

COURT OF APPEALS OF VIRGINIA

Record No. 0468-26-4

COMMONWEALTH OF VIRGINIA

v.

CHARLIE RAY SURIDA, JR.

Present: Judges Friedman, White and Frucci

Argued via videoconference

Opinion Issued September 8, 2026*

FROM THE CIRCUIT COURT OF THE CITY OF ALEXANDRIA

Rebecca J. Wade, Judge

Austin E. Deramo, Assistant Attorney General (Jay Jones, Attorney General, on briefs), for appellant.

Brett P. Blobaum, Senior Appellate Attorney (Virginia Indigent Defense Commission, on brief), for appellee.

MEMORANDUM OPINION BY JUDGE KIMBERLEY SLAYTON WHITE

The Circuit Court of the City of Alexandria granted Charlie Ray Surida, Jr.’s motion to suppress evidence “in its entirety”—including evidence gathered in the course of Alexandria police officers’ detention and arrest of him in a public park as well as evidence gathered from a subsequent search warrant. In his motion, Surida argued that officers had neither probable cause for arrest, nor reasonable articulable suspicion for a *Terry*¹ stop at the time officers displayed their weapons and handcuffed him. He also argued that a search conducted by officers produced evidence that was barred as “fruit of the poisonous tree.” He asked the trial court to suppress “all

* This opinion is not designated for publication. *See* Code § 17.1-413(A).

¹ *See Terry v. Ohio*, 392 U.S. 1 (1968).

statements and tangible evidence” obtained from his interactions with officers and from a search warrant granted and executed thereafter.

In four assignments of error, the Commonwealth argues that the trial court erred in granting Surida’s motion to suppress evidence because the officer who arrested Surida had reasonable suspicion to detain him and subsequently gained probable cause to arrest him. Since the trial court’s judgment was based entirely on its findings that the officers’ initial encounter with Surida was an arrest and that they lacked probable cause to make one, we begin our analysis with those questions. We then address the question of whether they had probable cause after the initial encounter. Finding error, we reverse.²

BACKGROUND

“In an appeal by the Commonwealth of an order of the trial court suppressing evidence, the evidence must be viewed in the light most favorable to the defendant.” *Commonwealth v. Peterson*, 15 Va. App. 486, 487 (1992). Thus, “findings of fact are entitled to a presumption of correctness unless they are plainly wrong or without evidence to support them.” *Id.*

I. The Felony Assault and the Arrest of Surida

On April 19, 2025, L.P. was laying on a blanket in a park when a naked man jumped on top of her. L.P. explained that the man told her to “shush,” “pinned [her] down,” and attempted to “force[] [her] to kiss him.” The man told L.P. that if she “yelled out,” he would “kill [her].” L.P. then kicked him in his “groin” and started “screaming.” After she “struggled” and “screamed,” a witness came near and the assailant fled from her. The witness called 911 at 9:26 p.m. and police arrived at the scene at 9:33 p.m. L.P. then described the assailant to police as a “naked, heavy-set

² On June 9, 2025, appellee was indicted in the trial court on both a felony and a misdemeanor charge. Pursuant to Code § 19.2-398(A), the Court will review the appeal only insofar as it pertains to the felony.

black man,” 250 pounds in her estimation, and “smell[ing] of alcohol.” Officers observed a Dogfish Head beer can that L.P. informed them was not hers and had been left by the assailant.

After receiving information from L.P. about which direction the assailant fled, Sergeant Vaccaro, along with Officer Ceglio and his K-9, headed in search of the assailant at approximately 9:44 p.m. Approximately two minutes later, Vaccaro came upon Surida, a Black male, “overweight,”³ “matching the description” of the assailant—specifically his race, sex, and build—laying in the grass next to two cases of beer, one of which was Dogfish Head matching the can found near L.P. He was “no more than a hundred yards” from the scene of the crime.

Upon encountering Surida, Vaccaro immediately drew his firearm and ordered Surida to put his hands up or he would “release the dog on to him.” Once Surida complied, Vaccaro holstered his firearm, having displayed it “a few seconds at most.”⁴ Ceglio was nearby with his K-9 but did not touch Surida. Vaccaro then stated that he was “just going to detain [Surida] for a second” and handcuffed him.

Vaccaro subsequently asked Surida for identification, and Surida said it was in his pocket. Vaccaro explained that at that point he believed Surida was dressed “unusually,” claiming that although he was wearing outer garments, Surida was not wearing “underwear” or “any kind of shirt” under his jacket. He was also “sweaty” even though he had been lying down. Also after Surida was handcuffed, Vaccaro observed a case of beer of the same brand as the can

³ The record shows that Surida weighed 250 pounds at the time of arrest.

⁴ Upon review of the bodycam footage, it appears his firearm was displayed for approximately four to five seconds.

found near L.P. and noticed that Surida “smelled of alcohol.”⁵ Though, as the trial court later noted, Surida was wearing shoes that were laced and tied.

While Vaccaro interacted with Surida, Officer Gavin spoke to L.P., who remained in the park with additional officers. Gavin explained to L.P. that the officers were about to conduct a “show up,” wherein the officers would drive L.P. past Surida to see if she recognized him. Gavin read instructions for the show up, stating that suspects may “disguise their appearance by changing clothes or wearing hats.” At that time, L.P. remembered that, when the suspect pinned her down, she had been wearing a “yellow baseball hat” with the words “New York” written on it and that she no longer knew where her hat was.

After Gavin took her to where Surida was being detained, he was “viewed by L.P. pursuant to a ‘show up.’” L.P. was unable to positively or negatively identify Surida. At 10:10 p.m. after Gavin had conducted the “show up,” he observed a yellow baseball hat “falling out of . . . Surida’s jacket pocket.” Gavin removed the hat, not reaching into the pocket because it was exposed, and observed that it said “New York” on it, matching the description given by L.P. of her hat. He then told Surida he was under arrest. Surida was taken to the police station and police obtained and executed a search warrant for Surida’s DNA, fingerprints, and photographs of his “face, neck, arms, legs, and torso.”

II. The Motion to Suppress the Evidence

Surida moved to suppress “all statements and tangible evidence” gained from his interactions with officers and from a subsequent warrant executed after Surida’s arrest. At the hearing addressing the motion, Vaccaro explained that he initially displayed his firearm because he could not see Surida’s hands, citing “officer safety” as the reason for displaying it. He also

⁵ Though the Commonwealth argued that Vaccaro noticed the brand of beer right away, taking the facts as found by the trial court, Vaccaro did not observe the brand of beer until after Surida was handcuffed.

stated that it “seemed prudent” to handcuff Surida because of the nature of the felony being investigated. The Commonwealth states on brief that it had argued alternatively at the hearing that either officers had probable cause to arrest Surida at their initial encounter, when Vaccaro displayed his firearm, or that even if they did not have probable cause to arrest him at that time, the officers had reasonable suspicion to conduct a *Terry* stop and in the course of the *Terry* stop, they gained probable cause to arrest Surida.

At the hearing, the Commonwealth struggled to clarify its position, but did so upon further inquiry by the trial court. Initially, the Commonwealth made clear its position was that officers had both reasonable suspicion for a detention and probable cause for arrest from their very first encounter with Surida. Later, the Commonwealth stated that Surida, is “technically under arrest when he submits to the officer’s instructions. So, when he is placed into handcuffs. But . . . it is not our position that someone who is placed in handcuffs, is automatically under arrest,” adding that officers sometimes put people in handcuffs for a “safety reason.” However, upon request for clarification by the trial court, the Commonwealth clarified its position that “after the show up [Surida] is told, and after the hat is found, he is told you are under arrest; you’re going to the station. It’s our position that at that point, he is under arrest.” Further, “I do want to note as well, that even before that point, it’s our position that probable cause was present for an arrest.”

The Commonwealth later discussed the search of Surida, specifically the yellow hat in his pocket, saying, “Removing that piece of evidence from the Defendant’s pocket was a lawful search of his person incident to his arrest.” The trial court questioned how it could be a search incident to arrest if the arrest did not occur until after the discovery of the hat. The Commonwealth stated further that “it’s our position that he was under arrest initially, as soon as these initial observations are done.” Upon further reflection the Commonwealth admitted, “I

guess maybe I'm a little bit confused about the question . . . while it's our position he could have been arrested after those initial observations, the officers don't take him to the station right away." Finally, "what I want to note as well is that if the Court finds that this was not a lawful search incident to arrest, I think there is certainly an argument to be made that this was in plain view."

In his motion to suppress the evidence, Surida argued that officers had neither probable cause for arrest, nor reasonable articulable suspicion for a *Terry* stop at the time officers displayed their weapons and handcuffed him. He also argued that a search conducted by officers produced evidence that was barred as "fruit of the poisonous tree." He asked the trial court to suppress "all statements and tangible evidence" obtained from his interactions with officers and from a warrant granted and executed thereafter.

The trial court granted the motion to suppress. The trial court explained that the Commonwealth took the position that Surida was arrested the moment he was handcuffed. The trial court noted that, while the Commonwealth cannot concede to law, in a mixed question of law and facts, it can concede to facts. "The [trial court] construe[d] the Commonwealth's position as an admission to such facts as would render the initial interaction between the defendant and law enforcement to constitute an arrest for Fourth Amendment purposes."

The trial court further concluded that there was no probable cause to arrest Surida at the time he was handcuffed. It found that the smell of alcohol, the brand of beer, and the hat were all discovered after the "arrest" and so were not admissible at trial. According to the trial court, the totality of the evidence at the first encounter with Surida was "someone who 'matched the description,' . . . [of] a naked, overweight black man." But Surida was "a dressed, overweight black man, who was encountered next to a case of beer of an unknown type, approximately one hundred yards from the assault, in the approximate direction the suspect had fled, and

approximately twenty to thirty minutes after the assault.” “These facts fall far short of the quantum needed to establish probable cause that the defendant was the individual who had perpetrated the assault.” The Commonwealth timely appealed the grant of the suppression motion.

ANALYSIS

I. The Appropriate and Reprobate Doctrine Does Not Apply

Crucial to our determination in this case is our analysis on the appropriate and reprobate doctrine. Surida argues on brief that the Commonwealth appropriated and reprobated its position on when Surida was arrested. “We have previously made clear that ‘[a] party may not appropriate and reprobate by taking successive positions in the course of litigation that are either inconsistent with each other or mutually contradictory.’” *Rowe v. Commonwealth*, 277 Va. 495, 502 (2009) (alteration in original) (quoting *Cangiano v. LSH Bldg. Co.*, 271 Va. 171, 181 (2006)). “The ‘appropriate and reprobate’ doctrine applies when the error the defendant complains of on appeal is ‘obviously the result of his own strategy and actions at trial.’” *Commonwealth v. Holman*, 303 Va. 62, 72 (2024) (quoting *Rowe*, 277 Va. at 502). Applying equally to assertions of fact and law, the doctrine “prevents litigants from ‘playing fast and loose’ with the courts.” *Wilroy v. Halbleib*, 214 Va. 442, 445 (1974) (quoting *Rohanna v. Vazzana*, 196 Va. 549, 553 (1954)).

However, Surida has failed to show that the Commonwealth took the position that he and the trial court have ascribed to it. The Commonwealth argued from the beginning in its responsive pleading to the motion to suppress that “Officers had reasonable articulable suspicion to detain the defendant and had probable cause for his arrest” and that “[i]n this case, it is evident that Sgt. Vaccaro had reasonable articulable suspicion that criminal activity was afoot.” We acknowledge that, later, during the hearing on the motion to dismiss the evidence, some of the Commonwealth’s language is ambiguous or even initially misleading. However, when the trial

court asked for clarity in that hearing, the Commonwealth went back to the theory that Vaccaro had at least reasonable articulable suspicion upon his first encounter with Surida and that he was merely detained initially and arrested later during his interactions with law enforcement.

Initially at the hearing, the Commonwealth states that upon his initial encounter with Surida “Sergeant Vaccaro had a reasonable, articulable suspicion to make an investigatory stop. And, he also had probable cause to make an arrest.” Shortly after, the Commonwealth doubled down on this theory saying in that encounter “even if the Court disagrees” that Vaccaro initially had probable cause based on the alleged sexual assault or public intoxication, “at the very least, [Vaccaro] had grounds *to detain him* for these offenses against [L.P.]” (Emphasis added). As the discussion continued, the Commonwealth appears to take a contradictory view, but explained it had gotten “tripped up” when it said the arrest happened initially because its position was that there was probable cause to arrest even though there was no arrest. The Commonwealth then says, “when you talk about how when a detention is raised to the level of an arrest, it’s our position that it’s not until after the show up that the, it is being treated like an arrest.”

When the Commonwealth states later that “it’s our position that he was under arrest initially, as soon as these initial observations are done,” this is in the context of a discussion about the search where Gavin found the hat in Surida’s pocket, not about Vaccaro’s initial encounter with Surida. To further clarify, the Commonwealth says, “Because while it’s our position he *could have* been arrested after those initial observations, the officers don’t take him to the station right away.” (Emphasis added). Rather, “[t]hey continue to investigate the case, but the force that they used is not improper in terms of putting him in handcuffs and moving him to a different position for the show up.”

Further, in later discussion about whether the hat should be admitted if the trial court found its discovery was not a valid search incident to arrest, the Commonwealth says “if your

ruling today is that the arrest of him was improper, that doesn't necessarily mean that the detention of him was improper.” The Commonwealth’s last statements reflecting its position respond to Surida’s argument that Vaccaro would not have read Surida his *Miranda*⁶ rights unless Surida was being placed under arrest at the initial encounter. The Commonwealth says, “Many times when someone is under an *investigatory detention*, they are read their *Miranda* rights because the officer is still investigating the crime.” (Emphasis added).

Finally, the Commonwealth has carried the same position into its appeal before this Court—that officers initiated an investigative detention based on reasonable articulable suspicion and subsequently gained probable cause for arrest.

II. Officers Had Reasonable Articulable Suspicion Upon Their Initial Encounter with Surida

“A defendant’s claim that evidence was seized in violation of the Fourth Amendment presents a mixed question of law and fact[.]” *Turner v. Commonwealth*, 75 Va. App. 491, 500 (2022) (alteration in original) (quoting *Murphy v. Commonwealth*, 264 Va. 568, 573 (2002)).

“While we are bound to review *de novo* ‘the ultimate questions of reasonable suspicion and probable cause,’ ‘we defer to the trial court’s findings of “historical fact” unless such findings are “plainly wrong or devoid of supporting evidence.”’” *Id.* (first quoting *Ornelas v. United States*, 517 U.S. 690, 691 (1996); and then quoting *Saal v. Commonwealth*, 72 Va. App. 413, 421 (2020)).

“[T]he Fourth Amendment requires ‘some minimal level of objective justification’ for making the stop.” *Id.* (quoting *United States v. Sokolow*, 490 U.S. 1, 7 (1989)). “The stop ‘must be justified by some objective manifestation that the person stopped is, or is about to be, engaged in criminal activity.’” *Id.* (quoting *United States v. Cortez*, 449 U.S. 411, 417 (1981)).

“Accordingly, ‘[i]f a police officer has reasonable, articulable suspicion that a person is engaging

⁶ See *Miranda v. Arizona*, 384 U.S. 436 (1966).

in, or is about to engage in, criminal activity, the officer may detain the suspect to conduct a brief investigation without violating the person’s Fourth Amendment protection against unreasonable searches and seizures.” *Id.* at 500-01 (alteration in original) (quoting *McGee v. Commonwealth*, 25 Va. App. 193, 202 (1997) (en banc))

“Under *Terry v. Ohio*, 392 U.S. 1 (1968), and its progeny, a police officer ‘may constitutionally conduct a brief, investigatory stop when the officer has a reasonable, articulable suspicion that criminal activity is afoot.’” *Beasley v. Commonwealth*, 60 Va. App. 381, 395 (2012) (quoting *Bass v. Commonwealth*, 259 Va. 470, 474-75 (2000)). “A ‘reasonable suspicion’ requires only ‘some minimal level of objective justification’ for making such a stop.” *Id.* (quoting *Branham v. Commonwealth*, 283 Va. 273, 280 (2012)). “Whether an officer has a reasonable suspicion to justify such a detention is ‘based on an assessment of the totality of the circumstances.’” *Id.* (quoting *Branham*, 283 Va. at 280). “That assessment ‘allows officers to draw on their own experience and specialized training to make inferences from and deductions about the cumulative information available to them that “might well elude an untrained person.”’” *Id.* (quoting *Branham*, 283 Va. at 280).

“[A]n appellate court must give deference to the factual findings of the circuit court and give due weight to the inferences drawn from those factual findings; however, the appellate court must determine independently whether the manner in which the evidence was obtained meets the requirements of the Fourth Amendment.” *Moore v. Commonwealth*, 69 Va. App. 30, 36 (2018) (alteration in original) (quoting *Commonwealth v. Robertson*, 275 Va. 559, 563 (2008)).

Our caselaw supports the conclusion that Vaccaro had reasonable articulable suspicion to make a *Terry* stop of Surida. We reached the same conclusion in *Turay v. Commonwealth*, 79 Va. App. 286 (2023). In *Turay*, a report was made on a potential home burglary and police were on the lookout for three Black men on foot wearing black who may have a weapon. *Id.* at

292-93. An officer on patrol stopped two Black men on foot, one of whom was wearing black pants and a black jacket with a red stripe down the side, the other of whom was wearing gray pants and a white hooded sweatshirt. *Id.* at 293. He believed they “matched the description” of the alleged perpetrators of the burglary. *Id.* The officer stopped them about 30 minutes after the burglary approximately 6-10 blocks from the location of the burglary. *Id.* at 294. There is no indication that the officer had reason to believe the individuals fled in any particular direction. *See id.* at 317 (Chaney, J., dissenting) (saying “he had no information about their path of flight”). This Court noted that “Turay was detained in response to a report of specific and recent criminal activity in a particular place. In that context, an officer encounters a suspect not in the vacuum of routine patrol activity, but against the backdrop of that recently reported crime.” *Id.* at 300. “Thus, a reviewing court must consider the general reasonable suspicion factors discussed above in relation to the reported crime.” *Id.*

Davis v. Commonwealth, 35 Va. App. 533 (2001), also supports a finding that reasonable suspicion existed in this case. In *Davis*, an officer received reports that a fight had broken out in a subdivision and that one of the perpetrators fled in the direction of a certain road. *Id.* at 540. Equipped only with that information and no description of the appearance of anyone involved, the officer stopped Davis because he was on the road where the perpetrator had been said to flee and the officer “saw a motor vehicle being rapidly backed out of a driveway” by Davis. *Id.* This Court found that, “based on our independent examination of the totality of the circumstances reflected in the record, we conclude that Officer Moore did not violate Davis’s Fourth Amendment rights when making the initial stop.” *Id.*

Here, officers had more features to match the assailant with Surida than is found in either of the aforementioned cases. The assailant was a Black male, heavy-set or estimated at 250 pounds, with beer, who had fled in a specific direction within a park. Vaccaro found Surida, a

Black male, 250 pounds (or “overweight” according to the trial court), lying near two cases of beer, in the general direction L.P. had indicated. Not only did he “match the description” provided by L.P., he was found in as little as 20 minutes after the 911 call, and only “a hundred yards” from the location of the crime. Thus, while in *Turay* there was no flight path for the perpetrators and the defendant did not perfectly match the description given and in *Davis* there was no description of the perpetrator at all, here we have a description of the perpetrator and a flight path. Officers met the threshold requirements for reasonable articulable suspicion in this case upon their initial encounter with Surida.

Finally, the encounter with Surida, including when the officers handcuffed him, was a valid *Terry* stop. “*Terry* established that police officers may approach a person for the purpose of investigating *possible* criminal behavior even though no probable cause exists for arrest.” *Johnson v. Commonwealth*, 20 Va. App. 49, 54 (1995) (quoting *Quigley v. Commonwealth*, 14 Va. App. 28, 32 (1992)). “*Terry* further held that whether the stop was justified is dependent upon whether ‘the facts available to the officer *at the moment of the seizure* or the search [would] ‘warrant a man of reasonable caution in the belief’ that the action was appropriate.’” *Johnson*, 20 Va. App. at 54 (alteration in original) (quoting *Quigley*, 14 Va. App. at 32). “Brief, complete deprivations of a suspect’s liberty, including handcuffing, ‘do not convert a stop and frisk into an arrest so long as the methods of restraint used are reasonable to the circumstances.’” *Johnson*, 20 Va. App. at 55 (quoting *Thomas v. Commonwealth*, 16 Va. App. 851, 857 (1993)). “To protect themselves during a valid *Terry* stop, police officers have a right to draw their weapons, to handcuff a suspect, or even to threaten to use force if the circumstances reasonably warrant it.” *Jackson v. Commonwealth*, 39 Va. App. 624, 651 (2003).

This Court has held that officers were justified using handcuffs to restrict a possible suspect of freedom due to safety concerns and low visibility from it being dark at night. *See*

Johnson, 20 Va. App. at 55. We have also held that officers are justified displaying their firearms for safety reasons, including when a possible suspect's hands are not visible and the circumstance involved potential safety concerns. See *Harris v. Commonwealth*, 27 Va. App. 554, 563 (1998). Here, L.P. reported to Vaccaro that her assailant had forcefully assaulted her and threatened to kill her. In fact, Vaccaro asked about the nature of the assailant's actions specifically to get a sense for what type of force would be appropriate in case they found him. When they found Surida, it was in an unilluminated section of the park and it was dark because the search took place at night. Vaccaro, with knowledge of the dangerous nature of the crime that had occurred, displayed his firearm because he could not see Surida's hands and handcuffed Surida so that he could "detain [him] for a second." This was a valid *Terry* stop, including Vaccaro's display of his firearm and handcuffing Surida.

III. Officers Had Probable Cause After the Initial Encounter

In its order granting Surida's motion to suppress the evidence, the trial court's analysis works on the assumption that there was no probable cause to arrest Surida at the initial encounter when Vaccaro drew his weapon and Surida was handcuffed. It then recited all the evidence that was discovered *after* the initial encounter—the brand of beer found near him, that he smelled of alcohol, the hat that was found in his pocket, and his "unusual" dress. The trial court concluded that the "facts [at the initial encounter] fall far short of the quantum needed to establish probable cause that the defendant was the individual who had perpetrated the assault" or "that the defendant was drunk in public." Finally, the trial court concluded that "excluding the information provided . . . from Sergeant Vaccaro from the search warrant affidavit, the information contained in the affidavit . . . falls short of probable cause to issue a search warrant." Thus, the trial court's ruling is based entirely on facts at the initial encounter and not after.

Since we hold that the initial encounter was a valid *Terry* stop, we now address the question of whether officers gained probable cause to arrest Surida after that stop. “Probable cause exists when the facts and circumstances within the arresting officer’s knowledge and of which he has reasonable trustworthy information are sufficient in themselves to warrant a man of reasonable caution in the belief that an offense had been or is being committed.” *Slayton v. Commonwealth*, 41 Va. App. 101, 106 (2003) (quoting *Purdie v. Commonwealth*, 36 Va. App. 178, 185 (2001)). “Probable cause relies on a ‘flexible, common-sense standard’—one that does not ‘demand any showing that such a belief be correct or more likely true than false.’” *Id.* (quoting *Texas v. Brown*, 460 U.S. 730, 742 (1983)). “It ‘requires only a probability or substantial chance of criminal activity, not an actual showing of such activity.’” *Moore v. Commonwealth*, 85 Va. App. 634, 647 (2025) (quoting *District of Columbia v. Wesby*, 583 U.S. 48, 57 (2018)).

The Commonwealth’s position is that Surida was arrested right after officers found the yellow hat that belonged to L.P. According to the record, that is the moment when officers told Surida he was under arrest and placed him in a law enforcement vehicle. In this case, officers had probable cause to arrest Surida before the hat was found. In addition to the way Surida “matched” the description of the perpetrator, the close proximity and time where officers spotted him, and the fact that he was laying next to two cases of beer, officers gained more evidence during Surida’s detention.

Officer Ceglio, who was with Vaccaro when he first came upon Surida, noticed he was “sweaty” and another officer later asked Surida why he was so sweaty and whether he had been running. Vaccaro reported the DogFish Head brand of one case of beer near Surida less than a minute after handcuffing him at 9:47 p.m. After he handcuffed Surida, found his identification, and asked him a few questions, Vaccaro noticed Surida was not wearing a shirt under his jacket.

Finally, Gavin noticed and took possession of the yellow hat “falling out” of Surida’s pocket at 10:10 p.m. The record shows that Surida was told he was under arrest at 10:24 p.m.

At the time of arrest, officers had knowledge that Surida matched a description of the perpetrator, was lying only 100 yards from the scene of the crime about 20 to 30 minutes after the assault, was sweaty, appeared to have no shirt under his jacket, and was lying next to two cases of beer, one of which was DogFish Head brand. Even without the yellow hat, this was enough for officers to have probable cause for the arrest.

Even if taking the hat from Surida’s pocket constituted a “search” of his person, that search would be lawful under the search incident to arrest doctrine. “It is well settled that a search incident to a lawful arrest is a traditional exception to the warrant requirement of the Fourth Amendment.” *Slayton*, 41 Va. App. at 108 (quoting *United States v. Robinson*, 414 U.S. 218, 224 (1973)). “Once ‘probable cause exists to arrest a person, a constitutionally permissible search of the person incident to arrest may be conducted by an officer *either before or after* the arrest if the search is contemporaneous with the arrest.’” *Id.* (quoting *Italiano v. Commonwealth*, 214 Va. 334, 336 (1973)). Thus, since there was probable cause for the arrest the search was justified under the search incident to arrest doctrine.

Given that officers had probable cause at the arrest, they also had probable cause to obtain a warrant to search his person. “Probable cause for issuance of a search warrant exists when ‘there is a fair probability that contraband or evidence of a crime will be found in a particular place.’” *Hicks v. Commonwealth*, 281 Va. 353, 359 (2011) (quoting *Jones v. Commonwealth*, 277 Va. 171, 178 (2009)).

Thus, officers had probable cause to arrest Surida, the search of his pocket was justified, and the search warrant of his person was justified.

CONCLUSION

For the foregoing reasons, we reverse the trial court's grant of Surida's motion to suppress the evidence gained through his encounters with law enforcement.

Reversed.