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IN THE COURT OF APPEALS OF NORTH CAROLINA

No. COA18-952-3

Filed 02 May 2023

Granville County, No. 02 CRS 51192

STATE OF NORTH CAROLINA

v.

VINCENT LAMONT HARRIS, Defendant.

On remand by order of the North Carolina Supreme Court on 14 December 2021 in *State v. Harris*, 379 N.C. 672, 865 S.E.2d 847 (2021), remanding this Court's decision filed 31 December 2020 for reconsideration. Defendant originally appealed the order imposing satellite-based monitoring entered 19 February 2018 by Judge Quentin T. Sumner in Granville County Superior Court.

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

Appellate Defender Glenn Gerding, by Assistant Appellate Defender Michele A. Goldman, for Defendant-Appellant.

CARPENTER, Judge.

This case was remanded to our Court by order of the North Carolina Supreme

Court for further consideration in light of *State v. Hilton*, 378 N.C. 692, 862 S.E.2d 806 (2021) and *State v. Studwick*, 379 N.C. 94, 864 S.E.2d 231 (2021), as well as the General Assembly's recent amendments to the satellite-based monitoring program. Vincent Lamont Harris ("Defendant") appealed the trial court's imposition of lifetime satellite-based monitoring and argues in his supplemental brief that the recent developments concerning the satellite-based monitoring program "do not affect this Court's as-applied decision in this case." Rather, Defendant argues the changes impact only facial challenges to the satellite-based monitoring statute. After careful review, considering the totality of the circumstances and recent jurisprudential developments, we find no error with the trial court's imposition of satellite-based monitoring. Consistent with the Supreme Court's mandate to this Court, we remand the matter to the trial court for proceedings under the General Assembly's recent amendments to the satellite-based monitoring program. *See State v. Harris*, 379 N.C. 672, 865 S.E.2d 847 (2021).

I. Factual & Procedural Background

On 27 February 2003, a Granville County Superior Court jury convicted Defendant of second-degree rape. Following a series of appeals from the trial court's judgments, Defendant was sentenced to serve 151 to 191 months' imprisonment. In August 2016, Defendant was released from prison after serving his active sentence.

On 19 February 2018, the trial court held a "come-back" hearing to consider the State's petition for satellite-based monitoring. On the same date, the trial court

entered a “Judicial Findings and Order as to Satellite-Based Monitoring When There Has Been No Prior Determination” (the “Order”), and found, *inter alia*: (1) Defendant was convicted of a reportable conviction as defined by N.C. Gen. Stat. § 14-208.6(4); (2) Defendant was convicted of an aggravated offense; and (3) the conviction of the aggravated offense required satellite-based monitoring under N.C. Gen. Stat. § 14-208.40. Accordingly, the trial court ordered Defendant to enroll in satellite-based monitoring for the remainder of his natural life.

Defendant timely appealed from the Order, and on 8 May 2019, this Court heard his appeal as to the imposition of satellite-based monitoring for the first time. We reversed the Order, “hold[ing] that the trial court failed to determine the reasonableness of [satellite-based monitoring] 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.’” *State v. Harris*, 266 N.C. App. 241, 829 S.E.2d 525, 2019 N.C. App. LEXIS 583, at *4–5 (N.C. Ct. App. 2019) (unpublished) (“*Harris I*”) (quoting *State v. Morris*, 246 N.C. App. 349, 352, 783 S.E.2d 528, 529 (2016)).

On 30 September 2019, our Supreme Court remanded the matter to this Court pursuant to a reconvening order in light of the Supreme Court’s decision in *State v. Grady*, 372 N.C. 509, 831 S.E.2d 542 (2019). On remand, we reviewed the trial court’s satellite-based monitoring Order a second time. *See State v. Harris*, 275 N.C. App. 781, 854 S.E.2d 51 (2020) (“*Harris II*”). On 31 December 2020, the *Harris II* majority

affirmed its prior decision of *Harris I*, holding *Grady* was inapplicable to the case. *Id.* at 786, 854 S.E.2d at 55. Writing separately, Chief Judge Stroud reasoned that the Court was bound to follow its precedent. *Id.* at 787, 854 S.E.2d at 55 (Stroud, J., concurring in part, dissenting in part) (citing *State v. Hilton*, 271 N.C. App. 505, 845 S.E.2d 81 (2020), *remanded by*, 379 N.C. 672, 865 S.E.2d 847 (2021)). Considering *Hilton*, Chief Judge Stroud concluded the imposition of satellite-based monitoring on Defendant for the remainder of his post-release supervision would be constitutional, but opined the Order would be unreasonable “to the extent [it] impose[d] satellite-based monitoring] *beyond* Defendant’s post-release supervision[.]” *Id.* at 787, 854 S.E.2d at 55 (quotations and citation omitted) (emphasis in original).

The State appealed to our Supreme Court based on Chief Judge Stroud’s partial dissent. The Supreme Court sua sponte dismissed the State’s appeal and remanded the case to this Court “to reconsider [our] holding in light of [the Supreme] Court’s decisions in [*Hilton* and *Strudwick*].” *State v. Harris*, 379 N.C. 672, 865 S.E.2d 847 (2021). The Supreme Court further instructed this Court to “remand th[e] matter to the trial court for proceedings under the General Assembly’s recent amendments to the satellite-based monitoring program, *see* Act of Sep. 2, 2021, S.L. 2021-138, § 18” *Id.*

II. Issue

The sole issue on remand is whether the recent decisions of *Hilton* and *Strudwick* affect this Court’s holding in *Harris II* regarding the trial court’s

imposition of lifetime satellite-based monitoring.

III. Standard of Review

This Court reviews a trial court’s order to determine “whether the trial court’s underlying findings of fact are supported by competent evidence . . . and whether those factual findings in turn support the judge’s ultimate conclusions of law.” *State v. Carter*, 238 N.C. App. 61, 65, 872 S.E.2d 802, 805 (2022) (citation and quotation marks omitted). “We review a trial court’s determination that [satellite-based monitoring] is reasonable *de novo*.” *State v. Gambrell*, 265 N.C. App. 641, 642, 828 S.E.2d 749, 750 (2019) (quoting *State v. Bare*, 197 N.C. App. 461, 464, 677 S.E.2d 518, 522 (2009)).

IV. Reasonableness of Satellite-Based Monitoring Under the Fourth Amendment

Following the Supreme Court’s remand to this Court, Defendant filed a motion for leave to file supplemental briefing on 26 January 2022. This Court granted the motion, allowing the parties to file briefs within thirty days of 2 February 2022. On 4 March 2022, Defendant attempted to file his brief; however, the docket number on the brief was incorrect, and the filing was rejected by the Court. On 3 March 2023, Defendant filed a motion for leave “to refile the supplemental brief he previously uploaded on 4 March 2022.” This Court allowed Defendant’s motion. Both parties filed supplemental briefs to address the narrow issue of whether the recent cases of *Hilton* and *Strudwick*, as well as the 2021 amendments related to satellite-based

monitoring, impact this Court's prior decision.

On remand, the State argues that in light of recent Supreme Court opinions, including *Hilton* and *Strudwick*, "Defendant cannot meet his burden of showing that the [satellite-based monitoring] program is unconstitutional in every sense[.]" Defendant contends this Court correctly reversed the Order because the satellite-based monitoring statutes, as applied to Defendant, violate his Fourth Amendment rights. Specifically, Defendant maintains the State failed "to demonstrate any risk of recidivism." This Court squarely addressed Defendant's argument in *State v. Gordon*, 285 N.C. App. 191, 876 S.E.2d 819 (2022), which was decided after the deadline for filing supplemental briefing. We are bound by our precedent on this issue. *See In re Civil Penalty*, 324 N.C. 373, 384, 379 S.E.2d 30, 37 (1989) ("Where a panel of the Court of Appeals has decided the same issue, albeit in a different case, a subsequent panel of the same court is bound by that precedent, unless it has been overturned by a higher court."). Accordingly, we reject Defendant's argument and affirm the trial court's Order imposing satellite-based monitoring.

The Supreme Court of the United States "has held that the imposition of [satellite-based monitoring] pursuant to North Carolina's [satellite-based monitoring] program effects a Fourth Amendment search." *Hilton*, 378 N.C. at 700, 862 S.E.2d at 812 (citing *Grady*, 575 U.S. 306, 310, 135 S. Ct. 1368, 1371, 191 L. Ed. 2d 459, 462 (2015)); *see* U.S. Const. amend. IV. "[W]e evaluate the reasonableness of [satellite-based monitoring] under the totality of the circumstances considering: (1)

the legitimacy of the State's interest; (2) the scope of [the d]efendant's privacy interests; and (3) the intrusion imposed by satellite-based monitoring." *Gordon*, 285 N.C. App. at 196, 876 S.E.2d at 823 (citations omitted).

With respect to "the legitimacy of the State's interest" prong, the *Gordon* Court rejected the defendant's argument that the State's evidence showed he "was unlikely to reoffend," and consequently, his contentions that the imposition of satellite-based monitoring was unreasonable and unconstitutional. *Id.* at 193, 876 S.E.2d at 821. We held "our Supreme Court and General Assembly have recognized satellite-based monitoring's efficacy as a matter of law; thus, 'there is no need for the State to prove [satellite-based monitoring]'s efficacy on an individualized basis.'" *Id.* at 194, 876 S.E.2d at 822 (quoting *Hilton*, 378 N.C. at 708, 862 S.E.2d 806) (alteration in original); see also N.C. Gen. Stat. § 14-208.39 (2021) ("[T]he General Assembly recognizes that the GPS monitoring program is an effective tool to deter criminal behavior among sex offenders.").

In reversing the Order in *Harris II*, we reasoned the State did not meet its burden of proof to show the legitimacy of its interest due to a lack of evidence. *Harris II*, 275 N.C. App. at 783–84, 854 S.E.2d at 53–54. Nonetheless, the Supreme Court and General Assembly have since made clear that such evidence is not necessary in determining whether satellite-based monitoring is reasonable. See *Gordon*, 285 N.C. App. at 197, 876 S.E.2d at 824. Hence, this factor weighs in favor of a finding that the trial court's imposition of satellite-based monitoring is reasonable. See *id.* at 196,

876 S.E.2d at 823.

Regarding a defendant's privacy interests, "an aggravated offender has a diminished expectation of privacy *both during and after* any period of post-release supervision as shown by the numerous lifetime restrictions that society imposes upon him." *Hilton*, 378 N.C. at 712, 862 S.E.2d at 820 (emphasis added). Moreover, "the imposition of lifetime [satellite-based monitoring] causes only a limited intrusion into [the defendant's] diminished privacy expectation." *Id.* at 712, 862 S.E.2d at 820.

In this case, Defendant was convicted of second-degree rape, which qualified Defendant as an aggravated offender. *See* N.C. Gen. Stat. § 14-208.6(1a) (2021) (defining an "aggravated offense"). Defendant did not challenge the trial court's finding that he is an aggravated offender. Thus, this finding is binding on appeal. *See Strudwick*, 379 N.C. at 113, 864 S.E.2d at 245 ("[U]nchallenged findings of fact are binding on appeal[.]"). Because Defendant is an "aggravated offender" as statutorily defined, Defendant's expectation of privacy was diminished; therefore, this factor weighs in favor of finding the imposition of satellite-based monitoring during and after post-release supervision is reasonable. *See Gordon*, 285 N.C. App. at 196, 862 S.E.2d at 823; *see also Hilton*, 378 N.C. at 712, 862 S.E.2d at 820.

Finally, we consider "the intrusion imposed by satellite-based monitoring." *See Gordon*, 285 N.C. App. at 196, 862 S.E.2d at 823. "[T]he search effected by satellite-based monitoring presents a 'narrow, tailored intrusion into [the] defendant's expectation of privacy in his person, home, vehicle, and location' when the defendant

is an aggravated offender.” *Id.* at 197, 876 S.E.2d at 824 (quoting *Strudwick*, 379 N.C. at 115, 864 S.E.2d at 246). Accordingly, under the facts of this case, this factor also weighs in favor of imposing satellite-based monitoring. *See id.* at 196, 876 S.E.2d at 823.

In sum, under the totality of the circumstances, and in light of *Hilton* and *Strudwick*, we hold the trial court’s imposition of satellite-based monitoring was reasonable under the circumstances. *Id.* at 196, 862 S.E.2d at 823; *see also Hilton*, 378 N.C. 692, 862 S.E.2d 806; *Strudwick*, 379 N.C. 94, 864 S.E.2d 23. Accordingly, we reject Defendant’s as-applied challenge to the satellite-based monitoring statute.

V. Conclusion

In considering the totality of the circumstances and the recent Supreme Court cases of *Hilton* and *Strudwick*, the trial court’s imposition of satellite-based monitoring did not violate Defendant’s Fourth Amendment right to be secure against unreasonable searches. *See Gordon*, 285 N.C. App. at 196, 862 S.E.2d at 823; *Hilton*, 378 N.C. 692, 862 S.E.2d 806; *Strudwick*, 379 N.C. 94, 864 S.E.2d 23; *see also* U.S. Const. amend. IV. Notwithstanding our holding, we remand this matter to the trial court to consider the General Assembly’s recent amendments to the satellite-based monitoring statute, pursuant to the Supreme Court’s order.

NO ERROR IN PART; REMANDED IN PART.

Chief Judge STROUD concurs.

Judge HAMPSON concurs in result only.

STATE V. HARRIS

Opinion of the Court

Report per Rule 30(e).