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

No. 49 SSM 52
The People &c.,
Appellant,
v.
Elvis Silvestry,
Respondent.

Submitted by Edward D. Saslaw, for appellant.
Submitted by Sally Butler, for respondent.

MEMORANDUM:

The order of the Appellate Division should be affirmed.

Whether the circumstances of a particular case rise to the level of reasonable suspicion is a mixed question of law and fact, beyond our review if the determination is supported by the record. Here record evidence supports the lower courts'

determination that the police lacked such suspicion (People v DeBour, 40 NY2d 210 [1976]).

The People's other contentions lack merit.

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On review of submissions pursuant to section 500.11 of the Rules, order affirmed, in a memorandum. Acting Chief Judge Ciparick and Judges Graffeo, Read, Smith, Pigott and Jones concur.

Decided January 13, 2009