



favorable to the Commonwealth, the prevailing party, and "accord[s] the Commonwealth the benefit of all reasonable inferences fairly deducible from that evidence." Id. at 570, 570 S.E.2d at 837. Finally, in challenging the denial of a suppression motion, the defendant must show that such denial was reversible error. Id. at 573, 570 S.E.2d at 838.

Pettaway argues that the police officer did not have reasonable, articulable suspicion to conduct a "pat down" for weapons. See Terry v. Ohio, 392 U.S. 1, 24 (1968). Assuming, arguendo, that such a frisk was justified, he further contends that the seizure of evidence from his pocket exceeded the permissible scope of a Terry pat down. Finally, Pettaway contends the search was not incident to an arrest because probable cause did not exist to arrest him.

A police officer may stop and question an individual if he has "'reasonable suspicion, based on objective facts, that the [person] is involved in criminal activity.'" Ewell v. Commonwealth, 254 Va. 214, 217, 491 S.E.2d 721, 722 (1997) (alteration in original) (quoting Brown v. Texas, 443 U.S. 47, 51 (1979)); Jones v. Commonwealth, 230 Va. 14, 18, 334 S.E.2d 536, 539 (1985) (citing Terry, 392 U.S. at 21-23). Having stopped an individual based on reasonable suspicion of criminal activity, an officer may conduct a frisk for weapons "if the officer reasonably believes the suspect may be armed and dangerous." Jones, 230 Va. at 19, 334 S.E.2d at 539-40 (citing Terry, 392 U.S. at 30-31).

In this appeal, the Court does not decide whether, under Terry, "a reasonably prudent [person] in the circumstances [of this case] would be warranted in the belief that his safety or that of

others was in danger." 392 U.S. at 27. The Court has previously held that "a person in this Commonwealth does not have the right to use force to resist an unlawful detention or 'pat down' search." Commonwealth v. Hill, 264 Va. 541, 548, 570 S.E.2d 805, 809 (2002). Pettaway prevented the officer from conducting the pat down by shoving one or both of his hands into his pockets despite the officer's repeated directions to remove his hands and place them on the police vehicle. Pettaway continued to struggle and resist the pat down, causing the officer to brace Pettaway's right arm and attempt to forcibly remove Pettaway's right hand from his pocket. The officer had to hold Pettaway on the hood of the police vehicle until another police officer arrived to assist.

Because Pettaway was not justified in using force to resist the pat down, the dispositive question is whether, following Pettaway's resistance, probable cause existed to arrest Pettaway when the officer subsequently reached into Pettaway's pocket and seized a cigarette pack that contained a "crack pipe" in plain view. "[P]robable cause exists when the facts and circumstances within the officer's knowledge, and of which he has reasonably trustworthy information, alone are sufficient to warrant a person of reasonable caution to believe that an offense has been or is being committed." Taylor v. Commonwealth, 222 Va. 816, 820, 284 S.E.2d 833, 836 (1981); accord Buhrman v. Commonwealth, 275 Va. 501, 505, 659 S.E.2d 325, 327 (2008). In determining whether a police officer had probable cause to make an arrest, the Court focuses upon "what the totality of the circumstances meant to police officers trained in analyzing the observed conduct for

purposes of crime control." Hollis v. Commonwealth, 216 Va. 874, 877, 223 S.E.2d 887, 889 (1976).

Based on the facts already summarized, the officer had probable cause to arrest Pettaway for obstruction of justice in violation of Code § 18.2-460(A). That statute, in part, makes it unlawful for "any person without just cause [to] knowingly obstruct[] any law-enforcement officer . . . in the performance of his duties." Id. "[A] warrantless arrest by a law officer is reasonable under the Fourth Amendment where there is probable cause to believe that a criminal offense has been or is being committed." Devenpeck v. Alford, 543 U.S. 146, 152 (2004). Because probable cause existed to arrest Pettaway for obstruction of justice, the officer was justified in searching Pettaway's person incident to that arrest. See United States v. Robinson, 414 U.S. 218, 235 (1973) ("A custodial arrest of a suspect based on probable cause is a reasonable intrusion under the Fourth Amendment; that intrusion being lawful, a search incident to the arrest requires no additional justification.").

Furthermore, that the officer searched Pettaway before arresting him does not change the Court's conclusion. "[A] search conducted before an arrest is not invalid if probable cause to arrest the person existed at the time of the search." Brown v. Commonwealth, 270 Va. 414, 418 n.1, 620 S.E.2d 760, 762 n.1 (2005) (citing Italiano v. Commonwealth, 214 Va. 334, 336, 200 S.E.2d 526, 528 (1973)). Similarly, an officer's "subjective reason for making the arrest need not be the criminal offense as to which the known facts provide probable cause." Devenpeck, 543 U.S. at 153.

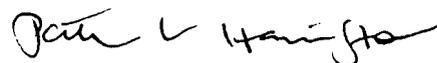
For these reasons, the judgment of the Court of Appeals of Virginia is affirmed. The appellant shall pay to the Commonwealth of Virginia thirty dollars damages.

This order shall be certified to the Court of Appeals of Virginia and to the Circuit Court of the City of Hopewell.

Justice Mims took no part in the consideration of this case.

A Copy,

Teste:

A handwritten signature in cursive script, appearing to read "Paul L. Hargis".

Clerk