

STATE OF WISCONSIN

CIRCUIT COURT ONEIDA COUNTY BRANCH 2

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 19 CF 180

18 CF 303

BLAKE C. FITZGERALD,

17 CM 160

17 CM 11

Defendant.

16 CM 239

16 CM 237

PRETRIAL CONFERENCE

HON. Judge Michael H. Bloom,
Circuit Court Judge Presiding

February 18, 2020

Oneida County Courthouse, Wisconsin

APPEARANCES:

The State of Wisconsin appeared by
Oneida County Assistant District
Attorney MARY SOWINSKI

The Defendant appeared via
videoconference without counsel.

Stenographically reported and transcribed by:

LYNN M. PENFIELD, RPR, CRR
Oneida County Branch 2 Court Reporter
P.O. Box 400
Rhinelander, WI 54501



COPY

1 Oneida County; February 18, 2020; 10:05 a.m.

2 Judge Michael H. Bloom; Branch 2

3 * * *

4 THE COURT: We'll go on the record in
5 18 CF 303. We're also calling 19 CF 180, 17 CM 160,
6 17 CM 11, 16 CM 239 and 16 CM 237, State of Wisconsin
7 versus Blake Fitzgerald. The State appears by Mary
8 Sowinski. Mr. Fitzgerald appears in person via
9 audio-visual teleconference from the Oneida County Jail.

10 We're on the calendar for a pretrial conference
11 today relative to case 18 CF 303. That case is
12 currently scheduled for a jury trial on March 11th of
13 this year. Mr. Fitzgerald had previously been
14 represented by attorney Travis Slattery, who was
15 appointed by the State Public Defender's Office to
16 represent him. Mr. Slattery moved the Court to
17 withdraw, and the Court ultimately granted his motion.

18 Prior to concluding his representation with
19 Mr. Fitzgerald, Mr. Slattery filed a demand for a speedy
20 trial. That was filed on December 27th of 2019.

21 At this point, the State Public Defender has
22 not found an attorney that will take Mr. Fitzgerald's
23 case on a Public Defender appointment. My assistant
24 contacted the Public Defender's Office this morning and
25 this week they have apparently reached out via email to,

1 I believe, it's 32 different attorneys, but at this
2 point the Public Defender's Office has not been able to
3 appoint counsel.

4 Mindful of Mr. Fitzgerald's speedy trial
5 rights, the Court has been seeking counsel to appoint on
6 a Court appointment to represent Mr. Fitzgerald, and a
7 number of attorneys have considered but declined to
8 accept the appointment. Some of those attorneys have
9 met with Mr. Fitzgerald.

10 As of today, an attorney has accepted the
11 Court's appointment. That will be attorney Albert
12 Moustakis, who is a long-time criminal defense attorney
13 who also served for the better part of 20 years as the
14 Vilas County District Attorney.

15 In terms of dates that are going to work, the
16 Court is going to reschedule the trial in this case.
17 Barring reasons why it cannot be, Ms. Sowinski, I am
18 seeking to schedule this trial for March 31st and
19 April 1st.

20 Is there any reason why that date will not work
21 for the State?

22 MS. SOWINSKI: Not that I'm aware of,
23 Your Honor. We'll certainly be in touch with our
24 witnesses and see what we can do.

25 THE COURT: All right. Mr. Fitzgerald has

1 filed a motion for immediate release from custody based
2 on section 971.10, which provides statutory speedy trial
3 rights. The basic requirement, which is in section
4 971.10(2) is that the trial of a defendant charged with
5 a felony shall commence within 90 days from the date
6 trial is demanded by any party in writing or on the
7 record.

8 In this case, a written speedy trial demand was
9 filed on December 27th of 2019. The 90-day statutory
10 time frame would expire on March 26th.

11 Subsection 3 of section 971.10 provides that
12 the Court has discretion to permit a continuance of the
13 case, including on the Court's own motion, if the ends
14 of justice served by taking action outweigh the interest
15 of the public and the defendant in a speedy trial. And
16 there are a number of statutory factors that the Court
17 must consider.

18 One, whether the failure to grant a continuance
19 would likely make the continuation of proceeding
20 impossible and result in a miscarriage of justice. That
21 isn't necessarily applicable.

22 The other is the case taken as a whole is so
23 unusual or so complex that due to the number of
24 defendants and the nature of the prosecution that it is
25 unreasonable to expect adequate preparation within the

1 statutory time periods, that's not so much the case
2 here.

3 The third factor that the Court must consider
4 is the interest of the victim under Chapter 950, and
5 suffice it to say the victims in this case deserve to
6 have the case tried in an orderly fashion and relatively
7 promptly.

8 The continuance that the Court is granting on
9 the Court's own motion is from March 11th of this year
10 to March 31st of this year, a period of 20 days. I
11 wouldn't believe that that compromises the interest of
12 any victim, and it accommodates the interest of justice
13 insofar as a court-appointed attorney will have the time
14 to prepare and is available to represent Mr. Fitzgerald
15 in this case within those parameters.

16 The statutory 90-day period runs through
17 March 26th of this year. March 31st is five days after
18 that. In addition to statutory speedy trial rights, all
19 criminal defendants are entitled to Constitutional
20 speedy trial rights, and if there is to be a delay in
21 the trial, in this case a 20-day delay that only goes
22 five days beyond the statutory speedy trial time frame,
23 the United States Supreme Court in the case of *Barker*
24 *versus Wingo*, 1972 U.S. Supreme Court decision,
25 indicated that there were a number of factors that

1 should be considered.

2 The length of the delay in this case, the delay
3 is nominal; five days beyond the statutory time frame.
4 The reason for the delay is so that Mr. Fitzgerald can
5 have the adequate assistance of counsel, something that
6 he's Constitutionally entitled to whether the defendant
7 asserted a speedy trial right -- it has been asserted in
8 this case -- and whether the delay will cause prejudice
9 to the defendant. A delay of five days beyond the
10 statutory time frame or a delay of 20 days beyond the
11 currently scheduled trial date will not prejudice the
12 defendant in terms of his ability to defend himself.

13 Scheduling the trial so as to allow for counsel
14 to come in, represent Mr. Fitzgerald, prepare for trial,
15 and defend him at trial reduces any potential prejudice
16 that the defendant could suffer in this case.

17 The Wisconsin Supreme Court in the case of
18 *Norwood versus State*, which is reported at 74 Wis.2d
19 343, indicated that the initial inquiry under *Barker*
20 must be the length of the delay, and the Wisconsin
21 Supreme Court in the case of *State versus Mullis*, which
22 is reported at 81 Wis.2d 454, indicated that unless the
23 delay is so inordinate as to be presumptively
24 prejudicial, no resort to the other *Barker* factors need
25 be made.

1 A five-day delay is not so inordinate as to be
2 presumptively prejudicial. I don't believe that a
3 five-day delay beyond the statutory time frame is
4 prejudicial at all.

5 And so I am, pursuant to section 971.10(3),
6 continuing this case to the March 31st trial date; and,
7 for the reasons stated, I'm finding that doing so does
8 not constitute a violation of Mr. Fitzgerald's statutory
9 or Constitutional right to a speedy trial and,
10 therefore, denying his motion for immediate release.

11 Mr. Fitzgerald, Mr. Moustakis will be meeting
12 with you at the jail within a week's time to begin
13 actively his representation of you.

14 Is there anything else that we need to take up
15 on the record as far as the State's concerned,
16 Ms. Sowinski?

17 MS. SOWINSKI: No, Your Honor. Thank you.

18 I'm sorry, yes, one thing.

19 I heard the 3-31 and 4-1 trial date. Is the
20 Court setting a final pretrial date? If so, I didn't
21 hear that. I'm sorry.

22 THE COURT: We can set a final pretrial --
23 actually, I'll let my assistant -- Mr. Moustakis is not
24 going to be back in his office until later this week as
25 of today, and I'll have her contact your office and

1 Mr. Moustakis' office to get a date prior to March 31st.

2 MS. SOWINSKI: That would be great. Thank you,

3 Your Honor.

4 THE COURT: All right.

5 As I said, Mr. Fitzgerald, Mr. Moustakis should
6 be meeting with you within a week's time. Direct any
7 inquiries you have to him.

8 All right. That's all for today.

9 (Proceedings concluded at 10:15 a.m.)

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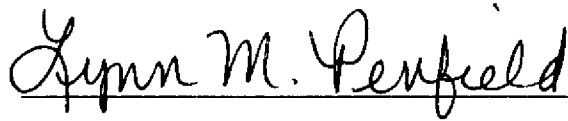
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I, Lynn Penfield, RPR, CRR, Official Court Reporter in and for the State of Wisconsin, do hereby certify:

That I reported stenographically the proceedings held in the above-entitled cause; that my notes were thereafter transcribed with Computer-Aided Transcription; and the foregoing transcript, consisting of pages numbered from 1 to 8, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on February 18, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand this 6th day of April, 2020.



Lynn M. Penfield, RPR, CRR