State v. Griffin and the Effectiveness of Satellite-Based Monitoring

Author : Jamie Markham

Categories : Sentencing, Uncategorized

Tagged as : satellite based monitoring, sbm, sex offenders, State v. Griffin

Date : August 9, 2018

The court of appeals issued a new decision on satellite-based monitoring (SBM) of sex offenders this week. It gives further guidance on what the State will need to show to establish that SBM is a reasonable search under the Fourth Amendment in light of Grady v. North Carolina.

The case is State v. Griffin. In *Griffin*, a defendant convicted of first-degree sexual offense in 2004 was called to court in 2016 (after his release from prison) for an SBM determination hearing (a "bring-back" hearing). By then, the Supreme Court had decided *Grady v. North Carolina* and the court of appeals had decided *State v. Blue* and *State v. Morris* (discussed here). It was therefore clear at that point that the State would need to make a showing (considering the totality of the circumstances, including the nature and purpose of the search and the extent to which it intrudes upon reasonable privacy expectations) that SBM was reasonable in order for the court to impose it. The State tried to do that, presenting information about the defendant's history in prison and on post-release supervision, the victim's youth, and the technical capabilities of the tracking device.

Applying G.S. 14-208.40B, the court ordered SBM for 30 years. As to the *Grady* issue, the court concluded that the need to protect the public outweighed the "de minimis" intrusion upon the defendant's Fourth Amendment rights.

The defendant argued on appeal that SBM violated his Fourth Amendment rights in light of the criteria set out in State v. Grady, ___ N.C. App. ___ (2018) (the decision that considered Torrey Grady's case on remand from the Supreme Court, discussed here). In that case, the court of appeals had said that the State failed to establish SBM's reasonableness in part because it failed to show that SBM was effective in protecting the public from sex offenders. *Griffin*, slip op. at 9.

Over a dissent, the court of appeals agreed with the defendant, concluding that here, as in *Grady*, the "State presented no evidence regarding the efficacy of the SBM program." *Id.* at 10. The State cited cases discussing sex offender recidivism, but it did not, the court said, present "empirical or statistical reports" on the issue. *Id.* The State therefore failed to meet its burden, and so the court reversed the trial court order.

Judge Bryant dissented (as she did in *Grady*), concluding that the majority was imposing a standard that went beyond what the Fourth Amendment requires. She pointed out that a lack of evidence about SBM's effectiveness was but one factor among several that the court had considered as part of the totality of the circumstances in *Grady*; it was not the sine qua non for meeting the State's burden that the majority made it out to be.

After *Griffin*, the State is still searching for a clear roadmap to establishing the reasonableness of SBM. But I suppose a few guideposts have emerged. We know from *Grady* that if the defendant will be subject to SBM beyond his or her term of probation, parole, or post-release supervision, then the State will likely need to present evidence of how the SBM program works for unsupervised offenders—who are monitored from Raleigh pursuant to this policy, not by local probation staff. And we know from *Grady* and now *Griffin* that the State needs to be prepared to offer some evidence about SBM's efficacy. That evidence shouldn't come through anecdotes or case citations, but rather through empirical or statistical reports. It seems to me that the pertinent issue in those reports will not be whether sex offenders recidivate at a higher or lower rate than other defendants, but rather whether monitored sex offenders are more or less

likely to offend than unmonitored sex offenders. On that front, the leading study appears to be Gies, et al., Monitoring High-Risk Sex Offenders With GPS Technology: An Evaluation of the California Supervision Program Final Report (2012). That study found that offenders monitored by GPS "demonstrate significantly better outcomes for both compliance and recidivism," *see* Doe v. Coupe, 143 A.3d 1266, 1277 (Del. Ch. 2016) (discussing the study), but it involved only a subset of California offenders.