

IN THE CIRCUIT COURT OF THE
NINTH JUDICIAL CIRCUIT, IN AND
FOR ORANGE COUNTY, FLORIDA

CASE NO: 2010-AP-35
Lower Court Case No: 2009-CT-4861

WILLIAM PADOVANI,

Appellant,

vs.

STATE OF FLORIDA,

Appellee.

_____ /

Appeal from the County Court,
for Orange County, Florida,
Faye Allen, County Court Judge

Robert Wesley, Public Defender and
Kimberly M. DeVries, Assistant Public Defender,
for Appellant

Lawson Lamar, State Attorney and
David H. Margolis, Assistant State Attorney,
for Appellee

Before POWELL, ARNOLD, and LAUTEN, J.J.

PER CURIAM.

FINAL ORDER AFFIRMING TRIAL COURT

Appellant William Padovani seeks review of an order denying his pretrial motion to suppress.¹ His sole argument is that the stop of his vehicle was not made on reasonable suspicion and was therefore unlawful. We disagree, and affirm. We dispense with oral argument pursuant to Florida Rule of Appellate Procedure 9.320.

¹ Appellant preserved his right to appeal. Even though there was no stipulation or finding that the motion was dispositive, we find that it can be inferred from the record.

At 10:00 p.m. on August 28, 2012, a Saturday night, Officer Coello received a call from his radio dispatch concerning a possible reckless or drunk driver. The unidentified caller reported the vehicle was in and out of its lane, could not maintain the lane, drove off the road several times, and that it stopped at a green light with a lot of people honking for him to move on. Officer Coello, who was approximately a mile and a half away, responded to the location described by the caller within two minutes. There he observed Appellant's vehicle which matched the make, color and tag number given by the caller. He also saw another vehicle following immediately behind Appellant's vehicle with its driver flagging, waiving and pointing to it. He then got behind Appellant's vehicle and before stopping it, saw it swerve to the right two times "in a manner that was a little awkward" even though the road was straight. Officer Coello further testified he initiated the stop "mainly because of that complaint – that call, reckless driver" and that he "wanted to make sure the driver wasn't impaired, asleep or tired, if something was going on in the vehicle...".²

A trial court's ruling on a motion to suppress is presumed correct and the reviewing court must interpret the evidence and all reasonable inferences and deductions drawn therefrom in a manner most favorable to the trial court's ruling. *Johnson v. State*, 438 So. 2d 774 (Fla. 1983), *cert denied* 465 U.S.1051 (1984). Each case is evaluated on its own particular facts. *Brown v. State*, 719 So. 2d 1243 (Fla. 5th DCA 1998). Considering the totality of the circumstances: the day of the week, the lateness of the hour, the extensive detail in the tip, the actions of the following driver³, and the corroborating observations and concerns of the officer; we conclude

² A legitimate concern for the safety of the motoring public can warrant a brief investigatory stop to determine if a driver is ill, tired or driving while impaired. *State, Dept. of Highway Safety & Motor Vehicles v. DeShong*, 603 So. 2d 1349 (Fla. 2d DCA 1992); *Ndow v. State*, 864 So. 2d 1248 (Fla. 5th DCA 2004).

³ Deputy Coello and the hearing officer could reasonably infer that the vehicle immediately following Appellant when Coello got there was the unidentified telephone caller.

that Officer Coello had reasonable suspicion to justify the stop of Appellant. Consequently, the order appealed from is AFFIRMED.

AFFIRMED.

DONE AND ORDERED at Orlando, Florida this 12th day of December, 2012.

/S/

ROM W. POWELL
Senior Judge

/S/

C. JEFFERY ARNOLD
Circuit Judge

/S/

FREDERICK J. LAUTEN
Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing order was furnished to **Kimberly M. DeVries, Assistant Public Defender**, 435 N. Orange Avenue, Ste. 400, Orlando, Florida 32801; **Dugald McMillan, Assistant State Attorney**, 415 N. Orange Avenue, Ste. 200, Orlando, Florida 32802-1673; and **Honorable Faye Allen**, 425 N. Orange Avenue, Orlando, Florida 32801, this 12th day of December, 2012.

/S/

Judicial Assistant