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LAW ENFORCEMENT OFFICER TRAINING CASE OF THE MONTH

By Don Hays

Month of July – 2026 - ALTERNATIVE

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United States v. Dazmine Erving, 164 F.4th 953, January 20, 2026.

THE CASE: The car in which Erving was sitting was searched by an Officer. A firearm was discovered. Was the search of the car and the discovery of the firearm legal?

FACTS: In the early morning hours of the day in question, the arresting Officer was on patrol in an unmarked police vehicle. He entered a city park at about 2:45 a.m. and noticed a red SUV parked at the back of a closed, dark parking lot. He decided to investigate. The Officer illuminated the vehicle with his headlights and then lit up the driver's side windows with a spotlight. The Officer exited his squad car and used his handheld flashlight to light up the darkly tinted rear passenger windows of the SUV. Two individuals were seen in the rear passenger seats. As the Officer approached, he watched them make "sudden movements," one of which caught his attention: "the individual – the male behind the driver's seat [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." To the Officer, it looked like the man was hiding something. As the Officer approached the SUV, the male started to open the rear passenger door, and the Officer used his flashlight to illuminate the interior of the SUV.

Inside sat Dazmine Erving and a female companion. Erving was semi-dressed; his companion was mostly dressed but her shirt was pulled upwards. The Officer assumed he had interrupted a couple attempting to engage in sexual relations. In addition to observing their state of undress, the Officer smelled a "lingering odor of burnt cannabis" but saw no other indicia of marijuana use. (A later search of the SUV turned up no other evidence of cannabis.). The Officer asked the pair for identification. Erving provided his Illinois state ID card. The woman gave the Officer her name, but she said she did not have identification. The Officer then closed the door to the SUV and returned to his car to run their information. He discovered that Erving was serving a term of federal supervised release for a weapons offense, which began twelve days prior to this encounter. He also realized that the woman gave him false identifying information because a search for her name and birthdate returned no results, even though she indicated she had a driver's license. When the Officer returned to the SUV, he asked whether Erving was on supervised release. Erving said that he was and gave the Officer the name of his probation officer. The Officer told the pair to step out of the vehicle and they complied. Erving asked if he could retrieve his shoes from the front seat. The Officer agreed and also allowed the woman to retrieve her belongings also.

After allowing Erving and the female companion to get their belongings, the Officer directed the pair to the rear of the vehicle but did not handcuff them. He then poked his head into the SUV and looked under the driver's seat, which was where he thought Erving may have stashed something. He saw a gun but left it alone and radioed for backup. Once backup arrived, the Officer retrieved the gun. Erving was arrested, received Miranda warnings, and admitted the gun belonged to him.

Thereafter, Erving was indicted for unlawfully possessing a weapon as a felon. The charge also resulted in a petition to revoke Erving's supervised release. Erving then moved to suppress the firearm, arguing that the Officer unlawfully searched the SUV by looking under the front seat. He contended the warrantless search of his car was not justified as a protective search. He also claimed that, because Illinois has legalized cannabis, the odor of burnt cannabis does not create probable cause to suspect a violation of state law. In response, the government asserted that the search was a permissible protective search and that, in any case, the odor of cannabis gave the Officer probable cause to search for evidence of a violation of Illinois law. The district court denied Erving's motion after an evidentiary hearing. The court concluded the Officer permissibly performed a protective search. In the court's view, Erving's furtive movements, his status as a person on supervised release for a weapons offense, and his companion's false statements made it reasonable to suspect that Erving was armed and dangerous and could access the gun. The Court did not address the odor of cannabis issue. Erving brought this appeal to challenge the District Court's denial of his motion to suppress.

ARGUMENT ON APPEAL: Erving argued that the Officer's warrantless search violated the Fourth Amendment and the district court erred by denying his motion to suppress.

THE LAW: The Fourth Amendment to the United States Constitution prohibits "unreasonable searches and seizures." This constitutional protection means the government usually must obtain a warrant before conducting a search or seizure. Indeed, warrantless searches are "per se unreasonable" unless one of the "few specifically established and well-delineated

exceptions" to the warrant requirement applies. Among these is the protective search exception. *Terry* marks the genesis of this exception. There the Supreme Court held that for "officers to protect themselves and other[s]," the Fourth Amendment allows them to conduct a search of a person, often referred to as a "frisk" or "pat down," where they "point to specific and articulable facts" indicating "that criminal activity may be afoot and that the persons with whom [they are] dealing may be armed and presently dangerous." Protective searches, though, are not necessarily limited to a brief search of an individual's person. Consistent with the Fourth Amendment, an officer may also conduct "area searches" for weapons "in limited circumstances." An officer armed with a "reasonable belief based on 'specific and articulable facts which, taken together with the rational inferences from those facts, reasonably warrant' the officers in believing that the suspect is dangerous and the suspect may gain immediate control of weapons," may "conduct[ ] a legitimate Terry search of the interior of [an] automobile." Still, such a search "must be strictly limited to that which is necessary for the discovery of weapons," and confined to "those areas in which a weapon may be placed or hidden" within the car. *Thus, a protective search of a vehicle is permissible if officers have reasonable suspicion to believe: (1) "the suspect is dangerous" and (2) the suspect "may gain immediate control of weapons*."

ISSUE #1: *DANGEROUSNESS*: Did the Officer in this case have sufficient reasonable suspicion to believe that Erving was dangerous?

FINDINGS: The Court found that to meet the "dangerousness" criterion, the Officer needed reasonable suspicion to believe that Erving was dangerous. Reasonable suspicion rests on particularized facts and requires "more than a hunch but less than probable cause." Put another way, determinations of reasonable suspicion "must be based on commonsense judgments and inferences about human behavior." And to resolve this question, the Court must conduct an objective inquiry, considering the totality of the circumstances. In this case, once the Officer knew that he was alone in a dark parking lot in the dead of night, had smelled burnt cannabis, learned one of the individuals provided him with false identifying information, and realized that he was dealing with a convicted felon who had apparently hidden something did the Officer conduct a search for weapons. At that point, the Court concluded that the Officer had reasonable suspicion that Erving was dangerous.

ISSUE #2: IMMEDIATE CONTROL OF A WEAPON: Could Erving gain immediate control of the weapons?

FINDINGS: The Court of Appeals noted that the second criterion—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. Further, the Court noted that the United States Supreme Court has held that a protective search is permitted "if the suspect is not placed under arrest" and will be allowed to return to the vehicle. In this case, the parties agreed that Erving committed no arrestable offense before the Officer discovered the weapon, so Erving was likely to be released. Therefore, the "immediate control" criterion was met.

ISSUE #3: CONDUCT OF THE OFFICER: If the Officer did not act as if he were concerned for his safety, could the People rely upon the "protective search" exception to justify the warrantless search of the suspect vehicle?

FINDINGS: Erving maintained that because the Officer let Erving remain in the SUV while he ran Erving's information, let Erving retrieve his belongings from the vehicle, did not handcuff Erving until backup arrived, and searched only under the driver's seat—rather than conducting a full protective search of the vehicle or physically restraining either Erving or the female passenger—it showed that the Officer was not concerned for officer safety, and thus not permitted to conduct a protective search.

The Court of Appeals declared that this argument failed to persuade for numerous reasons. Fundamentally, the Court noted that its inquiry under the Fourth Amendment was objective in nature; the Court was generally unconcerned with the officers' subjective motivations. As such, unusually calm or brave officers can conduct legal protective searches. Also, a quick, tailored search is less intrusive on a person's interests than a longer one. By limiting a search to the area that prompted concern in the first place, officers promote the purpose of the protective search—ensuring safety—while respecting the constitutional rights and dignitary interests of the person searched. In this case, the Court held that the Officer had reasonable suspicion to believe there was a weapon hidden beneath the driver's seat and he conducted a targeted search to confirm or dispel that suspicion.

CONSLUSION: The Court of Appeals concluded that the district court rightly denied Erving's motion to suppress the evidence obtained from the Officer's search of Erving's vehicle. The search was justified by the "protective search" exception to the Fourth Amendment's warrant requirement.

QUIZ QUESTIONS FOR THE MONTH OF JULY – 2026 - ALTERNATIVE

United States v. Dazmine Erving, 164 F.4th 953, January 20, 2026.

1. Does an Officer need probable cause to believe that a suspect is involved in criminal activity before a warrantless protective sweep of that suspect's vehicle can be authorized?

   a. Yes.

   b. No.

2. A protective search of a vehicle is permissible if officers have reasonable suspicion to believe: (1) the suspect is dangerous and (2) the suspect may gain immediate control of weapons.

   a. True.

   b. False.

3. In this case, Erving claimed that the People failed to prove that he was, in fact, dangerous. Did the Court of Appeals agree with Erving?

   a. Yes.

   b. No.

4. Erving complained that the "protective sweep" exception to the warrant requirement was unavailable to the People in this case because the Officer did not act like he was concerned for his own safety when dealing with Erving. The Court of Appeals rejected this argument.

   a. True.

   b. False.

QUIZ ANSWERS FOR THE MONTH OF JULY – 2026 - ALTERNATIVE

United States v. Dazmine Erving, 164 F.4th 953, January 20, 2026.

1. Does an Officer need probable cause to believe that a suspect is involved in criminal activity before a warrantless protective sweep of that suspect's vehicle can be authorized?

   b. No. Reasonable suspicion rests on particularized facts and requires "more than a hunch but less than probable cause." United States v. Richmond, 924 F.3d 404, 413–14 (7th Cir. 2019)

2. A protective search of a vehicle is permissible if officers have reasonable suspicion to believe: (1) the suspect is dangerous and (2) the suspect may gain immediate control of weapons.

   a. True. Thus, a protective search of a vehicle is permissible if officers have reasonable suspicion to believe: (1) "the suspect is dangerous" and (2) the suspect "may gain immediate control of weapons." see also *United States v. Vaccaro*, 915 F.3d 431, 436–37 (7th Cir. 2019).

3. In this case, Erving claimed that the People failed to prove that he was, in fact, dangerous. Did the Court of Appeals agree with Erving?

   b. No. The Court concluded that once the Officer knew that he was alone in a dark parking lot in the dead of night, had smelled burnt cannabis, learned one of the individuals provided him with false identifying information, and realized that he was dealing with a convicted felon who had apparently hidden something did the Officer conduct a search for weapons. At that point, the Court concluded that the Officer had reasonable suspicion that Erving was dangerous.

4. Erving complained that the "protective sweep" exception to the warrant requirement was unavailable to the People in this case because the Officer did not act like he was concerned for his own safety when dealing with Erving. The Court of Appeals rejected this argument.

   a. True. In response to this argument, the Court declared that fundamentally, its inquiry under the Fourth Amendment was objective; it was generally unconcerned with the officers' subjective motivations. *Brigham City v. Stuart*, 547 U.S. 398, 404, 126 S. Ct. 1943, 164 L.Ed.2d 650 (2006). As such, an unusually calm or brave officer can legally conduct protective searches.