



El Segundo Police Department

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TRAINING BULLETIN

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Is Fear Necessary To Prove A Brandishing Charge?

Brandishing a firearm at an occupied motor vehicle does not require that a person (victim) experience fear (417.3 PC).

Facts

While stopped at a traffic signal in Orange County, the defendant pointed a handgun in the direction of another driver who had taken a picture of the defendant's license plate (the defendant had reportedly been driving recklessly). The defendant had pulled up adjacent to the victim's passenger side and displayed the handgun. He left the scene, and the other driver (the victim) called 911. Subsequently, officers went to the defendant's home and recovered a handgun in his vehicle. The defendant was charged with felony brandishing a firearm at a person in a motor vehicle.

An Orange County trial court magistrate granted the defendant's motion to dismiss the brandishing count, reasoning there was no evidence the victim actually experienced fear as a result of the defendant's action.

Held

4DCA reversed the trial court and ruled the felony brandishing count should be reinstated, determining that 417.3 PC does not require proof that a victim subjectively or objectively experience fear. The statute only requires that the defendant's conduct "would likely cause a reasonable person to experience apprehension or fear of bodily harm." The theory behind brandishing a weapon is the *general intent* of the action. Although a victim could experience apprehension or fear, it is not a necessary element of proof.

Author's Notes

This decision is also applicable to other forms of brandishing specified in the Penal Code. Although a victim's personal feelings of fear or apprehension are not required for a conviction, if a victim does express these feelings during a field interview, these facts should be included in your police report.

The 4DCA pointed out that if the legislature wanted fear as a necessary element of a brandishing crime, this wording would have been written into the statute. Example: 422(a) PC (criminal threats) where the statute wording **requires** proof that a victim actually be in a state of fear as a result of a defendant's actions.