT

Petitioner was the defendant in the Circuit Court of the Seventeenth Judicial Circuit, in and for Broward County, and the Appellant in the Fourth District Court of Appeal. Respondent was the prosecution and appellee in the lower courts. In this brief, the parties will be referred to as they appear before this Court.

The following symbols will be used:

“R” = Record on Appeal

“T” = Trial Transcript

“A” = Appendix.

STATEMENT OF THE CASE AND FACTS

Petitioner was convicted of strong armed robbery of a bank A1, Magnotti v. State, 29 Fla. Law Weekly D809 (Fla. 4th DCA March 26, 2003). The facts from the district court's opinion show that Petitioner approached a teller's window and stated, "This is a hold-up. I want your hundreds, fifties and twenties now." A1. The teller responded, "'Pardon me?'" A1. Petitioner repeated the same words "very firmly" A1. The teller was behind a "thick bullet proof glass pane" and knew that she "could not be hurt because of that wall." A1. The teller did not see Petitioner with any weapons A1. The teller testified that she was "deathly afraid" because of the "mere fact of somebody coming up to you and saying 'Give me your money'" A1. The teller ultimately gave Petitioner money A1.

On appeal, it was argued that evidence was not sufficient to show that the resistance to the taking was suspended due to putting the teller in fear of bodily harm. The district court recognized that the teller was not in fear but held that actual fear is not required for "putting in fear" A2. The district court also held that the teller's subjective fear "coupled" with the objective circumstances of the taking was sufficient evidence of robbery A2.

Petitioner filed a motion for rehearing. On May 7, 2003, the motion for rehearing was denied A3. Petitioner filed a timely notice of intent to invoke the discretionary jurisdiction of this Court. This jurisdictional brief follows.

SUMMARY OF THE ARGUMENT

The district court's decision in Magnotti v. State, 28 Fla. L. Weekly D809 (Fla. 4th DCA March 26, 2003) conflicts with this Court's decision in Montsdoca v. State, 84 Fla. 82, 92 So. 157 (Fla. 1922) on two grounds. First, in Montsdoca, this Court held that fear must be created in the victim and that fear had to be reasonable. In Magnotti, the district court held that actual fear did not have to be present in the victim, but it is sufficient if a reasonable person would have been placed in fear.

Second, Montsdoca, and other cases, have held that the fear must be of bodily harm. The district court in Magnotti held that the subjective fear of the victim not involving bodily harm coupled with objective circumstances are sufficient for the "putting in fear" requirement.

This Court should accept jurisdiction to resolve these conflicts.

ARGUMENT

THIS COURT HAS JURISDICTION TO REVIEW MAGNOTTI V. STATE, 28 FLA. L. WEEKLY D809 (FLA. 4TH DCA MARCH 26, 2003), WHERE THE DECISION IS IN EXPRESS AND DIRECT CONFLICT WITH THIS COURT'S DECISION IN MONTSDOCA V. STATE, 84 FLA. 82, 93 SO. 157 (FLA. 1922).

Article V, § 3(b)3 of the Florida Constitution vests this Court with jurisdiction to hear appeals in criminal cases as follows:

(3) May review and decision of a district court of appeal ... that expressly and directly conflicts with a decision of the supreme court on the same question of law.

accord Fla.R.App.P. 9.030(a)(2)(A)(iv).

In Nielson v. City of Sarasota, 117 So. 2d 731 (Fla. 1960), this Court discussed “conflict jurisdiction” stating”

the principal situation justifying the invocation of our jurisdiction to review decisions of Courts of Appeal because of alleged conflict are, (1) the announcement of a rule of law which conflicts with a rule previously announced by this Court, or (2) the application of a rule of law to produce a different result in a case which involves substantially the same controlling facts as a case disposed of by this Court.

Id. at 734; accord Mancini v. State, 312 So. 2d 732, 733 (Fla. 1975). “The constitutional standard is whether the decision of the District Court on its face collides with a prior decision of this Court, or another District Court, on the same point of law so as to create an inconsistency or conflict among precedents.” Kincaid

v. World Insurance Co., 157 So. 2d 517, 518 (Fla. 1963).

The present case conflicts with this Court's decision in Montsdoca v. State, 84 Fla. 82, 93 So. 157 (Fla. 1922) as to whether in a robbery by "putting in fear" which prevents the victims' resistance, the fear must be actual or can be hypothetical (strictly on a reasonable person standard).¹

In Magnotti, the district court held that fear need not be actual.

No explanation or logic is given for holding that [actual] fear is not required to prevent the victim's resistance to the taking. What else is capable of preventing a robbery victim's resistance? A hypothetical fear that another person might entertain, but does not actually occur in the victim, simply would not prevent the victim's resistance.

The only basis for the evolution of a holding that [actual] fear is not required for "putting in fear" so that the victim does not resist appears to come from the misapplication of the law set forth in Montsdoca v. State, 84 Fla. 82, 93 So. 157 (Fla. 1922).²

In Montsdoca, this Court held that the fear must be create[d] in the victim (i.e. it must actually be present) and that the fear must be reasonable:

¹ The district court uses the term "actual fear." Logically, fear exists or does not exist. If the fear does not exist then, at best, it is a hypothetical fear.

² Misapplication of a Supreme Court decision also creates Supreme Court jurisdiction. Robertson v. State, 829 So. 2d 901, 904 (Fla. 2002).

Violence need not be actual to constitute the offense of robbery. It is robbery to create in the person to be despoiled a reasonable apprehension of violence to avoid which he parts with the thing.

84 Fla. at 87 (emphasis added). Thus, while a reasonable fear of apprehension is mentioned in Montsdoca, it is in the context of the requirement that the fear be reasonable (rather than purely subjective), but it still requires that the victim have actual fear that prevents resistance (create in the despoiled person a fear). The violence need not be actual. District courts have misapplied and misconstrued Montsdoca to conclude that no [actual] fear be present to prevent the victim's resistance as long as a reasonable person would be apprehensive under the circumstances. Smithson v. State, 689 So. 2d 1226 (Fla. 5th DCA 1997). Again, logic dictates that a victim must be in [actual] fear in order for the fear to prevent resistance to the taking. A hypothetical reasonable person fear would not prevent resistance because it does not exist in the victim's mind.

This Court has never retreated from Montsdoca, or adopted the elimination of the [actual] fear requirement, despite having reviewed a case often cited for the elimination of the actual fear requirement – Flagler v. State, 198 So. 2d 313 (Fla. 1967). This Court affirmed the district court's result in Flagler but instead of adopting the district court's analysis that actual fear was not required, this Court traversed its way to explain that the victim was in actual fear:

She testified at trial that she was frightened although she did not make an outcry and it is easily to understand why she did not, for an outcry in her situation might well have endangered her little boy. The conclusion that she was in deed actually in fear when he seized the pocketbook from the very side of herself and her little boy is not to us strained. And, strangely enough, the fact that she did not at the time give expression to her fear was in itself evidence of fear.

198 So. 2d at 314 (emphasis added). Thus, this Court declined to adopt the district court's rationale that actual fear was not required. The district courts' decisions, including the present case, conflict with this Court's decision in Montsdoca. This Court should resolve the conflict for "putting in fear."

There exists a second conflict between Montsdoca and this case. In Montsdoca, this Court made clear that the fear of the victim must be of "bodily harm" and that other types of fear (such as threat of prosecution) will not qualify. Montsdoca, at 87. Other district courts have agreed that the fear felt by a non-resisting victim must be of bodily harm. E.g. Schram v. State, 614 So. 2d 646 (Fla. 2d DCA 1993).

In this case the district court used the subjective fear of the victim (which was not of bodily harm) combined with objective circumstances to conclude that the "putting in fear" requirement had been met:

Wood testified that she was confident that the shield would protect her, she nevertheless maintained that she was "deadly afraid" during the robbery. We conclude that the victim's inarticulate, subjective fear coupled with the objective circumstances attendant to this robbery more than satisfy the taking "by putting in fear" element of the robbery statute.

The district court acknowledged the fear was not of any bodily harm as the teller knew she could not be hurt:

Wood testified that, despite being behind the protective glass and knowing that she “could not be hurt because of that wall,” she was “deadly afraid.”

Appendix. The district court gave lip service that the fear required by statute was bodily harm, but applied a test to affirm where the victim had a fear that did not involve bodily harm. Thus, the district court has created a new test for “putting in fear” – a subjective fear not of bodily harm coupled with a reasonable person test. This conflicts with Montsdoca, Schram and other cases that require fear of bodily harm.

CONCLUSION

Because express and direct conflict has been shown, this Court should grant the petition for discretionary review.

Respectfully submitted,

CAREY HAUGHWOUT
Public Defender

JEFFREY L. ANDERSON
Assistant Public Defender
Fifteenth Judicial Circuit of Florida
Florida Bar No. 374407
Attorney for Joseph Magnotti
The Criminal Justice Building
421 Third Street/Sixth Floor
West Palm Beach, Florida 33401
(561) 355-7600

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the Initial Brief has been furnished to HEIDI L. BETTENDORF, Assistant Attorney General, 1515 North Flagler Drive, Ninth Floor, West Palm Beach, Florida 33401-3432, by courier this _____ day of June, 2003.

Attorney for Joseph Magnotti

CERTIFICATE OF FONT COMPLIANCE

Counsel hereby certifies that the instant brief has been prepared with Times New Roman 14-point font.

JEFFREY L. ANDERSON
Assistant Public Defender

IN THE SUPREME COURT OF FLORIDA

JOSEPH MAGNOTTI,)
)
 Petitioner/Appellant,)
)
 vs.)
)
 STATE OF FLORIDA,)
)
 Respondent/Appellee.)
 _____)

CASE NO.
(4th DCA Case No. 4D02-300)

APPENDIX

PETITIONER’S BRIEF ON JURISDICTION

CAREY HAUGHWOUT
Public Defender

JEFFREY L. ANDERSON
Assistant Public Defender
Florida Bar No. 374407
Attorney for Joseph Magnotti
The Criminal Justice Building
421 Third Street/Sixth Floor
West Palm Beach, Florida 33401
(561) 355-7600