



CIRCUIT COURTS OF APPEAL · RESOURCES

Reasonable Fear, Actual Fear, and Weapons: United States v. Guerrero

By **Daigle Law Group**

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The case under discussion today from the First Circuit revisits the idea of actual fear versus reasonable fear an officer might face when stopping a vehicle. This concept is crucial because an officer is permitted to search a car without a warrant if there is reasonable suspicion that weapons might be involved.

Two significant cases, *Michigan v. Long* and *United States v. Lott*, are relevant to our discussion today. In *Michigan v. Long*, the Supreme Court ruled that when law enforcement officers conduct investigative detentions or Terry stops involving automobiles, they can perform a warrantless “car frisk” of the areas within the suspect’s “grab space,” if they have reasonable suspicion that the suspect might immediately access a weapon. In *United States v. Lott* and several other cases, when evaluating the reasonableness of car frisks under *Long*, courts have stipulated that: (1) the officers must genuinely fear that the suspect was armed (subjective prong); and (2) this fear must be reasonable under the circumstances (objective prong), before officers can “frisk a vehicle for weapons.”

FACTS

Around 1:00 a.m., police officers responded to a “shots fired” call from a nearby laundromat. Upon arrival, they saw a BMW sedan speeding away from the area. The officers attempted to stop the fleeing vehicle, but the driver did not comply. After a brief pursuit, the BMW stopped, and the officers apprehended the driver, Juan Guerrero, and a 16-year-old minor who was a passenger. The officers then searched the BMW and found a magazine loaded with bullets in a backpack behind the driver’s seat. They searched the rest of the vehicle but did not find a firearm. The government charged Guerrero with unlawful possession of ammunition by a convicted felon.

Guerrero submitted a motion to suppress the evidence seized from the vehicle.

The district court applied *Lott* to the facts of this case and ruled that the second prong—the objective prong which states that fear must be reasonable under the circumstances—was satisfied. It was objectively reasonable for the officers under these circumstances to believe that Guerrero might have accessed a weapon in the BMW. However, the district court ruled that the officers did not have an “actual fear” for their safety; thus, they were not entitled to frisk the BMW for weapons.

Consequently, the district court granted Guerrero's motion to suppress. The government appealed.

FIRST CIRCUIT COURT OPINION

The First Circuit Court of Appeals expressly discarded the "actual fear" or subjective prong articulated in Lott and subsequent cases. Initially, the court considered the "law of the circuit" rule which states that a legal issue, once decided by a court as in Lott, typically binds later courts. Nevertheless, the court noted that after it decided Lott in 1989, the Supreme Court released several opinions in various Fourth Amendment contexts, asserting that legal tests based on reasonableness should rely on objective standards rather than standards contingent on the subjective state of mind of the officer. The court also found that the Fifth, Eighth, and District of Columbia circuits had specifically dismissed the relevance of an officer's subjective fear when assessing the reasonableness of a car frisk under Long. Based on these considerations, the court believed that the judges who decided Lott, if given the opportunity, would not require officers to have an "actual fear" for their safety before conducting a lawful car frisk under Long. Consequently, the court overturned the district court's ruling that had granted Guerrero's motion to suppress the evidence seized from the vehicle.

TAKEAWAYS

When discussing a concept as complex as reasonable fear versus actual fear, there will inevitably be differences in circumstances and opinions as the court determines a ruling. So, what factors should you consider to protect yourself? Firstly, bear in mind that a warrantless search only permits you to examine the suspect's "grab space"; don't make the mistake of assuming this circumstance allows you to conduct a complete search of the vehicle. The magazine that officers found in this case was within the driver's reach. Secondly, take into account the factors surrounding the reasonable or subjective fear in this case: officers were responding to a shots fired call, which unequivocally suggests the involvement of weapons.

United States v. Guerrero, 2021 U.S. App. LEXIS 35883 (1st Cir. RI, Dec. 6, 2021)".

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