

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

**AMENDED MOTION TO SET BOND**

The Defendant, Vergilio<sup>1</sup> Aguilar Mendez, by and through undersigned counsel and pursuant to Florida Rule of Criminal Procedure 3.131 (a), Article 1, §14 of the Florida Constitution, and the Equal Protection and Due Process clauses of the United States and Florida Constitutions, respectfully moves this Honorable Court to set a bond in the above-styled cause and renews all previous argument in support of a bond. The Court has found the Defendant both indigent, and incompetent; the Defendant requests a prompt bond hearing. The grounds upon which this motion is based are as follows:

**FACTS**

1. In St. Johns County Florida, on May 19, 2023, Virgilio Aguilar Mendez was stopped without any reasonable articulable suspicion and then arrested; after placing Aguilar Mendez in the back of police vehicle, Sgt. Kunovich tragically suffered a life-ending heart attack.
2. The St. John County Sheriff's Office charged eighteen-year-old, Virgilio Aguilar Mendez with Murder while engaged in Resisting a Police Officer with Violence (Felony Murder) and Resisting and Officer with Violence.
3. On May 20, 2023 a first appearance hearing was held , Virgilio Aguilar Mendez was declared indigent; and probable cause was found on the aforementioned charges.
4. For over 240 days, Aguilar Mendez is held no bond for the filed charge of Aggravated Manslaughter of an Officer, and bond of \$50,000 for one count of Resisting an Officer with Violence.

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<sup>1</sup> At arrest there was a scrivener error, the correct spelling of Defendant's name is Virgilio Aguilar Mendez.

5. At no time during the incident in question did Virgilio Aguilar Mendez intentionally cause injury to Sgt. Kunovich or any other officer, nor did Sgt. Kunovich travel more than fifteen feet during the interaction with Aguilar Mendez.
6. The interaction lasted less than eight minutes.
7. There was no action or inaction by Aguilar Mendez on May 19, 2023 that would foreseeably result in the great bodily harm or death to any officer.
8. The Chief Medical Examiner, Dr. W. Sneed concluded Sgt. Kunovich's cause of death was a cardiac dysrhythmia (heart attack) due to atherosclerotic and hypertensive cardiovascular disease. See Attached Defense Exhibit: Medical Examiner Report.
9. Further, Dr. Sneed's final opinion concluded the manner of death was natural; with a contributory cause of death physical exertion and possible emotional stress while apprehending a fleeing suspect.
10. On July 25, 2023, the prosecution filed an information for one count of Aggravated Manslaughter of an Officer, first-degree-felony; and one count of Resisting an Officer with Violence, a third-degree felony.
11. Virgilio Aguilar Mendez has no prior criminal convictions and no prior arrests as a juvenile or adult. Counsel is unaware of any instance in which the Defendant has failed to appear for a court proceeding.
12. Aguilar Mendez entered the country as a juvenile and undocumented migrant; he was legally released to his family in the United States and given a future hearing date to determine his immigration status.
13. If a bond is granted and posted, Virgilio Aguilar Mendez will be taken into Federal custody to resolve a pending immigration hold.

### **ARGUMENT**

When pretrial release is appropriate, both §907.041(1), Florida Statute (2023) and Florida Rule of Criminal Procedure 3.131(d), provide that there is a presumption in favor of release on nonmonetary conditions unless charged with a dangerous crime, such as Aggravated Manslaughter. §907.041(3)(a) also provides that a defendant " shall be released on monetary conditions only if it is determined that such monetary conditions are necessary to assure the presence of the person at trial or at other proceedings, to protect the community from risk of

physical harm to persons, to assure the presence of the accused at trial, or to insure the integrity of the judicial process." See also § 903.046(1) and Fla. R. Crim. P. 3.131.

In consideration of release, Fla. R. Crim Pro. 3.131 delineates conditions of release that satisfy the legitimate objectives of bail.<sup>2</sup> If a monetary bail is appropriate, the court must consider the Defendant's financial resources to post the bail. *Cameron v. McCampbell*, 704 So.2d 721 (Fla. 4th DCA 1998). The Defendant in the instant case has been declared indigent by the court. Given Virgilio Aguilar Mendez's complete lack of financial resources, a combined bond over \$5000 for the two counts would be excessive and tantamount to no bond - a violation of the Eight Amendment to the United States Constitution. See *Good v. Wille*, 382 So.2d 408 (Fla. 4th DCA 1980) (citing *State ex rel. Bardina v. Sandstrom*, 321 So.2d 630 (Fla. 3d DCA 1975) ("Depending on financial circumstances of the defendant, excessive bail is tantamount to no bail."). See also, *Pugh v. Rainwater*, 572 F.2d 1053 (5th Cir. 1978) ("Imprisonment solely because of indigent status is invidious discrimination and not constitutionally permissible.")

**THE BASIS OF THE STOP, ARREST AND THE FILED INFORMATION ARE LEGALLY INSUFFICIENT AND UPON CLOSE REVIEW LACK PROBABLE CAUSE FOR A MONETARY BOND SUCH THAT THE DEFENDANT SHOULD BE RELEASED ON HIS OWN RECOGNIZANCE.**

Virgilio Aguilar Mendez asserts that he has several justiciable defenses to the elements of the felony charges and, further, that he intends to vigorously defend against the charges in court.

### ***1. Count One Aggravated Manslaughter***

Here Aguilar Mendez has committed no act that would foreseeably result in the death of any person. At first appearance hearing when bond was initially set, the presiding judge did not have the opportunity to review the body camera footage of the arrest. As opposed to the first appearance

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2. A summary of the enumerated conditions and their order are as follows: 1) personal recognizance of the defendant; 2) execution of an unsecured appearance bond in an amount specified by the judge; 3) placement of travel, association, or residence restrictions; 4) placement of the defendant in custody of a person or organization agreeing to supervise the defendant; 5) execution of a bail bond; or, 6) any condition reasonably necessary to assure appearance.

court, this Honorable Court has had the opportunity to review several body camera recordings, which have made this Court aware that there is no evidence that Aguilar Mendez intentionally used any physical force against any officer; there is no evidence that Aguilar Mendez acted in a manner of reckless disregard for the life of any officer. Unlike the first appearance court, this Court has the benefit of the medical examiner report, declaring Sgt. Kunovich's manner of death was natural causes. Count one is fully absent of any support establishing probable cause for the arrest. In the absence of a factual basis to support this charge the Court may exercise discretion to release young Virgilio on his own recognizance.

Florida courts have consistently instructed juries that a ,

“...The defendant cannot be guilty of Aggravated Manslaughter by causing a death because of a merely negligent act. But culpable negligence is more than a failure to use ordinary care toward others. In order for negligence to be culpable, it must be gross and flagrant. Culpable negligence is a course of conduct showing reckless disregard of human life, or of the safety of persons exposed to its dangerous effects, or such an entire want of care as to raise a presumption of a conscious indifference to consequences, or which shows wantonness or recklessness, or a grossly careless disregard for the safety and welfare of the public, or such an indifference to the rights of others as is equivalent to an intentional violation of such rights. The negligent act or omission must have been committed with an utter disregard for the safety of others. Culpable negligence is consciously doing an act or following a course of conduct that the defendant must have known, or reasonably should have known, was likely to cause death or great bodily injury.”

-Fla Jury Instruction 7.7(a) Aggravated Manslaughter.

With the above jury instruction in mind, this Court cannot ignore the State's complete inability to demonstrate that Aguilar Mendez's actions were likely to cause death or great bodily harm. At no point were Aguilar Mendez's action sufficient for a probable cause determination of culpable negligence wherein Aguilar Mendez did not act in a manner that resulted in great bodily harm or death. In short, Aguilar Mendez's actions did not cause the death of the late Sgt. Kunovich. Given these circumstances, a release on his own recognizance is appropriate.

## ***2. Count Two Resisting Officer With Violence***

On May 19, 2023 Aguilar Mendez did not knowingly or willfully resist any of the officers *with* violence. Again, during the first appearance hearing when bond was set, the presiding Judge did not have the opportunity to review the body cam footage of the arrest. Now, this court is aware that the violence that took place during this arrest was in fact against Virgilio. It is known that Virgilio Aguilar Mendez was stopped without any reasonable articulable suspicion and then arrested. During this arrest, Virgilio in a definitive example of his non-violent state of mind and his limited English repeated the phrase “*Sorry*” and “*Familia*” (family). After suffering various choke holds, being kned to his ribs and tased multiple times, Virgilio’s hands were cuffed. After being handcuffed, young Virgilio was face down and surrounded by numerous uniformed officers; then and only then, Virgilio retrieved and held a folded common pocket-knife in his clenched left hand. In the confusion of the arrest Virgilio committed no act of violence. He yelled “*Sandia*”, (which means watermelon in Spanish), in efforts to explain the one tool in his possession was used to earn a living. At all times, the possession of the common pocket-knife by Virgilio was legal. At no time during the incident was any officer in danger, as the blade within the common pocket-knife was never unfolded or exposed from his clenched hand. Hence, there was no act of violence committed by Virgilio to support the charge resisting arrest *with* violence, this Court may exercise discretion to release Virgilio on his own recognizance.

The purpose of bail is to ensure the Defendant's appearance in court. Bail is not designed to punish or detain an accused person prior to the disposition of the case. This case is unique in that the arrest report stands contradicted by the video recording of the arrest. For the reasons stated above the Court may exercise its discretion and release the defendant on his own recognizance and impose restrictions to his travel within the Seventh Judicial circuit (St. Johns, Flagler, Putnam and Volusia) and/or impose GPS monitor on his travel. “This traditional right to freedom before conviction permits the unhampered preparation of a defense, and serves to prevent the infliction of punishment prior to conviction. ...Unless this right to bail before trial is preserved, the presumption of innocence, secured only after centuries of struggle, would lose its meaning.” *Stack v. Boyle*, 342 U.S. 1, 72 S. Ct. 1, 342 L. Ed. 3 (1951).

WHEREFORE, the Defendant moves this Honorable Court for a bond hearing, with consideration of release on his own recognizance, or in the alternative, impose a bond no greater

than \$5000.00 for the two counts combined and allow him to post bond as security for his continued court appearances.

Respectfully submitted,

/s/ Rosemarie Peoples  
ROSEMARIE PEOPLES  
ASSISTANT PUBLIC DEFENDER

**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 17, 2024.

/s/ Rosemarie Peoples  
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