

Report of Investigation

In-Custody Death

Date of Incident: 4/20/2016

Location: Proximate to 3105 Annandale Rd.

Decedent: Paul A. Ganelos

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Purpose

This investigation was undertaken for the sole purpose of determining whether any person is criminally culpable with respect to the death of Paul A. Gianelos.¹

Facts

At autopsy, Paul A. Gianelos, was a 45 year old male who stood 5' 9 ½" tall and weighed 220 pounds (BMI of 32.5).² Medical and social records show that Mr. Gianelos suffered from autism and an intellectual disability.³ He was non-verbal and expressed himself through basic sign language and use of a communication book.⁴ His vision in both eyes was severely impaired by corneal scars rendering him "legally blind."⁵ Mr. Gianelos' hearing was normal.⁶

Mr. Gianelos resided at a group home on Queen Elizabeth Boulevard in Annandale Virginia. He required constant observation while eating in order to avoid choking as well as to control his food seeking and food taking compulsive episodes.⁷ Due to a history of elopements in connection with food seeking behavior, Mr. Gianelos required extra supervision while out in the community.⁸ After each elopement, social workers and staff discussed and recommended

¹ Questions of potential civil liability are beyond the scope and authority of this office.

² Report of Autopsy N152-16, 04/21/2016, p. 1

³ INOVA records generated 5/20/2016, p. 6; Adult Protective Service Report 12/11/2013 p.1

⁴ SJCS Emergency Data Form 8/22/2014, p. 2

⁵ Id. at p. 3

⁶ INOVA records generated 5/20/2016, p. 18

⁷ Community Residences Inc. Fax of 11/22/14 p.2

⁸ "Paul has a history of elopement requires extra support while out in the community; always keep him within a line of sight." 6/30/14 update; from mother's note "...emphasize to staff the importance of keeping a constant eye on him and never leaving him alone without supervision." SJCS Emergency Data Form 8/22/2014, p. 2. (Mr. Gianelos eloped from Queen Elizabeth to go to his mother's home. Returned to Queen Elizabeth, refused to go inside and then walked to Giant Food Store). Community Residences Incident Report 8/ 20/ 2012, pg. 30. (Mr. Gianelos eloped from outside Kaiser Permanente Springfield. "[He] refused to enter the van after completing his blood work,

ways to keep Mr. Gianelos safe and prevent future elopements.⁹ Perhaps foremost among the concerns of Mr. Gianelos' family as well as the social workers and caretakers, was that he not elope when no one is watching and get hit by a car.¹⁰

started walking across the parking lot in the street towards oncoming traffic. Staff attempted to redirect him and letting him know he had a sandwich in the van. PG crossed four lanes of traffic to the other side towards Springfield Mall. Staff was running after him, but he was walking so fast and was not listening. A third party arrived and notified security." Mr. Gianelos was familiar with the mall as his mother would take him there to eat on occasion. After this incident staff decided Mr. Gianelos "should 'have a 1:2 staff ratio while in the community to ensure his safety and that of others.") Community Residences Incident Report 8/ 21/ 2012, pg. 28. (Mr. Gianelos eloped from an outing at Mason District Park and was later located inside a 7-11 store eating candy and drinking soda.) Community Residences Incident Report 11/ 14/ 2012, pg. 26. ("[Mr. Gianelos] unbuckled his seatbelt and tried to unlock the back door [of the van] but could not open it because the child lock was on. When PG could not open the back door, he then proceeded to come to the front of the van and opened the door and eloped while staff was driving. Mr. Gianelos then ... went across the street to the Safeway. Staff stopped the van and shut the door then ran a red light to catch him. When staff finally caught up with him, he was in the Safeway drinking a can of soda and tried to grab other food items. After leaving to go to the day program Mr. Gianelos took both hands and pretended to vomit while waiting for his ride." A store clerk assisted staff in redirecting Mr. Gianelos back into the van) Community Residences Incident Report 5/ 30/ 2013, pg. 20. (Mr. Gianelos escaped from a transportation van stopped at a red light on Little River Turnpike. Staff arrived at the scene and searched several supermarkets and a pharmacy but couldn't find Mr. Gianelos. In the meantime, clerks working at a nearby CVS store had called police when Mr. Gianelos entered the store and began eating cookies and drinking soda from the shelves and throwing up. PFC Rivera arrived and observed Mr. Gianelos had defecated and urinated on himself and was drinking various energy drinks and throwing the empty containers on the floor. After initially appearing to comply with police requests, Mr. Gianelos suddenly began making a loud growling sound and swinging his arms. Unable to understand what was going on due to his medical issues, he continued to resist despite the officer's requests that he calm down and at one point he stiffened his body, bent forward and lifted PFC Rivera's feet off the ground carrying him forward. Mr. Gianelos then slipped in a puddle of urine taking the officer to the floor with him. Two other officers arrived and the three of them working together were able to secure Mr. Mr. Gianelos. PFC Rivera described Mr. Gianelos as being "very strong." A staff member stated that "client [Mr. Gianelos] will fight if he does not understand what is going on..." Staff later determined that client [Mr. Gianelos] would no longer go into the community without a second caretaker and that he would wear a harness vest and an ID bracelet. Community Residences Incident Report 9/ 25/ 2013, p. 17. 5/10/2016 TR. PFC Jose Rivera pp. 2-9, 5/16/23 Adult Protective Notes Report p. 8 (Mr. Gianelos eloped from transportation van and was later located by police at a Safeway store on Little River Turnpike. Mr. Gianelos 'was attempting to open and consume soda, Oreos, pretzels and ice cream' while inside the store. Mr. Gianelos cooperated with police and was returned safely to the van) Community Residences Incident Report 1/ 30/ 2014, p. 12.

⁹ (Second caretaker, harness vest, ID bracelet, GPS shoes) Community Residences Incident Report 9/ 25/ 2013, pg. 17. 5/16/2016 Adult Protective Services Notes Report p.11 (Move to a Center based facility where Mr. Gianelos would not be out in the community at all) 5/16/2016 Adult Protective Services Notes Report p. 25. (Move to Community Concepts which has behavioral specialists who deal with elopement behaviors. This placement was pending at the time of Mr. Gianelos death.) 5/16/2016 Adult Protective Services Notes Report p. 28.

¹⁰ "[A member of Mr. Gianelos' family] said that she is concerned about this latest incident because he crossed a very busy street to get to the 7-11 and it's 'a miracle' he hasn't been hit yet." 5/16/2016 Adult Protective Services Notes Report p.1 ("it is very dangerous for [Mr. Gianelos] to leave on his own and put himself at risk for being hit by a car...", Mr. Gianelos' day program caseworker was also concerned that a "tragedy" might occur with respect to his elopements.) 5/16/2016 Adult Protective Services Notes Report P. 25

On April 20, 2016 Mr. Gianelos was participating in the St. John's Community Services (SJCS) Day Program.¹¹ He was with a group of individuals including three clients and two support professionals.¹² Shortly before 12:15 hours the van carrying the group arrived at Roundtree Park in Annandale. The team leader, Mr. George Mayaba, Mr. Gianelos, and another of the clients exited the van leaving two clients and a second caretaker inside the van. Mr. Mayaba, Mr. Gianelos and the other client walked to a picnic area. They began eating lunch at approximately 12:15 hours. Mr. Gianelos finished his lunch quickly and threw his trash away. Mr. Mayaba became concerned that Mr. Gianelos might try to eat the other client's lunch. At that point, Mr. Mayaba instructed Mr. Gianelos to return to the van. Mr. Mayaba walked with Mr. Gianelos part of the way to the van and then turned back to assist the other client. Mr. Mayaba lost sight of Mr. Gianelos at that point and did not observe him enter the van. Approximately 10 minutes later Mr. Mayaba and the other client returned to the van. Mr. Mayaba observed that Mr. Gianelos was not present in the van.

Mr. Mayaba asked the second caretaker, Saffiatu Janneh, where Mr. Gianelos was located. She indicated she thought he was with Mr. Mayaba. Mr. Mayaba checked the bathrooms at the park, the bushes and the basketball courts calling out for Mr. Gianelos.¹³ Mr. Mayaba called 911 at 12:46:17 hours.¹⁴ On the call he described Mr. Gianelos as having special needs and mental health issues. The transcript of the 911 call reads in pertinent part as follows:

CT13: Fairfax County 911, where is your emergency?

MAYABA: Uh, Roundtree, uh, Round—Roundtree—tree Park on Annandale.

¹¹ SJCS Investigation Report May 3, 2016 p. 1

¹² Id. at p. 2

¹³ 7/21/2016 Report of Detective Flanagan pp. 40-41

¹⁴ Id. at p. 33

...

MAYABA: Yes, I'm, like, right next to Annandale Road, yes. It's called Roundtree Park Fairfax County or something like that. Right next to Annandale Road.

CT13: Okay, what is your name?

MAYABA: Uh, George Mayaba.

...

CT13: What's the emergency?

MAYABA: Um, I work for a company named St. Johns Community Services and, uh, one of our clients kind of, like, ran away and, like, we can't find him, you know?

CT13: Okay, what do you mean he ran away? How old is he?

MAYABA: Um, he's old, but he's, he has, like, special needs and stuff. He has tendency of sometimes, like, running away from stuff so I guess he just walked out and, like, we can't find him now. It hasn't even been five minutes we are looking for him.

CT13: He's been gone for five minutes?

MAYABA: I would say, yes.

CT13: Okay. What exactly is wrong with him?

MAYABA: Uh, what's wrong with him?

CT13: Yes, you said he has special needs. Can you be more specific?

MAYABA: Yeah, he has, like, um, like, you know, like, a little bit of ment—ment—mental issue, he has mental issue and sometimes he run away trying to like grab, like, food and stuff, like, from people so, like, now I don't know where he went. I can't, like, see him 'cause I was working with another staff and she was with him and, uh, I was on the

other side with another client and now we just looking and we can't find him.

CT13: Okay. How old is he?

MAYABA: Uh, he's in his forties. He's kind of big, about, like, two hundred and eighty pounds. He's wearing, like, a—

CT13: Okay—

MAYABA: --grey yellow jacket.

...

MAYABA: Paul Gianelos.

...

MAYABA: About, like, two hundred and ten pounds, but five nine.

CT13: Okay. Do you remember what he was wearing?

MAYABA: He was wearing blue jeans and then a, a grey and yellow jacket with a lunch bag.

CT13: And you said he had a lunch bag?

MAYABA: Yeah, he had a lunch bag because he was just eating lunch.

CT13: Do you know what color that was?

MAYABA: Uh, it was I think blue and grey.

CT13: Okay. And he ran away by himself, there was no one else with him?

MAYABA: Yeah, uh, yeah, I think he just ran away, I mean usually he walks by himself to the, um, to the bathroom, but staff was there to walk with him and, like, all of the sudden he just disappeared. She told me he's not here so I'm, like—

CT13: Okay. Do you know if he wears an electronic tracking device?

MAYABA: No, ma'am—

CT13: Okay. Where was he last seen?

MAYABA: --he doesn't wear that. He was seen at Roundtree Park not even, like, five minutes ago.

CT13: Right, but can you give me—is it where you are, where you're standing now?

MAYABA: Yes, like, where I'm standing right now next to the bathroom. He just ate his lunch from the, uh, there's like, you know, little seats where you can sit and then just walking to the van and he disappeared.

CT13: Okay. Were you the last person to see him?

MAYABA: Say what?

CT13: Were you the last person to see him?

MAYABA: Yes ma'am. What you say?

CT13: Okay.

...

CT13: Okay, that's fine. You said he was on foot?

MAYABA: Yes, ma'am.

CT13: Okay. Do you know what direction he ran towards?

MAYABA: Direction? He just walked towards, uh, we were at the park where you like—where we eat by the benches and he walked towards our van 'cause we driving the van and, uh, from there I don't know what happened 'cause I was working with another staff—I was watching the other guy, you know—

CT13: Okay.

MAYABA: --'cause he walked towards the van, yes.

...

CT13: Okay, um, well I do have a call and then we have officers on the way so they'll be there soon.

MPO Michael Meszaros is a 25 year veteran of the Fairfax County Police Department who is trained in Crisis Intervention Team (CIT) techniques. He is also experienced in dealing with persons suffering from mental health problems.¹⁵ Since 1997 he has worked overtime night shifts at the Merrifield Mental Health Center where he deals with people in mental health crisis.¹⁶

MPO Meszaros was on routine patrol in the Mason District of Fairfax County when he was dispatched to a critical missing person event at Roundtree Park. Dispatch advised MPO Meszaros via radio at 12:50:12 hours that, “[person] with mental issues ran away from the park, it’s going to be a 40 year old male, still getting more information.”¹⁷ After getting a name and description of Mr. Gianelos, MPO Meszaros began searching for him. While driving towards the Park, MPO Meszaros observed Mr. Gianelos walking very quickly along the sidewalk on Annandale Rd. near the intersection of Gouthier Rd which is approximately 1.3 miles from Roundtree Park.¹⁸

MPO Meszaros called out to Mr. Gianelos, using his first name, Paul, and asking him to hold up. While unaware that Mr. Gianelos was legally blind, MPO Meszaros noticed that Mr. Gianelos appeared to have visual impairments which he later described as “cataracts.”¹⁹ Mr. Gianelos glanced at MPO Meszaros, put his head down, and continued walking quickly. At

¹⁵ (Officer Meszaros has dealt with approximately two hundred persons suffering with mental health disabilities in the course of his career.) 4/20/2016 Tr. Meszaros p. 57

¹⁶ 4/20/2016 Tr. MPO Meszaros p. 37, 57

¹⁷ 7/21/2016 Report of Detective Flanagan p. 33

¹⁸ 8/4/2016 Crime Scene Officer, Susan Sharp Supplement p. 74

¹⁹ 4/20/2016 Tr. Meszaros p. 23

12:53:28 hours MPO Meszaros radioed this information to the dispatcher. MPO Meszaros made a U turn, drove past Mr. Gianelos and parked his vehicle some distance ahead of Mr. Gianelos. MPO Meszaros got out of his vehicle and walked onto the sidewalk. Mr. Gianelos walked up to the officer. MPO Meszaros observed that Mr. Gianelos appeared very agitated and seemed to want to get past him and continue walking.

As Mr. Gianelos stood facing MPO Meszaros, head to head, Meszaros held Mr. Gianelos' hands and attempted to calm him down, telling him everything was okay.²⁰ A citizen, GK, looking out from a window, saw MPO Meszaros holding Mr. Gianelos' hands. He said, "It was pretty calm, it just seemed like the officer was trying to explain something to the gentleman."²¹

According to MPO Meszaros, Mr. Gianelos appeared to calm down a bit. Mr. Gianelos was not wearing any medical identification device. MPO Meszaros put his hand on Mr. Gianelos' shoulder and asked if he was able to talk. Mr. Gianelos did not respond so the officer gave Mr. Gianelos a pen and paper and asked him if he could tell the officer what was wrong. Mr. Gianelos took the items in hand but didn't write anything. MPO Meszaros thought Mr. Gianelos might be deaf.²² At that point, Mr. Gianelos kept pointing down the road as if he wanted to go further.²³ Mr. Gianelos then reached out and took MPO Meszaros' hand in his and held it. It appeared to MPO Meszaros that Mr. Gianelos was calming down as both men stood holding hands on the sidewalk.²⁴

²⁰ Id. at p. 8

²¹ 4/25/2016 Tr. GK at p. 4

²² Id. at p. 9

²³ Tr. MPO Meszaros 4/20/2016, p. 9

²⁴ Id. at p. 9

Mr. Gianelos once again became agitated and tried to leave, pulling the officer down the street as they continued to hold hands. Mr. Gianelos pulled MPO Meszaros approximately forty yards down the sidewalk as MPO Meszaros held on and tried to prevent him from leaving.²⁵ MPO Meszaros later commented to Detectives, “that guy, [Mr. Gianelos] could’ve thrown me around like a rag doll, I mean uh, I don’t know... I’ve seen some, some people that are hopped up on stuff but I tell you that kid was stronger, that guy was stronger than anything I’ve encountered in 26 years, I mean, that guy was strong. I don’t know where he’s getting it from but he, you know, he could’ve had me at any point, you know, until Chang got there and he was giving us both a good run.”²⁶

PFC Hyun Chang arrived on the scene in an unmarked cruiser at 12:59:03 hours.²⁷ PFC Chang knew from the CAD event that the subject of the call was handicapped. He said, “I knew he was a service call, it was not a crime in progress or anything like that and so my objective was to return this subject to the caregiver he walked off from.”²⁸ PFC Chang observed MPO Meszaros five or six houses down from where MPO Meszaros’ vehicle was parked. PFC Chang noted that MPO Meszaros had a hold of Mr. Gianelos’ right arm as Gianelos was taking steps towards Arlington Blvd and MPO Meszaros was trying to go in the opposite direction. PFC Chang parked his cruiser and approached the two men. PFC Chang took Mr. Gianelos’ left wrist in his left hand and placed his right hand on Gianelos’ left shoulder. As soon as PFC Chang put his hands on Mr. Gianelos he noticed that he was very strong.²⁹

²⁵ Id. at p. 9

²⁶ 4/20/2016 Tr. MPO Meszaros, p. 54

²⁷ 7/21/2016 Detective Flanagan Supplement, p. 35

²⁸ 6/13/2015 Tr. Chang p. 16

²⁹ 6/13/2016 Tr. PFC Chang p. 6

The officers attempted to escort Mr. Gianelos to PFC Chang's cruiser as it was the closest vehicle to the men. Because of his disabilities, Mr. Gianelos couldn't understand the situation and began resisting and pulling away toward Arlington Boulevard. Both officers were concerned for the safety of Mr. Gianelos. PFC Chang stated they were worried that Mr. Gianelos might run into the busy traffic on Annandale Road or Arlington Boulevard and get hit by a car.³⁰ PFC Chang stated that their main concern was holding on to Mr. Gianelos and returning him to his caregivers. As Mr. Gianelos continued to pull away from the officers, PFC Chang, realizing that they were being overpowered, made the determination that Mr. Gianelos had to be taken to the ground for his own safety and so that the officers could get control of him.³¹ Chang later stated that he believed taking Mr. Gianelos to the ground and controlling him there was the only option which would prevent Mr. Gianelos from getting away and possibly hit by a car. Chang also stated that he was trained as to how to take someone to the ground and control them and that he used the minimum force necessary to detain and control Mr. Gianelos.³² PFC Chang, wanted to avoid taking Mr. Gianelos down on the concrete sidewalk, so PFC Chang took several steps onto a grassy area before using a foot sweep to put Mr. Gianelos down on a lawn.³³ All three men ended up on the ground.³⁴ Although PFC Chang stated that he alerted MPO Meszaros that he

³⁰ Id. at p.17 "There was heavy traffic on, Annandale Road is you know there's a lot of cars traveling that road especially at that time and we're so close to the roadway you know, we wanted to pro, I didn't want him to get hit by a car and he was head toward Arlington Boulevard and we all know how busy Arlington boulevard is."

³¹ 6/13/2016 Tr. PFC Chang p. 18. "... we were struggling with him, cause he wasn't moving at all he was that strong and Mike, I don't know what Mike was doing but I'm trying to walk him to my cruiser , it's not happening, he's not moving at all, he's just want to go straight on northbound on Annandale Road towards Arlington Boulevard. He wasn't' moving at all, um, he was taking steps forward actually, um but like I was being dragged, both of us were being dragged by the subject and I recognized it and said this plan is not working at all, you know , and I decide we need to put him down on the ground and I didn't want to put him down right there at that, location cause it was a concrete sidewalk cause if he goes down, you know, we, I wanted to prevent injury caused by us so took couple steps, I , I took a couple steps and inside sweep and we went gently down, on the grass on the yard, front yard of where the scene was.

³² 6/13/2016 Tr. PFC Chang pp. 38-39

³³ Id. at p. 18

³⁴ Id. at pp. 6-7

was going to put Mr. Gianelos on the ground MPO Meszaros was not expecting the fall and assumed that PFC Chang and Mr. Gianelos tripped.³⁵

When Mr. Gianelos went down to the ground PFC Chang went with him. PFC Chang was on top of Mr. Gianelos when they landed. At that point PFC Chang immediately got into a mounting position on Mr. Gianelos' waist and lower back.³⁶ The majority of PFC Chang's weight was centered over Mr. Gianelos' hips.³⁷

Later, detectives asked PFC Chang to demonstrate, using a dummy, the manner in which he positioned himself with respect to Mr. Gianelos' body once they went to the ground. PFC Chang demonstrated that Mr. Gianelos was prone with his head turned to the left. Chang was straddling Mr. Gianelos' lower back and waist. Both of PFC Chang's knees were on the ground supporting his own weight. His upper body was leaned forward over Mr. Gianelos back. His left hand was controlling Mr. Gianelos' left wrist which was extended perpendicular to his body. PFC Chang's right forearm was positioned to the left side of Mr. Gianelos' head above the ear.

MPO Meszaros stated that as the men fell to the ground he maintained contact with Mr. Gianelos' right arm. MPO Meszaros stated that he landed to the right side of Mr. Gianelos who was prone on the grass. MPO Meszaros had difficulty attempting to gain control of Mr. Gianelos right arm.

Unable to understand what was happening, Mr. Gianelos continued to resist and struggle from his position on the grass. He began bucking his hips and turning his head from side to side on the ground. Mr. Gianelos was spitting and attempting to bite PFC Chang's hand. PFC Chang

³⁵ 8/4/2016 Detective Griffith Supplement p. 49

³⁶ 6/13/2016 Tr. PFC Chang p. 19

³⁷ Id. at p. 37

adjusted his right arm and hand to avoid Mr. Gianelos' mouth.³⁸ PFC Chang stated he was very careful to avoid putting pressure on Mr. Gianelos' neck with his arm so as to avoid restricting his breathing.³⁹ Several times Mr. Gianelos seemed to tire and began breathing heavily through his mouth. Mr. Gianelos appeared to calm down a few times at which point PFC Chang removed his arm from Mr. Gianelos' head. During these calm interludes, PFC Chang patted Mr. Gianelos on the shoulder and said, "Paul calm down." As Mr. Gianelos calmed down, PFC Chang removed his right arm from the side of Mr. Gianelos' head and rested his right hand on Mr. Gianelos' back in order to maintain his balance. With respect to the force associated with the placement of PFC Chang's right hand on Mr. Gianelos' back in these calm interludes, PFC Chang explained, "I'm not actually putting pressure, I wasn't putting pressure when he was calm. I was just had my hand there so I, so I could keep my balance so I, I don't fall over to the side."⁴⁰ The autopsy revealed no hemorrhage to Mr. Gianelos' left back or shoulder and supports Chang's description of the manner in which he attempted to restrain Mr. Gianelos while in the mounting position.⁴¹ When Mr. Gianelos resumed struggling PFC Chang again placed his arm above Mr. Gianelos' left ear in order to maintain control over him.

In the meantime MPO Meszaros had managed to place a cuff on Mr. Gianelos' right wrist. MPO Meszaros later stated that he believed Mr. Gianelos was not trying to hurt him but that Mr. Gianelos was simply trying to get past them and go in the direction he wanted to go.⁴² By the same token, MPO Meszaros did not want to hurt Mr. Gianelos.⁴³ MPO Meszaros did not

³⁸ 6/13/2016 Tr. PFC Chang p. 7

³⁹ Id. at p. 23

⁴⁰ Id. at pp 20-21

⁴¹ Report of Autopsy, Evidence of Injury Torso p. 1

⁴² 4/20/2016 Tr. Meszaros p. 53

⁴³ Id. at p. 15

strike Mr. Gianelos or use any weapon against him.⁴⁴ MPO Meszaros did not employ a chokehold on Mr. Gianelos nor did he see any other officer do so.⁴⁵ MPO Meszaros stated that the sole extent of the encounter with Mr. Gianelos was to get his hands secured and gain control of him.⁴⁶

At 13:01:42 hours PFC Courtney Young and Officer Jessica Kenna arrived on scene. Officer Kenna described Mr. Gianelos as “kicking and really fighting hard.” Officer Kenna heard the other officers telling Mr. Gianelos that it is was okay and to try and calm down. She joined in telling him, “Paul it is okay we’re just trying to help you, just calm down.”⁴⁷ She was concerned that the kicks were coming close to MPO Meszaros’ head. In response, she grasped Mr. Gianelos’ right leg and attempted to control it. She stated that Mr. Gianelos was very strong and kicked her off his leg a couple of times.⁴⁸

A citizen, ML, who lived nearby saw part of the incident from his window. He described seeing two male and two female officers who were trying to hold someone down to put handcuffs on. He said, [Mr. Gianelos] “was kicking and swinging his arms...”⁴⁹ ML stated that the police were using their hands to hold [Mr. Gianelos] down. He didn’t see the officers strike [Mr. Gianelos] or use any weapons against him. He did not observe the officers leaning or kneeling on [Mr. Gianelos].⁵⁰

A motorist traveling southbound on Annandale road had a brief, 2 to 5 second, view of the incident as she drove by. She described seeing a man kicking from the prone position. She

⁴⁴ Id. at p. 55

⁴⁵ 4/27/2016 Tr. Meszaros p. 37

⁴⁶ 4/20/2016 Tr. Meszaros p. 55

⁴⁷ 6/8/2016 Tr. Officer Kenna p. 7

⁴⁸ Id. at p. 7

⁴⁹ 4/20/2016 Tr. ML at pp. 2-3

⁵⁰ 4/26/2016 Tr. ML at pp. 1-2

saw an officer to the left of the man who she described as “kind of on top, but not really touching.... he’s [the officer] kneeling next to him.”⁵¹ She stated “... [Mr. Gianelos] “was moving so violently that, at any moment I would have thought, all hell could break loose, you know, the guy could get away or whatever.”⁵²

PFC Young stated that Mr. Gianelos was struggling and rubbing his face from side to side in the grass. She stated that he never ended up in a face down position and his airway was always open.⁵³ She said that she watched to make sure he didn’t end up face down or with grass obstructing his airway.⁵⁴ She helped PFC Chang put a protective glove on his right hand. She then assisted in securing a second pair of handcuffs to Mr. Gianelos’ left wrist at which point both sets of handcuffs were joined and secured.⁵⁵

At some point prior to the two sets of handcuffs being joined, PFC Chang stood and repositioned himself next to the right side of Mr. Gianelos’ body. He knelt on the ground and placed his left knee on Mr. Gianelos’ right shoulder. PFC Chang stated that he put just enough pressure on Mr. Gianelos’ shoulder as was necessary to control him and stop him from bucking. The autopsy revealed focal intramuscular hemorrhage over the right pectoralis muscle and right trapezius/rhomboid muscles at the level of T-2 and T-3.⁵⁶ The medical examiner described these injuries as “minor.”⁵⁷ She further stated to detectives that these injuries are consistent with PFC Chang’s description of the amount of force he applied to Mr. Gianelos’ shoulder blade. Once

⁵¹ 4/21/2016 Tr. CD at pp. 6-7

⁵² Id. at p. 11

⁵³ 4/26/2016 Tr. PFC Young p. 19

⁵⁴ Id. at p. 32

⁵⁵ Id. at pp. 7-8

⁵⁶ 6/13/2016 Tr. PFC Chang pp. 25-26

⁵⁷ Report of Autopsy, Conclusion p. 3

PFC Chang's hands were free, after he had repositioned himself, he continued to pat Mr. Gianelos on the shoulder and ask him to calm down.

Given the nature of the call, PFC Chang stated that he "used the minimum force necessary to control and detain [Mr. Gianelos] so we could reunite him with his caregivers. That was our goal. That was our goal only."⁵⁸ PFC Chang added, "... he was overpowering us, um, I didn't want to lose contact cause, you know, we, we, since we had contact with him, you know, I, we lose him and decides to run, bolt towards, uh, the traffic and him hitting a car, we wanted to prevent that." PFC Chang believed, consistent with his training, that taking Mr. Gianelos to the ground minimized the risk of him escaping and running into traffic.⁵⁹

The officers noticed an abrasion and blood on Mr. Gianelos' face where he had been rubbing it on the ground and based upon this observation, at 13:05:34 hours MPO Meszaros requested a rescue unit respond. MPO Meszaros told the dispatcher that Mr. Gianelos was "scuffed up."

Once Mr. Gianelos was handcuffed and calm, PFC Chang stood and moved him onto his right side and raised his left knee towards his left chest in order to make it easier for him to breathe.⁶⁰ As the officers stood waiting for rescue to arrive, they observed that Mr. Gianelos was breathing but his color did not look right.⁶¹ He also had drool or foam coming from his mouth.⁶² They moved him to a sitting position with his back braced against the legs of PFC Chang and

⁵⁸ Id. at p. 39

⁵⁹ Id. at p. 38

⁶⁰ Id. at p. 10

⁶¹ 4/20/2016 Tr. Meszaros p. 32; 4/26/2016 Transcript PFC Courtney p. 10

⁶² Id. at p. 45

PFC Young. While Mr. Gianelos was in a sitting position, Officer Kenna was able to get a pulse and noticed that his breaths were heavy and deep.⁶³

Mrs. Zoila Maria Baralt Ramos, Program Coordinator for the day program at SJCS, arrived at the scene at approximately 13:03 hours. When she first observed Mr. Gianelos, there were four police officers present. She later stated that the officers did not seem upset nor were they yelling at Mr. Gianelos.⁶⁴ She walked up and observed Mr. Gianelos handcuffed behind his back and on the ground. She saw the officers checking Mr. Gianelos' pulse on his wrist and neck. They sat Mr. Gianelos up and she remembers him sliding back down sitting and leaning against a female officer's leg. She saw a big abrasion on the left side of his face. His eyes and mouth were open and he was drooling. She asked one of the officers if he was breathing and the officer responded that he was.⁶⁵ Mrs. Ramos recalled that the officers were attentive to Mr. Gianelos' physical condition and were "checking on him all the time."⁶⁶

Rescue arrived at 13:13:56 hours.⁶⁷ Fire Engine 418 had been dispatched to a "BLS" emergency (Basic Life Support). According to Firefighter Paramedic Technician, Stephanie White, a BLS emergency can constitute "anything from someone who fell down and scraped their knees, to [a] bee sting, [to a] headache."⁶⁸ White exited Fire Engine 418 and approached the scene. She saw two police officers standing behind and supporting the patient, Mr. Gianelos. She asked him if he was okay and got no response. Mr. Gianelos was pale and drooling. She lifted his head back and observed that the mucous membranes around his lips had started to turn

⁶³ 6/8/2016 Tr. Officer Jessica Kenna p. 27

⁶⁴ 4/22/2016 Tr. Mrs. Zoila Maria Baralt Ramos p. 42

⁶⁵ Id. at p. 23

⁶⁶ Id at p. 43

⁶⁷ 7/21/2016 Report of Detective Flanagan p. 37

⁶⁸ 5/3/2016 Tr. Stephanie White at p. 1

blue. She asked the police to remove the handcuffs and laid Mr. Gianelos on his back and took his pulse. He had no pulse and was not breathing. She immediately began to perform CPR.⁶⁹

Medic 408 arrived on scene and medics employed a Lucas device which is an automatic machine that delivers compressions to the patient's chest.⁷⁰ Medics also used a bag valve mask to give Mr. Gianelos supplemental oxygen.⁷¹ Once inside the medical unit medics placed an oropharyngeal airway (OP) to help provide air passage.⁷² In transit to INOVA Fairfax Hospital medics inserted a King Airway into Mr. Gianelos' throat in order to initiate ventilations directly into the lungs and minimize gastric distention into the stomach.⁷³

Mr. Gianelos arrived at the Emergency Department at 13:26 hours. Two attempts to intubate Mr. Gianelos were made at the ER. The second attempt was successful but persistent vomit through the tube made bagging difficult. Efforts to resuscitate Mr. Gianelos were unsuccessful and he was pronounced dead in the emergency room at 13:52 hours.⁷⁴

The Community Caretaker Function

On April 20, 2016, the police officers involved in this incident were functioning in their role as community caretakers when they were called upon to locate and assist Mr. Gianelos. Virginia courts have long recognized that police officers have duties that extend beyond the investigation of crime and the apprehension of criminals.

⁶⁹ Id. at pp. 2-3.

⁷⁰ Id. at p. 3

⁷¹ Id at p. 6

⁷² 5/10/2016 Tr. Patrick Montague, pp. 8-9

⁷³ Id. at pp. 9-10

⁷⁴ INOVA records generated 5/20/2016, pp. 25-28

“Indeed, it is far from illogical to expect that police officers, as a necessary function of their profession, do much more than simply “investigate” crimes or wrongs that have already occurred or that have unfolded in their presence. To the contrary,

‘[p]olice have “complex and multiple tasks to perform in addition to identifying and apprehending persons committing serious criminal offenses;” by design or default, the police are also expected to “reduce the opportunities for the commission of some crimes through preventive patrol and other measures,” “**aid individuals who are in danger of physical harm,**” “**assist those who cannot care for themselves,**” “resolve conflict,” “create and maintain a feeling of security in the community,” and “**provide other services on an emergency basis.**” (Emphasis added)⁷⁵

Medical Examiner

On 4/21/2016, Assistant Chief Medical Examiner, Dr. Jocelyn Posthumus MD., performed an autopsy upon the body of Paul A. Gianelos in order to determine the cause and manner of death. She later reported to detectives that the physical findings she made were consistent with the statements of the officers involved in this incident. She prepared a Report of Investigation as well as a Report of Autopsy reflecting her findings. The Report of Investigation reads in pertinent part as follows:

“Cause of Death:
Cardiac Arrhythmia Associated with Police Restraint

Manner of Death:
Accident”

The Report of Autopsy reads in relevant part as follows:

⁷⁵ Kyer v. Commonwealth, 43 Va. App. 603 (2004), citing 3 W. LaFave, Search and Seizure §6.6, at 389-90 (1996); see also Wood v. Commonwealth, 27 Va. App. 21, at 33 (1998)”

“Case Summary:

According to investigators, this was a 45 – year – old Caucasian male with a history of severe mental retardation who went unresponsive during a police encounter and was pronounced dead at the hospital. The decedent resided in a group home and wandered away unattended from the group while they were outside eating lunch. The police were contacted and when they located him he became aggressive requiring the use of physical restraint. The decedent was taken to the ground and placed in a prone position with pressure applied to his back and handcuffed. After approximately 4 minutes⁷⁶ he was placed in a seated position and EMS was called. When EMS arrived he was pulseless and CPR was initiated; however, despite resuscitative efforts he was declared dead at the hospital.

Gross examination showed minor blunt force trauma to the wrists consistent with handcuff use. There was minor blunt force trauma to the head and torso consistent with history of physical restraint and being placed in a prone position on the ground. There was hemorrhage in the neck consistent with a traumatic intubation. The presence of ocular petechiae may be secondary to resuscitation. His heart was mildly enlarged at 44 gm; however, no anatomical abnormality was identified.

Post mortem toxicological analysis of inferior vena cava blood was negative for alcohols, common drugs of abuse including cannabinoids and his prescription medications quetiapine and trazodone.

The exertion used in resisting restraint in conjunction with the pressure applied to the torso, resulted in cardiac arrhythmia and death.

CAUSE OF DEATH:

Cardiac Arrhythmia Associated with Police
Restraint

MANNER OF DEATH:

Accident”

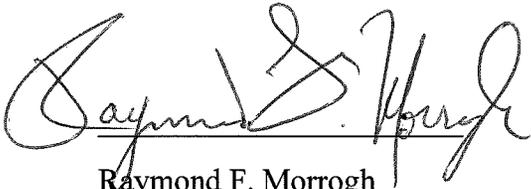
⁷⁶ This time estimate of 4 minutes constitutes an approximation based on the time that PFC Chang parked his cruiser and marked on scene (12:59:03 hours) and the time that PFC Young calls “10-4, 10-6” over the radio (13:03:37 hours). PFC Chang changes his position and applies pressure to the torso (right shoulder area) of Mr. Gianelos at some point after PFC Young marks on scene (13:01:42 hours). MPO Meszaros, PFC Chang and Mr. Gianelos go to the ground at some time after PFC Chang arrives on scene and before PFC Young arrives on the scene.

Conclusion

The officers who responded to the scene on April 20, 2016 were faced with a difficult situation. They had limited information concerning Mr. Gianelos' medical and mental condition other than he was a critical missing person with mental health issues. The first officer on the scene, MPO Meszaros, consistent with his Crisis Intervention training, treated Mr. Gianelos with kindness and empathy, holding his hands and attempting to communicate with him. When Mr. Gianelos started pulling away, next to a busy road, MPO Meszaros had little choice but to hold on to him for Mr. Gianelos' safety.

PFC Chang's decision to take Mr. Gianelos to the ground was not unreasonable given Mr. Gianelos' strength and his proximity to a busy street. And PFC Chang's successful effort to maneuver Mr. Gianelos to a grassy area is supportive of his statement that his only goal was to help Mr. Gianelos and reunite him with his caregivers.

The officers did not strike Mr. Gianelos, nor did they employ any choke holds or weapons. The officers were careful not to restrict Mr. Gianelos' airway. These officers had little alternative but to attempt to restrain Mr. Gianelos for his own safety. He was legally blind, intellectually impaired, agitated and in real danger of serious injury or death if he had run into the roadway. On the evidence here, these officers did not intend to hurt Mr. Gianelos, did not act with malice, nor did they act recklessly with a callous disregard for Mr. Gianelos' life. Thus their conduct in attempting to restrain Mr. Gianelos was not criminal. While tragic and profoundly sad, Mr. Gianelos' death was accidental. In my legal opinion, none of these police officers are criminally culpable for his death.

 9/8/2016

Raymond F. Morrogh
Commonwealth's Attorney