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IN THE COURT OF APPEALS OF NORTH CAROLINA

2021-NCCOA-580

No. COA20-906

Filed 19 October 2021

Columbus County, No. 18 CRS 51956

STATE OF NORTH CAROLINA

v.

RICHARD GORDON REED, III

Appeal by defendant from judgment entered 22 June 2020 by Judge Douglas B. Sasser in Colombus County Superior Court. Heard in the Court of Appeals 11 August 2021.

Attorney General Joshua H. Stein, by Associate Attorney General Brian Michael Miller, for the State.

Mark L. Hayes for Defendant Appellant.

CARPENTER, Judge.

¶ 1 On 12 December 2018, Richard Gordon Reed, III, ("Defendant") was indicted on a charge of first-degree sex offense of a child. On 12 April 2019, an order was filed denying Defendant's motion to suppress statements made to law enforcement. On 22 June 2020, Defendant entered an *Alford* plea to first-degree sexual offense of a child. The plea expressly reserved Defendant's right to appeal the denial of his motion to

suppress. On 25 June 2020, Defendant filed notice of appeal, was found indigent, and the Appellate Defender was appointed to represent Defendant on his appeal. Defendant appeals the denial of his motion to suppress, the order requiring him to register as a sex offender for life, and the order requiring him to be placed on satellite-based monitoring for life. We find no error with the trial court's denial of the motion to suppress but find the trial court erred in requiring Defendant to register as a sex offender for life and in requiring satellite-based monitoring. We affirm in part, vacate in part, and remand this case to the trial court for reconsideration of the sex offender registration duration and satellite-based monitoring eligibility.

I. Factual and Procedural Background

¶ 2 On 2 August 2018, Detective Paul Rockenbach ("Detective Rockenbach") contacted Defendant by phone. At that time, Defendant was twenty-eight years old. Detective Rockenbach and Defendant made plans to have "a conversation" at a later date because "an incident had [come] up with [Defendant's] name in it," but Defendant was not informed he had been accused of any offenses by the alleged victim. Defendant subsequently called Detective Rockenbach to ask if the two could meet that night instead. Detective Rockenbach agreed, and Defendant traveled from his home in Conway, South Carolina, accompanied by his mother and grandmother, to the Columbus County Sheriff's Office; they arrived after 7 p.m.

¶ 3 After leading Defendant and his family members into the waiting room, Detective Rockenbach asked Defendant if he was ready to go upstairs and talk. Detective Rockenbach led Defendant to an upstairs interview room. Prior to the interview, Detective Rockenbach told Defendant he was not under arrest. The interview began around 7:25 p.m. and lasted for approximately two hours. The interview was videotaped. The interview room had two chairs and a table. The upper half of the door in the interview room contained nine glass windowpanes above the door handle, through which the outside of the room could be viewed. The door to the interview room was closed throughout the interview but never locked.

¶ 4 Detective Rockenbach was the only officer present during the interview. At the outset of the interview, Detective Rockenbach thanked Defendant for being on camera and agreeing to be interviewed. Detective Rockenbach was dressed in plain clothes for the interview and had a firearm on his hip. Defendant was never handcuffed or shackled in any way prior to or during the interview. Defendant did not leave the room for the entirety of the interview.

¶ 5 During the interview, Detective Rockenbach disclosed the topic of intended discussion, a “sexual incident” between Defendant and his younger sister, who was eight years old at the time of the alleged offense. Detective Rockenbach questioned Defendant and expressed on multiple occasions throughout the interview that he thought Defendant was being untruthful. Prior to Defendant’s confession, Detective

Rockenbach made the statement, "you don't walk out these doors the same way you walked in."

¶ 6 Around thirty-five minutes after the interview began, Defendant made his first incriminating statement regarding sexual behavior with his sister. As Detective Rockenbach continued to question Defendant, asserting that Defendant was not being truthful and leaving Defendant alone in the room periodically, Defendant revealed increasingly incriminating statements regarding his relations with his sister. During questioning, Detective Rockenbach put his hand on Defendant's shoulder to console him and moved his chair in front of Defendant's; this was continued for less than two minutes before Detective Rockenbach returned his chair to a greater distance, away from the door. Defendant confessed to three separate occasions of sexual contact with his sister, including vaginal penetration with his finger and attempted penile penetration. Defendant claimed the incidents happened sometime between December 2008 and February 2009.

¶ 7 Toward the end of the interview, after much of the confession had been given, Detective Rockenbach said, "you've been free to leave" and asked Defendant if he knew that. Defendant responded in the affirmative. Defendant was not read his *Miranda* rights at any time before or during the interview. After the interview was conducted, Detective Rockenbach finalized the recording and took Defendant into custody.

II. Jurisdiction

¶ 8 Jurisdiction lies in this Court pursuant to N.C. Gen. Stat. § 7A-27(b) (2019).

III. Issues

¶ 9 The issues on appeal are (1) whether the trial court properly denied Defendant's motion to suppress when it determined Defendant was not in custody when he made inculpatory statements to law enforcement; (2) whether the trial court properly ordered Defendant to register as a sex offender for life; and (3) whether the trial court properly ordered Defendant to comply with satellite-based monitoring for life.

IV. Analysis

A. Motion to Suppress

¶ 10 Defendant argues the trial court erred in denying the motion to suppress. Defendant contends the trial court wrongfully concluded "Defendant's freedom of movement was not restrained . . . to the degree associated with formal arrest" because a reasonable person in Defendant's position would have believed they were in custody at the time he gave incriminating statements. Thus, Defendant asserts Detective Rockenbach should have provided Defendant his *Miranda* warnings prior to his confession. We disagree.

¶ 11 Our review of a trial court's denial of a motion to suppress is "strictly limited to determining whether the trial judge's underlying findings of fact 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 findings of fact are unchallenged, they are deemed supported by competent evidence and are binding on appeal. *State v. Stanley*, 259 N.C. App. 708, 711, 817 S.E.2d 107, 110 (2018). "The trial court's conclusions of law . . . are fully reviewable on appeal." *State v. Hughes*, 353 N.C. 200, 208, 539 S.E.2d 625, 631 (2000). "[T]he trial court's conclusions of law must be legally correct, reflecting a correct application of applicable legal principles to the facts found." *State v. Hammonds*, 370 N.C. 158, 161, 804 S.E.2d 438, 441 (2017) (quoting *State v. Buchanan*, 353 N.C. 332, 336, 543 S.E.2d 823, 826 (2001) (alteration in original)). "A trial court's determination of whether an interrogation is conducted while a person is 'in custody' for purposes of *Miranda* is a conclusion of law and thus fully reviewable by this Court." *Hammonds*, 370 N.C. at 161, 804 S.E.2d at 441.

¶ 12 In *Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966), the Supreme Court of the United States ruled that unless a defendant is "warned that he has a right to remain silent, that any statement he does make may be used as evidence against him, and that he has a right to the presence of an attorney," prosecutors may not use statements by the defendant elicited through custodial interrogation. 384 U.S. at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706–07. Custodial

interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." *Id*. at 444, 86 S. Ct. at 1612, 16 L. Ed. 2d at 706.

¶ 13 The Supreme Court of North Carolina has explained that when conducting a custody analysis to determine if *Miranda* warnings should have been issued, "an appellate court must examine all the circumstances surrounding the interrogation; but the definitive inquiry is whether there was a formal arrest or a restraint on freedom of movement of the degree associated with a formal arrest." *Buchanan*, 353 N.C. at 338, 543 S.E.2d at 828 (quoting *State v. Gaines*, 345 N.C. 647, 662, 483 S.E.2d 396, 405, *cert. denied*, 522 U.S. 900, 118 S. Ct. 248, 139 L.Ed.2d 177 (1997)). To make this determination, two discrete inquiries are essential:

> first, what were the circumstances surrounding the interrogation; and second, given those circumstances, would a reasonable person have felt he or she was [not] at liberty to terminate the interrogation and leave. Once the scene is set and the players' lines and actions are reconstructed, the court must apply an objective test to resolve the ultimate inquiry: was there a formal arrest or restraint on freedom of movement of the degree associated with formal arrest.

Hammonds, 370 N.C. at 162–63, 804 S.E.2d at 442 (quoting *J.D.B. v. North Carolina*, 564 U.S. 261, 270, 131 S. Ct. 2394, 2402, 180 L.Ed.2d 310, 322 (2011) (alteration in original)). To further clarify, for *Miranda* warning purposes, custody "depends on the objective circumstances of the interrogation, not on the subjective views harbored by

either the interrogating officers or the person being questioned." *Stansbury v. California*, 511 U.S. 318, 323, 114 S. Ct. 1526, 1529, 128 L.Ed.2d 293, 298 (1994) (per curiam). Thus, "the only relevant inquiry is how a reasonable man in the suspect's position would have understood his situation." *Id.* at 324, 114 S. Ct. at 1529, 128 L.Ed.2d at 299 (quoting *Berkemer v. McCarty*, 468 U.S. 420, 442, 104 S. Ct. 3138, 3151, 82 L.Ed.2d 317, 336 (1984)).

> [A] noncustodial situation is not converted to one in which Miranda applies simply because a reviewing court concludes that, even in the absence of any formal arrest or restraint on freedom of movement, the questioning took place in a "coercive environment." Any interview of one suspected of a crime by a police officer will have coercive aspects to it, simply by virtue of the fact that the police officer is part of a law enforcement system which may ultimately cause the suspect to be charged with a crime. But police officers are not required to administer Miranda warnings to everyone whom they question. Nor is the requirement of warnings to be imposed simply because the questioning takes place in the station house, or because the questioned person is one whom the police suspect. Miranda warnings are required only where there has been such a restriction on a person's freedom as to render him "in custody." It was *THAT* sort of coercive environment to which Miranda by its terms was made applicable, and to which it is limited.

Buchanan, 353 N.C. at 337, 543 S.E.2d at 826–27 (quoting *Oregon v. Mathiason*, 429 U.S. 492, 495, 97 S. Ct. 711, 714, 50 L. Ed. 2d 714, 719 (1977) (alterations in original).

¶ 14 The Supreme Court of the United States notes, when determining how a reasonable man in the defendant's position would have gauged his freedom of

movement, "[r]elevant factors include the location of the questioning, its duration, statements made during the interview, the presence or absence of physical restraints during the questioning, and the release of the interviewee at the end of the questioning." *Howes v. Fields*, 565 U.S. 499, 509, 132 S. Ct. 1181, 1189, 182 L. Ed. 2d 17, 27–28 (2012) (citations omitted). Additionally, noting that no single factor is controlling when assessing the totality of the circumstances, the Supreme Court of North Carolina has identified relevant factors in determining if an individual is in custody for *Miranda* purposes: "whether a suspect is told he or she is free to leave, whether the suspect is handcuffed, whether the suspect is in the presence of uniformed officers, and the nature of any security around the suspect." *State v. Waring*, 364 N.C. 443, 471, 701 S.E.2d 615, 633 (2010) (citations omitted).

¶ 15 In *State v. Waring*, a case involving a police station interview, a police officer identified the nineteen-year-old defendant at his residence the day after a murder was committed. *Id.* at 457, 701 S.E.2d at 625. The officer told the defendant he was not under arrest and asked him to sit on the curb until detectives arrived. *Id.* at 457, 701 S.E.2d at 625. After being told he was not under arrest by a detective, the defendant then voluntarily submitted to a pat down and agreed to ride with two detectives to the police station for an interview. *Id.* at 458, 701 S.E.2d at 626. The defendant was not handcuffed before or after arriving at the station, and he walked freely into the building without any assistance by the detectives. *Id.* at 458, 701

S.E.2d at 626. The interview room was not guarded and was unlocked. *Id.* at 458, 460, 701 S.E.2d at 626–27. The primary interviewing detective was in plain clothes without a firearm. *Id.* at 458–59, 701 S.E.2d at 626. There were two other law enforcement officers involved during the course of the interview. *Id.* at 461–62, 701 S.E.2d at 627–28; *see State v. Green*, 129 N.C. App. 539, 549, 500 S.E.2d 452, 458 (1998), *aff'd*, 350 N.C. 59, 510 S.E.2d 375 (1999) (the defendant was not found to be in custody when there were four officers in the interview room with him, three of whom were visibly armed). In *Waring*, the defendant was confronted with inconsistencies in his statements and encouraged to be truthful on multiple occasions during the interview. *Id.* at 461–62, 701 S.E.2d at 627–28. The defendant was also confronted with increasingly incriminating evidence before he eventually confessed to stabbing the victim; he was shortly thereafter given his *Miranda* rights. *Id.* at 459–63, 701 S.E.2d at 626–29. The entire interview lasted around five hours. *Id.* at 463, 701 S.E.2d at 629; *see State v. Sanders*, 122 N.C. App. 691, 694, 471 S.E.2d 641, 643 (1996) (the defendant was not in custody when he agreed to accompany two detectives to the police station for an interview lasting approximately two hours). Ultimately, the Supreme Court of North Carolina concluded that under these circumstances, a reasonable person in the defendant's position would not have believed that he was under arrest or was restrained in his movement to that significant degree. *Waring*, 364 N.C. at 472, 701 S.E.2d at 634.

¶ 16 In *State v. Buchanan*, 355 N.C. 264, 265, 559 S.E.2d 785, 785 (2002), the North Carolina Supreme Court affirmed the trial court's ruling that the defendant was "in custody" during part of his confession. In *Buchanan*, police approached the defendant at his work site to discuss inconsistencies in previous statements he had given regarding his whereabouts the night two homicides occurred. *State v. Buchanan*, 353 N.C. 332, 333, 543 S.E.2d 823, 824 (2001). The defendant agreed to ride in the passenger seat of an unmarked police vehicle with an officer in plain-clothes to the police station for an interview. *Id.* at 333, 543 S.E.2d at 824. The defendant was told he was not under arrest, was free to leave at any time, and was not handcuffed. *Id.* at 333, 543 S.E.2d at 824. The defendant was led to the second floor of the police station, where he was allowed to use the restroom and get a drink of water by himself before being interviewed. *Id.* at 334, 543 S.E.2d at 824. The defendant was interviewed by two officers dressed in shirt and tie; one officer was armed. *Id.* at 334, 543 S.E.2d at 825. The defendant verbally confessed to the murders around forty-five minutes into the interview when confronted with evidence contrary to prior statements he made to police. *Id.* at 334, 543 S.E.2d at 825. Shortly after the verbal confession, the defendant asked to use the restroom and was accompanied by both officers. *Id.* at 334, 543 S.E.2d at 825. One officer entered the restroom in front of the defendant and the other entered behind the defendant; they exited in similar fashion. *Id.* at 335, 543 S.E.2d at 825. Upon returning to the office, the defendant

disclosed additional details and signed two written confessions. *Id.* at 335, 543 S.E.2d at 825. After signing the second confession, around four hours into the interview, the defendant was arrested and notified of his *Miranda* rights. *Id.* at 335, 543 S.E.2d at 825.

¶ 17 After determining the trial court had applied the wrong standard, the Supreme Court remanded the case for application of the proper "ultimate inquiry" test. *Id.* at 342, 543 S.E.2d at 830. On remand, the trial court found the defendant was "in custody" when, "after admitting to his station house interrogators that he had participated in a homicide, those same interrogators accompanied him to the bathroom, with an officer staying with defendant at all times." *Buchanan*, 355 N.C. at 265, 559 S.E.2d at 785. The Supreme Court affirmed the ruling that any statements after the defendant and the officers returned from the bathroom to the time defendant was given *Miranda* rights should be suppressed. *Id.* at 265, 559 S.E.2d at 785.

¶ 18 In this instance, Defendant voluntarily drove from South Carolina to participate in the interview at an earlier time than originally arranged. Defendant was told he was not under arrest. After arriving at the Sheriff's office, Defendant agreed to accompany Detective Rockenbach to the interview room. Detective Rockenbach was dressed in plain clothes, he was the only officer on the second floor with Defendant until the interview was over, no one guarded the door, and the door

was not locked at any point. Defendant was never handcuffed during the course of the interview. Additionally, the interview lasted approximately two hours, which the trial court found to be a reasonable time. Our precedent supports that finding under similar circumstances. *See Waring*, 364 N.C. at 463, 701 S.E.2d at 629; *Sanders*, 122 N.C. App. at 694, 471 S.E.2d at 643.

¶ 19 Defendant argues the level of restraint was heightened when Detective Rockenbach moved his chair in front of Defendant's, blocking Defendant's path to the door. However, this was initiated when Detective Rockenbach put his hand on Defendant's shoulder to console him, and was continued for less than two minutes before Detective Rockenbach returned his chair to a greater distance away from the door. The positioning occurred for a brief moment and, in context of the whole confession, did not assert a higher degree of restraint of Defendant.

¶ 20 Defendant argues Detective Rockenbach "made it clear that he believed [Defendant] was guilty of a sexual incident with a child and that [Defendant] was lying when he denied it." While relevant to the custody analysis as a whole, Detective Rockenbach was not required to issue *Miranda* warnings simply because Defendant was the prime suspect. *See Mathiason*, 429 U.S. at 495, 97 S. Ct. at 714, 50 L. Ed. 2d at 714.

¶ 21 Defendant also offers Detective Rockenbach's statement, "you don't walk out these doors the same way you walked in," prior to Defendant's confession, as

favorable to his argument. Taken in context with Detective Rockenbach's other statements, it is apparent to the Court this statement expressed an understanding that Defendant would be addressing something he had been hiding for a long time, not that he would be leaving in handcuffs.

¶ 22 Ultimately, the relevant factors in this case show the "restraint on freedom of movement" was similar to, and as to some factors, to a lesser degree than prior cases in this State's jurisprudence where it was determined defendants were not in custody at the time of a confession. Additionally, at no point was the level of security measures taken with Defendant abruptly increased as in *Buchanan*. *See* 355 N.C. at 265, 559 S.E.2d at 785. In this instance, the security measures at the outset of the interview remained relatively consistent during and after the initial confession.

¶ 23 Assessed objectively through a reasonable person's interpretation, we conclude there was no "restraint on freedom of movement of the degree associated with formal arrest." *See Hammonds*, 370 N.C. at 163, 804 S.E.2d at 442. Thus, Defendant was not "in custody" when he made his confession and *Miranda* warnings were not required.

¶ 24 After reviewing all the circumstances surrounding the interview and confession of Defendant, we conclude the findings of fact, challenged and unchallenged, "are supported by competent evidence[,]. . . binding on appeal,. . . and support the judge's ultimate conclusions of law." *Cooke*, 306 N.C. at 134, 291 S.E.2d

at 619. Furthermore, the trial court's conclusion reflects a "correct application of applicable legal principles to the facts found." *Buchanan*, 353 N.C. at 336, 543 S.E.2d at 826. The trial court did not err in denying Defendant's motion to suppress.

B. Lifetime Sex Offender Registration

¶ 25 "[W]hen a trial court acts contrary to a statutory mandate and a defendant is prejudiced thereby, the right to appeal the court's action is preserved, notwithstanding defendant's failure to object at trial." *State v. Ashe*, 314 N.C. 28, 39, 331 S.E.2d 652, 659 (1985). Defendant alleges a violation of a statutory mandate, and "[a]lleged statutory errors are questions of law and as such, are reviewed *de novo*." *State v. Mackey*, 209 N.C. App. 116, 120, 708 S.E.2d 719, 721 (2011) (internal citations omitted); *State v. Johnson*, 253 N.C. App. 337, 345, 801 S.E.2d 123, 128 (2017).

¶ 26 Defendant argues that by pleading guilty to first degree sex offense pursuant to N.C. Gen. Stat. § 14-27.4(a)(1) (2015) (recodified as § 14-27.26, by S.L. 2015-181, § 8(a), eff. Dec. 1, 2015), he was not necessarily pleading guilty to a crime of penetration and the finding of an aggravated offense was improper. Since the aggravated offense was the basis for his lifetime sex offender registration requirement, Defendant concludes this requirement is also improper. We agree.

¶ 27 "A person who is a recidivist, who is convicted of an aggravated offense, or who is classified as a sexually violent predator shall maintain registration for the person's

life. Except as provided under [N.C. Gen. Stat.] 14-208.6C, the requirement of registration shall not be terminated." N.C. Gen. Stat. § 14-208.23 (2019). An "aggravated offense" is:

> [a]ny criminal offense that includes either of the following: (i) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim of any age through the use of force or the threat of serious violence; or (ii) engaging in a sexual act involving vaginal, anal, or oral penetration with a victim who is less than 12 years old.

N.C. Gen. Stat. § 14-208.6(1a) (2019). "[T]his Court [has] held that when deciding whether a criminal offense is an aggravated offense, 'the trial court is only to consider the elements of the offense of which a defendant was convicted and is not to consider the underlying factual scenario giving rise to the conviction.'" *State v. Mann*, 214 N.C. App. 155, 160, 715 S.E.2d 213, 217 (2011) (quoting *State v. Davison*, 201 N.C. App. 354, 364, 689 S.E.2d 510, 517 (2009)).

¶ 28 N.C. Gen. Stat. § 14-27.4(a)(1) states, "[a] person is guilty of a sexual offense in the first degree if the person engages in a sexual act . . . [w]ith a victim who is a child under the age of 13 years and the defendant is at least 12 years old and is at least four years older than the victim." N.C. Gen. Stat. § 14-27.1(4) provides that a "sexual act" includes either: cunnilingus, fellatio, analingus, anal intercourse, penetration of the genital opening, or penetration of the anal opening. Furthermore, the North Carolina Supreme Court has recognized neither fellatio nor cunnilingus,

under N.C. Gen. Stat. § 14-27.1(4), require penetration. *See State v. Fletcher*, 370 N.C. 313, 329–30, 807 S.E.2d 528, 540 (2017); *State v. Goodson*, 313 N.C. 318, 319, 327 S.E.2d 868, 869 (1985); *State v. Ludlum*, 303 N.C. 666, 669, 281 S.E.2d 159, 161 (1981).

¶ 29 In *State v. Johnson*, the defendant was ordered to register as a sex offender for life upon his release from prison, based on the finding that the offenses of conviction were aggravated offenses. *Johnson*, 253 N.C. App. at 344, 801 S.E.2d at 127–28. One of his convictions was first degree sex offense and this Court ruled,

> [b]ecause the elements of the convicted offenses in this case require only a sexual act, which may or may not involve penetration, neither sexual offense with a child pursuant to N.C. Gen. Stat. § 14-27.4A nor sexual offense by a substitute parent pursuant to N.C. Gen. Stat. § 14-27.7(a) necessarily involves the penetration statutorily required to constitute an aggravated offense under N.C. Gen. Stat. § 14-208.6(1a). We reverse the registration order and remand to the trial court for entry of a registration order based upon proper findings.

Id. at 348–49, 801 S.E.2d at 130.

¶ 30 In this instance, Defendant was convicted of sexual offense with a child pursuant to N.C. Gen. Stat. § 14-27.4(a)(1), requiring a "sexual act," based on the trial court's determination that the date of offense was somewhere between December 2008 and February 2009. A "sexual act" can be found on the basis of cunnilingus or fellatio; neither requiring penetration. *See Fletcher*, 370 N.C. at 329, 807 S.E.2d at

540. Thus, Defendant's conviction does not "necessarily" involve the penetration statutorily required by N.C. Gen. Stat. § 14-208.6(1a) to constitute an aggravated offense. *See Johnson*, 253 N.C. App. at 348–49, 801 S.E.2d at 130.

¶ 31 Additionally, Defendant has not been classified as a sexually violent predator or a recidivist. Therefore, there was no basis pursuant to N.C. Gen. Stat. § 14-208.23 for Defendant to be ordered sex offender registration for his natural life. Therefore, we rule in accord with our decision in *Johnson* to reverse the order for lifetime sex offender registration and remand to the trial court for entry of a registration order based on proper findings.

C. Lifetime Satellite-Based Monitoring

¶ 32 Defendant argues because the finding of an aggravated offense was improper, the order for lifetime satellite-based monitoring is also improper. We agree.

¶ 33 "If the court finds that the offender has been classified as a sexually violent predator, is a recidivist, has committed an aggravated offense, or was convicted of [N.C. Gen. Stat. §] 14-27.23 or [N.C. Gen. Stat. §] 14-27.28, the court shall order the offender to enroll in a satellite-based monitoring program for life." N.C. Gen. Stat. § 14-208.40A(c) (2019). As established above, the trial court incorrectly characterized Defendant's conviction as an "aggravated offense." Additionally, the record does not show Defendant met any of the other qualifiers for lifetime satellite base monitoring under N.C. Gen. Stat. § 14-208.40A(c). Thus, Defendant was ordered

to lifetime monitoring on an improper finding of an aggravated offense, and this requirement is also improper.

¶ 34 The record contains no indication a hearing was held to determine the constitutionality of the order subjecting Defendant to lifetime satellite-based monitoring. In *Grady v. North Carolina*, the Supreme Court of the United States held that North Carolina's satellite-based monitoring "program is plainly designed to obtain information. And since it does so by physically intruding on a subject's body, it effects a Fourth Amendment search." 575 U.S. 306, 310, 135 S. Ct. 1368, 1371, 191 L. Ed. 2d 459, 462 (2015). In response to that ruling, this Court has determined once the trial court finds an individual meets any of the criteria for a satellite-based monitoring program under N.C. Gen. Stat. § 14-208.40(a), "the trial court must conduct a hearing in order to determine the constitutionality of ordering the targeted individual to enroll in the satellite-based monitoring program." *State v. Gordon*, 270 N.C. App. 468, 469, 840 S.E.2d 907, 909 (2020), *review allowed*, *writ allowed*, 853 S.E.2d 148 (N.C. 2021). The court should examine the totality of the circumstances when considering the reasonableness of requiring satellite-based monitoring to establish "whether the warrantless, suspicionless search here is reasonable when 'its intrusion on the individual's Fourth Amendment interests' is balanced 'against its promotion of legitimate governmental interests.'" *Id.*, 270 N.C. App. at 475, 840 S.E.2d at 912 (quoting *State v. Grady*, 372 N.C. 509, 527, 831 S.E.2d 542, 557 (2019)).

¶ 35 In this instance, if the trial court properly found an aggravated offense, the satellite-based monitoring determination still would have been improper without a hearing determining the requirement is a reasonable search. *See Gordon*, 270 N.C. App. at 469, 840 S.E.2d at 909. Therefore, we vacate and remand to the trial court for redetermination of Defendant's eligibility for satellite-based monitoring and entry of an order based upon proper findings. Should the court find Defendant eligible for satellite-based monitoring on other grounds, a hearing is to be conducted to determine the reasonableness of the search requirement based on a totality of the circumstances.

V. Conclusion

¶ 36 We hold no error in the trial court's denial of Defendant's motion to dismiss. We hold the trial court did err in its orders for lifetime sex offender registration and lifetime satellite-based monitoring. As a result, we vacate and remand for the sole purpose of determining Defendant's eligibility for lifetime sex offender registration and satellite-based monitoring.

VACATED AND REMANDED.

Judges DILLON and INMAN concur.

Report per Rule 30(e).