



INDEPENDENT INVESTIGATIONS DIVISION

Declination Report Concerning the Police-Involved
Death in Montgomery County on December 24, 2024

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Declination Report Concerning the Police-Involved Death of Marvin Salamanca Garcia on December 24, 2024

The Independent Investigations Division of the Maryland Office of the Attorney General (the “IID”) is charged with investigating “police-involved incidents that result in the death of individuals or injuries likely to result in death.”¹ If the Attorney General determines that the investigation provides sufficient grounds for prosecution, then the IID “shall have exclusive authority to prosecute the offense.”²

I. Introduction

On December 24, 2024, at approximately 10:28 p.m., Gaithersburg Police Department (“GPD”) officers responded to the 300 block of Summit Avenue for a report of a man causing a disturbance. When officers arrived, they encountered a man in the entrance way of an apartment building covered in blood and acting erratically. Officers grabbed the man, placed him on the ground, and held him. While officers waited for medics to arrive, the man went unconscious and stopped breathing. Officers rendered medical aid until medics responded to the scene and transported the man to an area hospital. The man was pronounced dead on December 26, 2024.

After completing its investigation and evaluating all the available evidence, the Office of the Attorney General has determined that the subject officers did not commit a crime under Maryland law. Accordingly, the Attorney General has declined to prosecute any of the subject officers in this case.

The IID’s investigation focused exclusively on potential criminal culpability relating to the subject officers’ conduct. By statute, the IID only has jurisdiction to investigate the actions of Maryland police officers, not those of any other individuals involved in the incident. Moreover, the IID’s analysis does not consider issues of civil liability or the department’s administrative review of an officer’s conduct. Compelled statements by subject officers may be considered in civil or administrative proceedings but may not be considered in criminal investigations or prosecutions due to the subject officers’ Fifth Amendment rights. If any compelled statements exist in this case, they have not been considered in the IID’s investigation.

This report is composed of a factual narrative followed by a legal analysis. Every fact in the narrative is supported by the evidence obtained in this investigation, including forensic and autopsy reports, police radio transmissions, dispatch records, police and emergency medical reports, body-worn camera footage, photographs, department policy, and interviews with civilian and law enforcement witnesses. The subject officers did not make a statement in this case, which has no impact on the prosecutorial decision.

The legal analysis explains why the IID will not bring charges under the relevant Maryland statutes.

¹ Md. Code, State Gov’t § 6-602 (c)(1).

² Md. Code, State Gov’t § 6-604 (a)(1).

This investigation involved one decedent and seven subject officers:

- A. Marvin Salamanca Garcia was 35 years old at the time of the incident. He was a Hispanic male who lived in Gaithersburg, Maryland.
- B. Sergeant Evan Milano has been employed by GPD since January 2013. He is a White male, and at the time of the incident was 37 years old.
- C. Corporal Louis Seek has been employed by GPD since November 2015. He is a White male, and at the time of the incident was 36 years old.
- D. Officer William Diggons has been employed by GPD since July 2017. He is a White male, and at the time of the incident was 46 years old.
- E. Officer Kelvin Colon Gerena has been employed by GPD since January 2021. He is a White male, and at the time of the incident was 27 years old.
- F. Officer Anna Reckley has been employed by GPD since June 2023. She is a White female, and at the time of the incident was 23 years old.
- G. Officer Nicholas Ozkayan has been employed by GPD since January 2020. He is a White male, and at the time of the incident was 28 years old.
- H. Officer Jaime Flores-Rios has been employed by GPD since January 2024. He is a Hispanic male, and at the time of the incident was 21 years old.

The IID reviewed any disciplinary records and criminal histories of these involved parties and where they existed, determined none were relevant to the legal analysis.

II. Factual Summary

On December 24, 2024, at 10:10:01 p.m., Gaithersburg Police Department 911 received a call from a man trying to enter his apartment in the 300 block of N. Summit Avenue. The caller reported that he could not enter his apartment because his roommate was acting erratically and under the influence of an unknown substance.³

At 10:28:46 pm, Officer Kelvin Colon Gerena responded to the call. He encountered a man, later identified as Marvin Salamanca Garcia, sitting on the floor behind the glass entrance to the apartment building. Blood was smeared on the glass door, and Mr. Salamanca Garcia had deep

³At 6:10 p.m. on December 24, 2025, subject officers Flores-Rios and Reckley responded to an earlier call for a domestic disturbance at the same address. They interacted with Mr. Salamanca Garcia; however, no police assistance was required.

lacerations on both hands. Mr. Salamanca Garcia's body, hands, and face were covered in blood. Officer Colon Gerena immediately requested emergency medical services.



Image 1: Officer Colon Gerena's initial encounter with Mr. Salamanca Garcia in the apartment vestibule covered in blood.

Officer Colon Gerena opened the door to the apartment building, and Mr. Salamanca Garcia raised his arms and said, "Amen." Mr. Salamanca Garcia slid through the open door and appeared to be making the sign of the Cross and stating in Spanish "in the name of the Father, the Son, and the Holy Ghost." Officer Colon Gerena attempted to communicate with Mr. Salamanca Garcia, but Mr. Salamanca Garcia's response was unintelligible. Mr. Salamanca Garcia continued to speak and act erratically, including throwing his hands in a manner that caused blood to splatter.

During this time, Corporal Louis Seek, Sergeant Evan Milano, and Officers Jaime Flores-Rios, Nick Ozkayan, William Diggons, and Anna Reckley arrived on scene. Mr. Salamanca Garcia was rolling around on the ground and unable to coherently respond to officers who were questioning him in Spanish. Officer Colon Gerena spoke with the 911 caller, who said that Mr. Salamanca Garcia had been drinking alcohol earlier but that he did not know how the injuries to Mr. Salamanca Garcia's hands occurred. At approximately 10:34 p.m., Mr. Salamanca Garcia stood up and walked toward Corporal Seek. The subject officers ordered him to stay calm; however, Mr. Salamanca Garcia continued to walk toward the subject officers in the direction of the street in front of the apartment complex.



Image 2: Still image from Corporal Seek's body-worn camera showing Mr. Salamanca Garcia approach the subject officers.

As Mr. Salamanca Garcia walked past the subject officers with his arms raised, Corporal Seek grabbed Mr. Salamanca Garcia's arm, which caused a large amount of blood to spray Corporal Seek's face. Corporal Seek and Mr. Salamanca Garcia fell face down to the ground, with Corporal Seek landing on top of Mr. Salamanca Garcia. The subject officers held Mr. Salamanca Garcia's arms and legs as he struggled. The subject officers held the front of Mr. Salamanca Garcia's body on the ground for approximately 2 minutes and 46 seconds, until Mr. Salamanca Garcia stopped struggling. During the struggle, one of the subject officers decided not to handcuff Mr. Salamanca Garcia because of the deep lacerations to his hands.



Image 3: An image from Officer Flores-Rios' body-worn camera footage showing the subject officers restraining Mr. Salamanca Garcia.

As the subject officers turned Mr. Salamanca Garcia onto his back, they determined he was breathing but not responsive. Corporal Seek and Officer Colon Gerena administered lifesaving efforts, including the use of the automated external defibrillator (“AED”), until medics arrived on scene several minutes later and took over medical care. Mr. Salamanca Garcia was taken to the hospital, where he was pronounced dead on December 26, 2024.

III. Supplemental Information

A. Autopsy

An autopsy of Mr. Salamanca Garcia was performed by the Office of the Chief Medical Examiner (the “OCME”) on December 27, 2024. The Medical Examiner determined that Mr. Salamanca Garcia died of “complications of cocaine and cocaethylene intoxication, sharp force injuries, cardiovascular disease, and prone restraint.”⁴ The report further indicates that Mr. Salamanca Garcia’s prior heart disease increased the risk of cardiac arrest, which was exacerbated by alcohol, cocaine, substantial blood loss, and the stress caused by prone restraint. The manner of death was ruled “Homicide”.⁵

The OCME toxicology test detected the presence of cocaine and alcohol in Mr. Salamanca Garcia’s system.

B. Department Policy

GPD provides officers with written policies and procedures, as well as practical training in the use of force. The GPD policies and training materials encompass the written policies and procedures for its sworn officers, which include several written policies relevant to this investigation.

1. Policy

GPD Policy 600.1, Response to Resistance/Aggression, permits officers to use only the amount of force that is necessary under the totality of the circumstances to prevent the immediate threat of injury or to effectuate a law enforcement duty. Officers should cease the use of force as soon as the individual is under control and no longer poses an immediate threat of harm to the officers or other individuals. Officers should render medical aid and promptly request medical treatment to injured people. Police officers must use verbal warnings before physical force to de-escalate the situation. The amount of force used should be limited to what is necessary in relation to the resistance.

⁴ Prone restraint indicates that Mr. Salamanca Garcia was held while lying on the front of his body, face down.

⁵ Manner of death is a classification used to define whether a death is from intentional causes, unintentional causes, natural causes, or undetermined causes. The Maryland Office of the Chief Medical Examiner uses five categories of manner of death: natural, accident, suicide, homicide, and undetermined. “Homicide” applies death results from a volitional act committed by another person to cause fear, harm, or death. This term is not considered a legal determination; rather, they are largely used to assist in the collection of public health statistics. *A Guide for Manner of Death Classification*, First Edition, National Association of Medical Examiners, February 2002.

GPD Policy 602.2, Response to Person with Mental Illness or Cognitive Disability, permits officers to request a petition for emergency evaluation if the officer observes behavior indicative of a mental illness and the individual presents a danger to himself and others.

2. Training

GPD training materials on Sudden In-Custody Death Prevention indicate that officers should limit the time an individual is kept in the prone position to avoid asphyxiation. Officers should also avoid applying pressure to the individual's back and neck. Officers should place the individual in handcuffs to assist in control. In addition, the officers should place the individual in the recovery position (side or seated) as soon as the officers can gain control over the individual.

According to GPD training Lieutenant Chris Vance, officers encountering an individual experiencing a mental health crisis and having significant physical injuries should attend to medical injury first. Lieutenant Vance indicated that officers may detain an individual who is not cooperative if they have potentially life-threatening injuries to ensure they receive proper medical care. Officers should consider their safety in these circumstances, including the presence of weapons and blood-borne pathogens. Additionally, officers should use the least amount of force necessary to detain the individual.

IV. Legal Analysis

After a criminal investigation is complete, prosecutors must determine whether to bring criminal charges against a person. When making that determination, prosecutors have a legal and ethical duty to only charge a person with a crime when they can meet the State's burden of proof; that is, when the available evidence can prove each element of the alleged crime beyond a reasonable doubt. Prosecutors also need to determine whether the person accused of the crime could raise an affirmative defense. In those cases, prosecutors not only need to prove the crime, but they also need to determine whether the evidence could disprove the defense beyond a reasonable doubt. Ultimately, the decision to bring any charges rests on whether the available evidence is sufficient for prosecutors to meet that standard.

Based on the evidence, two relevant offenses were considered in this case. First is the violation of Maryland's Use of Force Statute, which makes it a crime for officers to intentionally use excessive force.⁶ The second offense is Involuntary Manslaughter, which occurs when an accused person's grossly negligent conduct causes the death of another person.⁷

The evidence in this case shows that the subject officers did not violate any of the aforementioned statutes. Accordingly, the IID will not pursue criminal charges against any of the

⁶ See Md Code, Public Safety §3-524(d)(1).

⁷ MPJI-Cr 4:17.9 Homicide—Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.9 (2d Ed. 2022).

subject officers. This report explains in further detail why, based on the evidence, a prosecutor could not prove beyond a reasonable doubt that any officer committed a crime.

A. Maryland Use of Force Statute

Proving a violation of the Use of Force Statute requires a prosecutor to establish beyond a reasonable doubt that a subject officer:

- (1) used force that was not necessary and proportional to prevent an imminent threat of physical injury to themselves or another person, or to accomplish a legitimate law enforcement objective;
- (2) intended to use force that was excessive, *i.e.*, not necessary and proportional under the circumstances; and
- (3) the use of excessive force resulted in serious bodily injury or death.⁸

First, prosecutors would need to establish that one or more of the subject officers used force that was not necessary and proportional under the circumstances. Second, prosecutors would need to prove that a subject officer's use of excessive force was intentional. Finally, prosecutors would need to establish that the force used by the subject officers resulted in Mr. Salamanca Garcia's death.

Determining whether an officer's use of force is "necessary and proportional" to prevent an imminent threat of physical injury or accomplish a legitimate law enforcement objective is a fact-specific inquiry. Generally speaking, a use of force is considered "necessary and proportional" when an officer had no reasonable alternative available to the officer under the circumstances, the kind and degree of force was appropriate in light of the officer's legitimate law enforcement objective, and it was not likely to result in harm that was out of proportion or too severe in relation to the officer's law enforcement objective.⁹ When a factfinder—either a judge or a jury—conducts this analysis, they must consider the totality of the circumstances, including, but not limited to, the nature of the call for service, what occurred in the moments before force was used, what the subject officers knew at the time force was used, and the time and distances involved.¹⁰

Based on the totality of the circumstances, there is no evidence that the subject officers intended to use force that exceeded that which was necessary and proportional to prevent Mr. Salamanca Garcia from being a danger to himself or others. First, with respect to whether the use of force was necessary, Mr. Salamanca Garcia's behavior posed a threat to his safety and that of the subject officers on scene, which required the subject officers to restrain him. When the subject officers arrived, blood covered Mr. Salamanca Garcia's chest, hands, and face, as well as the glass apartment door, and Mr. Salamanca Garcia had extremely deep lacerations on both hands. Mr. Salamanca Garcia was acting erratically and unable to appropriately respond to the subject

⁸ MPJI-Cr 4:36 Unlawful Use of Force by a Police Officer, MPJI-Cr 4:36 (2d ed. 2022).

⁹ For a more detailed discussion of the "necessary and proportional" standard, see [this opinion](#) written by the Office of the Attorney General.

¹⁰ *Id.*

officers' questions and requests to remain calm. Mr. Salamanca Garcia's actions, specifically, attempting to walk past the subject officers and flinging blood, required that the subject officers restrain him, both for his safety and for the safety of others.

Second, with respect to whether the kind and degree of force used by the subject officers was proportional to the imminent threat of harm presented by Mr. Salamanca Garcia, video evidence shows that the force used by the subject officers was proportionate. The subject officers did not strike or slam Mr. Salamanca Garcia down. The subject officers restrained his arms, legs, and shoulders after Mr. Salamanca Garcia fell to the ground. The subject officers did not exert pressure on Mr. Salamanca Garcia's back or neck as he lay in the prone position and immediately turned him to his back when he stopped resisting. Additionally, the subject officers initially used verbal commands and conversation in an attempt to calm Mr. Salamanca Garcia and prevent him from walking off into the street in a delusional state with what could be reasonably interpreted as life-threatening injuries.

Based on the evidence, a prosecutor could not prove beyond a reasonable doubt that the subject officers' use of force was not necessary and proportional to accomplish a legitimate law enforcement objective.¹¹ Accordingly, the Office of the Attorney General will not charge the subject officers with a violation of the Use of Force Statute in this case.

B. Involuntary Manslaughter

To prove involuntary manslaughter, a prosecutor would need to prove beyond a reasonable doubt that:

- (1) one or more of the subject officers acted in a grossly negligent manner, and
- (2) that their gross negligence caused Mr. Salamanca Garcia's death.¹²

Gross negligence is conduct that demonstrates a "wanton and reckless disregard for human life."¹³ To determine whether the subject officers acted with gross negligence, prosecutors must examine the decision to restrain Mr. Salamanca Garcia forcefully and the manner in which the subject officers rendered medical aid.

Regarding the decision to restrain Mr. Salamanca Garcia and their actions during the restraint, the evidence does not support a charge that the subject officers acted recklessly or negligently. As previously discussed, the subject officers used force that was reasonable under the circumstances to prevent Mr. Salamanca Garcia from being a danger to himself and others. Video evidence shows that the actions taken by the subject officers to restrain Mr. Salamanca Garcia were appropriate and minimal. The subject officers tried to reasonably gain control of Mr. Salamanca Garcia as safely as possible. The subject officers did not strike Mr. Salamanca Garcia,

¹¹ Because there is insufficient evidence to establish that the subject officers intended to use force that was excessive, this report does not analyze whether the subject officers caused the death of Mr. Salamanca Garcia.

¹² MPJI-Cr 4:17.9 Homicide—Involuntary Manslaughter (Grossly Negligent Act and Unlawful Act), MPJI-Cr 4:17.9 (2d Ed. 2021).

¹³ *Duren v. State*, 203 Md. 584, 588 (1954).

nor did they slam him to the ground. Furthermore, the subject officers' actions were consistent with their training, which explicitly addresses positional asphyxiation and instructs officers to limit the time an individual is in the prone position and to refrain from applying pressure to the back and neck. Mr. Salamanca Garcia was held down in the prone position because he was actively resisting the subject officers' attempts to restrain him. Additionally, the deep lacerations on Mr. Salamanca Garcia's hands prevented the subject officers from handcuffing him. As soon as Mr. Salamanca Garcia stopped resisting, the subject officers immediately turned him over to his back and checked for responsiveness. The subject officer's conduct was not grossly negligent because their positioning and restraint of Mr. Salamanca Garcia's limbs was limited to gain control.

With regards to medical treatment for Mr. Salamanca Garcia, the evidence does not show that the subject officers acted recklessly or negligently. The subject officers immediately called for medics upon their arrival, noting the large amount of blood and deep lacerations on his hands. The subject officers checked for responsiveness immediately after turning him onto his back and rendered medical aid until emergency medical services arrived.

Accordingly, the Office of the Attorney General will not charge the subject officers with involuntary manslaughter in this case.

V. Conclusion

This report has presented factual findings, legal analysis, and conclusions relevant to the December 24, 2024, police-involved death of Marvin Salamanca Garcia in Montgomery County, Maryland. The Office of the Attorney General has declined to seek charges in this case because, based on the evidence obtained in its investigation, the subject officers did not commit a crime.