

IN THE CIRCUIT COURT FOR PINELLAS COUNTY, FLORIDA
CRIMINAL DIVISION

CASE NO.: 22-09348-CF
SECTION: T
JUDGE: Siracusa

STATE OF FLORIDA,

Vs.

JUAN ARIEL MOLINA-SALLES

**AMENDED¹ MOTION TO REMOVE VICTIM INJURY POINTS FROM THE
SCORESHEET**

THE DEFENDANT, Mr. Juan Ariel Molina-Salles, by and through undersigned counsel, and pursuant to Florida Rule of Criminal Procedure Rule 3.190, hereby moves this Court for a pre-trial determination on whether the State is permitted to add victim injury points to the scoresheet when the discovery and the discovery depositions have established that the victim was deceased immediately as result of the accident. Thus, the criminal conduct alleged - the “leaving of the scene” - did not directly cause the victim’s death. A definitive pre-trial ruling is necessary in this case so that counsel can provide effective assistance of counsel under the Sixth Amendment in advising Mr. Molina-Salles regarding plea negotiations. As grounds in support, Mr. Molina-Salles states:

1. On September 23, 2022, Mr. Molina-Salles was arrested for Leaving the Scene of an Accident Involving Death after a late-night construction site accident where Deputy Michael Hartwick died after being struck with a front-loader construction vehicle.
2. On October 13, 2022, the State of Florida filed an Information charging Mr. Molina-Salles with Leaving the Scene of a Crash Involving Death, a first-degree felony punishable by up to 30 years in prison.

¹Mr. Molina-Salles hereby withdraws the previously filed “Motion to Remove Victim Injury Points from the Scoresheet” and substitutes this “Amended Motion to Remove Victim Injury Points from the Scoresheet” in its place.

3. The State cited to Fl. Stat. 316.027(2)(c) and (2)(f), which allege that the charge carries a four-year minimum mandatory term, which is discretionary with the Court under cases like this where there is no allegation that Mr. Molina-Salles was driving under the influence. *See* Fl. Stat. 316.027(2)(g).
4. The State also cited to Fl. Stat. 921.0021(7)(e). Fl. Stat. 921.0021(7) contains two arguably conflicting paragraphs. First, subsection (a) states that victim injury points may be assessed if “the physical injury or death suffered by a person [was] a direct result of the primary offense, or any additional offense, for which an offender is convicted, and which is pending before the court for sentencing at the time of the primary offense.” Subsection (e) states: “Notwithstanding paragraph (a), if the conviction is for an offense described in s. 316.027 and the court finds that the offender caused victim injury, sentence points for victim injury may be assessed against the offender.”
5. The State provided a scoresheet which added 120 “death” points. Under this scoresheet, the bottom of Mr. Molina-Salles’ guidelines are 124.5 months, or approximately 10.375 years.
6. Because Mr. Molina-Salles has no prior criminal record, and is charged with no additional offenses, without the added “death” points, the bottom of his guidelines would be 34.5 months, or just under three years, notwithstanding the discretionary four-year minimum mandatory term as discussed above.
7. Discovery provided by the State, in the form of body worn cameras, the Fleet Camera from Deputy Hartwick’s car, the EMT reports, and the discovery depositions taken to date all establish undisputed evidence that Deputy Hartwick died on impact when struck with the front-loader.
8. The EMT report states under “Initial Patient Acuity” that Deputy Hartwick was “obviously dead/no resuscitation effort.” First responders testified in deposition in a similar manner. Further, the witness interviews and depositions from the construction personnel who were on scene at the time of the accident and who approached Deputy Hartwick within seconds to minutes afterwards all indicate that there were no signs of life immediately after the accident.
9. Mr. Molina-Salles is unaware of any evidence in the State’s possession by which it could even allege, let alone prove, that Deputy Hartwick’s death “was a direct result” of Mr.

Molina-Salles' *leaving the scene*, which is what the statute and the case law require.

10. The Florida Supreme Court has held that the "direct result" language clearly imparts and includes a causation requirement, which in the case of a leaving the scene of an accident charge, requires that the causal relationship "must exist between the death of the victim and the charged offense of leaving the scene of an accident resulting in death." *Sims v. State*, 998 So.2d 494, 505 (Fla. 2008).
11. Earlier Second District Court of Appeals cases arrived at the same conclusion. In 1996, that appellate court held that the victim injury points were improperly included in the scoresheet calculation where the victim's injury occurred *prior to* the commission of leaving the scene of an accident – pointing out that even had the defendant remained on scene, the injury would still have existed. *Geary v. State*, 675 So.2d 625 (Fla. 2d DCA 1996). And, later that same year, the court wrote that it was error for the trial court to assess victim injury points for death where there is no evidence that the victim's death was a direct result of the defendant's leaving the scene of an accident. *Rodriguez v. State*, 684 So.2d 864 (Fla 2d DCA 1996).
12. In *Sims*, as here, Mr. Molina-Salles was charged only with Leaving the Scene of an Accident Involving Death. *Sims* was not charged with vehicular homicide nor with any other offense that might insinuate a further crime, which would have caused the death of the victim. Under those set of facts, the Supreme Court concluded that the causation requirement for victim injury points does not exist as to further enhance *Sims*' sentence. These are exactly the circumstances in Mr. Molina-Salles' case.
13. It is important to note that *Sims* was decided in 2008, which is after subsection (e) was added and was made effective in July of 2007. *Sims* is still good law and has never been overruled.
14. To provide constitutionally effective assistance of counsel, including to advise Mr. Molina-Salles of whether to or what kind of plea offer to make to try to resolve his case short of a trial, counsel must be able to accurately explain to him the legal range of penalties he is facing. This is especially true in this case, where he has no prior criminal record, and where the difference in the scoresheet equates to more than 6 years in prison as a minimum punishment.
15. To the extent the State disputes Mr. Molina-Salles' interpretation of the discovery, the

witness statements, the body cam, and Fleet camera footage, the 911 calls, or the depositions, Mr. Molina-Salles respectfully requests an evidentiary hearing to establish these facts.

WHEREFORE, Mr. Molina-Salles moves for this Court to strike the victim injury points from the scoresheet and instruct the State to prepare a corrected one, or, in the event the State disputes the facts alleged in this Motion, set the matter for an evidentiary hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I do certify that a copy hereof has been furnished by email/physical delivery to the State Attorney, County Justice Center, Clearwater, Florida, on April 9, 2024.

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