IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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ORDER SUSPENDING STIPULATION REQUIREMENT FOR
USE OF INTERACTIVE AUDIOVISUAL DEVICE IN CERTAIN PROCEEDINGS
(SDCL § 15-5A-9)

WHEREAS, a public health emergency has been declared in the United States and State of South Dakota as a result of the COVID-19 disease; and

WHEREAS, this Court entered an Order on March 13, 2020, declaring the existence of a statewide judicial emergency as a result of the COVID-19 disease, and;

WHEREAS, during this time, it has become necessary for courts in all counties statewide to limit public gathering or otherwise significantly modify their regular operations; and

WHEREAS, SDCL § 15-5A-9 provides that the use of interactive audiovisual devices will not be permitted to conduct any felony plea hearings, any stage of trial, felony sentencing, or probation revocation hearings unless all parties to the proceeding stipulate to the use of the interactive audiovisual device;

WHEREAS, SDCL 23A-39-1 provides that a defendant shall be present at his arraignment, at the time of his plea, and at the imposition of sentence;

WHEREAS, SDCL 23A-7-1 and SDCL 23A-7-2 require arraignments and pleas of guilty and nolo contendere to be entered in open court;

NOW, THEREFORE, pursuant to the Court's authority to administer justice and to ensure the safety of court personnel, litigants and the public and in exercise of its emergency powers,

IT IS HEREBY ORDERED THAT the provision requiring the stipulation of all parties prior to the use of an interactive audiovisual device to conduct felony plea hearings, felony sentencings, and probation revocation hearings as set forth in SDCL § 15-5A-9 is hereby suspended effective immediately for all counties statewide until rescinded by further order of the Court. However, as further provided in SDCL 15-5A-9, the judge presiding over the matter always retains the discretion not to allow an appearance by interactive audiovisual device if the judge believes that to do so would prejudice the rights of any party to the proceeding.

IT IS FURTHER ORDERED THAT any court using interactive audiovisual devices for felony plea hearings, felony sentencings, or in probation revocation hearings shall ensure that that defendant's constitutional rights are provided for in such proceedings. An official record of all proceedings must be maintained.

IT IS FURTHER ORDERED THAT a defendant appearing by interactive audiovisual device consistent with this Order shall be considered present for the purposes of SDCL 23A-39-1 and appearing in open court pursuit to SDCL 23A-7-1 and 23A-7-2.

DATED at Pierre, South Dakota, this 7th day of April, 2020.

BY THE COURT:

David Gilbertson, Chief Justice

ATTEST:

Clerk of the Supreme Court
(SEAL)

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

APR 07 2020

Clerk