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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-1296

Filed: 18 June 2019

New Hanover County, No. 16CRS60151-53, 17CRS2657

STATE OF NORTH CAROLINA

v.

JOSE VAZQUEZ, Defendant.

Appeal by Defendant from judgments entered 6 August 2018 by Judge Leonard L. Wiggins in New Hanover County Superior Court. Heard in the Court of Appeals 7 May 2019.

Attorney General Joshua H. Stein, by Assistant Attorney General Jarrett McGowan, for the State.

Appellant Defender Glenn Gerding, by Assistant Appellant Defender Aaron Thomas Johnson, for Defendant-Appellant.

INMAN, Judge.

Defendant Jose Vazquez ("Defendant") appeals from his convictions following guilty pleas of three counts of trafficking in cocaine; one count of possession with intent to sell and deliver a Schedule II controlled substance; one count of felony possession of a Schedule I controlled substance; one count of maintaining a vehicle

for keeping and selling a controlled substance; and attaining habitual felon status. Defendant argues: (1) the trial court erred in denying his motion to suppress evidence discovered in a traffic stop conducted by a law enforcement officer without reasonable suspicion; and (2) remand is required to correct a clerical error. After thorough review of the record and applicable law, we hold that Defendant has failed to demonstrate error, but remand the case for correction of the clerical error.

I. FACTUAL AND PROCEDURAL BACKGROUND

The evidence introduced throughout the trial proceedings tended to show the following:

At about 7:00pm on 19 December 2016, Drug Enforcement Administration agent Elbert H. Kennedy ("Agent Kennedy") received a tip from a known informant that Defendant, driving a silver Mitsubishi SUV, would be receiving cocaine from a supplier near the intersection of Wilshire Boulevard and South College Road in Wilmington, North Carolina. Defendant, who went by the nickname "Boltas," was part of a larger investigation involving the drug supplier Edwardo Martinez ("Martinez"), who went by the nickname "Lalo."

Agent Kennedy immediately drove to the described location. Once Agent Kennedy arrived on the scene, he discovered Defendant in a silver Mitsubishi SUV sitting alone in a McDonald's parking lot. Agent Kennedy then called for assistance from additional officers specifically involved in drug task forces from various counties.

After the officers arrived, they observed Defendant, who never left his vehicle, for approximately twenty minutes.

At or around 7:45pm, Martinez drove into the plaza where the McDonald's was located and parked near a Harris Teeter grocery store. Defendant then moved his car "no more than a few feet" in front of another restaurant. "Shortly thereafter," Martinez drove his car to the area where Defendant was located, which resulted in them being in "close proximity" to one another. Neither Agent Kennedy nor the other officers observed any transaction or interaction between Martinez and Defendant, and both suspects stayed in the parking lot briefly.

Defendant then left the parking lot and drove to a restaurant off of Military Cutoff Road. Although Defendant stayed in the parking lot, he never exited the car, but someone else later came out of the restaurant and got into the car, stayed in the car for a short time, and then exited and went back into the restaurant. Agent Kennedy kept following Defendant as he left the parking lot.

As Agent Kennedy was following Defendant, Defendant made an "abrupt turn" into another McDonald's parking lot, drove around the business but never stopped, then drove back on the highway. Agent Kennedy, based on nineteen years of law enforcement and investigation experience, thought that Defendant was performing "counter surveillance," a maneuver intended to determine whether one is being followed. Defendant continued to drive to other locations in Wilmington, including

an apartment complex. At about 9:15pm, Agent Kennedy initiated a stop of Defendant's car. Rather than promptly stopping, Defendant continued driving and did not pull over until he reached a dead end.

When Agent Kennedy approached Defendant's car, Defendant "appeared nervous," and kept his hands in his pockets until Agent Kennedy ordered that he keep his hands in plain view. Agent Kennedy also saw that Martinez's nickname "Lalo" was displayed on Defendant's phone during an ongoing call. Defendant ultimately consented to a pat down, revealing a small bag of cocaine. Defendant was then taken into custody and read his *Miranda* rights. A search of Defendant's car later revealed a medicine box containing more cocaine.

On 22 May 2017, Defendant was indicted on three counts of trafficking in cocaine and one count each for possession with intent to manufacture, sell, and deliver a Schedule II controlled substance; possession of a Schedule II controlled substance; maintaining a vehicle used for keeping and selling a controlled substance; possession of drug paraphernalia; possession of a Schedule VI controlled substance; driving with license revoked; and attaining habitual felon status.

Defendant's attorney filed a motion to suppress all evidence seized as a result of the search, arguing that Agent Kennedy conducted an illegal traffic stop. The motion was heard on 6 August 2018, and Agent Kennedy was the only witness. The

trial court denied the motion orally in open court and in a written order entered on 8 August 2018.

The same day the motion to suppress was heard and denied from the bench, Defendant pled guilty to three counts of trafficking in cocaine; one count of possession with intent to sell and deliver a Schedule II controlled substance; one count of felony possession of a Schedule I controlled substance; one count of maintaining a vehicle for keeping and selling a controlled substance; and attaining habitual felon status. The remaining charges were dropped as a condition of the plea arrangement. Defendant was sentenced in the presumptive range of punishment to 76 to 104 months' imprisonment, with credit for 596 days spent in confinement, and ordered to pay $59,145.22 in fines and court costs.

Defendant gave oral notice of appeal.

II. ANALYSIS

A. Reasonable Suspicion

Defendant contends that the trial court erroneously denied his motion to suppress because Agent Kennedy did not possess reasonable suspicion to conduct a traffic stop. In reviewing motions to suppress, we determine whether "the trial judge's underlying findings of facts are supported by competent evidence, in which event they are conclusively binding on appeal, and whether those factual findings in turn support the judge's ultimate conclusions of law." *State v. Cooke*, 306 N.C. 132,

134, 291 S.E.2d 618, 619 (1982). If any or all of the findings of fact are unchallenged, they are presumed to be supported by competent evidence and thus binding on appeal. *State v. Washington*, 193 N.C. App. 670, 672, 668 S.E.2d 622, 624 (2008).

The relevant findings of fact from the trial court's order denying Defendant's motion to suppress are as follows:

> 1. The Court heard testimony from [Agent Kennedy]. He has been employed with the federal Drug Enforcement Administration, DEA for 19 years and has conducted numerous drug and controlled substance related investigations over the years and has assisted numerous state and other local authorities in illegal controlled substance activity. Prior to his service with the DEA, he worked with the New Hanover County Sheriff's Department for eight years.
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> 2. That on or about December 19, 2016 Agent Kennedy had an active investigation involving the defendant in this matter. That Agent Kennedy had received information regarding the activities of the defendant on at least three separate occasions, ranging from January 2016 to December 2016.
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> 3. The information received was received from a reliable and confidential informant. This informant, on prior occasions, had given information that yielded positive results. The informant was a participant in an investigation involving [Martinez], who was also identified as "Lalo". Martinez was the larger target for the investigation and was identified as the supplier for [Defendant]. [Defendant] is the subject of the criminal action that is before the court.
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> 4. On or about December 19, 2016 Agent Kennedy received information from a reliable and confidential informant the defendant would be in or near the vicinity of Wilshire

Boulevard and South College Street in Wilmington, North Carolina. Agent Kennedy received this information at approximately 7:00p.m.

5. Based on this information, Agent Kennedy immediately left his residence and proceeded to the location of Wilshire Boulevard and South College Road. That additional information from the reliable and confidential informant indicated that the defendant would be driving a silver Mitsubishi SUV.

6. The location of Wilshire Boulevard and South College Road is marked by a McDonald's restaurant, a Harris Teeter Shopping center as well as a restaurant known as La Tapatia. Upon arrival of that location Agent Kennedy pulled into the parking lot, PVA, and recognized the defendant. Agent Kennedy recognized the defendant from photographs of the defendant. Agent Kennedy was able to identify the defendant by virtue of the fact that the defendant was sitting in his vehicle with his dome light illuminated. Once he identified the defendant, Agent Kennedy called for assistance from additional officers from various agencies that are part of the controlled substance task force in the New Hanover, Brunswick and Pender County areas.

7. Agent Kennedy observed the defendant from his personal vehicle which was a Mustang. Furthermore Agent Kennedy went inside the McDonald's restaurant and observed the defendant from inside. The defendant never exited his vehicle.

8. Additional assistance arrived in the form of other officers from the multi-county controlled substance task force and they all began to observe the defendant. The reliable, confidential informant said this defendant was known as "Boltas". Agent Kennedy was able to corroborate both the location of the defendant and what the defendant would be driving. Agent Kennedy and other assisting officers watched the defendant for approximately 20

minutes.

9. On or around 7:45p.m., Agent Kennedy and officers of the multi-county task force observed Edwardo Martinez enter the PVA of this area that had the Harris Teeter parking lot, the La Tapatia restaurant, as well as the McDonald's restaurant. Martinez was the larger target and the subject of an on-going controlled substance violation investigation. Martinez is known as "Lalo".

10. Martinez drove into the parking lot and briefly parked in front of the Harris Teeter. [Defendant] moved his vehicle form an area in and near the McDonald's PVA to a point that was beside the La Tapatia restaurant. This movement is no more than a few feet, give or take.

11. Shortly thereafter, [Martinez] moved his vehicle to the same area where the defendant was located. Both Martinez and [Defendant] ended up near the La Tapatia restaurant in the same area in a close proximity to each other. Agent Kennedy nor the other officers could see any transaction between the two but both vehicles only stayed in or near the vicinity of each other for a very short period of time. Thereafter, the defendant . . . proceeded to leave the area and went to the El Cerro Grande restaurant off Military Cutoff Road.

12. The defendant parked on the back side of the restaurant. The defendant never exited his vehicle and an individual came out of the restaurant and got into the defendant's vehicle. That individual stayed in the vehicle only a brief period of time and then went back into the restaurant. The defendant . . . departed the rear parking area of El Cerro Grande restaurant.

13. In each instance where [Defendant] was at the McDonald's at Wilshire and South College Road and in the general vicinity of La Tapatia and El Cerro Grande the defendant, to the best of the knowledge and observation of the officers never got out of his vehicle or stayed at any of

> these locations for any significant period of time.
>
> 14. The defendant proceeded to drive through the city of Wilmington. At some point in time the defendant made what was described by Agent Kennedy as an abrupt turn into a McDonald's restaurant that is at the intersection of Military Cutoff Road and Eastwood Road. The defendant drove around the building but never made a stop and then proceeded back on the highway. Based on the knowledge, experience and training of Agent Kennedy this particular activity is consistent with counter surveillance activity in an effort by individuals to determine if anyone is following them in other motor vehicles.
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> 15. The defendant ultimately went to other locations in or near the vicinity of Independence Drive and Oleander Drive in Wilmington. The defendant drove in and around the Reserves at Forrest Hills apartment complex.
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> 16. That all of the aforementioned activity described by Agent Kennedy in his testimony as evidenced by his first hand observations, along with his knowledge and experience as a seasoned and experienced law enforcement who regularly investigates unlawful controlled substance activity, gave rise to reasonable suspicion to initiate a stop of the vehicle and said activity is consistent with illegal and unlawful controlled substance activity.
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> 17. At or around 9:15p.m. Agent Kennedy initiated a stop of the defendant's motor vehicle. The defendant delayed in bringing his vehicle to a stop and did not immediately bring his vehicle to a stop. The defendant pulled into a gated apartment complex, Covil Garden Apartments, where he, essentially, did not have anywhere else where he could drive or retreat to.

1. Findings of Fact Supported by Competent Evidence

Defendant makes multiple arguments concerning portions of the trial court's

findings of fact. When determining whether a trial court's findings are supported by competent evidence, we give great deference to the trial court because it is tasked with the "duty to hear testimony, weigh and resolve any conflicts in the evidence, find the facts, and, then based upon those findings, render a legal decision." *Cooke*, 306 N.C. at 134, 291 S.E.2d at 619-20.

Defendant first argues that finding of fact 16 should not be given any deference because it is a conclusion of law falsely labeled as a finding of fact. *See State v. Campola*, __ N.C. App. __, __, 812 S.E.2d 681, 687 (2018) ("If the trial court labels as a finding of fact what is in substance a conclusion of law, we review that 'finding' *de novo*." (quotations and citation omitted)). We agree with the State, however, that finding of fact 16 contains both findings of fact and conclusions of law.

Although the "classification of a determination as either a finding of fact or a conclusion of law is admittedly difficult," our appellate courts have provided definitions delineating the two. *In re Helms*, 127 N.C. App. 505, 510, 491 S.E.2d 672, 675 (1997). Generally, conclusions of law are determinations made through the exercise of judgment or the application of legal principles, while findings of fact are those "determination[s] reached through 'logical reasoning from the evidentiary facts.'" *Id.* (quoting *Quick v. Quick*, 305 N.C. 446, 452, 290 S.E.2d 653, 657-58 (1982)).

Here, the State contends, and we agree, that the only conclusion of law in finding of fact 16 is the determination that the circumstances found by the trial court

"gave rise to reasonable suspicion to initiate a stop of the vehicle." *See State v. Kincaid*, 147 N.C. App. 94, 97, 555 S.E.2d 294, 297 (2001) ("[A] trial court's conclusions of law regarding whether the officer had reasonable suspicion to detain a defendant is reviewable *de novo*."). The remaining language within that finding consists of facts derived from the evidence introduced at the hearing. The trial court heard Agent Kennedy's testimony and found that, through his observations and experience, Defendant's actions resembled illegal activity involving controlled substances. And through its finding of this activity—based on inferences drawn via "natural reasoning," rather than any "fixed rules of law"—the trial court concluded as a matter of law that reasonable suspicion existed. *Woodard v. Mordecai*, 234 N.C. 463, 472, 67 S.E.2d 639, 645 (1951).

Defendant next contends finding of fact 17, that Defendant delayed in stopping his vehicle, was not supported by competent evidence and in fact conflicts with the evidence presented at trial. We disagree.

When asked about Defendant's actions after he initiated his blue emergency lights, Agent Kennedy testified to the following:

> [STATE:] And how far is it between the time you activated your blue lights and the time Mr. Vazquez pulled over into Covil Garden apartments?
>
> [AGENT KENNEDY:] Maybe a tenth of a mile.
>
> [STATE:] Between those two times, were there spaces to pull over on the side of the road?

[AGENT KENNEDY:] Yes.

[STATE:] Was there anything that was obstructing a vehicle from being able to pull over on to the side of the road?

[AGENT KENNEDY:] No.

[STATE:] How—about how fast were you traveling at this point?

[AGENT KENNEDY:] Close to the speed limit. He was—since he just left [t]he Reserves, he was just picking up speed, he was probably going right around the speed limit by that point.

[STATE:] Do you recall what the speed limit is?

[AGENT KENNEDY:] I want to say 45. I'm not quite 100 percent sure.

[STATE:] And then once Mr. Vazquez turned into the apartment complex that's there, were there places to stop without going through the gate?

[AGENT KENNEDY:] Yes.

[STATE:] Once Mr. Vazquez went through the gate, were there places to stop before getting all the way to the back of the parking lot?

[AGENT KENNEDY:] Yes. There are parking places right there at the entrance right beside Covil Avenue.

[STATE:] Do you recall was there anything in the way preventing either you or Mr. Vazquez from stopping?

[AGENT KENNEDY:] No.

> [STATE:] Can you describe when Mr. Vazquez stopped, how you maneuvered your car?
>
> [AGENT KENNEDY:] Mr. Vazquez pulled all the way to the end towards the hedgerow there, pulled to the right.

Defendant calculates that, if he pulled his car over after a tenth of a mile going 45 miles per hour, it must have taken him eight seconds to stop his car upon noticing Agent Kennedy's flashing lights; which is not an unreasonable time to constitute a delay. Defendant, however, did not merely stop while driving in a straight line, but rather chose to weave through an apartment community, bypassing areas where he reasonably could have stopped, and not stopping until he reached a dead end. We thus hold that the trial court's finding that Defendant delayed in stopping was supported by competent evidence.

Defendant also points out that the trial court's findings do not specify what Martinez supplied to Defendant. Indeed, finding of fact 3 merely provides that Martinez is "the larger target for the investigation and [is] identified as the supplier for [Defendant]." While the "general rule is that [the trial court] should make findings of fact to show the bases of [its] ruling," there is no affirmative duty to do so absent any "material conflict in the evidence." *State v. Phillips*, 300 N.C. 678, 685, 268 S.E.2d 452, 457 (1980). "In these situations, the necessary findings are implied from the admission of the challenged evidence." *State v. Salinas*, 366 N.C. 119, 124, 729 S.E.2d 63, 66 (2012); *see also State v. Bartlett*, 368 N.C. 309, 312, 776 S.E.2d 672, 674

(2015) ("When there is no conflict in the evidence, the trial court's findings can be inferred from its decision.").

Here, Agent Kennedy was the only witness presented at the suppression hearing. His testimony described the investigation of Defendant based on the suspicion that Martinez was delivering cocaine to Defendant to sell. No evidence was introduced to the contrary. No evidence was introduced that Martinez was allegedly supplying another commodity or substance to Defendant. Because the trial court did not have to resolve any evidentiary conflict in its written order on this matter, we infer from its decision that it found that Agent Kennedy understood that Martinez was Defendant's supplier of cocaine.

2. Authority to Conduct the Traffic Stop

Defendant finally argues that his motion to suppress should have been granted because Agent Kennedy did not possess reasonable suspicion that he was committing or about to commit any criminal activity. As noted *supra*, a trial court's decision as to whether reasonable suspicion existed is a conclusion of law that we review *de novo*. *State v. Munoz*, 141 N.C. App. 675, 682, 541 S.E.2d 218, 222 (2001). Additionally, the argued findings that we held were either appropriate or supported by competent evidence are included in our analysis with the remaining uncontested findings.

"Our federal and state constitutions protect individuals against unreasonable searches and seizures." *State v. Fields*, 195 N.C. App. 740, 743, 673 S.E.2d 765, 767

(2009) (quoting U.S. Const. amend. IV; N.C. Const. art. I, § 20). A seizure can include an investigatory traffic stop, "even though the purpose of the stop is limited and the resulting detention quite brief." *State v. Styles*, 362 N.C. 412, 414, 665 S.E.2d 438, 439 (2008) (citations and quotation omitted). For a traffic stop to pass constitutional muster, the officer conducting the stop "must have reasonable suspicion, based on specific and articulable facts, that criminal activity is afoot." *State v. McClendon*, 350 N.C. 630, 636, 517 S.E.2d 128, 132 (1999). "Reasonable suspicion is a 'less demanding standard than probable cause and requires a showing considerably less than preponderance of the evidence.' " *State v. Barnard*, 362 N.C. 244, 247, 658 S.E.2d 643, 645 (2008) (quoting *Illinois v. Wardlow*, 528 U.S. 119, 123, 145 L. Ed. 2d 570, 576 (2000)). In reviewing a trial court's ruling on a motion to suppress evidence resulting from a stop or search, we do not view each of the facts in isolation, but through "the totality of the circumstances—the whole picture." *United States v. Cortez*, 449 U.S. 411, 417, 66 L. Ed. 2d 621, 629 (1981).

In support of his argument that Agent Kennedy lacked reasonable suspicion, Defendant argues that the tip provided by the confidential informant "was limited in both its reliability and its content."[1] "When police act on the basis of an informant's tip, the indicia of the tip's reliability are certainly among the circumstances that must

[1] Although Defendant does not expressly take issue with the trial court's finding that Agent Kennedy was notified by a "reliable and confidential informant," we interpret his argument to be that the information conveyed was more akin to an anonymous tip.

be considered in determining whether reasonable suspicion exists." *State v. Maready*, 362 N.C. 614, 619, 669 S.E.2d 564, 567 (2008). We have held that "a tip from an informant 'known to [the officer] personally and [who] had provided him with information in the past' is sufficient to provide reasonable suspicion for a stop.' " *State v. McRae*, 203 N.C. App. 319, 324, 691 S.E.2d 56, 60 (2010) (quoting *Adams v. Williams*, 407 U.S. 143, 146, 32 L. Ed. 2d 612, 617 (1972) (alterations in original)). However, if " '[t]here [is] no indication that the informant ha[s] been previously used and ha[s] given accurate information[,]' the Court treat[s] the informant as an anonymous informant." *State v. Blankenship*, 230 N.C. App. 113, 116, 748 S.E.2d 616, 618 (2013) (quoting *McRae*, 203 N.C. App. at 325, 691 S.E.2d at 60-61).

Here, Agent Kennedy testified that he had been using the same confidential informant since January 2016 for his investigations against Defendant and Martinez. The confidential informant had successfully bought cocaine from Martinez in the past and attempted to buy cocaine from Defendant as well, but was unsuccessful only due to a disagreement as to the price. Early on in Agent Kennedy's investigation, the confidential informant also provided a photograph of Defendant—who at the time was known only by his nickname, Boltas—which allowed Agent Kennedy to identify Defendant by his legal name. And the confidential informant provided Agent Kennedy with the type of car Defendant drove months prior to the December 2016 tip. Contrary to Defendant's argument, the record contains an abundance of evidence

that Agent Kennedy had worked with a known informant who had provided reliable information in the past. Accordingly, we hold that Agent Kennedy's information came from a "proven, confidential informant." *McRae*, 203 N.C. App. at 325, 691 S.E.2d at 60.

Defendant cites to *Florida v. J.L.* for the proposition that a tip merely describing the suspect and his location is insufficient to constitute reasonable suspicion absent assertions of illegality and future behavior.[2] 529 U.S. 266, 269, 146 L. E. 2d 254, 262 (2000). *J.L.* is inapposite, however, because it was reviewing the reliability of an anonymous tip, rather than a tip from a reliable and known informant. *See id.* at 270, 146 L. E. 2d at 260 ("Unlike a tip from a known informant whose reputation can be assessed and who can be held responsible if her allegations turn out to be fabricated, an anonymous tip alone seldom demonstrates the informant's basis of knowledge or veracity[.]" (internal quotations and citations omitted)); *see also State v. Harwood*, 221 N.C. App. 451, 459, 727 S.E.2d 891, 898 (2012) ("The reasonable suspicion . . . at issue [in an anonymous tip situation] requires that [the] tip be reliable in its assertion of illegality, not just in its tendency to identify a determinate person." (quoting *J.L.*, 529 U.S. at 272, 146 L. E. 2d at 261) (alterations in original) (internal quotations omitted)).

[2] This argument is also premised on Defendant's previous assertion that the findings did not identify any illegal activity that he allegedly was going to commit. But, as we held in Part A.1, we can infer that Defendant was going to be supplied cocaine.

Defendant also relies on *State v. Hughes* to support his argument that the confidential informant's reliability cannot be adequately determined based on Agent Kennedy's testimony. 353 N.C. 200, 204, 539 S.E.2d 625, 628 (2000). Again, much like his reliance on *J.L.*, Defendant's reference to *Hughes* is misplaced. In *Hughes*, an officer received a tip from a confidential informant that a suspect would be arriving by bus possessing multiple controlled substances. *Id.* at 202-03, 539 S.E.2d at 627. The original officer who received the tip passed the information to a detective who in turn relayed it to the arresting officers. *Id.* The arresting officers had no prior experience with the informant. *Id.* Our Supreme Court held that, because there was no evidence other than the original officer's assertion that the informant was reliable and credible, the tip should be classified as anonymous. *Id.* at 204-05, 539 S.E.2d at 628-29; *cf. State v. Nixon*, 160 N.C. App. 31, 37, 584 S.E.2d 820, 824 (2003) ("Probable cause may not be established by the testimony of only the arresting officer that he or she was told by another officer that the information was reliable." (citing *Hughes*, 353 N.C. at 204, 539 S.E.2d at 628)).

The evidence in this case is readily distinguishable from *Hughes*. Agent Kennedy communicated directly with the confidential informant, had prior experience with the informant, and testified at trial why he deemed the informant reliable and credible. Defendant cites no additional case law, and we can find none, for his assertion that an informant's credibility cannot be determined solely from an

officer's testimony.

Defendant also argues that the tip was proven unreliable because, contrary to the confidential informant's tip, police observed no cocaine transaction between Defendant and Martinez. This argument is not supported by case law. *See State v. Otto*, 366 N.C. 134, 139, 726 S.E.2d 824, 828 (2012) (Newby, J., concurring) ("A criminal act need not occur before an officer may initiate a stop."); *State v. Williams*, 209 N.C. App. 255, 263-64, 703 S.E.2d 905, 911 (2011) ("Investigator Brown was told by three [confidential and reliable] informants that defendant was selling narcotics at both the Holiday Inn Lounge and Wings and Things and traveled in a late-model Jeep Cherokee. . . . *Although the investigators did not personally observe defendant selling narcotics*, [the] specific and articulable facts . . . were sufficient to create a reasonable suspicion . . . to justify a brief investigatory stop of [the] defendant's vehicle." (emphasis added)). Indeed, the United States Supreme Court has held that a known "informant's *unverified* tip," which may well be insufficient to establish probable cause, can "carr[y] enough indicia of reliability to justify [an] officer's forcible stop." *Adams*, 407 U.S. at 148, 32 L. Ed. 2d at 617 (emphasis added).

Even presuming that the confidential informant's tip could not justify the stop, the factual circumstances preceding the stop, considered in their totality, were sufficient to prompt a reasonable suspicion that Defendant was engaged in ongoing illegal activity involving controlled substances. While Defendant makes further

isolated arguments that certain findings should be given minimal weight, a suspect's otherwise innocent actions and the surrounding innocent circumstances are included in our holistic analysis. *See Terry v. Ohio*, 392 U.S. 1, 22, 20 L. Ed. 2d 889, 907 (1968) (holding that individual acts appearing innocent on their face, "taken together," can "warrant further investigation").

Agent Kennedy was notified that Defendant, driving a silver Mitsubishi SUV, would be receiving cocaine at the intersection of Wilshire Boulevard and South College Road that night. When Agent Kennedy arrived at the scene, he discovered Defendant driving the described car, sitting in a parking lot. Minutes later, Agent Kennedy witnessed Martinez—who was the main target of his investigation and suspected supplier—pull into a nearby parking lot. As the officers observed the two vehicles, both Defendant and Martinez crept closer and closer, eventually ending up "in the same area in a close proximity to each other."[3] Although Defendant never exited his vehicle, when he left the parking lot and drove to a nearby restaurant, Agent Kennedy witnessed another individual enter, and then exit, Defendant's

[3] Defendant makes the additional argument that his presence close to Martinez "suggest[s] little more than guilt[] by association." Unlike the case law that he uses to bolster his claim, Defendant was not a person tangentially connected to another criminal suspect or area. *See State v. Bedient*, 247 N.C. App. 314, 323-24, 786 S.E.2d 319, 327 (2016) (holding that reasonable suspicion did not exist because the defendant's association with a person known for drug use and transactions was not particularized to the reason for the officer's search); *Ybarra v. Illinois*, 444 U.S. 85, 91, 62 L. E. 2d 238, 245 (1979) (reasoning that probable cause did not exist as the defendant was merely a person in "propinquity to others *independently* suspected of criminal activity" (emphasis added)). Defendant's proximity to Martinez was discovered and monitored as a result of an active investigation against both of them, rather than by unfortunate happenstance.

vehicle within the span of a few moments. *See State v. Summey*, 150 N.C. App. 662, 667, 564 S.E.2d 624, 628 (2002) (holding that an officer viewed "conduct which was characteristic of a drug transaction" when he witnessed a man approach a truck briefly before walking away). As Agent Kennedy continued to follow and watch Defendant drive aimlessly, he witnessed what he construed, based on his nineteen years of experience, to be "counter surveillance" by Defendant—a tactic employed by suspects to see if they are being followed.

In sum, Agent Kennedy witnessed two individuals—both suspects in an ongoing drug investigation—appear mere yards away from each other consistent with a known informant's tip that a drug transaction would be taking place at a certain location. When we include the findings that Defendant (1) drove to another location and allowed a person to briefly enter his car; (2) traveled throughout Wilmington, including driving through an apartment community without stopping; and (3) delayed in stopping his vehicle upon Agent Kennedy activating his blue emergency lights, we conclude that Agent Kennedy met the "minimal level of objective justification" to stop Defendant's car. *Styles*, 362 N.C. at 414, 665 S.E.2d at 439; *see also State v. Mello*, 200 N.C. App. 437, 443-44, 684 S.E.2d 483, 488 (2009) (stating that officers must view specific and articulable facts, "as well the rational inferences from those facts, as viewed through the eyes of a reasonable, cautious officer, guided by his experience and training").

B. Clerical Error

Defendant argues, and the State concedes, that this case must be remanded to the trial court to correct a clerical error that inadvertently lists him as a Class E "habitual breaking and entering status offender." Clerical errors are errors "resulting from a minor mistake or inadvertence, esp[ecially] in writing or copying something in the record, and not from judicial reasoning or determination." *State v. Gillespie*, 240 N.C. App. 238, 245, 771 S.E.2d 785, 790 (2015) (alterations in original) (quotations and citation omitted). If a clerical error "is discovered in the trial court's judgment or order, it is appropriate to remand the case to the trial court for correction because of the importance that the record speak the truth." *State v. Smith*, 188 N.C. App. 842, 845, 656 S.E.2d 695, 696 (2008) (quotations and citation omitted). We thus remand for correction of the error on the trial court's judgment form.[4]

NO ERROR IN PART; REMANDED FOR CORRECTION OF CLERICAL ERROR.

Judges TYSON and ARROWOOD concur.

Report per Rule 30(e).

[4] Defendant does not argue for resentencing.