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This memorandum is uncorrected and subject to revision before
publication in the New York Reports.

No. 139 SSM 25
The People &c.,
Respondent,
v.
John R. Simmons,
Appellant.

Submitted by Barbara J. Davies, for appellant.
Submitted by Julie Bender Fiske, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.
The determination regarding a founded suspicion of criminality,
justifying the arresting officer's demand that defendant "show
his hands," involves a mixed question of law and fact (see People

v Mercado, 25 NY3d 936, 937 [2015]; People v Valerio, 95 NY2d 924, 925 [2000]). Based on the police officer's experience handling gun cases, the high crime rate and gang violence in the patrol area, the recent reports of gunshots fired near the location where defendant was first observed, and defendant's clutching of his waistband, there is record evidence to support a finding of founded suspicion. The totality of these circumstances provides sufficient indicia of criminality to warrant a level-two inquiry under People v De Bour (40 NY2d 210, 223 [1976]). Therefore, the determinations made below are beyond our further review.

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Order affirmed, in a memorandum. Chief Judge DiFiore and Judges Rivera, Stein, Fahey, Garcia, Wilson and Feinman concur.

Decided October 17, 2017