

**IN THE COURT OF COMMON PLEAS FOR LYCOMING COUNTY, PENNSYLVANIA**

**COMMONWEALTH**

**v.**

**DAVID CLEMENS,  
Defendant**

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**No. 1756-2008  
CRIMINAL**

**OPINION AND ORDER**

On December 30, 2008, Defendant filed a Motion to Suppress. A hearing on the Motion was held on February 6, 2009.

***Background***

The following is a summary of the facts presented at the Suppression hearing. On August 16, 2008, Officers Jeremy Brown (Brown) and Edward Lucas were in the area of Fourth Street and Penn Street in a marked police unit working for the Crime Suppression Unit. Around 1:51 a.m., Lycoming County Dispatch Center dispatched that it received a citizen's complaint that a large white male, approximately six foot five inches in height, with a beer belly, and salt and pepper hair was making a disturbance at Joey's Place and had threatened to blow up the building. The dispatch stated the suspect had left the area in a tan suburban, going east bound on Brandon Place. Immediately after the dispatch, Brown saw marked police units traveling east in the area of Washington Boulevard, so he decided to go North in the area of Wyoming Street. As Brown turned off Penn Street onto Wyoming Street in the 800 Block, he saw taillights of an SUV and these were the only taillights observed at that time going east. The Officers caught up to the vehicle, around Almond Street, where it turned north and Brown noticed the vehicle was a tan suburban and the driver was a large white male. As the vehicle turned east on Sheridan Street,

Brown ran the vehicle's registration and then conducted a traffic stop. Brown related that he observed the Defendant's vehicle and conducted the traffic stop within minutes of receiving the first dispatch.

### *Discussion*

Defendant alleges that the officers did not have reasonable suspicion to stop his vehicle. Specifically, Defendant contends that the information provided to the Officers was not sufficient to identify the Defendant's vehicle and that the officers could not tell the Defendant's size by looking through the driver's side window.

According to the Pennsylvania Supreme Court, "where a motion to suppress has been filed, the burden is on the Commonwealth to establish by a preponderance of the evidence that the challenged evidence is admissible." Commonwealth v. Bryant, 866 A.2d 1143, 1145 (Pa. Super. Ct. 2005) (quoting Commonwealth v. DeWitt, 608 A.2d 1030, 1031 (Pa. 1992)). "An investigative detention occurs when a police officer temporarily detains an individual by means of physical force or a show of authority for investigative purposes." Commonwealth v. Smith, 904 A.2d 30, 35 (Pa. Super. Ct. 2006). "Such a detention constitutes a seizure of a person . . ." and therefore requires at least reasonable suspicion. Id. The Court must look at the totality of the circumstances in determining "whether the officer had reasonable suspicion that criminal activity was afoot." Id. at 35-36. "Further, 'police officers need not personally observe the illegal or suspicious conduct, but may rely upon the information of third parties, including 'tips' from citizens." Id. at 36 (quoting Commonwealth v. Barber, 889 A.2d 587, 593 (Pa. Super. Ct. 2005)).

After reviewing the totality of the circumstances, the Court finds the Officers had reasonable suspicion to stop the Defendant's vehicle. First, the citizen's complaint was made by

a specifically identifiable reporting party who provided police with his address and phone number. When making the complaint, the reporting party gave dispatch information regarding the incident, a description of the vehicle which included the make and color, and in which direction the vehicle was seen leaving from Joey's Place. The reporting party also gave Officers a detailed description of the Defendant's person, to include his approximate height, size, and hair color. Brown testified that he observed a vehicle matching the description of the Defendant's vehicle going east in the area provided within minutes of the complaint. Brown also related he observed a larger white male driving the vehicle. Therefore, the Court finds the Officers had reasonable suspicion to believe the Defendant and the vehicle were the subjects of the complaint.

**ORDER**

AND NOW, this \_\_\_\_ day of March 2009, based on the foregoing Opinion, it is ORDERED and DIRECTED that Defendant's Omnibus Motion is hereby DENIED.

By the Court,

Nancy L. Butts, Judge

xc: DA (KO)  
PD (RB)  
Trisha D. Hoover, Esq. (Law Clerk)  
Gary L. Weber (LLA)