

An unpublished opinion of the North Carolina Court of Appeals does not constitute controlling legal authority. Citation is disfavored, but may be permitted in accordance with the provisions of Rule 30(e)(3) of the North Carolina Rules of Appellate Procedure.

IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-952

Filed: 2 July 2019

Granville County, No. 02 CRS 51192

STATE OF NORTH CAROLINA

v.

VINCENT LAMONT HARRIS, Defendant.

Appeal by defendant from order entered 19 February 2018 by Judge Quentin T. Sumner in Granville County Superior Court. Heard in the Court of Appeals 8 May 2019.

Attorney General Joshua H. Stein, by Special Deputy Attorney General Sonya Calloway-Durham, for the State.

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Michele A. Goldman, for defendant-appellant.

YOUNG, Judge.

Where the State failed to establish reasonableness, we find the trial court erred in ordering lifetime satellite-based monitoring.

I. Factual and Procedural Background

On 16 April 2002, Vincent Lamont Harris (defendant) was arrested on a warrant, and subsequently indicted by a Granville County grand jury, for second

STATE V. HARRIS

Opinion of the Court

degree rape. On 27 February 2003, the defendant was convicted of second degree rape in Granville County Superior Court and was ordered to serve 151 to 191 months in prison. On 27 August 2016, the defendant completed his active sentence and was released from prison. On 19 August 2017, the State instituted proceedings seeking to impose lifetime satellite-based monitoring (“SBM”) on the defendant. The defendant moved to dismiss the State’s SBM petition. A hearing was held on 19 February 2018 in Granville County Superior Court. At the conclusion of the hearing, the trial court denied the defendant’s motion to dismiss the State’s SBM petition, and ordered the defendant to submit to SBM for life. On 22 February 2018, the defendant timely filed a written notice of appeal from the SBM order.

II. Standard of Review

On appeal, the defendant raised a constitutional issue. “The standard of review for alleged violations of constitutional rights is *de novo*.” *State v. Graham*, 200 N.C. App. 204, 214, 683 S.E.2d 437, 444 (2009), *appeal dismissed and disc. review denied*, 363 N.C. 857, 694 S.E.2d 766 (2010); *see also Piedmont Triad Reg’l Water Auth. v. Sumner Hills Inc.*, 353 N.C. 343, 348, 543 S.E.2d 844, 848 (2001) (“[D]e novo review is ordinarily appropriate in cases where constitutional rights are implicated”).

III. Reasonableness

STATE V. HARRIS

Opinion of the Court

On appeal, the defendant contends the State failed to meet its burden of showing that continuous tracking of defendant for the rest of his life was reasonable under the Fourth Amendment. We agree.

The Fourth Amendment protects “[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]” U.S. Const. amend. IV; *see also* N.C. Const. art. I, § 20. “Warrantless searches are presumptively unreasonable[.]” *United States v. Karo*, 468 U.S. 705, 715, 82 L. Ed. 2d 530, 542 (1984). Trial courts must conduct a hearing on the question of SBM’s reasonableness under the Fourth Amendment prior to ordering SBM, even if its imposition is mandated by statute. At the hearing, the State bears the burden of demonstrating that SBM is a reasonable search. *State v. Blue*, 246 N.C. App. 259, 265, 783 S.E.2d 524, 527 (2016); *State v. Morris*, 246 N.C. App. 349, 352, 783 S.E.2d 528, 530 (2016). Using a totality-of-the-circumstances test, the trial court must determine the reasonableness of the search “by assessing, on the one hand, the degree to which it intrudes upon an individual’s privacy and, on the other, the degree to which it is needed for the promotion of legitimate governmental interests.” *Blue*, 246 N.C. App. at 265, 783 S.E.2d at 527 (quoting *Samson v. California*, 547 U.S. 843, 848, 165 L. Ed. 2d 250, 256 (2006)). These determinations must be made on a “case-by-case” basis. *State v. Grady*, __ N.C. App. __, 817 S.E.2d 18, 23 (2018) (*Grady II*).

STATE V. HARRIS

Opinion of the Court

In *Blue*, the trial court erred by failing to analyze the “totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations.” *Blue*, 246 N.C. App. at 261, 783 S.E.2d at 525 (2016). “Rather, the trial court simply acknowledged that SBM constitutes a search and summarily concluded it is reasonable, stating that ‘[b]ased upon [the second degree rape] conviction, and upon the file as a whole, lifetime satellite-based monitoring is reasonable and necessary and required by the statute.’” *Id.* at 264-65. 783 S.E.2d at 527. As a result, this court reversed the trial court’s order and remanded for a new hearing in which the trial court was to determine if SBM is reasonable, based on the totality of the circumstances, as mandated by the Supreme Court of the United States in *Grady v. North Carolina*, 575 U.S. ___, 191 L. Ed. 2d 459 (2015) (*Grady I*). *Blue*, 246 N.C. App. at 265, 783 S.E.2d at 527.

Similarly, in *Morris*, this Court found the trial court erred by not analyzing the “totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations.” *Morris*, 246 N.C. App. at 352, 783 S.E.2d at 529. This Court found that the trial court merely reviewed *Grady* and decided that “registration and lifetime [SBM] constitutes a reasonable search or seizure of the person and is required by statute.” *Id.*

STATE V. HARRIS

Opinion of the Court

In the instant case, the State's evidence was limited to testimony about the general mechanics of the SBM program and the results of defendant's Static-99 assessment, which placed him at a "moderate-low" risk of reoffending. The State presented no testimony about the degree of likelihood of the defendant to reoffend, no evidence of other offenses that would leave anyone to believe the defendant would reoffend and no evidence of efficiency of SBM. We hold that the trial court failed to determine the reasonableness of SBM based on the "totality of the circumstances, including the nature and purpose of the search and the extent to which the search intrudes upon reasonable privacy expectations." *Morris*, 246 N.C. App. at 352, 783 S.E2d at 529. As such, we hold that the trial court erred in ordering the defendant to submit to lifetime satellite-based monitoring.

In addition, the defendant raises two constitutional issues on appeal. Because we hold that the trial court erred in failing to establish reasonableness, we need not address the constitutional issues.

REVERSED.

Judge STROUD concurs.

Judge HAMPSON concurs in the result only.

Report per Rule 30(e).