

This document was previously  
filed via e-mail

STATE OF WISCONSIN  
IN SUPREME COURT

RECEIVED

State of Wisconsin,

Plaintiff,

vs.

Blake Fitzgerald

Defendant.

APR 21 2020  
Supreme  
CLERK OF COURT OF APPEALS  
OF WISCONSIN

Case # 18CF303

20XX538CR

EMERGENCY MOTION FOR EXCEPTION TO IN RE THE MATTER OF JURY TRIALS  
DURING THE COVID-19 PANDEMIC

PLEASE TAKE NOTICE THAT the Defendant, by his attorney Albert Moustakis, files this motion with the Supreme Court of Wisconsin for an exception to Supreme Court Order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, dated March 22, 2020.

i. **Introduction**

“In all criminal prosecutions, the accused shall enjoy the right to a speedy trial[.]”<sup>1</sup> By order of the Supreme Court of Wisconsin, the Defendant has been denied this constitutional right. While preserving his right to challenge the Supreme Court’s assertion of this power, the Defendant asks the following:

- (1) For an exception to the Supreme Court of Wisconsin order filed March 22, 2020;  
or in the alternative
- (2) An order that tolling of Defendant’s speedy trial demand immediately cease on  
May 23, 2020.

<sup>1</sup> U.S. Const. amend. XI, § 1

**ii. Factual Allegations**

In further support of this motion, the Defendant states the following:

1. On October 17, 2018, a felony complaint was filed in the State of Wisconsin Circuit Court of Oneida County, case number 2018-CF-303. This complaint charged the Defendant with one count of Interference w/ Custody-After Court Order. The complaint alleged that on September 4, 2018, in the City of Rhinelander, Oneida County, Wisconsin, the Defendant as a parent, did, after issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, withhold a child, from the other parent in violation of the order, contrary to sec. 948.31(3)(c) Wis. Stats. This violation is a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both. (A copy of which is attached as Exhibit #1 and incorporated herein by reference).
2. On October 17, 2018, an Extradition Forecast was also filed in Oneida County setting a cash bond in the amount of \$20,000.00. (A copy of which is attached as Exhibit #2 and incorporated herein by reference).
3. On October 18, 2018, an arrest warrant was issued and cash bond set by the Oneida County Circuit court in the amount of \$7,500.00. (Copies of the arrest warrant and bond are attached as Exhibits #3 & #4, respectively, and incorporated herein by reference).
4. The Defendant has been in custody in this matter, unable to post bond since December 2019.
5. On December 27, 2019, the defendant filed a Demand for a Speedy Trial. (A copy of which is attached as Exhibit #5 and incorporated herein by reference).
6. The court had previously set the matter for trial on March 31<sup>st</sup>, 2020. That is approximately 95 days after the Defendant filed his request for a speedy trial.

7. On March 10<sup>th</sup>, 2020, the Defendant, filed a motion to modify bond. (A copy of which is attached as Exhibit #6 and incorporated herein by reference).
8. Defendant's current custody situation during the COVID-19 pandemic has not only increased his risk of contracting COVID-19, it is also hampered counsel's ability to effectively assist in his defense.
9. Defendant was put in isolation for 14 days because of jail staff placing him in the booking area which is considered a hot spot in the jail. For the 14 days following his exposure to the hot spot, he was only able to reach his attorney during a two-hour period (March 25, 2020 Status / Pre-Trial Conference Tr. at 23).
10. As a result of Oneida County jail policy in response to COVID-19, legal counsel and investigators must have contact with clients by telephone only (March 25, 2020 Status / Pre-Trial Conference Tr. at 16-17).
11. The Supreme Court of Wisconsin order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, fails to set a date in which tolling for speedy trial demands ends.

**iii. Exception to the March 22, 2020 Order**

Defendant has been denied his right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution and Art. I, § 7, of the Wisconsin Constitution. Whether a defendant has been denied the right to a speedy trial is a constitutional question that the Supreme Court reviews de novo.<sup>2</sup> The trial court's underlying findings of historical fact, however, will be upheld unless they are clearly erroneous.<sup>3</sup>

Defendant asks that this Court make an exception to its March 22, 2020 order. In considering whether to make the exception, Defendant asks the Court to

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<sup>2</sup> *State v. Ziegenhagen*, 73 Wis. 2d 656, 664, 245 N.W.2d 656 (1976).

<sup>3</sup> Wis. Stat. § 805.17(2); *State v. Clappes*, 136 Wis. 2d 222, 235, 401 N.W.2d 759 (1987).

consider the following: Under both the United States and Wisconsin Constitutions, to determine whether a defendant has been denied the right to a speedy trial, a court must consider: (1) the length of the delay; (2) the reason for the delay, i.e., whether the government or the defendant is more to blame for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) whether the delay resulted in any prejudice to the defendant.<sup>4</sup>

*a. Length of Delay and Reason for Delay*

First, a court must determine that the length of the delay is presumptively prejudicial before inquiry can be made into the remaining three factors.<sup>5</sup> If the length of the delay is presumptively prejudicial and the court determines that, under the totality of the circumstances, the defendant has been denied the right to a speedy trial, the charges must be dismissed. See *Barker*, 407 U.S. at 522.

On March 26, 2020, ninety (90) days had passed since the Defendant filed his speedy trial demand. The circuit court scheduled the initial trial date for March 31, 2020. Currently, the trial has been rescheduled for June 02, 2020, at which time, 158 days will have passed since Defendant's speedy trial demand.

*b. Prejudice to Defendant*

Defendant reasserts that the Wisconsin Supreme Court does not have the power to indefinitely suspend his Sixth Amendment right to a speedy trial. This is not a power that was vested in the Court under Article VII, subsection 3 of the Wisconsin Constitution. Defendant concurs with the dissenting opinion of Honorable Rebecca Grassl Bradley and incorporates her argument herein by reference. In that

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<sup>4</sup> *Doggett v. United States*, 505 U.S. 647, 651 (1992); *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *Day v. State*, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973).

<sup>5</sup> See *Doggett*, 505 U.S. at 651-52 (holding "[T]o trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay."); *Hatcher v. State*, 83 Wis. 2d 559, 566-67, 266 N.W.2d 320 (1978).

sense, the prejudice to the Defendant in this case is extreme—he is being denied a constitutional right.

The Defendant currently stands as an innocent man in a non-violent interference of custody case and he has been deprived of his freedom because of the excessive nature of the cash bonds. He has entered his plea of not guilty and demanded his speedy trial. He asserts that the Wisconsin Supreme Court could have disseminated a less punitive order that would have protected his constitutionally guaranteed right as well as the public at large. For instance, because schools are closed, it would have been easy to use an auditorium and effectively implement safety protocols for the public and still effectively been able to protect Mr. Fitzgerald's right to a speedy trial. This is only one less intrusive way of protecting the Defendant's right. It appears to the Defendant that the court failed to take a less intrusive path, instead just blanketing the entire state which has added to the overall negative impact of COVID-19.

The Defendant is asking this Court to make an exception to its order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, so that he can exercise is Constitutional and statutory right to a speedy trial.

**iv. Tolling Cease on May 23, 2020**

In the alternative, if this Court does not grant Defendant's motion for an exception to its order, the Defendant respectfully requests that this Court make a clarifying order that tolling for speedy trial demands cease on May 23, 2020.

Based on the Wisconsin Supreme Court order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, there is no calculable end to the ongoing delay.

The way the Wisconsin Supreme Court has entered its order regarding COVID-19 is inappropriate because it fails to indicate a time when his right to the speedy trial resumes. The United States District Court for the Eastern District of Wisconsin issued a similar order to, *In re the Matter of Jury Trials During the COVID-19*

*Pandemic*. A major difference between the two orders is that order from the Eastern District of Wisconsin set timelines for tolling:

In criminal cases, the court finds that the period of any continuance entered from the date of this order through May 1, 2020 as a result of this order shall be EXCLUDED under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), because the court finds that the ends of justice served by taking that action outweigh the interests of the parties and the public in a speedy trial, given the need to protect the health and safety of defendants, their counsel, prosecutors, court staff and the public by reducing the number of in person hearings to the fullest extent possible.<sup>6</sup>

This guarantees a date in which the time to be calculated for a speedy trial demand continues to be counted, thus minimizing the prejudice to a defendant. The United States District Court for the Western District of Wisconsin made a similar order:

Accordingly, the court orders that the period of any continuance entered from March 18, 2020, through May 18, 2020 shall be excluded in the calculation of Speedy Trial Act time limits, as provided in 18 U.S.C. §3161(h)(7)(A).<sup>7</sup>

Again, this order guarantees a date in which the time to be calculated in a speedy trial demand continues to be counted.

Unlike the above two examples, the Supreme Court of Wisconsin's order in *In re the Matter of Jury Trials During the COVID-19 Pandemic*, fails to set a date in which the time to be calculated in a speedy trial demand continues to be counted.

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<sup>6</sup> United States District Court Eastern District of Wisconsin, General Order No. 20-2.

<sup>7</sup> United States District Court for the Western District of Wisconsin, Admin. Order 362.

Rather, it allows the presiding circuit court judge to simply set a date "after May 22, 2020," without any guidance on how this affects the tolling of the speedy trial demand.

Defendant respectfully asks that this Court find that tolling of Defendant's speedy trial demand cease on May 23, 2020 and the calculable time for the demand resume.

**v. Conclusion**

Defendant respectfully asks this Court for an exception to the Supreme Court of Wisconsin order filed March 22, 2020. In the alternative, Defendant respectfully requests an order that tolling of Defendant's speedy trial demand immediately cease on May 23, 2020 and the calculable time for the demand resume.

Dated this 16 day of April 2020.



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Albert Moustakis  
Bar # 1018354  
P.O. Box 1934  
Eagle River, WI 54521

**Moustakis & Mettelka, LLC**  
***Attorneys for Defendant***  
*219 S. Main Street*  
*P.O. Box 1934*  
*Eagle River, WI 54521*



<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhinelander, WI 54501	CASE 2018-00007024
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**SUPPLEMENTAL NARRATIVE**

On Friday, October 14, 2018 I spoke with Assistant District Attorney Mary SOWINSKI regarding a child custody issue involving Kylie Y. SCHNEIDER (DOB 06-28-84) and Blake C. FITZGERALD (DOB 07-23-83). I had been aware at that point that FITZGERALD had physical custody of two minor children, Grayson J. FITZGERALD (DOB 04-11-14) and Mason B. FITZGERALD (DOB 07-11-11) in North Dakota and in violation of an existing family court order out of North Dakota. SCHNEIDER resides at 309 N. Pelham St. in the City of Rhinelander.

The information I had at that time was that there was a scheduled child custody exchange at the beginning of September in Minnesota which did not occur. At that time, Blake allegedly returned to North Dakota with the children after disagreeing with the transportation arrangements. SCHNEIDER had been making attempts to get her children home since that time. SCHNEIDER had been in contact with Detective Craig DANIELSON from the West Fargo, ND Police Department. DANIELSON had subsequently been communicating with SOWINSKI regarding the matter. SOWINSKI stated she was actively trying to have FITZGERALD charged with Interference with the custody of a child, but needed a referral with some information regarding the matter. I informed SOWINSKI that I would conduct an investigation into the matter and refer my findings to her.

I contacted SCHNEIDER to come to the police department with her documentation to initiate a formal complaint and investigation. SCHNEIDER complied and came to the police department. SCHNEIDER stated she had been long having problems with her ex-husband, Blake FITZGERALD and had a current restraining order against him. I first asked to review the current court order out of North Dakota regarding child custody. SCHNEIDER provided me with State of North Dakota, Cass County Court File Number 09-2015-DM-01322 based upon decisions reached on August 29, and August 30 in that jurisdiction. The document clearly indicates SCHNEIDER to have, "primary residential responsibility of the children" in paragraphs 13 and 28.

The order outlines a holiday visitation schedule as well as a summer visitation schedule indicating that Blake would have three weeks of Summer visitation time each month of June, July, and August with the weeks being separated by one week for SCHNEIDER to have vacation time with the kids.

SCHNEIDER indicated that the exchanges were going well over the Summer and she frequently used a friend, identified as Daniel MULLINS to transport the children to the scheduled meeting point at Bloomington Police Department in Minnesota and back. SCHNEIDER also mentioned that earlier in the year, in approximately April, she was arrested in Minnesota for an operating while intoxicated offense where her children were not with her. As a result of that, she may have had an arrest warrant issued in Minnesota. SCHNEIDER further elaborated that she did not have a reliable vehicle to continually make the trip to Minnesota.

SCHNEIDER stated Blake had a period of visitation from June 8 until the 29<sup>th</sup>, from July 6 until July 29, and then starting on August 5 was the August visitation period with the children set to return home for the start of the school year. SCHNEIDER stated MULLINS transported the children during each of the exchanges with no protest from Blake. SCHNEIDER stated she elected to allow Blake to keep the children through Labor Day as he was scheduled to have the children over that holiday weekend and it would prevent an extra trip back and forth from Wisconsin and North Dakota.

SCHNEIDER showed me a series of text messages indicating she was making plans for the child exchange on Labor Day and before the first day of school. On Saturday, September 1, 2018 SCHNEIDER attempted to arrange for Sean SMITH, the father of her other child to bring the children back to Rhinelander as he was in Minnesota. Photos posted to Facebook on September 2 indicated that Blake did meet with Sean at the Mall of America however choose not to allow the boys leave with SMITH. Blake message SCHNEIDER that he would only meet with her and had a right to change his feelings. It was presumed at this point that Blake learned of SCHNEIDERs warrant and was attempting to get her to Minnesota to have her arrested. Blake stated he would meet SCHNEIDER at the

REPORTING OFFICER HELKE, KURT A 356	DATE 10/12/2018	REVIEWED BY HELKE, KURT A 10/16/2018
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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhineland, WI 54501	CASE 2018-00007024
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**SUPPLEMENTAL NARRATIVE CONTINUATION**

Bloomington Police Department on Monday at 4:00 P.M. SCHNEIDER then messaged Blake indicating that Dan MULLINS would again be there for the child exchange. Blake indicated that this would no longer be acceptable. SCHNEIDER indicated she did not have a reliable vehicle and made continued efforts to allow for this exchange to happen.

On Monday, September 3 at approximately 4:00 P.M. Blake messaged SCHNEIDER indicating he was at the Bloomington Police Department and would be leaving unless she would be there shortly. SCHNEIDER countered that MULLINS would be there at 4:30 P.M. due to traffic and BLAKE elected to return to North Dakota with the children. Blake indicated it was now SCHNEIDER'S responsibility to get the boys. Blake further texted, "You can come to Fargo".

SCHNEIDER stated she had been filing documents through North Dakota and attempting to work with the West Fargo Police Department to get her children. SCHNEIDER stated she was hesitant to go to North Dakota because of the restraining order and the police sending a message that they would not assist her in getting her children. According to the West Fargo officers, all of the child custody issues were civil in nature and they could not assist.

I did a North Dakota public records search to see what action was being taken on the family court case. There was significant activity on the case starting on September 5 including a motion to compel compliance with existing order, a motion for Ex Parte Emergency relief and an order to deny this motion. It appears that the court has taken no immediate action regarding the placement of the children aside from establishing a hearing date of November 19<sup>th</sup>. In the meantime, Blake was keeping custody of the children in violation of the order and adversely affecting the children's ability to begin school in Wisconsin.

I made contact with Detective DANIELSON who had been working on the case as well. DANIELSON again explained that his official actions were limited as he was not permitted to be involved in any child custody matter, however could speak with Blake under an agency assist. DANIELSON later told me that he had a cordial discussion with Blake regarding the custody issues and the potential for criminal charges.

Blake then called me at 5:00 P.M. and I spoke with him in a 52 minute phone call allowing him to voice his concerns and frustrations. Initially Blake accused me of having a personal relationship with SCHNEIDER and made several accusations regarding SCHNEIDER abusing alcohol and drugs, as well as her fabricating injuries sustained in a domestic violence incident from the past making her unfit as a parent. Blake stated he had Grayson and Mason enrolled at school in Fargo and had them playing hockey. Blake stated he would comply with the court order as advised by his attorney. Blake further stated that we would, "rip the boys out of school" and not allow them to say goodbye to their friends. I reminded Blake that the court order that I reviewed indicated the children were to attend school in Wisconsin while in the custody of their mother. I asked Blake what would happen if SCHNEIDER were to drive to North Dakota to get the boys and he said, "I would have to abide by the court order".

I again spoke with SCHNEIDER who said she was prepared to leave immediately to go to Fargo to get her children. SCHNEIDER began making plans with her mother to drive to Fargo, North Dakota. Based upon some provisions I read in the court order and what I found to be objectively reasonable, I felt that a good time for the exchange of the children would be 4:00 P.M. on Sunday October 14<sup>th</sup> at the West Fargo Police Department. This would be the jurisdiction where Blake was residing with the children. SCHNEIDER stated she would make it work and get to Fargo at that time.

Blake called me back on Saturday, October 13 at 1:27 P.M. and I again spoke with him at length and allowed him to vent his frustrations on the matter. I made a concerted effort to convince Blake that adherence to the existing court order would be in his best interests. Blake again started the conversation being confrontational and accusing me of

REPORTING OFFICER HELKE, KURT A 366	DATE 10/12/2018	REVIEWED BY HELKE, KURT A 10/16/2018
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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> <small>201 N. Brown Street Rhineland, WI 54501</small>	<b>CASE# 2018-00007024</b>
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<b>SUPPLEMENTAL NARRATIVE CONTINUATION</b>
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having a personal relationship with SCHNEIDER. At length, I discussed the applicable law regarding interference with the custody of a child as well as the common sense aspect to follow a court order authored in North Dakota that he was clearly in violation of by keeping the kids. I informed Blake that SCHNEIDER was intending on being in Fargo on Sunday at 4:00 P.M. Blake ended the conversation cordially and agreeing to abide by the court order.

On Sunday, October 14 I sent a text message to Blake clarifying that SCHNEIDER was coming to Fargo and would be at the West Fargo Police Department at 4:00 P.M. and that his cooperation would be appreciated and would help him potentially avoid criminal charges. Blake responded that he would meet at the Moorhead Police Department. Checking the map, I saw that the Moorhead Police Department is just across the border into Minnesota and was clearly a ploy to get SCHNEIDER in a position to be arrested on a warrant.

I contacted SCHNEIDER again and told her that if it was possible to take care of any legal issues she had in Minnesota to remove the potential of it being used against her. SCHNEIDER stated she contacted an agency in Minnesota and was advised she did not have a warrant. SCHNEIDER also stated she contacted the Clay County Sheriff's Department (the jurisdiction where Blake wanted to meet) and a deputy informed her that she was not wanted. I contacted the Anoka County Sheriff's Department in Minnesota and was advised that SCHNEIDER did not have a warrant. I then contacted the Clay County Sheriff's Department and they did a statewide search which indicated SCHNEIDER had a warrant in Washington County. I then contacted the Washington County Sheriff's Department and learned that SCHNEIDER did have a warrant through that county in the amount of \$3000.00. I was informed that SCHNEIDER would need to post the bond and be scheduled for a new court date. I relayed this information to SCHNEIDER to assist her in taking care of the matter.

To mediate the potential meeting and child exchange, I again messaged Blake and informed him that SCHNEIDER would be there at 4:00 P.M. and that he should return the children in accordance with the court order. Blake then responded that he would need to bring the kids to Minneapolis to follow the order. I highlighted to Blake that he told SCHNEIDER to come to Fargo and that withholding the children after she drove from Wisconsin to North Dakota to get them is a clear violation of the order and criminal conduct.

SCHNEIDER arrived at the West Fargo Police Department at 3:50 P.M. and waited there for an hour while making contact with the West Fargo Police. SCHNEIDER messaged Blake that she was there for the kids. According to Detective DANIELSON, officers went to Blake's residence and no one answered the door. According to SCHNEIDER, officers told her that the windows were covered with blankets. SCHNEIDER got a hotel in the Fargo area and stated she would not leave until she had her kids.

On Monday, October 15, 2018 SCHNEIDER made attempts to locate the schools her children were allegedly attending so that she could retrieve them. SCHNEIDER learned that Blake withheld the children from school, apparently telling the school officials that they were, "out of town". SCHNEIDER also went to the Cass County Courthouse, spoke with the state's attorney, and attempted to get an order from the judge directing the police to take action. Blake also sent Kylie a text message asking her to allow him to keep the children and that taking them away would be, "ripping them out of school" and away from hockey and their friends. It appears as though Blake is attempting to establish the children in Fargo as a tactic to assist in his custody fight as well as involving the children in the dispute. SCHNEIDER stated that Blake allowed her a phone call with the children that she recorded. SCHNEIDER stated Blake is heard telling her son to tell her to stop having the police come to his house as well as other concerning things.

At this time, Blake has had custody of the two minor children for more than six weeks beyond the court appointed custody change to the parent that has been awarded primary placement. This has affected the children's ability to establish in the Rhineland School District and has kept the children away from their mother for an extended period

<small>REPORTING OFFICER</small> HELKE, KURT A 366	<small>DATE</small> 10/12/2018	<small>REVIEWED BY</small> HELKE, KURT A 10/16/2018
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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhinelander, WI 54501	<b>CASE# 2018-00007024</b>
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**SUPPLEMENTAL NARRATIVE CONTINUATION**

of time. Based upon the totality of the circumstances and Blake choosing not to allow Kylie to have the children when given several opportunities to do so, I am forwarding this case to the Oneida County District Attorney for the charges of interference with the custody of a child.

REPORTING OFFICER <b>HELKE, KURT A 356</b>	DATE <b>10/12/2018</b>	REVIEWED BY <b>HELKE, KURT A 10/16/2018</b>
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Case 2018CF00030 Document 1  
STATE OF WISCONSIN - VS - Blake C. Fitzgerald

Filed 10-17-2018

Page 6 of 6

Subscribed and sworn to before me on  
10/17/18

Electronically Signed By:

Mary M. Sowinski

Assistant District Attorney

State Bar #: 1028147

Electronically Signed By:

Deputy Sara Wolosek

Complainant

FILED  
10-17-2018  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

**EXTRADITION FORECAST**

**NAME: Blake C. Fitzgerald**

**CASE NO.:**

**CHARGES: Interfere w/ Custody-After Custody Order 948.31(3)(c)  
Class F Felony**

**BOND AMOUNT: \$20,000**

(If bond amount is posted, please give defendant a court date of the following Monday at 1:30 p.m. in Oneida County Circuit Court.)

- WILL NOT EXTRADITE
- EXTRADITE ADJACENT STATES ONLY
- EXTRADITE WITHIN CONTINENTAL UNITED STATES
- WILL EXTRADITE

Date Signed: 10/17/18  
Electronically Signed By:  
Mary M. Sowinski  
Assistant District Attorney  
State Bar #: 1028147

Exhibit #2

FILED  
10-19-2018  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

DATE SIGNED: October 19, 2018

Electronically signed by Michael H. Bloom  
Circuit Court Judge

Exhibit # 3

STATE OF WISCONSIN	CIRCUIT COURT	ONEIDA COUNTY
STATE OF WISCONSIN	DA Case No.: 2018ON001422	
Plaintiff,	Assigned DA/ADA: Mary M. Sowinski	
	Agency Case No.: 2018-00007024	
	Court Case No.:	
vs.	ATN:	
BLAKE C. FITZGERALD		
508 19th Avenue, W F	<b>WARRANT</b>	<i>For Official Use</i>
West Fargo, ND 58078		
DOB: 07/23/1983		
Defendant.		

THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER:

A complaint, a copy of which is attached, having been made before me accusing the defendant of committing the crime(s) of:

THE CRIME(S) OF:

VIOLATION DATE:

WIS. STAT(S):

Interfere w/ Custody-After  
Custody Order

09/04/2018

948.31(3)(c)

And having found that probable cause exists that such violation was committed by the defendant, you are, therefore, commanded to arrest the defendant and bring him before me, or if I am not available, before some other judge of this county.



FILED  
12-27-2019  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

STATE OF WISCONSIN                      CIRCUIT COURT                      ONEIDA COUNTY

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STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 18CF303

Blake Fitzgerald,

Defendant.

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**DEFENDANT'S DEMAND FOR A SPEEDY TRIAL**

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Pursuant to Wis. Stat. § 971.10, Blake Fitzgerald, through his attorney Travis Slattery of Travis Slattery Law Office, demands a speedy trial in this matter.

DATED this 26<sup>th</sup> day of December, 2019 at Stevens Point, Wisconsin.

Respectfully submitted,

Electronically Signed By:

\*\*\*\* Travis Slattery\*\*\*\*

---

Attorney Travis Slattery

State Bar No. 1074981

Attorney Travis Slattery  
PO Box 955  
Stevens Point, WI 54481  
[travisslatterylawoffice@gmail.com](mailto:travisslatterylawoffice@gmail.com)  
(715) 600 1934

Exhibit #5

FILED  
03-10-2020  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

STATE OF WISCONSIN                      CIRCUIT COURT                      ONEIDA COUNTY

STATE OF WISCONSIN,

PLAINTIFF

VS

MOTION TO MODIFY BOND

18CF303, 19CF150

BLAKE FITZGERALD

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PLEASE TAKE NOTICE THAT The Defendant, by his attorney Albert Moustakis will move the court to modify Mr. Fitzgerald bond. The request for modification is made because the bond set at this time cannot be posted by Mr. Fitzgerald.

Dated this 10<sup>th</sup> day of March, 2020.

*Albert Moustakis*

Albert Moustakis

Bar # 1018354

P. O. Box 1934

Eagle River, WI 54521

Exhibit #6

This document was previously  
filed via e-mail

**STATE OF WISCONSIN  
IN SUPREME COURT**

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State of Wisconsin,

Plaintiff,

vs.

Case # 18CF303

Blake Fitzgerald

Defendant.

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**EMERGENCY MOTION FOR EXCEPTION TO IN RE THE MATTER OF JURY TRIALS  
DURING THE COVID-19 PANDEMIC**

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- (1) For an exception to the Supreme Court of Wisconsin order filed March 22, 2020;  
or in the alternative
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May 23, 2020.

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<sup>1</sup> U.S. Const. amend. XI, § 1

## ii. Factual Allegations

In further support of this motion, the Defendant states the following:

1. On October 17, 2018, a felony complaint was filed in the State of Wisconsin Circuit Court of Oneida County, case number 2018-CF-303. This complaint charged the Defendant with one count of Interference w/ Custody-After Court Order. The complaint alleged that on September 4, 2018, in the City of Rhinelander, Oneida County, Wisconsin, the Defendant as a parent, did, after issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, withhold a child, from the other parent in violation of the order, contrary to sec. 948.31(3)(c) Wis. Stats. This violation is a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both. (A copy of which is attached as Exhibit #1 and incorporated herein by reference).
2. On October 17, 2018, an Extradition Forecast was also filed in Oneida County setting a cash bond in the amount of \$20,000.00. (A copy of which is attached as Exhibit #2 and incorporated herein by reference).
3. On October 18, 2018, an arrest warrant was issued and cash bond set by the Oneida County Circuit court in the amount of \$7,500.00. (Copies of the arrest warrant and bond are attached as Exhibits #3 & #4, respectively, and incorporated herein by reference).
4. The Defendant has been in custody in this matter, unable to post bond since December 2019.
5. On December 27, 2019, the defendant filed a Demand for a Speedy Trial. (A copy of which is attached as Exhibit #5 and incorporated herein by reference).
6. The court had previously set the matter for trial on March 31<sup>st</sup>, 2020. That is approximately 95 days after the Defendant filed his request for a speedy trial.

7. On March 10<sup>th</sup>, 2020, the Defendant, filed a motion to modify bond. (A copy of which is attached as Exhibit #6 and incorporated herein by reference).
8. Defendant's current custody situation during the COVID-19 pandemic has not only increased his risk of contracting COVID-19, it is also hampered counsel's ability to effectively assist in his defense.
9. Defendant was put in isolation for 14 days because of jail staff placing him in the booking area which is considered a hot spot in the jail. For the 14 days following his exposure to the hot spot, he was only able to reach his attorney during a two-hour period (March 25, 2020 Status / Pre-Trial Conference Tr. at 23).
10. As a result of Oneida County jail policy in response to COVID-19, legal counsel and investigators must have contact with clients by telephone only (March 25, 2020 Status / Pre-Trial Conference Tr. at 16-17).
11. The Supreme Court of Wisconsin order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, fails to set a date in which tolling for speedy trial demands ends.

**iii. Exception to the March 22, 2020 Order**

Defendant has been denied his right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution and Art. I, § 7, of the Wisconsin Constitution. Whether a defendant has been denied the right to a speedy trial is a constitutional question that the Supreme Court reviews de novo.<sup>2</sup> The trial court's underlying findings of historical fact, however, will be upheld unless they are clearly erroneous.<sup>3</sup>

Defendant asks that this Court make an exception to its March 22, 2020 order. In considering whether to make the exception, Defendant asks the Court to

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<sup>2</sup> *State v. Ziegenhagen*, 73 Wis. 2d 656, 664, 245 N.W.2d 656 (1976).

<sup>3</sup> Wis. Stat. § 805.17(2); *State v. Clappes*, 136 Wis. 2d 222, 235, 401 N.W.2d 759 (1987).

consider the following: Under both the United States and Wisconsin Constitutions, to determine whether a defendant has been denied the right to a speedy trial, a court must consider: (1) the length of the delay; (2) the reason for the delay, i.e., whether the government or the defendant is more to blame for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) whether the delay resulted in any prejudice to the defendant.<sup>4</sup>

*a. Length of Delay and Reason for Delay*

First, a court must determine that the length of the delay is presumptively prejudicial before inquiry can be made into the remaining three factors.<sup>5</sup> If the length of the delay is presumptively prejudicial and the court determines that, under the totality of the circumstances, the defendant has been denied the right to a speedy trial, the charges must be dismissed. See *Barker*, 407 U.S. at 522.

On March 26, 2020, ninety (90) days had passed since the Defendant filed his speedy trial demand. The circuit court scheduled the initial trial date for March 31, 2020. Currently, the trial has been rescheduled for June 02, 2020, at which time, 158 days will have passed since Defendant's speedy trial demand.

*b. Prejudice to Defendant*

Defendant reasserts that the Wisconsin Supreme Court does not have the power to indefinitely suspend his Sixth Amendment right to a speedy trial. This is not a power that was vested in the Court under Article VII, subsection 3 of the Wisconsin Constitution. Defendant concurs with the dissenting opinion of Honorable Rebecca Grassl Bradley and incorporates her argument herein by reference. In that

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<sup>4</sup> *Doggett v. United States*, 505 U.S. 647, 651 (1992); *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *Day v. State*, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973).

<sup>5</sup> See *Doggett*, 505 U.S. at 651-52 (holding "[T]o trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay."); *Hatcher v. State*, 83 Wis. 2d 559, 566-67, 266 N.W.2d 320 (1978)).

sense, the prejudice to the Defendant in this case is extreme—he is being denied a constitutional right.

The Defendant currently stands as an innocent man in a non-violent interference of custody case and he has been deprived of his freedom because of the excessive nature of the cash bonds. He has entered his plea of not guilty and demanded his speedy trial. He asserts that the Wisconsin Supreme Court could have disseminated a less punitive order that would have protected his constitutionally guaranteed right as well as the public at large. For instance, because schools are closed, it would have been easy to use an auditorium and effectively implement safety protocols for the public and still effectively been able to protect Mr. Fitzgerald's right to a speedy trial. This is only one less intrusive way of protecting the Defendant's right. It appears to the Defendant that the court failed to take a less intrusive path, instead just blanketing the entire state which has added to the overall negative impact of COVID-19.

The Defendant is asking this Court to make an exception to its order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, so that he can exercise is Constitutional and statutory right to a speedy trial.

#### iv. Tolling Cease on May 23, 2020

In the alternative, if this Court does not grant Defendant's motion for an exception to its order, the Defendant respectfully requests that this Court make a clarifying order that tolling for speedy trial demands cease on May 23, 2020.

Based on the Wisconsin Supreme Court order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, there is no calculable end to the ongoing delay.

The way the Wisconsin Supreme Court has entered its order regarding COVID-19 is inappropriate because it fails to indicate a time when his right to the speedy trial resumes. The United States District Court for the Eastern District of Wisconsin issued a similar order to, *In re the Matter of Jury Trials During the COVID-19*

*Pandemic*. A major difference between the two orders is that order from the Eastern District of Wisconsin set timelines for tolling:

In criminal cases, the court finds that the period of any continuance entered from the date of this order through May 1, 2020 as a result of this order shall be EXCLUDED under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), because the court finds that the ends of justice served by taking that action outweigh the interests of the parties and the public in a speedy trial, given the need to protect the health and safety of defendants, their counsel, prosecutors, court staff and the public by reducing the number of in person hearings to the fullest extent possible.<sup>6</sup>

This guarantees a date in which the time to be calculated for a speedy trial demand continues to be counted, thus minimizing the prejudice to a defendant. The United States District Court for the Western District of Wisconsin made a similar order:

Accordingly, the court orders that the period of any continuance entered from March 18, 2020, through May 18, 2020 shall be excluded in the calculation of Speedy Trial Act time limits, as provided in 18 U.S.C. §3161(h)(7)(A).<sup>7</sup>

Again, this order guarantees a date in which the time to be calculated in a speedy trial demand continues to be counted.

Unlike the above two examples, the Supreme Court of Wisconsin's order in *In re the Matter of Jury Trials During the COVID-19 Pandemic*, fails to set a date in which the time to be calculated in a speedy trial demand continues to be counted.

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<sup>6</sup> United States District Court Eastern District of Wisconsin, General Order No. 20-2.

<sup>7</sup> United States District Court for the Western District of Wisconsin, Admin. Order 362.

Rather, it allows the presiding circuit court judge to simply set a date "after May 22, 2020," without any guidance on how this affects the tolling of the speedy trial demand.

Defendant respectfully asks that this Court find that tolling of Defendant's speedy trial demand cease on May 23, 2020 and the calculable time for the demand resume.

**v. Conclusion**

Defendant respectfully asks this Court for an exception to the Supreme Court of Wisconsin order filed March 22, 2020. In the alternative, Defendant respectfully requests an order that tolling of Defendant's speedy trial demand immediately cease on May 23, 2020 and the calculable time for the demand resume.

Dated this 16 day of April 2020.



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Albert Moustakis  
Bar # 1018354  
P.O. Box 1934  
Eagle River, WI 54521

**Moustakis & Mettelka, LLC**  
***Attorneys for Defendant***  
*219 S. Main Street*  
*P.O. Box 1934*  
*Eagle River, WI 54521*



<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brent Street Rhinelander, WI 54801	CASE# 2018-00007024
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**SUPPLEMENTAL NARRATIVE**

On Friday, October 14, 2018 I spoke with Assistant District Attorney Mary SOWINSKI regarding a child custody issue involving Kylie Y. SCHNEIDER (DOB 06-28-84) and Blake C. FITZGERALD (DOB 07-23-83). I had been aware at that point that FITZGERALD had physical custody of two minor children, Grayson J. FITZGERALD (DOB 04-11-14) and Mason B. FITZGERALD (DOB 07-11-11) in North Dakota and in violation of an existing family court order out of North Dakota. SCHNEIDER resides at 309 N. Pelham St. in the City of Rhinelander.

The information I had at that time was that there was a scheduled child custody exchange at the beginning of September in Minnesota which did not occur. At that time, Blake allegedly returned to North Dakota with the children after disagreeing with the transportation arrangements. SCHNEIDER had been making attempts to get her children home since that time. SCHNEIDER had been in contact with Detective Craig DANIELSON from the West Fargo, ND Police Department. DANIELSON had subsequently been communicating with SOWINSKI regarding the matter. SOWINSKI stated she was actively trying to have FITZGERALD charged with interference with the custody of a child, but needed a referral with some information regarding the matter. I informed SOWINSKI that I would conduct an investigation into the matter and refer my findings to her.

I contacted SCHNEIDER to come to the police department with her documentation to initiate a formal complaint and investigation. SCHNEIDER complied and came to the police department. SCHNEIDER stated she had been long having problems with her ex-husband, Blake FITZGERALD and had a current restraining order against him. I first asked to review the current court order out of North Dakota regarding child custody. SCHNEIDER provided me with State of North Dakota, Cass County Court File Number 09-2015-DM-01322 based upon decisions reached on August 29, and August 30 in that jurisdiction. The document clearly indicates SCHNEIDER to have, "primary residential responsibility of the children" in paragraphs 13 and 28.

The order outlines a holiday visitation schedule as well as a summer visitation schedule indicating that Blake would have three weeks of Summer visitation time each month of June, July, and August with the weeks being separated by one week for SCHNEIDER to have vacation time with the kids.

SCHNEIDER indicated that the exchanges were going well over the Summer and she frequently used a friend, identified as Daniel MULLINS to transport the children to the scheduled meeting point at Bloomington Police Department in Minnesota and back. SCHNEIDER also mentioned that earlier in the year, in approximately April, she was arrested in Minnesota for an operating while intoxicated offense where her children were not with her. As a result of that, she may have had an arrest warrant issued in Minnesota. SCHNEIDER further elaborated that she did not have a reliable vehicle to continually make the trip to Minnesota.

SCHNEIDER stated Blake had a period of visitation from June 8 until the 29<sup>th</sup>, from July 6 until July 29, and then starting on August 5 was the August visitation period with the children set to return home for the start of the school year. SCHNEIDER stated MULLINS transported the children during each of the exchanges with no protest from Blake. SCHNEIDER stated she elected to allow Blake to keep the children through Labor Day as he was scheduled to have the children over that holiday weekend and it would prevent an extra trip back and forth from Wisconsin and North Dakota.

SCHNEIDER showed me a series of text messages indicating she was making plans for the child exchange on Labor Day and before the first day of school. On Saturday, September 1, 2018 SCHNEIDER attempted to arrange for Sean SMITH, the father of her other child to bring the children back to Rhinelander as he was in Minnesota. Photos posted to Facebook on September 2 indicated that Blake did meet with Sean at the Mall of America however choose not to allow the boys leave with SMITH. Blake message SCHNEIDER that he would only meet with her and had a right to change his feelings. It was presumed at this point that Blake learned of SCHNEIDERs warrant and was attempting to get her to Minnesota to have her arrested. Blake stated he would meet SCHNEIDER at the

REPORTING OFFICER	DATE	REVIEWED BY
HELKE, KURT A 356	10/12/2018	HELKE, KURT A 10/16/2018

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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhineland, WI 54901	CASE# 2018-00007024
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**SUPPLEMENTAL NARRATIVE CONTINUATION**

Bloomington Police Department on Monday at 4:00 P.M. SCHNEIDER then messaged Blake Indicating that Dan MULLINS would again be there for the child exchange. Blake indicated that this would no longer be acceptable. SCHNEIDER indicated she did not have a reliable vehicle and made continued efforts to allow for this exchange to happen.

On Monday, September 3 at approximately 4:00 P.M. Blake messaged SCHNEIDER indicating he was at the Bloomington Police Department and would be leaving unless she would be there shortly. SCHNEIDER countered that MULLINS would be there at 4:30 P.M. due to traffic and BLAKE elected to return to North Dakota with the children. Blake indicated it was now SCHNEIDER'S responsibility to get the boys. Blake further texted, "You can come to Fargo".

SCHNEIDER stated she had been filing documents through North Dakota and attempting to work with the West Fargo Police Department to get her children. SCHNEIDER stated she was hesitant to go to North Dakota because the restraining order and the police sending a message that they would not assist her in getting her children. According to the West Fargo officers, all of the child custody issues were civil in nature and they could not assist.

I did a North Dakota public records search to see what action was being taken on the family court case. There was significant activity on the case starting on September 5 including a motion to compel compliance with existing order, a motion for Ex Parte Emergency relief and an order to deny this motion. It appears that the court has taken no immediate action regarding the placement of the children aside from establishing a hearing date of November 19<sup>th</sup>. In the meantime, Blake was keeping custody of the children in violation of the order and adversely affecting the children's ability to begin school in Wisconsin.

I made contact with Detective DANIELSON who had been working on the case as well. DANIELSON again explained that his official actions were limited as he was not permitted to be involved in any child custody matter, however could speak with Blake under an agency assist. DANIELSON later told me that he had a cordial discussion with Blake regarding the custody issues and the potential for criminal charges.

Blake then called me at 6:00 P.M. and I spoke with him in a 52 minute phone call allowing him to voice his concerns and frustrations. Initially Blake accused me of having a personal relationship with SCHNEIDER and made several accusations regarding SCHNEIDER abusing alcohol and drugs, as well as her fabricating injuries sustained in a domestic violence incident from the past making her unfit as a parent. Blake stated he had Grayson and Mason enrolled at school in Fargo and had them playing hockey. Blake stated he would comply with the court order as advised by his attorney. Blake further stated that we would, "rip the boys out of school" and not allow them to say goodbye to their friends. I reminded Blake that the court order that I reviewed indicated the children were to attend school in Wisconsin while in the custody of their mother. I asked Blake what would happen if SCHNEIDER were to drive to North Dakota to get the boys and he said, "I would have to abide by the court order".

I again spoke with SCHNEIDER who said she was prepared to leave immediately to go to Fargo to get her children. SCHNEIDER began making plans with her mother to drive to Fargo, North Dakota. Based upon some provisions I read in the court order and what I found to be objectively reasonable, I felt that a good time for the exchange of the children would be 4:00 P.M. on Sunday October 14<sup>th</sup> at the West Fargo Police Department. This would be the jurisdiction where Blake was residing with the children. SCHNEIDER stated she would make it work and get to Fargo at that time.

Blake called me back on Saturday, October 13 at 1:27 P.M. and I again spoke with him at length and allowed him to vent his frustrations on the matter. I made a concerted effort to convince Blake that adherence to the existing court order would be in his best interests. Blake again started the conversation being confrontational and accusing me of

REPORTED BY OFFICER <b>HELKE, KURT A 366</b>	DATE <b>10/12/2018</b>	REVIEWED BY <b>HELKE, KURT A 10/16/2018</b>
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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhineland, WI 54601	CASE# 2018-00007024
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<b>SUPPLEMENTAL NARRATIVE CONTINUATION</b>
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having a personal relationship with SCHNEIDER. At length, I discussed the applicable law regarding interference with the custody of a child as well as the common sense aspect to follow a court order authored in North Dakota that he was clearly in violation of by keeping the kids. I informed Blake that SCHNEIDER was intending on being in Fargo on Sunday at 4:00 P.M. Blake ended the conversation cordially and agreeing to abide by the court order.

On Sunday, October 14 I sent a text message to Blake clarifying that SCHNEIDER was coming to Fargo and would be at the West Fargo Police Department at 4:00 P.M. and that his cooperation would be appreciated and would help him potentially avoid criminal charges. Blake responded that he would meet at the Moorhead Police Department. Checking the map, I saw that the Moorhead Police Department is just across the border into Minnesota and was clearly a ploy to get SCHNEIDER in a position to be arrested on a warrant.

I contacted SCHNEIDER again and told her that if it was possible to take care of any legal issues she had in Minnesota to remove the potential of it being used against her. SCHNEIDER stated she contacted an agency in Minnesota and was advised she did not have a warrant. SCHNEIDER also stated she contacted the Clay County Sheriff's Department (the jurisdiction where Blake wanted to meet) and a deputy informed her that she was not wanted. I contacted the Anoka County Sheriff's Department in Minnesota and was advised that SCHNEIDER did not have a warrant. I then contacted the Clay County Sheriff's Department and they did a statewide search which indicated SCHNEIDER had a warrant in Washington County. I then contacted the Washington County Sheriff's Department and learned that SCHNEIDER did have a warrant through that county in the amount of \$3000.00. I was informed that SCHNEIDER would need to post the bond and be scheduled for a new court date. I relayed this information to SCHNEIDER to assist her in taking care of the matter.

To mediate the potential meeting and child exchange, I again messaged Blake and informed him that SCHNEIDER would be there at 4:00 P.M. and that he should return the children in accordance with the court order. Blake then responded that he would need to bring the kids to Minneapolis to follow the order. I highlighted to Blake that he told SCHNEIDER to come to Fargo and that withholding the children after she drove from Wisconsin to North Dakota to get them is a clear violation of the order and criminal conduct.

SCHNEIDER arrived at the West Fargo Police Department at 3:50 P.M. and waited there for an hour while making contact with the West Fargo Police. SCHNEIDER messaged Blake that she was there for the kids. According to Detective DANIELSON, officers went to Blake's residence and no one answered the door. According to SCHNEIDER, officers told her that the windows were covered with blankets. SCHNEIDER got a hotel in the Fargo area and stated she would not leave until she had her kids.

On Monday, October 15, 2018 SCHNEIDER made attempts to locate the schools her children were allegedly attending so that she could retrieve them. SCHNEIDER learned that Blake withheld the children from school, apparently telling the school officials that they were, "out of town". SCHNEIDER also went to the Cass County Courthouse, spoke with the state's attorney, and attempted to get an order from the judge directing the police to take action. Blake also sent Kylie a text message asking her to allow him to keep the children and that taking them away would be, "ripping them out of school" and away from hockey and their friends. It appears as though Blake is attempting to establish the children in Fargo as a tactic to assist in his custody fight as well as involving the children in the dispute. SCHNEIDER stated that Blake allowed her a phone call with the children that she recorded. SCHNEIDER stated Blake is heard telling her son to tell her to stop having the police come to his house as well as other concerning things.

At this time, Blake has had custody of the two minor children for more than six weeks beyond the court appointed custody change to the parent that has been awarded primary placement. This has affected the children's ability to establish in the Rhineland School District and has kept the children away from their mother for an extended period

REPORTING OFFICER HELKE, KURT A 366	DATE 10/12/2018	REVIEWED BY HELKE, KURT A 10/16/2018
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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhinelander, WI 54501	CASE# 2018-00007024
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**SUPPLEMENTAL NARRATIVE CONTINUATION**

of time. Based upon the totality of the circumstances and Blake choosing not to allow Kylie to have the children when given several opportunities to do so, I am forwarding this case to the Oneida County District Attorney for the charges of interference with the custody of a child.

REPORTING OFFICER HELKE, KURT A 386	DATE 10/12/2018	REVIEWED BY HELKE, KURT A 10/16/2018
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Case 2018CF000300 Document 1  
STATE OF WISCONSIN - VS - Blake C. Fitzgerald

Filed 10-17-2018

Page 6 of 6

Subscribed and sworn to before me on  
10/17/18

Electronically Signed By:

Mary M. Sowinski

Assistant District Attorney

State Bar #: 1028147

Electronically Signed By:

Deputy Sara Wolosek

Complainant

FILED  
10-17-2018  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

**EXTRADITION FORECAST**

**NAME: Blake C. Fitzgerald**

**CASE NO.:**

**CHARGES: Interfere w/ Custody-After Custody Order 948.31(3)(c)  
Class F Felony**

**BOND AMOUNT: \$20,000**

(If bond amount is posted, please give defendant a court date of the following Monday at 1:30 p.m. in Oneida County Circuit Court.)

- WILL NOT EXTRADITE
- EXTRADITE ADJACENT STATES ONLY
- EXTRADITE WITHIN CONTINENTAL UNITED STATES
- WILL EXTRADITE

Date Signed: 10/17/18  
Electronically Signed By:  
Mary M. Sowinski  
Assistant District Attorney  
State Bar #: 1028147

*Exhibit #2*

**FILED**  
**10-19-2018**  
**ONEIDA COUNTY**  
**CLERK OF CIRCUIT**  
**COURT**  
**2018CF000303**

**DATE SIGNED: October 19, 2018**

Electronically signed by Michael H. Bloom  
Circuit Court Judge

Exhibit # 3

STATE OF WISCONSIN	CIRCUIT COURT	ONEIDA COUNTY
STATE OF WISCONSIN Plaintiff,	DA Case No.: 2018ON001422 Assigned DA/ADA: Mary M. Sowinski Agency Case No.: 2018-00007024 Court Case No.: ATN:	
vs.		
BLAKE C. FITZGERALD 508 19th Avenue, W F West Fargo, ND 58078 DOB: 07/23/1983 Defendant.	<b>WARRANT</b>	<i>For Official Use</i>

THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER:

A complaint, a copy of which is attached, having been made before me accusing the defendant of committing the crime(s) of:

<u>THE CRIME(S) OF:</u>	<u>VIOLATION DATE:</u>	<u>WIS. STAT(S):</u>
Interfere w/ Custody-After Custody Order	09/04/2018	948.31(3)(c)

And having found that probable cause exists that such violation was committed by the defendant, you are, therefore, commanded to arrest the defendant and bring him before me, or if I am not available, before some other judge of this county.

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

Amended

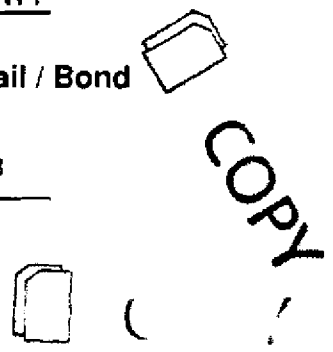
State of Wisconsin vs. Blake C. Fitzgerald

Bail / Bond

Date of Birth: 07-23-1983

Case No.: 2018CF000303

Citation No(s): \_\_\_\_\_



A. Monetary Conditions of Release

CASH BAIL: Cash bail of \$7500.00 shall be deposited. Date deposited \_\_\_\_\_

*If the defendant does not comply with the terms of this bail/bond, the bail/bond will be forfeited and the defendant and/or surety may be ordered to pay the amount of the bond.*

*Any restitution, recompense, fines, forfeitures or costs imposed against the defendant shall be paid out of the cash bail/bond without further notice.*

B. Additional Conditions of Release

- Defendant shall appear on all court dates.
- Defendant shall give written notice to the Clerk of this Court within 48 hours of any change of address or telephone number.
- Defendant shall not commit any crime.
- Defendant shall neither directly nor indirectly threaten, harass, intimidate or otherwise interfere with victims or witnesses in this action.
- Other:

Must strictly comply with any Injunction in place regarding any persons. Must strictly comply with any family court order regarding legal custody/placement of minor children.

See attached.

Federal law provides penalties for, and you may be prohibited from possessing, transporting, shipping, receiving or purchasing a firearm, including, but not limited to, a rifle, shotgun, pistol, revolver, or ammunition, pursuant to 18 U.S.C. 922(g)(8)-(9).

The sheriff shall detain the defendant in custody until the defendant has signed the bond, complied with the monetary conditions of release, or is otherwise discharged.

<b>I have received a copy of this bail/bond and I agree to its terms. I understand that the court date(s) is/are:</b>			
Circuit Court Location Branch 2 Courtroom, 2nd Floor, Oneida County Courthouse 1 South Oneida P.O. Box 400 Rhineland, WI 54501		Date 12-21-2018	Time 01:15 pm
Defendant's Signature	Date 12-18-2018	Defendant's Address 508 19th Avenue, W F West Fargo, ND 58078	Telephone Number 701-353-9524
Surety's Signature	Date 12-18-2018	Surety's Address	Telephone Number

Distribution:

Mary M Sowinski Ms.  
Blake C. Fitzgerald

I have furnished the defendant with a copy of this document.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

December 18, 2018  
Date

\_\_\_\_\_  
Date

Exhibit # 4

**FILED**  
**12-27-2019**  
**ONEIDA COUNTY**  
**CLERK OF CIRCUIT**  
**COURT**  
**2018CF000303**

STATE OF WISCONSIN                      CIRCUIT COURT                      ONIEDA COUNTY

STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 18CF303

Blake Fitzgerald,

Defendant.

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**DEFENDANT'S DEMAND FOR A SPEEDY TRIAL**

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Pursuant to Wis. Stat. § 971.10, Blake Fitzgerald, through his attorney Travis Slattery of Travis Slattery Law Office, demands a speedy trial in this matter.

DATED this 26<sup>h</sup> day of December, 2019 at Stevens Point, Wisconsin.

Respectfully submitted,

Electronically Signed By:  
\*\*\*\* Travis Slattery\*\*\*\*

---

Attorney Travis Slattery  
State Bar No. 1074981

Attorney Travis Slattery  
PO Box 955  
Stevens Point, WI 54481  
[travisslatterylawoffice@gmail.com](mailto:travisslatterylawoffice@gmail.com)  
(715) 600 1934

Exhibit #5

FILED  
03-10-2020  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

STATE OF WISCONSIN                      CIRCUIT COURT                      ONEIDA COUNTY

STATE OF WISCONSIN,

PLAINTIFF

VS

MOTION TO MODIFY BOND

18CF303, 19CF180

BLAKE FITZGERALD

---

PLEASE TAKE NOTICE THAT The Defendant, by his attorney Albert Moustakis will move the court to modify Mr. Fitzgerald bond. The request for modification is made because the bond set at this time cannot be posted by Mr. Fitzgerald.

Dated this 10<sup>th</sup> day of March, 2020.

Albert Moustakis  
Albert Moustakis  
Bar # 1018354  
P. O. Box 1934  
Eagle River, WI 54521

Exhibit #6

STATE OF WISCONSIN  
IN SUPREME COURT

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State of Wisconsin,

Plaintiff,

vs.

20XX538

Blake Fitzgerald

Defendant.

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EMERGENCY MOTION FOR EXCEPTION TO IN RE THE MATTER OF JURY TRIALS  
DURING THE COVID-19 PANDEMIC

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PLEASE TAKE NOTICE THAT the Defendant, by his attorney Albert Moustakis, files this motion with the Supreme Court of Wisconsin for an exception to Supreme Court Order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, dated March 22, 2020.

i. Introduction

“In all criminal prosecutions, the accused shall enjoy the right to a speedy trial[.]”<sup>1</sup> By order of the Supreme Court of Wisconsin, the Defendant has been denied this constitutional right. While preserving his right to challenge the Supreme Court’s assertion of this power, the Defendant asks the following:

- (1) For an exception to the Supreme Court of Wisconsin order filed March 22, 2020;  
or in the alternative
- (2) An order that tolling of Defendant’s speedy trial demand immediately cease on  
May 23, 2020.

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<sup>1</sup> U.S. Const. amend. XI, § 1

**ii. Factual Allegations**

In further support of this motion, the Defendant states the following:

1. On October 17, 2018, a felony complaint was filed in the State of Wisconsin Circuit Court of Oneida County, case number 2018-CF-303. This complaint charged the Defendant with one count of Interference w/ Custody-After Court Order. The complaint alleged that on September 4, 2018, in the City of Rhinelander, Oneida County, Wisconsin, the Defendant as a parent, did, after issuance of a temporary or final order specifying joint legal custody rights and periods of physical placement, withhold a child, from the other parent in violation of the order, contrary to sec. 948.31(3)(c) Wis. Stats. This violation is a Class F Felony, and upon conviction may be fined not more than Twenty Five Thousand Dollars (\$25,000), or imprisoned not more than twelve (12) years and six (6) months, or both. (A copy of which is attached as Exhibit #1 and incorporated herein by reference).
2. On October 17, 2018, an Extradition Forecast was also filed in Oneida County setting a cash bond in the amount of \$20,000.00. (A copy of which is attached as Exhibit #2 and incorporated herein by reference).
3. On October 18, 2018, an arrest warrant was issued and cash bond set by the Oneida County Circuit court in the amount of \$7,500.00. (Copies of the arrest warrant and bond are attached as Exhibits #3 & #4, respectively, and incorporated herein by reference).
4. The Defendant has been in custody in this matter, unable to post bond since December 2019.
5. On December 27, 2019, the defendant filed a Demand for a Speedy Trial. (A copy of which is attached as Exhibit #5 and incorporated herein by reference).
6. The court had previously set the matter for trial on March 31<sup>st</sup>, 2020. That is approximately 95 days after the Defendant filed his request for a speedy trial.

7. On March 10<sup>th</sup>, 2020, the Defendant, filed a motion to modify bond. (A copy of which is attached as Exhibit #6 and incorporated herein by reference).
8. Defendant's current custody situation during the COVID-19 pandemic has not only increased his risk of contracting COVID-19, it is also hampered counsel's ability to effectively assist in his defense.
9. Defendant was put in isolation for 14 days because of jail staff placing him in the booking area which is considered a hot spot in the jail. For the 14 days following his exposure to the hot spot, he was only able to reach his attorney during a two-hour period (March 25, 2020 Status / Pre-Trial Conference Tr. at 23).
10. As a result of Oneida County jail policy in response to COVID-19, legal counsel and investigators must have contact with clients by telephone only (March 25, 2020 Status / Pre-Trial Conference Tr. at 16-17).
11. The Supreme Court of Wisconsin order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, fails to set a date in which tolling for speedy trial demands ends.

**iii. Exception to the March 22, 2020 Order**

Defendant has been denied his right to a speedy trial guaranteed by the Sixth Amendment to the United States Constitution and Art. I, § 7, of the Wisconsin Constitution. Whether a defendant has been denied the right to a speedy trial is a constitutional question that the Supreme Court reviews de novo.<sup>2</sup> The trial court's underlying findings of historical fact, however, will be upheld unless they are clearly erroneous.<sup>3</sup>

Defendant asks that this Court make an exception to its March 22, 2020 order. In considering whether to make the exception, Defendant asks the Court to

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<sup>2</sup> *State v. Ziegenhagen*, 73 Wis. 2d 656, 664, 245 N.W.2d 656 (1976).

<sup>3</sup> Wis. Stat. § 805.17(2); *State v. Clappes*, 136 Wis. 2d 222, 235, 401 N.W.2d 759 (1987).

consider the following: Under both the United States and Wisconsin Constitutions, to determine whether a defendant has been denied the right to a speedy trial, a court must consider: (1) the length of the delay; (2) the reason for the delay, i.e., whether the government or the defendant is more to blame for the delay; (3) whether the defendant asserted the right to a speedy trial; and (4) whether the delay resulted in any prejudice to the defendant.<sup>4</sup>

*a. Length of Delay and Reason for Delay*

First, a court must determine that the length of the delay is presumptively prejudicial before inquiry can be made into the remaining three factors.<sup>5</sup> If the length of the delay is presumptively prejudicial and the court determines that, under the totality of the circumstances, the defendant has been denied the right to a speedy trial, the charges must be dismissed. See *Barker*, 407 U.S. at 522.

On March 26, 2020, ninety (90) days had passed since the Defendant filed his speedy trial demand. The circuit court scheduled the initial trial date for March 31, 2020. Currently, the trial has been rescheduled for June 02, 2020, at which time, 158 days will have passed since Defendant's speedy trial demand.

*b. Prejudice to Defendant*

Defendant reasserts that the Wisconsin Supreme Court does not have the power to indefinitely suspend his Sixth Amendment right to a speedy trial. This is not a power that was vested in the Court under Article VII, subsection 3 of the Wisconsin Constitution. Defendant concurs with the dissenting opinion of Honorable Rebecca Grassl Bradley and incorporates her argument herein by reference. In that

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<sup>4</sup> *Doggett v. United States*, 505 U.S. 647, 651 (1992); *Barker v. Wingo*, 407 U.S. 514, 530 (1972); *Day v. State*, 61 Wis. 2d 236, 244, 212 N.W.2d 489 (1973).

<sup>5</sup> See *Doggett*, 505 U.S. at 651-52 (holding "[T]o trigger a speedy trial analysis, an accused must allege that the interval between accusation and trial has crossed the threshold dividing ordinary from 'presumptively prejudicial' delay."); *Hatcher v. State*, 83 Wis. 2d 559, 566-67, 266 N.W.2d 320 (1978)).

sense, the prejudice to the Defendant in this case is extreme—he is being denied a constitutional right.

The Defendant currently stands as an innocent man in a non-violent interference of custody case and he has been deprived of his freedom because of the excessive nature of the cash bonds. He has entered his plea of not guilty and demanded his speedy trial. He asserts that the Wisconsin Supreme Court could have disseminated a less punitive order that would have protected his constitutionally guaranteed right as well as the public at large. For instance, because schools are closed, it would have been easy to use an auditorium and effectively implement safety protocols for the public and still effectively been able to protect Mr. Fitzgerald's right to a speedy trial. This is only one less intrusive way of protecting the Defendant's right. It appears to the Defendant that the court failed to take a less intrusive path, instead just blanketing the entire state which has added to the overall negative impact of COVID-19.

The Defendant is asking this Court to make an exception to its order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, so that he can exercise is Constitutional and statutory right to a speedy trial.

**iv. Tolling Cease on May 23, 2020**

In the alternative, if this Court does not grant Defendant's motion for an exception to its order, the Defendant respectfully requests that this Court make a clarifying order that tolling for speedy trial demands cease on May 23, 2020.

Based on the Wisconsin Supreme Court order, *In re the Matter of Jury Trials During the COVID-19 Pandemic*, there is no calculable end to the ongoing delay.

The way the Wisconsin Supreme Court has entered its order regarding COVID-19 is inappropriate because it fails to indicate a time when his right to the speedy trial resumes. The United States District Court for the Eastern District of Wisconsin issued a similar order to, *In re the Matter of Jury Trials During the COVID-19*

*Pandemic*. A major difference between the two orders is that order from the Eastern District of Wisconsin set timelines for tolling:

In criminal cases, the court finds that the period of any continuance entered from the date of this order through May 1, 2020 as a result of this order shall be EXCLUDED under the Speedy Trial Act, 18 U.S.C. § 3161(h)(7)(A), because the court finds that the ends of justice served by taking that action outweigh the interests of the parties and the public in a speedy trial, given the need to protect the health and safety of defendants, their counsel, prosecutors, court staff and the public by reducing the number of in person hearings to the fullest extent possible.<sup>6</sup>

This guarantees a date in which the time to be calculated for a speedy trial demand continues to be counted, thus minimizing the prejudice to a defendant. The United States District Court for the Western District of Wisconsin made a similar order:

Accordingly, the court orders that the period of any continuance entered from March 18, 2020, through May 18, 2020 shall be excluded in the calculation of Speedy Trial Act time limits, as provided in 18 U.S.C. §3161(h)(7)(A).<sup>7</sup>

Again, this order guarantees a date in which the time to be calculated in a speedy trial demand continues to be counted.

Unlike the above two examples, the Supreme Court of Wisconsin's order in *In re the Matter of Jury Trials During the COVID-19 Pandemic*, fails to set a date in which the time to be calculated in a speedy trial demand continues to be counted.

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<sup>6</sup> United States District Court Eastern District of Wisconsin, General Order No. 20-2.

<sup>7</sup> United States District Court for the Western District of Wisconsin, Admin. Order 362.

Rather, it allows the presiding circuit court judge to simply set a date "after May 22, 2020," without any guidance on how this affects the tolling of the speedy trial demand.

Defendant respectfully asks that this Court find that tolling of Defendant's speedy trial demand cease on May 23, 2020 and the calculable time for the demand resume.

**v. Conclusion**

Defendant respectfully asks this Court for an exception to the Supreme Court of Wisconsin order filed March 22, 2020. In the alternative, Defendant respectfully requests an order that tolling of Defendant's speedy trial demand immediately cease on May 23, 2020 and the calculable time for the demand resume.

Dated this \_\_\_\_\_ day of April 2020.

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Albert Moustakis  
Bar # 1018354  
P.O. Box 1934  
Eagle River, WI 54521

**Moustakis & Mettelka, LLC**  
*Attorneys for Defendant*  
219 S. Main Street  
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Eagle River, WI 54521



<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhinelander, WI 54601	CASE# 2018-00007024
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**SUPPLEMENTAL NARRATIVE**

On Friday, October 14, 2018 I spoke with Assistant District Attorney Mary SOWINSKI regarding a child custody issue involving Kylie Y. SCHNEIDER (DOB 06-28-84) and Blake C. FITZGERALD (DOB 07-23-83). I had been aware at that point that FITZGERALD had physical custody of two minor children, Grayson J. FITZGERALD (DOB 04-11-14) and Mason B. FITZGERALD (DOB 07-11-11) in North Dakota and in violation of an existing family court order out of North Dakota. SCHNEIDER resides at 309 N. Pelham St. in the City of Rhinelander.

The information I had at that time was that there was a scheduled child custody exchange at the beginning of September in Minnesota which did not occur. At that time, Blake allegedly returned to North Dakota with the children after disagreeing with the transportation arrangements. SCHNEIDER had been making attempts to get her children home since that time. SCHNEIDER had been in contact with Detective Craig DANIELSON from the West Fargo, ND Police Department. DANIELSON had subsequently been communicating with SOWINSKI regarding the matter. SOWINSKI stated she was actively trying to have FITZGERALD charged with Interference with the custody of a child, but needed a referral with some information regarding the matter. I informed SOWINSKI that I would conduct an investigation into the matter and refer my findings to her.

I contacted SCHNEIDER to come to the police department with her documentation to initiate a formal complaint and investigation. SCHNEIDER complied and came to the police department. SCHNEIDER stated she had been long having problems with her ex-husband, Blake FITZGERALD and had a current restraining order against him. I first asked to review the current court order out of North Dakota regarding child custody. SCHNEIDER provided me with State of North Dakota, Cass County Court File Number 09-2016-DM-01322 based upon decisions reached on August 29, and August 30 in that jurisdiction. The document clearly indicates SCHNEIDER to have, "primary residential responsibility of the children" in paragraphs 13 and 28.

The order outlines a holiday visitation schedule as well as a summer visitation schedule indicating that Blake would have three weeks of Summer visitation time each month of June, July, and August with the weeks being separated by one week for SCHNEIDER to have vacation time with the kids.

SCHNEIDER indicated that the exchanges were going well over the Summer and she frequently used a friend, identified as Daniel MULLINS to transport the children to the scheduled meeting point at Bloomington Police Department in Minnesota and back. SCHNEIDER also mentioned that earlier in the year, in approximately April, she was arrested in Minnesota for an operating while intoxicated offense where her children were not with her. As a result of that, she may have had an arrest warrant issued in Minnesota. SCHNEIDER further elaborated that she did not have a reliable vehicle to continually make the trip to Minnesota.

SCHNEIDER stated Blake had a period of visitation from June 8 until the 29<sup>th</sup>, from July 6 until July 29, and then starting on August 5 was the August visitation period with the children set to return home for the start of the school year. SCHNEIDER stated MULLINS transported the children during each of the exchanges with no protest from Blake. SCHNEIDER stated she elected to allow Blake to keep the children through Labor Day as he was scheduled to have the children over that holiday weekend and it would prevent an extra trip back and forth from Wisconsin and North Dakota.

SCHNEIDER showed me a series of text messages indicating she was making plans for the child exchange on Labor Day and before the first day of school. On Saturday, September 1, 2018 SCHNEIDER attempted to arrange for Sean SMITH, the father of her other child to bring the children back to Rhinelander as he was in Minnesota. Photos posted to Facebook on September 2 indicated that Blake did meet with Sean at the Mall of America however choose not to allow the boys leave with SMITH. Blake message SCHNEIDER that he would only meet with her and had a right to change his feelings. It was presumed at this point that Blake learned of SCHNEIDERs warrant and was attempting to get her to Minnesota to have her arrested. Blake stated he would meet SCHNEIDER at the

REPORTED BY HELKE, KURT A 356	DATE 10/12/2018	REVIEWED BY HELKE, KURT A 10/16/2018
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<b>RHINELANDER POLICE DEPARTMENT</b> OFFENSE FIELD REPORT 201 N. Brown Street Rhineland, WI 54601	CASE# 2018-00007024
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**SUPPLEMENTAL NARRATIVE CONTINUATION**

Bloomington Police Department on Monday at 4:00 P.M. SCHNEIDER then messaged Blake indicating that Dan MULLINS would again be there for the child exchange. Blake indicated that this would no longer be acceptable. SCHNEIDER indicated she did not have a reliable vehicle and made continued efforts to allow for this exchange to happen.

On Monday, September 3 at approximately 4:00 P.M. Blake messaged SCHNEIDER indicating he was at the Bloomington Police Department and would be leaving unless she would be there shortly. SCHNEIDER countered that MULLINS would be there at 4:30 P.M. due to traffic and BLAKE elected to return to North Dakota with the children. Blake indicated it was now SCHNEIDER'S responsibility to get the boys. Blake further texted, "You can come to Fargo".

SCHNEIDER stated she had been filing documents through North Dakota and attempting to work with the West Fargo Police Department to get her children. SCHNEIDER stated she was hesitant to go to North Dakota because the restraining order and the police sending a message that they would not assist her in getting her children. According to the West Fargo officers, all of the child custody issues were civil in nature and they could not assist.

I did a North Dakota public records search to see what action was being taken on the family court case. There was significant activity on the case starting on September 5 including a motion to compel compliance with existing order, a motion for Ex Parte Emergency relief and an order to deny this motion. It appears that the court has taken no immediate action regarding the placement of the children aside from establishing a hearing date of November 19<sup>th</sup>. In the meantime, Blake was keeping custody of the children in violation of the order and adversely affecting the children's ability to begin school in Wisconsin.

I made contact with Detective DANIELSON who had been working on the case as well. DANIELSON again explained that his official actions were limited as he was not permitted to be involved in any child custody matter, however could speak with Blake under an agency assist. DANIELSON later told me that he had a cordial discussion with Blake regarding the custody issues and the potential for criminal charges.

Blake then called me at 5:00 P.M. and I spoke with him in a 52 minute phone call allowing him to voice his concerns and frustrations. Initially Blake accused me of having a personal relationship with SCHNEIDER and made several accusations regarding SCHNEIDER abusing alcohol and drugs, as well as her fabricating injuries sustained in a domestic violence incident from the past making her unfit as a parent. Blake stated he had Grayson and Mason enrolled at school in Fargo and had them playing hockey. Blake stated he would comply with the court order as advised by his attorney. Blake further stated that we would, "rip the boys out of school" and not allow them to say goodbye to their friends. I reminded Blake that the court order that I reviewed indicated the children were to attend school in Wisconsin while in the custody of their mother. I asked Blake what would happen if SCHNEIDER were to drive to North Dakota to get the boys and he said, "I would have to abide by the court order".

I again spoke with SCHNEIDER who said she was prepared to leave immediately to go to Fargo to get her children. SCHNEIDER began making plans with her mother to drive to Fargo, North Dakota. Based upon some provisions I read in the court order and what I found to be objectively reasonable, I felt that a good time for the exchange of the children would be 4:00 P.M. on Sunday October 14<sup>th</sup> at the West Fargo Police Department. This would be the jurisdiction where Blake was residing with the children. SCHNEIDER stated she would make it work and get to Fargo at that time.

Blake called me back on Saturday, October 13 at 1:27 P.M. and I again spoke with him at length and allowed him to vent his frustrations on the matter. I made a concerted effort to convince Blake that adherence to the existing court order would be in his best interests. Blake again started the conversation being confrontational and accusing me of

REPORTING OFFICER HELKE, KURT A 356	DATE 10/12/2018	REVIEWED BY HELKE, KURT A 10/16/2018
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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> <small>201 N. Brown Street Rhinelander, WI 54501</small>	CASE# 2018-00007024
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<b>SUPPLEMENTAL NARRATIVE CONTINUATION</b>
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having a personal relationship with SCHNEIDER. At length, I discussed the applicable law regarding interference with the custody of a child as well as the common sense aspect to follow a court order authored in North Dakota that he was clearly in violation of by keeping the kids. I informed Blake that SCHNEIDER was intending on being in Fargo on Sunday at 4:00 P.M. Blake ended the conversation cordially and agreeing to abide by the court order.

On Sunday, October 14 I sent a text message to Blake clarifying that SCHNEIDER was coming to Fargo and would be at the West Fargo Police Department at 4:00 P.M. and that his cooperation would be appreciated and would help him potentially avoid criminal charges. Blake responded that he would meet at the Moorhead Police Department. Checking the map, I saw that the Moorhead Police Department is just across the border into Minnesota and was clearly a ploy to get SCHNEIDER in a position to be arrested on a warrant.

I contacted SCHNEIDER again and told her that if it was possible to take care of any legal issues she had in Minnesota to remove the potential of it being used against her. SCHNEIDER stated she contacted an agency in Minnesota and was advised she did not have a warrant. SCHNEIDER also stated she contacted the Clay County Sheriff's Department (the jurisdiction where Blake wanted to meet) and a deputy informed her that she was not wanted. I contacted the Anoka County Sheriff's Department in Minnesota and was advised that SCHNEIDER did not have a warrant. I then contacted the Clay County Sheriff's Department and they did a statewide search which indicated SCHNEIDER had a warrant in Washington County. I then contacted the Washington County Sheriff's Department and learned that SCHNEIDER did have a warrant through that county in the amount of \$3000.00. I was informed that SCHNEIDER would need to post the bond and be scheduled for a new court date. I relayed this information to SCHNEIDER to assist her in taking care of the matter.

To mediate the potential meeting and child exchange, I again messaged Blake and informed him that SCHNEIDER would be there at 4:00 P.M. and that he should return the children in accordance with the court order. Blake then responded that he would need to bring the kids to Minneapolis to follow the order. I highlighted to Blake that he told SCHNEIDER to come to Fargo and that withholding the children after she drove from Wisconsin to North Dakota to get them is a clear violation of the order and criminal conduct.

SCHNEIDER arrived at the West Fargo Police Department at 3:50 P.M. and waited there for an hour while making contact with the West Fargo Police. SCHNEIDER messaged Blake that she was there for the kids. According to Detective DANIELSON, officers went to Blake's residence and no one answered the door. According to SCHNEIDER, officers told her that the windows were covered with blankets. SCHNEIDER got a hotel in the Fargo area and stated she would not leave until she had her kids.

On Monday, October 15, 2018 SCHNEIDER made attempts to locate the schools her children were allegedly attending so that she could retrieve them. SCHNEIDER learned that Blake withheld the children from school, apparently telling the school officials that they were, "out of town". SCHNEIDER also went to the Cass County Courthouse, spoke with the state's attorney, and attempted to get an order from the judge directing the police to take action. Blake also sent Kylie a text message asking her to allow him to keep the children and that taking them away would be, "ripping them out of school" and away from hockey and their friends. It appears as though Blake is attempting to establish the children in Fargo as a tactic to assist in his custody fight as well as involving the children in the dispute. SCHNEIDER stated that Blake allowed her a phone call with the children that she recorded. SCHNEIDER stated Blake is heard telling her son to tell her to stop having the police come to his house as well as other concerning things.

At this time, Blake has had custody of the two minor children for more than six weeks beyond the court appointed custody change to the parent that has been awarded primary placement. This has affected the children's ability to establish in the Rhinelander School District and has kept the children away from their mother for an extended period

<small>REPORTING OFFICER</small> HELKE, KURT A 356	<small>DATE</small> 10/12/2018	<small>REVIEWED BY</small> HELKE, KURT A 10/16/2018
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<b>RHINELANDER POLICE DEPARTMENT</b> <b>OFFENSE FIELD REPORT</b> 201 N. Brown Street Rhineland, WI 54601	CASE 2018-00007024
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**SUPPLEMENTAL NARRATIVE CONTINUATION**

of time. Based upon the totality of the circumstances and Blake choosing not to allow Kylie to have the children when given several opportunities to do so, I am forwarding this case to the Oneida County District Attorney for the charges of interference with the custody of a child.

REPORTING OFFICER <b>HELKE, KURT A 356</b>	DATE <b>10/12/2018</b>	REVIEWED BY <b>HELKE, KURT A 10/16/2018</b>
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Case 2018CF000303 Document 1  
STATE OF WISCONSIN - VS - Blake C. Fitzgerald

Filed 10-17-2018

Page 6 of 6

Subscribed and sworn to before me on  
10/17/18

Electronically Signed By:  
Mary M. Sowinski  
Assistant District Attorney  
State Bar #: 1028147

Electronically Signed By:  
Deputy Sara Wolosek  
Complainant

FILED  
10-17-2018  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

**EXTRADITION FORECAST**

**NAME: Blake C. Fitzgerald**

**CASE NO.:**

**CHARGES: Interfere w/ Custody-After Custody Order 948.31(3)(c)  
Class F Felony**

**BOND AMOUNT: \$20,000**

(If bond amount is posted, please give defendant a court date of the following Monday at 1:30 p.m. in Oneida County Circuit Court.)

- WILL NOT EXTRADITE
- EXTRADITE ADJACENT STATES ONLY
- EXTRADITE WITHIN CONTINENTAL UNITED STATES
- WILL EXTRADITE

Date Signed: 10/17/18  
Electronically Signed By:  
Mary M. Sowinski  
Assistant District Attorney  
State Bar #: 1028147

Exhibit #2

FILED  
10-19-2018  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

DATE SIGNED: October 19, 2018

Electronically signed by Michael H. Bloom  
Circuit Court Judge

Exhibit # 3

**STATE OF WISCONSIN                      CIRCUIT COURT                      ONEIDA COUNTY**

STATE OF WISCONSIN  
   Plaintiff,

vs.

BLAKE C. FITZGERALD  
508 19th Avenue, W F  
West Fargo, ND 58078  
DOB: 07/23/1983  
   Defendant.

DA Case No.: 2018ON001422  
Assigned DA/ADA: Mary M. Sowinski  
Agency Case No.: 2018-00007024  
Court Case No.:  
ATN:

**WARRANT**

*For Official Use*

**THE STATE OF WISCONSIN TO ANY LAW ENFORCEMENT OFFICER:**

A complaint, a copy of which is attached, having been made before me accusing the defendant of committing the crime(s) of:

<u>THE CRIME(S) OF:</u>	<u>VIOLATION DATE:</u>	<u>WIS. STAT(S):</u>
Interfere w/ Custody-After Custody Order	09/04/2018	948.31(3)(c)

And having found that probable cause exists that such violation was committed by the defendant, you are, therefore, commanded to arrest the defendant and bring him before me, or if I am not available, before some other judge of this county.

STATE OF WISCONSIN CIRCUIT COURT ONEIDA COUNTY

Amended

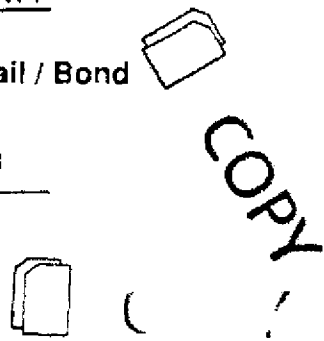
State of Wisconsin vs. Blake C. Fitzgerald

Bail / Bond

Date of Birth: 07-23-1983

Case No.: 2018CF000303

Citation No(s): \_\_\_\_\_



A. Monetary Conditions of Release

CASH BAIL: Cash bail of \$7500.00 shall be deposited. Date deposited \_\_\_\_\_

*If the defendant does not comply with the terms of this bail/bond, the bail/bond will be forfeited and the defendant and/or surety may be ordered to pay the amount of the bond.*

*Any restitution, recompense, fines, forfeitures or costs imposed against the defendant shall be paid out of the cash bail/bond without further notice.*

B. Additional Conditions of Release

- Defendant shall appear on all court dates.
- Defendant shall give written notice to the Clerk of this Court within 48 hours of any change of address or telephone number.
- Defendant shall not commit any crime.
- Defendant shall neither directly nor indirectly threaten, harass, intimidate or otherwise interfere with victims or witnesses in this action.
- Other:

Must strictly comply with any injunction in place regarding any persons. Must strictly comply with any family court order regarding legal custody/placement of minor children.

See attached.

Federal law provides penalties for, and you may be prohibited from possessing, transporting, shipping, receiving or purchasing a firearm, including, but not limited to, a rifle, shotgun, pistol, revolver, or ammunition, pursuant to 18 U.S.C. 922(g)(8)-(9).

The sheriff shall detain the defendant in custody until the defendant has signed the bond, complied with the monetary conditions of release, or is otherwise discharged.

<b>I have received a copy of this bail/bond and I agree to its terms. I understand that the court date(s) is/are:</b>			
Circuit Court Location Branch 2 Courtroom, 2nd Floor, Oneida County Courthouse 1 South Oneida P.O. Box 400 Rhinelander, WI 54501		Date 12-21-2018	Time 01:15 pm
Defendant's Signature	Date 12-18-2018	Defendant's Address 508 19th Avenue, W F West Fargo, ND 58078	Telephone Number 701-353-9524
Surety's Signature	Date 12-18-2018	Surety's Address	Telephone Number

Distribution:  
Mary M Sowinski Ms.  
Blake C. Fitzgerald

I have furnished the defendant with a copy of this document.

Signature \_\_\_\_\_

Title \_\_\_\_\_

December 18, 2018

Date \_\_\_\_\_

Exhibit # 4

FILED  
12-27-2019  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

STATE OF WISCONSIN                      CIRCUIT COURT                      ONEIDA COUNTY

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STATE OF WISCONSIN,

Plaintiff,

vs.

Case No. 18CF303

Blake Fitzgerald,

Defendant.

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**DEFENDANT'S DEMAND FOR A SPEEDY TRIAL**

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Pursuant to Wis. Stat. § 971.10, Blake Fitzgerald, through his attorney Travis Slattery of Travis Slattery Law Office, demands a speedy trial in this matter.

DATED this 26<sup>h</sup> day of December, 2019 at Stevens Point, Wisconsin.

Respectfully submitted,

Electronically Signed By:  
\*\*\*\* Travis Slattery\*\*\*\*

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Attorney Travis Slattery  
State Bar No. 1074981

Attorney Travis Slattery  
PO Box 955  
Stevens Point, WI 54481  
[travisslatterylawoffice@gmail.com](mailto:travisslatterylawoffice@gmail.com)  
(715) 600 1934

Exhibit #5

FILED  
03-10-2020  
ONEIDA COUNTY  
CLERK OF CIRCUIT  
COURT  
2018CF000303

STATE OF WISCONSIN                      CIRCUIT COURT                      ONEIDA COUNTY

STATE OF WISCONSIN,

PLAINTIFF

VS

MOTION TO MODIFY BOND

18CF303, 19CF180

BLAKE FITZGERALD

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PLEASE TAKE NOTICE THAT The Defendant, by his attorney Albert Moustakis will move the court to modify Mr. Fitzgerald bond. The request for modification is made because the bond set at this time cannot be posted by Mr. Fitzgerald.

Dated this 10<sup>th</sup> day of March, 2020.

*Albert Moustakis*

Albert Moustakis  
Bar # 1018354  
P. O. Box 1934  
Eagle River, WI 54521

Exhibit #6