

**COURT OF APPEALS
DECISION
DATED AND FILED**

October 21, 2026

Samuel A. Christensen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2025AP2666-CR
STATE OF WISCONSIN**

Cir. Ct. No. 2022CM217

**IN COURT OF APPEALS
DISTRICT II**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

GABRIELA DOMINGUEZ,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Racine County:
JON E. FREDRICKSON, Judge. *Affirmed.*

¶1 GUNDRUM, J.¹ Gabriela Dominguez appeals from a judgment of conviction, entered on her no contest plea, for carrying a concealed weapon. She contends the circuit court erred in denying her motion to suppress key evidence, the

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f)(2023-24). All references to the Wisconsin Statutes are to the 2023-24 version.

weapon. The court erred, she asserts, because the officer who found the weapon on her person did not have probable cause to arrest and search her, which search led to the discovery of the weapon. We conclude the court did not err.

BACKGROUND

¶2 The arresting officer was the sole witness at the hearing on Dominguez’s suppression motion, and her relevant testimony is as follows.

¶3 The officer testified to her 20 years of experience as a law enforcement officer, including more than 8 years as a drug recognition expert. When asked, “[H]ow many times [she had] conducted [traffic] stops pertaining to marijuana,” she responded, “A lot. I couldn’t even give you a number.”

¶4 The officer explained that she had stopped for speeding the vehicle in which Dominguez had been traveling and “smelled the strong odor of marijuana coming from the vehicle ... [w]hen [the driver] rolled down the window.” She had the driver, the back-seat passenger, and Dominguez, who was the front-seat passenger, exit the vehicle so they and the vehicle could be searched, resulting in the officer’s discovery of a handgun in the front pocket of the shirt Dominguez was wearing.

¶5 On cross-examination, the officer acknowledged that the marijuana odor was coming from the car, but “[n]ot from any particular person.” The officer read verbatim from her police report, which indicated she had asked Dominguez to exit the vehicle and then asked her “if she had anything on her I needed to know about, and [Dominguez] said in her pocket. I pointed to her hoodie sweatshirt pocket and she said, yes. I reached my hand in there and I pulled out a Newport

cigarette pack and a black handgun.” When Dominguez acknowledged she did not have a permit to carry the concealed weapon, the officer arrested her.

¶6 Defense counsel played a specific portion of the officer’s body camera video from the arrest, and asked, “[D]id you hear my client say, yes, in my pocket?” The officer responded, “I heard a mumble and I honestly can’t make out what she said. And then when I said in here, I heard, yes.” Counsel stated that “following the mumble that we can’t hear, you said, yeah, you do,” to which the officer agreed. The officer confirmed that “the sequence” of statements during her interaction with Dominguez was “do you have anything on you? Yeah, in my front pocket. Yeah, you do.”

¶7 On redirect examination, the officer agreed that as she was “taking all the passengers out of the vehicle, that odor of marijuana was consistent throughout all open doors and windows of the car.” She further agreed that, based on the body camera video, when she was “reaching towards [Dominguez’s] front pocket,” it appears as if she said to Dominguez, “this here, and [Dominguez was] like, yes.”

¶8 Regarding watching and listening to the video, the circuit court stated that “everyone else seemed to have more trouble hearing what was on that video.... [I]n my listening to the video, I heard, do you have anything on you? Yeah, in there, and [Dominguez] motioned her head down and then the officer said, in here? And then [the officer] opened the pocket.” The court later stated, “I heard, do you have anything on you? Then I heard, yeah. Then I heard what everyone else testified was mumbling, but I thought she clearly said, in there. And then ... the officer said, in here? And then the pocket went open, in what I heard.... I did hear something that was an ascent, do you have something on you? Yeah.”

¶9 Relying heavily upon our supreme court’s decision in ***State v. Secrist***, 224 Wis. 2d 201, 589 N.W.2d 387 (1999), the circuit court denied Dominguez’s suppression motion on the basis that at the time the officer reached into (i.e., searched) Dominguez’s pocket and discovered the weapon, she did so lawfully because she had probable cause to arrest Dominguez.

¶10 Dominguez eventually pled no contest to carrying a concealed weapon and was sentenced. She now appeals.

DISCUSSION

¶11 “When we review a circuit court’s ruling on a motion to suppress evidence, we apply the clearly erroneous standard to the circuit court’s findings of fact.” ***State v. Smiter***, 2011 WI App 15, ¶9, 331 Wis. 2d 431, 793 N.W.2d 920 (2010). Our review of whether those factual findings support a determination of probable cause, however, is de novo. ***State v. Moore***, 2023 WI 50, ¶8, 408 Wis. 2d 16, 991 N.W.2d 412.

¶12 “[W]arrantless searches are per se unreasonable under the Fourth Amendment, subject to a few carefully delineated exceptions.” ***State v. Sanders***, 2008 WI 85, ¶27, 311 Wis. 2d 257, 752 N.W.2d 713. One such exception, which is the exception at issue in this case, is a search incident to arrest. ***Moore***, 408 Wis. 2d 16, ¶8.

¶13 As the ***Secrist*** court reiterated, “[an] officer will have probable cause to arrest when the quantum of evidence within the officer’s knowledge ... would lead a reasonable police officer to believe that the defendant probably committed or was committing a crime.” 224 Wis. 2d at 218. “This standard is case-specific: ‘[t]he quantum of information which constitutes probable cause to arrest must be

measured by the facts of the particular case.” **State v. Blatterman**, 2015 WI 46, ¶35, 362 Wis. 2d 138, 864 N.W.2d 26 (alteration in original; quoting **State v. Paszek**, 50 Wis. 2d 619, 625, 184 N.W.2d 836 (1971)). “It is only necessary that the information lead a reasonable officer to believe that guilt is more than a possibility.” **Paszek**, 50 Wis. 2d at 625. The State bears the burden to show it had probable cause to arrest. **Blatterman**, 362 Wis. 2d 138, ¶34.

¶14 As Dominguez appears to acknowledge, this appeal turns on whether the officer lawfully *could have* arrested—i.e., whether the officer had probable cause to arrest—Dominguez at the time she searched/reached into Dominguez’s pocket. See **State v. Baudhuin**, 141 Wis. 2d 642, 651, 416 N.W.2d 60 (1987) (indicating that what matters is that “there were objective facts that would have supported a correct legal theory to be applied and ... there existed articulable facts fitting the ... law violation”); see also **Moore**, 408 Wis. 2d 16, ¶8 (“When conducting a search incident to arrest, the officer is not required to formally arrest before the search.”); **State v. Sykes**, 2005 WI 48, ¶15, 279 Wis. 2d 742, 695 N.W.2d 277 (explaining that where a “formal arrest followed quickly on the heels of the challenged search of petitioner’s person, we do not believe it particularly important that the search preceded the arrest rather than vice versa” (citation omitted)); **Baudhuin**, 141 Wis. 2d at 651 (“As long as there was a proper legal basis to justify the intrusion, the officer’s subjective motivation does not require suppression of the evidence”). We conclude the officer had probable cause to arrest Dominguez, and thus, the search was lawful.

¶15 As to whether the officer had probable cause to arrest, **Secrist**, a case on which both parties rely heavily, as did the circuit court, serves as our guide. **Secrist** involved similar facts to the case now before us, except that in **Secrist**, the driver was the sole occupant of the vehicle from which the officer smelled

marijuana, whereas in this case there was the driver, the back-seat passenger, and Dominguez, the front-seat passenger—so, three occupants. Importantly, the *Secrist* court did not limit its holding to situations with only one person in the vehicle. As Dominguez and the circuit court both recognized, the key language from *Secrist* is:

We hold that the odor of a controlled substance may provide probable cause to arrest when the odor is unmistakable and *may be linked to a specific person or persons* because of the particular circumstances in which it is discovered or because other evidence at the scene or elsewhere links the odor to the person or persons.

We believe a common sense conclusion when an officer smells the odor of a controlled substance is that a crime has probably been committed.... If under the totality of the circumstances, a trained and experienced police officer identifies an unmistakable odor of a controlled substance *and is able to link that odor to a specific person or persons*, the odor of the controlled substance will provide probable cause to arrest.

224 Wis. 2d at 217-18 (emphases added; citation omitted).

¶16 In this case, the undisputed evidence established that the odor of marijuana that this highly experienced officer detected “was consistent throughout all open doors and windows of the car,” which necessarily means the officer smelled the odor emitting out of the door from which Dominguez exited and from where she had just been sitting, connecting her to the odor more so than if, for example, it had only been detected out of the driver’s side of the vehicle. Then, the officer, in one way or another, asks Dominguez if she has “anything on” her person, and Dominguez indicates she does, signaling to her front pocket.²

² No matter which version of the officer’s interaction with Dominguez is the correct version, what is consistent in all versions is that before the officer reached into Dominguez’s pocket, she asked Dominguez if she had “anything on” her person, and Dominguez confirmed that she did, signaling to her front pocket. Moreover, as indicated, we conclude the officer had probable cause to search Dominguez even before the officer began speaking with her.

¶17 The odor of marijuana alone, emitting as it was from the area where Dominguez had just been sitting, provided a sufficient link between her and the observed presence of marijuana to satisfy the probable cause threshold necessary to arrest and search her. But, whether Dominguez is looked at individually or as part of this group of “persons,” the key language of *Secrist* is squarely met here—“under the totality of the circumstances, [this] trained and experienced police officer identifie[d] an unmistakable odor of a controlled substance and [was] able to link that odor to a specific person or persons.” See *id.* at 218. As a result, “the odor of the controlled substance ... provide[d] probable cause to arrest.” *Id.* Although the odor also came from the area where the other two occupants had been sitting, that does not diminish the link between the odor and Dominguez individually. And, with the odor being “consistent throughout all open doors and windows of the car,” it also can fairly be said that the odor was “link[ed] ... to ... specific ... persons,” these three. See *id.*

¶18 While we could stop our probable cause analysis there, we do not, because there was more that strengthened the link between Dominguez and the recognized presence of the illegal drug. Before the officer ever searched her by reaching into her pocket, Dominguez admitted to the officer that something untoward was on her person. The nature of the circumstances, particularly the odor of marijuana emitting from the vehicle, and the exchange between Dominguez and the officer clearly would have indicated to both a reasonable officer and Dominguez that when the officer asked Dominguez if there was “anything on” her, the officer was asking if there was anything on her *that should not be on her*, as opposed to asking if she had just *anything*—nail polish, a cell phone, or some other noncontraband item(s)—on her. With an odor of marijuana coming from where Dominguez had just been sitting and Dominguez’s acknowledgment that something

was on her person that she should not have and it was in her front pocket, a reasonable officer would have believed it was more than a possibility that Dominguez was at that moment in possession of marijuana in her front pocket. Taken together, these facts provided additional probable cause to arrest Dominguez prior to the search.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

