

THE STATE OF NEW HAMPSHIRE

SUPREME COURT

In Case No. 2006-0128, State of New Hampshire v. Jacob Jason, the court on March 14, 2007, issued the following order:

Following a jury trial, the defendant, Jacob Jason, was convicted of possession of cocaine and marijuana. On appeal, he contends that the trial court erred in denying his motion to suppress. He concedes that the stop was lawful at its inception; he argues, however, that it evolved into an unreasonable detention when the police officers realized that the person that they sought was not in the cab. We affirm.

In reviewing a trial court's ruling on a motion to suppress, we accept its factual findings unless they lack support in the record or are clearly erroneous. State v. McKinnon-Andrews, 151 N.H. 19, 22 (2004). Our review of the trial court's legal conclusions is *de novo*. *Id.*

In this case, the defendant concedes that the police officers had reasonable suspicion to stop the cab. At oral argument, he also conceded that they had the right to approach the cab. *See, e.g., United States v. Jenkins*, 452 F.3d 207, 213 (2d Cir. 2006) (“[W]hen police officers stop a vehicle on a reasonable, albeit erroneous, basis and then realize their mistake, they do not violate the Fourth Amendment merely by approaching the vehicle and apprising the vehicle's occupants of the situation.”).

The trial court found that as one of the officers approached the cab, he noticed the defendant making suspicious gestures around his waist, which caused the officer to become concerned that the defendant was armed. *See McKinnon-Andrews*, 151 N.H. at 23 (before concluding investigative stop, officer may take whatever additional action which the circumstances would warrant a man of reasonable caution to take); State v. Roach, 141 N.H. 64, 67 (1996) (once officer is justified in making investigatory stop, he may also conduct protective frisk if he justifiably believes that individual is armed and presently dangerous). It was as the officer was initiating a pat down search to insure that the defendant was not armed that he observed baggies containing white powder in a pocket of the defendant's sweatshirt.

Based upon the record before us, we affirm the order of the trial court denying the defendant's motion to suppress.

Affirmed.

BRODERICK, C.J., and DUGGAN and HICKS, JJ., concurred.

**Eileen Fox,
Clerk**