

STATE OF WISCONSIN

CIRCUIT COURT ONEIDA COUNTY BRANCH 2

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 18 CF 303

BLAKE C. FITZGERALD,

Defendant.

HEARING

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

March 23, 2020

Oneida County Courthouse, Wisconsin

APPEARANCES:

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

The Defendant appeared via videoconference

Defense counsel, ALBERT MOUSTAKIS, Attorney at Law, Eagle River, Wisconsin, appeared telephonically.

Stenographically reported and transcribed by:

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



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1 Oneida County; March 23, 2020; 11:55 a.m.

2 Judge Michael H. Bloom; Branch 2

3 * * *

4 THE COURT: We'll go on the record in
5 18 CF 303, State of Wisconsin versus Blake Fitzgerald.
6 The State appears by Mary Sowinski via telephone with
7 leave of Court. The defendant appears in person via
8 teleconference from the Oneida County Jail. His
9 attorney, Al Moustakis, appears via telephone with leave
10 of Court.

11 We're currently on the calendar for a jury
12 trial in this case. Mr. Fitzgerald also has other
13 pending matters here in Oneida County Circuit Court.
14 This case is scheduled for trial to begin on March 31st,
15 and we're also on for a status/pretrial conference this
16 coming Wednesday, on March 25th.

17 We were on the record last week for a hearing
18 regarding the defendant's motion to modify bond. That
19 motion was taken under advisement.

20 A lot has happened since we went on the record
21 last Thursday morning, including information that has
22 come in to my attention that the Federal District Court
23 for the Eastern District of Wisconsin has entered a
24 temporary order suspending, to an extent, speedy trial
25 rights of defendants with pending criminal matters

1 before that court. And, as of yesterday, the Wisconsin
2 Supreme Court has entered two different orders, one of
3 which is basically requiring remote hearings -- in other
4 words, no in-person court appearances for all
5 non-essential court proceedings with some delineated
6 exceptions -- and has also entered an order dated
7 March 22nd, 2020 regarding jury trials during the
8 COVID-19 pandemic.

9 And I'm making specific reference to the
10 Court's -- that being the Wisconsin Supreme Court's --
11 March 22nd, 2020 order regarding jury trials insofar as
12 it appears to require courts to adjourn all criminal and
13 civil jury trials to a date after May 22nd, 2020.

14 The Court's order makes various findings
15 relative to the current public health emergency relative
16 to the COVID-19 virus and also makes specific findings
17 relative to a defendant's speedy trial rights vis-a-vis
18 citizens called in for jury duty and the competing
19 interests that are outlined in section 971.10 of the
20 Wisconsin statutes.

21 The Court had previously made findings to
22 schedule the jury trial to start on March 31st insofar
23 as that date was beyond the 90 days prescribed by
24 statute by a week or so. There has been prior
25 discussion regarding the implications of conducting the

1 trial in light of the current scenario regarding the
2 COVID-19 virus as it implicates the defendant's speedy
3 trial rights, and this most recent order of the
4 Wisconsin Supreme Court, which was issued just
5 yesterday, in essence compels the Court to make a
6 finding that the interests of the public as a whole,
7 including citizens potentially called in for jury duty,
8 outweigh the rights of defendants to a speedy trial
9 given the implications of the current healthcare
10 emergency existing in the world, the United States, the
11 state of Wisconsin, and Oneida County.

12 So to make a long story short, for all those
13 reasons I interpret the Wisconsin Supreme Court's order
14 as compelling me to adjourn this trial until after
15 May 22nd.

16 The order does provide that circuit courts or
17 parties, including the State or Mr. Fitzgerald, could
18 file a motion with the Wisconsin Supreme Court seeking
19 an exception. I'll leave that to counsel. I'm not
20 going to take up anything along those lines today.

21 And I also understand, Mr. Moustakis, that you
22 have returned to the Northwoods after being outside of
23 the state of Wisconsin and that there may be certain
24 components of the moratorium on personal contact that's
25 been issued by the State of Wisconsin Department of

1 Health Services as well as individual counties that may
2 implicate your availability within the next two weeks.
3 That's potentially a moot point in light of the Supreme
4 Court's order as I interpret it compelling the
5 adjournment of all trials to a date after May 22nd.

6 Mr. Moustakis, are you aware of any authority,
7 other than potentially availing yourself and
8 Mr. Fitzgerald of a motion to the Wisconsin Supreme
9 Court, that would be a basis to not adjourn this trial
10 until some date after May 22nd?

11 MR. MOUSTAKIS: I am not.

12 And I'm a little confused about the local
13 order, and I'll indicate to the Court, at least for the
14 record, that of course my wife lives with me and
15 Vilas County has decided if she doesn't show any
16 symptoms, even though I returned early Friday morning,
17 she should be at work. I find that a little confusing
18 as well as what I can and can't do, but I have basically
19 quarantined myself just because of the Vilas order or
20 the Vilas declaration, and so I'm only -- I'm limiting
21 my outside exposure for 14 days that I find necessary
22 and what I find necessary by taking the proper protocol
23 in that regard as well, okay?

24 It does leave our motion to modify his bond,
25 though, still on the table. The Court has not made a

1 decision in that regard.

2 I am well aware of the Supreme Court order as I
3 reviewed it this morning and so I'm not sure how the
4 Court wants to handle that other issue, the adjournment
5 motion.

6 I have not discussed with Mr. Fitzgerald the
7 option of moving the Supreme Court for an exception. I
8 think that would be -- well, I won't give an opinion
9 about what the Supreme Court would venture to respond to
10 a motion in that regard.

11 Mr. Fitzgerald has been in custody for a
12 substantial amount of time. This is not a violent
13 matter. And I think there was a misrepresentation,
14 though unintentional, by the State, at the last hearing
15 that the standoff was referred to by the State in his, I
16 believe, Minnesota case as being an armed standoff.
17 That's not the information that I have. There was no
18 weapons involved. And that may be a consideration for
19 the Court to consider. If it wants to consider the
20 modification of the bond, I think that's an important
21 fact.

22 And I don't think I have much more to say
23 regarding these issues than what I've put on the record
24 at this point.

25 THE COURT: All right. And, Ms. Sowinski, for

1 purposes of today's proceeding, I think the bottom line
2 is that I am making a ruling, in essence, that the
3 March 22nd, 2020 order of the Wisconsin Supreme Court
4 regarding jury trials during the COVID-19 pandemic
5 compels my adjourning this matter until sometime after
6 May 22nd.

7 Do you disagree?

8 MS. SOWINSKI: No, Your Honor.

9 THE COURT: All right. Now, regarding
10 Mr. Moustakis' motion on behalf of Mr. Fitzgerald
11 regarding modification of bond, I would be more
12 comfortable if a noticed hearing was conducted before I
13 ruled, and we are on the calendar for proceedings on
14 Wednesday afternoon at 3:00 o'clock. I'm going to leave
15 that hearing on, and I am going to rule on
16 Mr. Moustakis' motion for bond at that time.

17 That will allow Mr. Moustakis, hopefully, an
18 opportunity to communicate with Mr. Fitzgerald via
19 telephone between now and then to confer on whatever
20 they wish to.

21 My understanding is that the alleged victim in
22 this case already has notice of that hearing and we can
23 conduct that hearing as scheduled, and I can rule on
24 behalf of -- on behalf of the Court regarding
25 Mr. Moustakis' motion.

1 The interplay between the Wisconsin Supreme
2 Court's order and the defendant's right to be released
3 as a result of compulsory adjournment are not
4 particularly clear to me, particularly in light of the
5 fact that the Federal District Court of the Eastern
6 District of Wisconsin has entered an order last week
7 specifically excluding delays as a result of the
8 COVID-19 virus from the time frame for purposes of
9 assessing speedy trial rights, and I have already
10 articulated my concerns about the issues of bond,
11 generally speaking, on the record more than once, and
12 that is the reason why the bond is as it is in
13 Mr. Fitzgerald's case.

14 And I need to satisfy myself as to what extent
15 the current order of the Wisconsin Supreme Court, in
16 essence, tolls the time between the present and May 22nd
17 for purposes of the defendant's speedy trial rights, and
18 I will attempt to be prepared to address that at the
19 time of the Wednesday hearing.

20 But while we're all on the phone, I'm trying to
21 identify dates as soon after May 22nd as possible to
22 reschedule this case.

23 Ms. Sowinski, are you in a position to schedule
24 at this time?

25 MS. SOWINSKI: Yes, Your Honor. There's

1 absolutely nothing on my calendar that would impede my
2 ability to do this trial, with the exception of another
3 speedy trial demand that's also in Your Honor's court
4 involving a child victim of a sexual assault. That
5 defendant's last name, I'm sure as you are well aware,
6 is Mr. Ciardo. Although I have no travel plans or any
7 other reasons why I couldn't schedule it whenever the
8 Court and the other parties are available.

9 THE COURT: All right. Mr. Moustakis, are you
10 aware of whether you are available on Tuesday and
11 Wednesday, June 2nd and June 3rd, for potential trial
12 dates?

13 MR. MOUSTAKIS: The answer to that, Judge,
14 would be that I am available, but let me qualify that
15 because of a number of other issues that I haven't
16 raised that I may raise by motion, and one of those has
17 to do with full faith and credit of a North Dakota
18 divorce decree and the ramifications of violations in
19 different jurisdictions. I haven't researched it
20 enough, but it has dawned on me it could be an issue.

21 The second one is my inability at this point to
22 get certain witnesses to cooperate that are not in the
23 state of Wisconsin, and I will likely be filing a motion
24 for an order from Wisconsin to require an out-of-state
25 witness, and maybe more than one -- one from Minnesota,

1 one from North Dakota -- and that may cause some timing
2 issues because of the length of time it may cause to be
3 able to get that accomplished.

4 I'll indicate -- and I've already indicated to
5 the State -- that one of those witnesses is
6 Mr. Fitzgerald's civil attorney in North Dakota, and in
7 one of the reports there is even reference to his having
8 discussions with this North Dakota attorney when he --
9 right before he actually turned the children over to his
10 wife in North Dakota. That is who is not readily
11 cooperating.

12 My investigator has spoken to his assistant who
13 says he doesn't want to get involved. We're trying to
14 get that verification in writing from them, but that's
15 the information I got from my investigator. And he
16 could be a very important witness in all of this
17 because -- as it has to do with intent, okay? And so
18 I'm going to likely be filing some motions in this case
19 that were not previously filed by other defense
20 attorneys, and so that may hamper things, Judge, and I
21 want to make the Court and the State aware of that.

22 THE COURT: All right. And what I'm trying to
23 do is this: First of all, I'm not foreclosing the
24 defense from raising any issues at any time. We have an
25 unusual, very unique, and as yet to be defined situation

1 in the courts as a result of the whole situation
2 involving the COVID-19 virus.

3 What I'm hoping to do is at least have some
4 dates on the calendar as soon as possible after May 22nd
5 that the case is on the calendar so that the Court will
6 hold those days, and if it turns out that for whatever
7 reason the dates need to be adjourned, I'm going to be
8 accommodating given the developing scenario that the
9 Court and both parties are dealing with.

10 MR. MOUSTAKIS: That's fair. So I would think
11 go ahead and schedule those dates.

12 THE COURT: All right. And -- all right. For
13 now I'm going to put this matter on the calendar for
14 Tuesday, June 2nd, and Wednesday, June 3rd.

15 We're going to keep the Wednesday, March 25th,
16 3:00 p.m. hearing on the record, at which time I will
17 make a final ruling at least on the current motion
18 relative to bond, and we will also address any other
19 issues that counsel wish to raise.

20 And if there needs to be additional hearings
21 between Wednesday, March 25th, and the June trial dates,
22 we will hear the matters in an orderly fashion.

23 In the event that Mr. Fitzgerald is released on
24 bond in the interim period and that loosens things up,
25 we can take that up as well. I want us to -- I want to

1 feel comfortable that issues can be raised in an orderly
2 fashion and that I will hear them as the relatively
3 unique scenario that we're operating in requires and
4 makes appropriate.

5 All right. Anything else that we need to
6 discuss today before we conclude and then reconvene on
7 Wednesday, Ms. Sowinski?

8 MS. SOWINSKI: Just a note, Your Honor, that I
9 do have an out-of-state witness who is cooperative, and
10 I will contact him immediately to see if he has any
11 conflict with that trial date and hope to let the Court
12 know by Wednesday when we're back together. Thank you.

13 THE COURT: That's fine.

14 Anything further, Mr. Moustakis?

15 MR. MOUSTAKIS: No, Judge. Thank you for your
16 thoughts and comments.

17 THE COURT: All right. All right.

18 Mr. Fitzgerald, I assume that Mr. Moustakis
19 will be in touch with you. You can direct your
20 questions to him.

21 But for now, that's all for today. You may
22 hang up and have a good rest of your day.

23 We're adjourned.

24 (Proceedings concluded at 12:02 p.m.)

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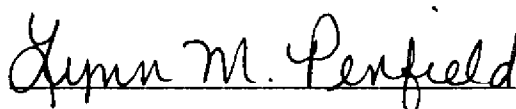
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I, Lynn Penfield, RPR, CRR, Official Court Reporter in and for the State of Wisconsin, do hereby certify:

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 12, inclusive, is a full, true and correct transcription of my shorthand notes taken during the proceeding had on March 23, 2020.

IN WITNESS WHEREOF, I have hereunto set my hand this 3rd day of April, 2020.



Lynn M. Penfield, RPR, CRR