

IN THE SUPREME COURT
OF THE
STATE OF SOUTH DAKOTA

* * * *

IN THE MATTER OF THE ADOPTION)
OF A NEW RULE RELATING TO SEARCH) RULE 13-04
WARRANT FOR INSTALLATION, USE,)
AND MAINTENANCE OF TRACKING)
DEVICES)

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A hearing was held on February 13, 2013, at Pierre, South Dakota, relating to the adoption of a new rule relating to search warrant for installation, use, and maintenance of tracking devices and the Court having considered the proposed adoption and the oral presentation relating thereto and being fully advised in the premises, now, therefore, it is

ORDERED that the adoption of a new rule to be designated at SDCL 23A-35-4.3. relating to search warrant for installation, use, and maintenance of tracking devices be and it is hereby adopted to read in its entirety as follows:

SDCL 23A-35-4.3. Search warrant for installation, use, and maintenance of tracking devices.

- (a) Tracking Device Defined. As used in this section the term tracking device means an electronic or mechanical device which permits the tracking of the movement of a person or object.
- (b) Contents. A search warrant for a tracking device may be issued by any magistrate authorized in SDCL 23A-35-2 for the installation, use, and maintenance of a tracking device. There must be probable cause to search and seize property as set forth in this chapter and that such installation and use of this device will lead to the discovery of evidence under 23A-35-3. The tracking-device warrant must identify the person or property to be tracked, designate the magistrate to whom it must be returned, and specify a reasonable length of time that the device may be used. The time may not exceed 45 days from the date the warrant was issued. The court may,

for good cause, grant one or more extensions for a reasonable period not to exceed 45 days each. The warrant must command the officer to complete any installation authorized by the warrant within a specified time no longer than 10 days.

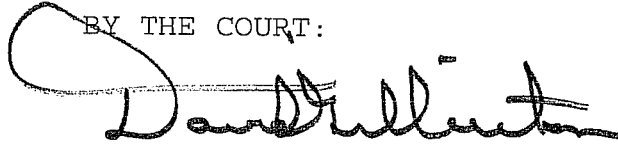
- (b) Scope. Any tracking-device warrant issued under this section may authorize the use of the tracking device within the jurisdiction of the magistrate, and outside that jurisdiction if the tracking device is installed within the magistrate's jurisdiction. The executing officer must perform any installation authorized by the warrant during the daytime, unless the magistrate for good cause expressly authorizes installation at another time.
- (c) Return. The tracking-device warrant must command the executing officer to return the warrant to the magistrate designated in the warrant. The officer executing a tracking-device warrant must enter on it the exact time and date the device was installed and the period during which it was used.
- (e) Service. Within 10 days after the use of the tracking-device has ended, the officer executing a tracking-device warrant must serve a copy of the warrant on the person who was tracked or whose property was tracked. Service may be accomplished by delivering a copy to the person who, or whose property, was tracked; or by leaving a copy at the person's residence or usual place of abode with an individual of suitable age and discretion who resides at that location and by mailing a copy to the person's last known address. Upon request of the state, the judge may delay notice for reasons set forth in 23A-35-4.3(f).
- (f) Sealing of Contents of Warrant. With respect to the issuance of any warrant under this section, a judge may, upon a showing of good cause, seal the contents of a warrant and supporting documents until the termination of an investigation, an indictment or information is filed, or as otherwise ordered by the court for purpose of preventing (1) endangerment of life or physical safety of an individual, (2) flight from prosecution, (3) destruction of or tampering with evidence, (4) intimidation of potential witnesses; or (5) if failure

to seal would otherwise seriously jeopardize an investigation or unduly delay a trial.

IT IS FURTHER ORDERED that the rule shall become effective immediately.

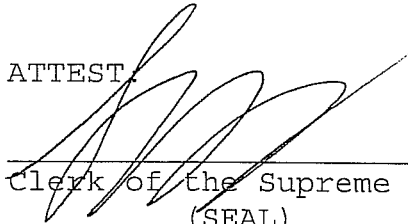
DATED at Pierre, South Dakota, this 14th day of February, 2013.

BY THE COURT:



David Gilbertson, Chief Justice

ATTEST



Clerk of the Supreme Court
(SEAL)

STATE OF SOUTH DAKOTA

In the Supreme Court

I, Shirley A. Jameson-Fergel, Clerk of the Supreme Court of South Dakota, hereby certify that the within instrument is a true and correct copy of the original thereof as the same appears on record in my office. In witness whereof, I have hereunto set my hand and affixed the seal of said court at Pierre, S.D. this

14th day of Feb, 2013



Clerk of Supreme Court

Deputy

SUPREME COURT
STATE OF SOUTH DAKOTA
FILED

FEB 14 2013


Clerk