

IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR  
ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA,

v.

VERGILIO AGUILAR MENDEZ,

Defendant.

CASE NO.: 2023-00781CF

JUDGE R. LEE SMITH

**MOTION TO DISMISS COUNT ONE FOR LACK OF LEGAL CAUSATION**

COMES NOW, the Defendant, Vergilio Aguilar Mendez, and moves this Honorable Court through his undersigned counsel to Dismiss Count one of the Information Pursuant to Fla. R. Crim. P. 3.190(c)(4), the Florida Constitution, and the Due Process clauses of the United States and Florida Constitutions, as grounds therefore, states that there are no material disputed facts and that the undisputed facts do not establish a prima facie case of guilt against defendant. The facts on which this motion is based are:

**FACTS**

1. As presented in the State discovery the following facts are derived from the various body camera recordings, and written reports by Saint Johns County Sheriff Officers.
2. On May 19, 2023, Mr. Aguilar Mendez resided at the Super 8 by Wyndham, St. Augustine, located at 2550 State Road 16, Saint Augustine, Florida 32092.
3. In the evening of May 19, 2023, Mr. Aguilar Mendez stood alone on the sidewalk in front of the Super 8 hotel holding his cell phone. See Sgt. Kunovich Body Camera stamp date 2023-05-19 time 21:04.
4. Sgt. Kunovich approached him in a marked unit wearing a St. John's County Sheriff's uniform. See Sgt. Kunovich Body Camera stamp date 2023-05-19 time 21:04.
5. Within a minute Sgt. Kunovich called in a single Hispanic Male, Sgt. Kunovich placed his hands on Mr. Aguilar Mendez. See Sgt. Kunovich Body Camera stamp date 2023-05-19 time 21:06:07.
6. Within seconds of Sgt. Kunovich placing hands on Aguilar Mendez, additional officers with the St. Johns County Sheriff's Office arrived on scene, in following order Deputies Gavin

- Higgins ( 21:06); George Montgomery (21:09), Matheus Alves (21:10), followed by Brian Armenta, and Tyler Harrell. See Sgt. Kunovich Body Camera date 2023-05-19.
7. While on the ground and being restrained by Deputy Higgins, Sgt. Kunovich deployed the taser six times against Mr. Aguilar Mendez. See Sgt. Kunovich Body Camera at time stamps (21:07:47 leg); (attempt 21:08:16); (twice at 21:08:21 leg and ground); (21:09:04 back ); and (21:09:07 back).
  8. With the participation of Deputy Higgins and Deputy Montgomery, Mr. Aguilar Mendez was handcuffed, face down with his hands behind his back. See Sgt. Kunovich Body Camera date 2023-05-19.
  9. After being handcuffed Sgt. Kunovich moves away from Aguilar Mendez. See Sgt. Kunovich Body Camera date 2023-05-19 time 21:11:44.
  10. Moreover, after Mr. Aguilar Mendez was handcuffed, Sgt. Kunovich had no further direct contact with Mr. Aguilar Mendez.
  11. A common pocket-knife was seized from Mr. Aguilar Mendez; Sgt. Kunovich was not directly involved. See Sgt. Kunovich Body Camera date 2023-05-19 time 21:21:31.
  12. In handcuffs, Mr. Aguilar Mendez was placed in the back of a police car. See Sgt. Kunovich Body Camera date 2023-05-19 time 21:13:10.
  13. After the arrest of Mr. Aguilar Mendez, Sgt. Kunovich collapsed. See Report by Deputy Smith.
  14. At the command of St. Johns County Deputy Smith, Sgt. Kunovich was given at least two doses of Narcan. See Attached Report by Deputy Smith.
  15. Sgt. Kunovich was taken to Flagler hospital where he died of cardiac dysrhythmia (heart attack). See Report by Deputy Smith.
  16. The Chief Medical Examiner, Dr. W. Sneed concluded Officer Kunovich's cause of death was a cardiac dysrhythmia (heart attack) due to atherosclerotic and hypertensive cardiovascular disease; and manner of death was natural. See Medical Examiner Report.
  17. Officer Higgins in deposition and under oath expressed he did not foresee the events of the arrest resulting in Sgt. Kunovich's heart attack. See Higgins Deposition page 55 line 6 to 24.
  18. Officer Montgomery in deposition and under oath conveyed he did not foresee the events of the arrest resulting in Sgt. Kunovich's heart attack. See Higgins Deposition page 66 line 24 to 25 and page 67 line 1 to 10.

19. On July 25, 2023, the prosecution filed an information against Mr. Aguilar Mendez for one count Aggravated Manslaughter of an Officer, first degree felony; and one count of Resisting an Officer with Violence, a third-degree felony.

## **ARGUMENT**

In this case, an Sgt. Kunovich's death by natural causes (heart attack) after an arrest was not a reasonably foreseeable consequence of any action taken by Mr. Aguilar Mendez; therefore the manslaughter charge against him must be dismissed due to lack of legal causation.

In Penton v State, 548 So.2d 273 (Fla. 1<sup>st</sup> DCA 1989), the Court dismissed a manslaughter conviction due to the lack of legal causation. The facts in Penton are as follows: Mr. Penton and a codefendant burglarized the garage of Michael D. Scott (decedent), stealing two bicycles. Scott, who was alerted to the burglary by barking dogs, and his son's shouts that someone was stealing his bike, ran from the house, chasing Mr. Penton, who was seen riding away on one of the two bikes. After chasing Mr. Penton approximately 25 to 30 feet, Mr. Scott fell down in the middle of the street. Attempts to revive him failed and he was dead at the scene. Mr. Penton was thereafter charged with first degree premeditated murder or felony murder, burglary and theft. The Penton Court found the evidence on the issue of causation legally insufficient to convict appellant of the offense of manslaughter. Here Sgt. Kunovich did not engage in a foot chase; sadly, he died of natural causes. Likewise, the body camera recording demonstrates the actions of the officers were the only violence present during the arrest of Aguilar Mendez. There was no action by Aguilar Mendez to satisfy the element of causation for the death of Sgt. Kunovich.

In Todd v. State, 594 So.2d 802 (Fla. 5<sup>th</sup> DCA 1992) the Court dismissed a charge of manslaughter based on a lack of legal causation. Mr. Todd entered a church and stole \$110 from the collection plate and then fled. The theft was witnessed by several members of the congregation, one of whom, Richard Voegltin, took off in his car in pursuit. During the pursuit, Mr. Voegltin, who had a preexisting heart condition, began to experience cardiac dysrhythmia. He lost control of his vehicle, collided with a tree at low speed and died of cardiac arrest. The Todd Court reasoned that the criminal act of "the petty theft did not encompass the kind of direct, foreseeable risk of physical

harm that would support a conviction of manslaughter.” Todd v. State, 594 So.2d 802, 806 (Fla. 5<sup>th</sup> DCA 1992).

The actions taken by Mr. Aguilar Mendez are even more attenuated than the cases cited above. Here, as in Penton and Todd, there is no “legal causation” connecting any act committed by Mr. Aguilar Mendez and the death of Sgt Kunovich by natural causes. Mr. Aguilar Mendez cannot be convicted of aggravated manslaughter through culpable negligence for the death of an officer by natural causes (heart attack).

All of the facts set forth in this motion are derived from the State’s discovery; hence the State should agree that there are no facts in dispute. On December 29, 2023 this Court adjudged Mr. Aguilar Mendez incompetent and ordered him to participate in competency training. It is unknown when Mr. Aguilar Mendez will benefit from competency training, such that the delay for him to reach competency before this court is unknown. As he is legally incompetent, it is not possible for Aguilar Mendez to swear to this pleading. Florida courts have long held that the purpose of a defendant swearing to a motion to dismiss under Florida Rule of Criminal Procedure 3.190(c)(4); is to subject an affiant to a penalty of perjury. The Florida Supreme Court held that “the purpose of the oath is the same: to prevent the filing of motions based on falsehoods or unverified allegations.” State v. Rodriguez, 523 So.2d 1141(1988). Perjury could not be at issue here, because there are no facts in dispute as the facts presented are from on the state’s discovery, and because Mr. Aguilar Mendez is incompetent. Similar to a motion for Judgment of Acquittal, this motion to dismiss is presented as a matter of law that the prosecution’s case is wholly insufficient.

State v. Betancourt, 616 So.2d 82, 83 (Fla. 3d DCA 1993), explains the rule for a sworn to motion to dismiss, “the purpose of the rule is to subject those having personal knowledge of the facts recited to the penalties of perjury. This objective is met even if the affiant is merely a witness to the incident rather than the defendant himself.” The Court in Betancourt plainly stated:

“The present case affords an excellent reason why the rule wisely does not require the affidavit to be executed personally by the defendant. Here, the defendant had been adjudged mentally incompetent and committed to the Department of Rehabilitative Services. Therefore, any affidavit by him would have been incompetent.”

Id at 83.

Similarly, Mr. Aguilar Mendez has been found incompetent, and an affidavit from him could not provide a basis for perjury prosecution. It is unknown, if and when Aguilar Mendez will reach legal competency, as this delay is rooted in the very fabric of his being and cannot be changed on command. <sup>1</sup>Therefore, a hearing on this motion must not be delayed on account of competency factors beyond his control.

State v. Williams, 10 So.3d 1172, 1173 (Fla. 3d DCA 2009), stated as follows:

“While the defendant may rely on a sworn affidavit in his recitation of the “undisputed facts,” see State v. Betancourt, 616 So.2d 82 (Fla. 3d DCA 1993), because the affidavit relied upon in the instant case does not establish that the object used was not a deadly weapon, the motion alleging that “undisputed” fact *must be sworn to by the defendant or his attorney*. The purpose of the oath requirement is to prevent the filing of motions based upon falsehoods.”

In light of the holding in Williams there is no need for a sworn motion where there are no undisputed facts. Defense has provided sworn statements of state eyewitnesses, Saint Johns County Sherrif Officers Higgins and Montgomery. There are no facts alleged in this motion that are solely the personal knowledge of the Defendant nor counsel; rather the undisputed facts in this motion are gathered directly from the State discovery.

Wherefore, the undersigned counsel on behalf of the Defendant, Mr. VIRGILIO AGUILAR MENDEZ, prays that this Court will dismiss count one of the filed Information; wherein there is a complete lack of legal causation and there are no material disputed facts and the undisputed facts do not establish a prima facie case of guilt against the Defendant.

/s/ Rosemarie Peoples  
ROSEMARIE PEOPLES  
ASSISTANT PUBLIC DEFENDER  
Florida Bar Number: 0498238  
O/B/O VERGILIO AGUILAR MENDEZ,  
Defendant

---

<sup>1</sup> “...justice too long delayed is justice denied.” Martin Luther King Jr. Letter from the Birmingham Jail.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a copy of the foregoing has been furnished by delivery to: K. Mark Johnson, Assistant State Attorney, 2446 Dobbs Road, Saint Augustine, FL 32086, and to the Defendant, on January 29, 2024.

/s/ Rosemarie Peoples  
ROSEMARIE PEOPLES  
ASSISTANT PUBLIC DEFENDER  
Florida Bar Number: 0498238  
4010 Lewis Speedway, Suite #1101  
Saint Augustine, FL 32084  
(904) 827-5699  
peoples.rosemarie@pd7.org