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Beneath the Seat, Beyond a Hunch: Protective Vehicle Searches in *United States v. Erving*

By **Daigle Law Group**

September 15, 2026

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The United States Court of Appeals for the Seventh Circuit recently released an opinion in *United States v. Erving*, a case that highlights the circumstances under which a protective vehicle search is permissible under the Fourth Amendment. The court examined whether the officer had reasonable suspicion that Erving was dangerous and could gain immediate control of a weapon.

Summary of the Facts

In September 2022, Peoria Police Department Lieutenant Erin Barisch was on patrol in an unmarked vehicle. Around 2:45 AM, he observed a Dodge Durango parked in the back of a dark, closed parking lot and decided to investigate. Lieutenant Barisch lit up the car with his headlights and then shined his flashlight into the rear windows. He observed Dazmine Erving and a female companion in the backseat. He noticed that Erving “[made] a quick, sudden movement leaning down and then toward the rear of the back driver’s seat toward the floorboard, and then he quickly sat up,” making it seem like he was hiding something. As Lieutenant Barisch approached the car, Erving began to open the rear door, allowing the lieutenant to use his flashlight to view the interior. Due to Erving’s and the woman’s state of partial undress, Lieutenant Barisch believed that they were engaged in sexual activities. Additionally, he smelled a “lingering odor of burnt cannabis.” When asked for identification, Erving provided his identification card. The woman did not have identification but informed Lieutenant Barisch that her name was “Adriana Smith, born February 5, 2005.” Upon checking their information, Lieutenant Barisch could not find a record of the woman and realized that she had provided false information. He also discovered that Erving was recently on federal supervised release for a weapons offense. Lieutenant Barisch returned to the car and confirmed Erving’s supervised release status. He requested that the pair exit the vehicle. After they stepped out of the car, Lieutenant Barisch allowed Erving and the woman to retrieve their belongings. He then placed them in the back of his police vehicle without handcuffing them. Lieutenant Barisch then looked under the driver’s seat, believing that Erving had hidden something. He discovered a firearm, left it alone, and called for backup. Upon the arrival of backup, Lieutenant Barisch retrieved the firearm and placed Erving under arrest. Erving was charged with unlawfully possessing a weapon as a felon.

At the district court, Erving moved to suppress the firearm, stating that Lieutenant Barisch unlawfully searched his vehicle by looking under the front seat. He claimed that the search could not be justified

as a protective search and that, due to the legalization of cannabis in Illinois, the odor of burnt cannabis did not give the lieutenant probable cause to suspect a violation of Illinois law. The district court denied Erving's motion to suppress, concluding that the search was a valid protective search under the Fourth Amendment, and Erving was convicted of the firearm offense. Erving appealed to the Seventh Circuit Court of Appeals, challenging the denial of his motion to suppress.

United States Court of Appeals for the Seventh Circuit

On appeal, the Seventh Circuit examined whether Lieutenant Barisch had reasonable suspicion that Erving was dangerous and might gain immediate control of weapons inside the vehicle. The court began by reiterating the legal principles that would guide its opinion. First, the court emphasized that *Terry v. Ohio* permits an officer to conduct a safety frisk without a warrant when there is a reasonable, articulable suspicion that criminal activity is afoot and reasonable grounds to believe that a suspect is armed and dangerous. During these protective searches, police may seize contraband during a lawful pat-down if the contraband's "contour or mass makes its identity as contraband immediately apparent." Under Seventh Circuit precedent in *United States v. Richmond*, an officer may also conduct "area searches" for weapons "in limited circumstances." However, an area search "must be strictly limited to that which is necessary for the discovery of weapons." The court then cited the Supreme Court case *Michigan v. Long*, which outlines the scope of protective vehicle searches. Under *Long*, a protective search is permissible under the Fourth Amendment if an officer has reasonable suspicion to believe that (1) "the suspect is dangerous" and (2) the suspect "may gain immediate control of weapons."

In applying this framework, the court first examined whether Lieutenant Barisch had reasonable suspicion to believe that Erving was dangerous. The court, considering the specific facts under the totality of the circumstances, found that Lieutenant Barisch, without any additional backup, conducted this stop at 2:45 AM in a high-crime area. Moreover, as Lieutenant Barisch approached the vehicle, he noticed Erving make a "furtive movement," and, relying on his training and experience, noted that the movement seemed suspicious. Erving argued that "furtive movements" should not permit officers to search a vehicle at every traffic stop. However, Lieutenant Barisch described Erving's movement as "a deliberate, sudden, quick movement leaning down and then quickly back up." If Erving had been getting redressed, the movement would have appeared longer in duration. Therefore, Erving's movement appeared as if he was trying to hide something rather than regain his composure. In addition to this suspicion, Lieutenant Barisch smelled burnt cannabis as he approached the vehicle. The court emphasized that "[r]eason to believe a suspect may be 'under the influence of drugs,' including the mere smell of intoxicants, contributes to reasonable suspicion." Therefore, the court found it reasonable that someone who may be under the influence is more likely to pose a threat to others.

Additionally, Lieutenant Barisch conducted the protective search only after discovering that Erving had a previous criminal record and was on supervised release for a weapons offense. Therefore, based on the totality of the circumstances, the court found that Lieutenant Barisch had reasonable suspicion to believe that Erving was dangerous.

Next, the court considered whether Erving could have gained immediate control of a weapon. Under the Seventh Circuit's decision in *United States v. Vaccaro*, the "ability to gain immediate control of a weapon can be satisfied if the suspect is likely to be released or permitted to gather belongings from the vehicle." In this case, the court found that Erving was likely to be released since he had not committed an arrestable offense before Lieutenant Barisch discovered the firearm. As such, the court concluded that Erving's release was likely at this point in the interaction and found that Erving could have regained access to his vehicle and immediate control of the weapon. In response, Erving contended that *Vaccaro* was decided incorrectly and should therefore be overruled. The court disagreed, citing *Long*, in which the Supreme Court held that a protective search is permitted if a suspect is not placed under arrest and will be returned to the vehicle.

Ultimately, the Seventh Circuit concluded that Lieutenant Barisch had reasonable suspicion that Erving was dangerous and could gain immediate control of a weapon in the vehicle. Therefore, the protective search of the passenger compartment was justified under the Fourth Amendment. Accordingly, the court affirmed the district court's denial of the motion to suppress.

Key Takeaways

Erving emphasizes that officers can conduct a limited protective sweep of a vehicle when specific, articulable facts create reasonable suspicion that the person is dangerous and could quickly regain access to a weapon inside the car, even if that person is temporarily removed from it. Law enforcement officers should carefully document the circumstances surrounding any incident, including any resistance or noncompliance that may contribute to the officer's concerns for their safety and the safety of others. Officers must ensure that protective searches are justified by specific safety concerns and limited in scope so they do not become general searches for evidence or a routine part of every vehicle stop.

United States v. Erving, 164 F.4th 953 (7th Cir. 2026)

Originally published at <https://dlglearningcenter.com/beneath-the-seat-beyond-a-hunch-protective-vehicle-searches-in-united-states-v-erving/>

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