

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WISCONSIN

HALIMA ABDULLAHI, on her own behalf
and as Administrator for the Estate of
JAMAL MOHAMED, Deceased,

Plaintiff,

and ALI MOHAMED ABDI, whereabouts
unknown,

Involuntary Plaintiff,

v.

CITY OF MADISON, SERGEANT
PATRICK GRADY, OFFICER HERBERT
MUELLER, OFFICER JESSICA MURPHY,
and CAPITOL POLICE OFFICER JAMES
BROOKS,

Defendants.

OPINION AND ORDER

03-C-631-C

Plaintiff Halima Abdullahi brings this civil action pursuant to 42 U.S.C. § 1983 to recover monetary damages for alleged violations of the constitutional rights of her son, Jamal Mohamed, who died during an altercation with officers from the Madison Police Department and the State Capitol Police on November 20, 2002. The Dane County Coroner's Office investigated the incident and ruled that Mohamed had died as a result of chest and neck trauma, the cause of which was unknown. Plaintiff disputes the coroner's conclusion concerning causation. She contends that defendant Capitol Police Officer James Brooks used excessive force on her son by kneeling on Mohamed's back and shoulder area

while he was lying prone, causing trauma to his chest and neck and ultimately causing his death. She contends that defendants Sergeant Patrick Grady, Officer Jessica Murphy and Officer Herbert Mueller are also liable under § 1983 because they observed Brooks using this excessive force but failed to intervene to stop him.

Defendants Grady, Murphy, Mueller and Brooks have moved for summary judgment. They contend that plaintiff has failed to adduce sufficient evidence from which a trier of fact could infer that her son's injuries were caused by the action or inaction of any of the officers. (In her complaint, plaintiff alleged various other claims under state and federal law against defendants, including a "policy and practice" claim against defendant City of Madison. In her response to defendants' motions for summary judgment, she has conceded that she lacks sufficient evidence to support these claims and that judgment may be entered in favor of defendants on these claims.)

This is an unfortunate case with many unanswered questions. It is understandable that plaintiff is troubled by the failure of city officials to determine conclusively who or what caused the injuries that led to her son's death and that she wants the question put to a jury. However, plaintiff bears the burden of proving causation. Having carefully reviewed plaintiff's evidence, I find that she has not adduced evidence from which a jury could reasonably find that her son's injuries were caused by the actions of defendant Brooks. The undisputed evidence shows that defendant Brooks applied pressure with his knee and shin only to Mohamed's shoulder blade area. Plaintiff has introduced no evidence to show that

this action could have caused the fatal injuries to Mohamed that were found on autopsy. Absent some evidence of specific wrongdoing on the part of Brooks that could have caused her son's injuries, plaintiff's excessive force claim fails, as do the attendant failure-to-intervene claims.

From the parties' proposed findings of fact and the record, I find the following facts to be undisputed for the purpose of deciding the motions for summary judgment.

UNDISPUTED FACTS

A. Mohamed's Altercation with the Officers

At approximately 1:18 p.m. on November 20, 2002, nurse Pamela McCarty was in her Jeep on her way to work when she saw cars weaving to avoid hitting a man who was staggering across three lanes of traffic on University Avenue. McCarty slowed her car because the man was having trouble walking. As he passed in front of her Jeep, McCarty observed that he was in distress physically and was breathing heavily. McCarty saw the man stumble and fall as he attempted to negotiate the curb. The man was later identified as Jamal Mohamed, a 22 year old Somalian-born man with a history of severe post traumatic stress disorder stemming from experiences he endured as a young boy in Somalia.

McCarty got out of her vehicle to help Mohamed. She went around the back of her vehicle and found Mohamed crawling into the front seat of her Jeep. She told him she was a nurse, offered to help him and told him not to crawl into her car. She grabbed the back

of his shirt collar and pulled him out of the vehicle. Mohamed then walked alongside her Jeep, bouncing into it three or four times with enough force to shake the vehicle. He then ran into the middle of the three inbound lanes of University Avenue and pulled down his pants while he faced oncoming traffic. McCarty went out into the street, grabbed his arm and assisted him as he stumbled back to the driver's side of her Jeep.

Once at the side of McCarty's car, Mohamed again tried to get into it. He made guttural noises and was breathing heavily. McCarty grabbed him again and got him out of her car. He flopped himself on the hood of her Jeep, with enough force to shake the entire vehicle. He pulled the wiper blade of the Jeep all the way back and pounded hard on the windshield several times.

Mohamed then came off the vehicle to the terrace area in front of the car. McCarty followed him, telling him she was a nurse and could help him. Mohamed crouched down and began scooping up leaves, branches and gravel and throwing the debris at McCarty. He grabbed a fistful of McCarty's hair with a firm grip and twisted her neck, pulling her down. While McCarty was crouched down trying to get Mohamed to release her hair, he started clawing at her uniform. McCarty grabbed her cell phone from her breast pocket and knocked Mohamed in the head with the phone half a dozen times with as much force as she could. The two continued to struggle, and Mohamed punched McCarty hard in the face with a closed fist, grabbing McCarty's glasses in the process. He then let go of McCarty's hair. Mohamed finally dropped the glasses and McCarty was able to put them back on.

Meanwhile, City of Madison police officer Jessica Murphy was on patrol in her squad car when she received dispatches reporting that a male was causing a disturbance in a tailor's shop in the 2800 block of University Avenue. As defendant Murphy drove to the scene, she received additional dispatches stating that a man was down in traffic in the same area of University Avenue and later, that the man was having an altercation with a woman driving a Jeep.

When defendant Murphy arrived on scene, she observed Mohamed lying on his back on the sidewalk area, near the curb, to the right of McCarty's Jeep. Near Mohamed was McCarty. Not knowing whether Mohamed had been hit by a vehicle or was injured, Murphy radioed dispatch and told them to send fire rescue.

As defendant Murphy approached Mohamed, she saw that his pants were open in the front and that he was fumbling around by his waist. Defendant Murphy identified herself as a Madison police officer and told him to calm down and stop moving his hands around his belt area. As defendant Murphy got closer, she noticed that he had his belt in his hand. As she continued to get closer, Mohamed sat up and started swinging his belt over his head by holding onto the belt buckle. Defendant Murphy got out her pepper spray and told Mohamed to put down the belt and settle down, or she would have to spray him. She also radioed dispatch and reported Mohamed's actions with the belt.

Meanwhile, defendants Sergeant Grady and Officer Mueller were on patrol in separate squad cars and heard dispatch send defendant Murphy to the call. After hearing

that dispatch as well as the later reports of a man walking or running against traffic on University Avenue, Sergeant Grady and Officer Mueller began to drive to the scene. While en route, the officers heard additional radio transmissions that the man may have grabbed a pedestrian and was swinging a belt at officer Murphy. Upon hearing this last piece of information, the officers activated their lights and sirens and continued to the scene on an emergency basis.

Also heading to the scene was defendant Brooks, a State Capitol police officer who had just finished paying for gas on University Avenue when he saw defendant Murphy's squad speed by with its lights and sirens activated. His curiosity piqued, defendant Brooks got into his squad car, turned on his scanner and headed in Murphy's direction. While en route, defendant Brooks heard over the scanner a female officer say something to the effect of "He's whipping his belt at me" and "step it up."

Meanwhile, Mohamed did not respond to defendant Murphy's commands to put down the belt. After swinging it around his head, he grabbed an end of the belt with each hand and held it above his head. As defendant Murphy started to approach him again, he grabbed the buckle-less end of the belt and started swinging the belt around his head again, this time with the buckle flying outward. Defendant Murphy backed off again and continued to tell Mohamed to drop the belt. After a short time, he stopped swinging the belt but put it around his neck, crossing the ends of the belt in front of his chest.

Around that time, defendants Brooks and Grady arrived on the scene. The officers came toward defendant Murphy and Mohamed. Defendant Grady saw that Mohamed had the belt in his hand, was flailing his arms and making a guttural, growling noise. Defendant Brooks saw Mohamed jump up from his knees to a standing position, an athletic move that shocked Brooks. Observing that there was a lot of vehicular traffic on University Avenue and a lot of foot traffic on the sidewalk in the area, defendant Grady was concerned that Mohamed would run into traffic or attack someone else. Defendant Grady made eye contact with defendant Murphy and walked up behind Mohamed to restrain him. Defendants Murphy, Grady and Brooks did not observe anything about Mohamed that suggested that he was physically injured.

Defendants Grady, Murphy and Brooks approached Mohamed. Defendant Murphy grabbed one arm while defendants Brooks and Grady grabbed the other. The officers moved Mohamed to the Jeep a short distance away and held him against it to try to get him under control. The officers then directed him to the ground, onto his stomach. Mohamed went down to the ground easily, hitting the ground without any great force. Once on the ground, Mohamed continued to resist, kicking his legs and moving his arms so they could not be handcuffed and arching his back as if he was trying to get away. Defendant Grady attempted to get control of Mohamed's legs and feet. Defendant Murphy was on Mohamed's left side and was able to cuff his left wrist, but she could not get the free end of the handcuffs toward his right wrist because he continued to pull his arms away. Officer

Brooks, who was on Mohamed's right side, placed his right knee and shin on Mohamed's right shoulder area to gain control so the officers could get the handcuffs on. Defendant Brooks did not drop onto Mohammed with his knee or place his knee across Mohamed's spine or neck.

Mohamed continued to struggle, attempting to arch his back and lift his torso off the ground. By rolling his grounded foot slightly, defendant Brooks was able to shift his body weight so as to place enough weight on Mohamed to prevent him from arching up. Mohamed stopped struggling with his upper body after about 15-20 seconds because by then Brooks had put enough weight on Mohamed so that he could not lift himself up. Defendant Brooks took his handcuffs and looped one cuff onto the open loop of defendant Murphy's handcuffs and the other cuff around Mohamed's right wrist.

During the struggle to handcuff Mohamed, defendant Murphy kept asking Mohamed to stop resisting. As the officers were getting the handcuffs on Mohamed, Brooks could see that Mohamed was still breathing, because he was resisting. Brooks kept some weight on Mohamed during the entire time that Brooks was putting handcuffs on Mohamed. Once Mohamed was handcuffed, defendant Brooks took his right knee and shin off Mohamed's shoulder and knelt next to Mohamed with his hand on Mohamed's back. Defendant Brooks had his knee and shin on Mohamed's right shoulder for approximately 30-45 seconds. After he took his knee and shin off Mohamed, Brooks observed that Mohamed was still breathing.

Mohamed continued to struggle and kick with his feet after he was handcuffed and Brooks had gotten off him. Defendant Grady, who had placed one of his knees on one of Mohamed's thighs, was trying to hold Mohamed's ankles down with his hands. Mohamed continued to move and was trying to squirm loose. Grady suggested that Mohamed's feet be restrained. Defendant Grady asked James Morovic, a Madison police officer who had just arrived on the scene, for a restraint called a flex cuff. Morovic did not produce a flex cuff but said that he had a kickstop restraint, a restraint consisting of nylon straps that go around the ankles and waist. Morovic ran to his squad to get the kickstop restraint.

While Officer Morovic was retrieving the kickstop restraint, defendant Grady was holding Mohamed's ankles and legs. Mohamed continued to kick and was making guttural noises. Officer Morovic returned quickly with the kick stop restraint. Following right behind Officer Morovic was defendant Mueller, who had just arrived on the scene. Mueller saw that Mohamed was still kicking his legs and moving back and forth in a rocking motion. Mueller approached Mohamed from the right and grabbed his right thigh to try to restrain him, but Mohamed continued to kick. Mueller then grabbed Mohamed's right ankle.

Almost immediately after Officer Mueller grabbed Mohamed's ankle, Officer Morovic started to apply the kickstop restraint. Officer Morovic placed the strap around Mohamed's ankles and secured them as Mohamed continued to kick. Officer Morovic then began to try to fasten the waist strap around Mohamed's waist. Around this time, Officer Jerry Goehring

arrived and moved in to double-lock the handcuffs. When Goehring walked up to the scene, he did not observe any movement from Mohamed.¹

Officer Mueller and Sergeant Grady, who were holding onto Mohamed's legs, noticed that when Morovic moved to apply the waist strap, Mohamed suddenly went limp. Officer Brooks and Sgt. Grady both said something to the effect of "I don't think he's breathing." The officers immediately turned Mohamed carefully onto his side and checked for a pulse, but could not find one. Fire rescue had just arrived on the scene and moved in immediately to assess Mohamed and provide treatment. The officers quickly removed the handcuffs and leg restraints and then backed away so fire rescue could have access to Mohamed. The paramedics began resuscitation efforts at the scene and conveyed Mohamed to the hospital. The deputy coroner pronounced Mohamed dead at 2:39 p.m.

Approximately two and one-half minutes passed from the time the officers took Mohamed to the ground until they noticed he had stopped breathing. McCarty was standing about six to seven feet away during the officers' interaction with Mohamed. McCarty did not see any officer hit, sock, slap, punch or kick Mohamed or do anything that

¹ Plaintiff insists that Officer Goehring arrived prior to the time that Officer Morovic came back with the kick stop. However, I find that Goehring's deposition testimony supports defendants' contention that he arrived after the leg restraints had already been applied. In any case, this dispute is largely immaterial. Plaintiff has adduced no evidence that Brooks still had his knee on Mohammed's shoulder at the time Goehring walked up and she concedes that it was reasonable for the officers to apply the leg restraint.

in her view would have resulted in injury to Mohamed or cause her to be concerned about the amount of force used.

B. Coroner's Investigation

The Dane County Coroner's Office investigated Mohamed's death. In connection with that investigation, Coroner John Stanley asked Dr. Robert Huntington, III, a forensic pathologist, to perform an autopsy. Dr. Huntington found from his autopsy that Mohamed had massive truncal emphysema (air trapped between the skin and the underlying structures) with a left pneumothorax (collapsed lung) shown on x-ray and extensive internal neck acute hemorrhage. With respect to the neck, Dr. Huntington found "[e]xtensive hemorrhage is present at many level of planes over the entire trachea as well as extending into the carotid sheaths bilaterally and the sternomastoid muscles bilaterally." He found no fractures of the cervical spine or thyroid cartilage, although the right thyroid cornu appeared dislocated and hemorrhage was present over the outside. Dr. Huntington concluded that the cause of Mohamed's death was widespread soft tissue emphysema and neck injuries, although he was "not at all clear about the timing of either." Dr. Huntington noted that "[t]he very extensive hemorrhage in the neck needs explaining," noting that the extent of it "would strongly suggest force while [Mohamed] was alive."

Stanley concluded that Mohamed had died as a result of traumatic asphyxia, which was the consequence of truncal emphysema, tension pneumothorax and laryngeal

hemorrhage. He was unable to determine the “exact causes” of these three conditions except that they were the result of neck and chest trauma, the source of which was unknown. Stanley determined that the manner of Mohamed’s death was accidental. He found nothing in his investigation to suggest that Mohamed’s injuries were caused by any conduct of any firefighters, paramedics or other health care professionals who handled Mohamed after his interaction with the officers.

Stanley did not interview any of the officers involved in the altercation with Mohamed. However, from speaking with their supervisors and reviewing the reports of the detectives who had interviewed the officers after the incident, Stanley concluded that Mohamed’s death was not the result of any conduct by the police officers.

The coroner attempted to determine Mohamed’s whereabouts during the hours before his death. Witnesses reported having seen Mohamed at 12:25 p.m. leaving the hospital where he had attended a program. Another witness reported having seen Mohamed about 20 minutes later “laying or half-sitting” in some bushes about a block from the hospital. Mohamed was reported to have been seen next was when he came into the tailor’s shop on University Avenue at 1:18 p.m. The coroner was unable to determine where Mohamed had been during the intervening half hour.

OPINION

A. Summary Judgment Standard

Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); Celotex Corp. v. Catrett, 477 U.S. 322-23 (1986). In determining whether a genuine issue of material fact exists, courts must construe all facts in the light most favorable to the non-moving party and draw all reasonable inferences in favor of that party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255 (1986). When a properly-supported motion for summary judgment shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law, to avoid summary judgment the non-moving party must respond by presenting affidavits or other evidence that sets forth specific facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56. The non-moving party must supply evidence sufficient to allow a reasonable jury to render a verdict in his favor. Sanchez v. Henderson, 188 F.3d 740, 743 (7th Cir. 1999). The mere existence of some alleged factual dispute is insufficient to defeat a properly supported motion for summary judgment. Liu v. T & H Machine, Inc., 191 F.3d 790, 796 (7th Cir. 1999).

B. Plaintiff's Claim of Excessive Force Against Defendant Brooks

At the outset, I note what is not at issue in this case. In her response brief, plaintiff has conceded that it was proper for the officers to detain Mohamed and take him to the

ground, place him in a prone position and place handcuffs on him. She also concedes that it was reasonable for the officers to use the leg restraint. Plaintiff has distilled her excessive force claim down to challenging only “the manner in which Defendant Brooks executed the prolonged detention, and specifically placed his knee, shin, arm, and hand on Jamal Mohamed’s body once he was on the ground (and both before and after the evidence indicates he stopped moving).” Plaintiff contends that these actions by defendant Brooks caused the fatal injuries that led to her son’s death, in other words, that Brooks used “deadly force” to restrain Mohamed.

The parties agree that plaintiff’s claim is governed by Graham v. Connor, 490 U.S. 386 (1989), wherein the Supreme Court held that “*all* claims that law enforcement officers have used excessive force--deadly or not--in the course of an arrest, investigatory stop, or other 'seizure' of a free citizen should be analyzed under the Fourth Amendment and its 'reasonableness' standard.” Id. at 395 (emphasis in original). As the Court explained in Graham, the reasonableness standard cannot be defined precisely or applied in a mechanical fashion. Id. at 396. “Determining whether the force used to effect a particular seizure is reasonable under the Fourth Amendment requires a careful balancing of the nature and quality of the intrusion on the individual's Fourth Amendment interests against the countervailing governmental interests at stake.” Id. (internal quotations and citation omitted). The determination whether a police officer utilized excessive force is a fact-specific inquiry that depends on the totality of the circumstances surrounding the encounter. Frazell

v. Flanigan, 102 F.3d 877, 882-83 (7th Cir. 1996). Courts must pay "careful attention to the facts and circumstances of each particular case, including the severity of the crime at issue, whether the suspect pose[d] an immediate threat to the safety of the officers or others, and whether he [was] actively resisting arrest or attempting to evade arrest by flight." Graham, 490 U.S. at 396 (citing Tennessee v. Garner, 471 U.S. 1, 8-9 (1985)). In addition, the reasonableness inquiry is an objective one: The "particular use of force must be judged from the perspective of a reasonable officer on the scene, rather than with the 20/20 vision of hindsight." Id. "[T]he question is whether the officers' actions are 'objectively reasonable' in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation." Id. at 397. A demonstration of mere negligence is insufficient to establish an excessive force claim under § 1983. See Daniels v. Williams, 474 U.S. 327, 331-33 (1986) (stating that "injuries inflicted by governmental negligence are not addressed by the United States Constitution" and rejecting § 1983 claim based on alleged due process violation).

Plaintiff does not contend that defendant Brooks's description of his actions, if true, could have caused Mohamed's injuries. It is relatively easy to see why plaintiff does not make this argument. Mohamed's neck injuries were deep and traumatic and on *both* sides of his neck; the lung that ultimately collapsed was on Mohamed's left side, not his right; and there were no broken ribs or other injuries consistent with force applied solely to the right shoulder blade area. Indeed, no expert has stated that the application of pressure to

Mohamed's shoulder blade area could have caused the fatal injuries that were discovered on autopsy. In her effort to defeat defendants' motions for summary judgment, plaintiff attempts to show that there is evidence from which a jury could infer that Brooks did something *other* than apply pressure with his knee and shin to Mohamed's right shoulder blade area.

Although plaintiff's expert, Dr. Howard Adelman, stated that Mohamed's injuries were consistent with those seen in strangulation cases, plaintiff does not contend that Brooks strangled Mohamed. It does not appear that she is contending that Brooks asphyxiated Mohamed by placing so much pressure on him that Mohamed could not breathe. Indeed, she concedes that Mohamed was breathing both while Brooks was applying pressure to him and after he stopped doing so. Rather, she contends that Brooks applied pressure to Mohamed's "back and neck" that resulted in the traumatic injuries to Mohamed's chest and neck that led to his death.

As support for her claim that there is evidence from which a jury could conclude that Brooks applied pressure to Mohamed's back and neck, plaintiff relies solely on Brooks's own statements in his deposition and in an affidavit. Plaintiff asserts that at his deposition, defendant Brooks admitted using his "knee, shin, arm, and hand to place pressure on Mohamed's body, including his back *and* 'shoulder area.'" (Emphasis added). Insofar as plaintiff appears to suggest that Brooks admitted applying pressure to Mohamed's back in any area *other* than the right shoulder blade region, plaintiff puts words in Brooks's mouth.

Plaintiff cites Brooks's response to the question whether he thought all three officers were needed to restrain Mohamed. Brooks replied in the affirmative, explaining that "with me being on his back, he still got full movement of his left arm." Dep. of James Brooks, Feb. 19, 2004, dkt. #18, at 82. However, immediately after that, Brooks clarified what he meant when he said he was on Mohamed's "back." The relevant excerpt reads as follows:

COUNSEL: And you said, what counsel got mad at me for saying earlier, that when you were on his back, the shoulder, the back, do you make a distinction?

BROOKS: The thing that I found myself doing on this, and the reason that I know exactly where my knee and shin area was, is because I looked. Because I didn't want to be on his spine and I didn't want to be on his neck.

COUNSEL: And you're confident you were not on his spine?

BROOKS: I know I'm not. I know I wasn't.

COUNSEL: That's what confident means.

BROOKS: Yes.

COUNSEL: And you're confident you weren't on his neck?

BROOKS: Oh, I bet the farm on it.

COUNSEL: Fair enough. But--

BROOKS: I know, that wasn't--

COUNSEL: So you weren't on his spine?

BROOKS: Uh-huh.

COUNSEL: And you weren't on his neck?

BROOKS: Correct.

COUNSEL: But is it fair to say you were on his back?

BROOKS: I would say his upper shoulder area. I would not say -- yeah, it's the back of his body, but I would say kind of in this area, in this area (indicating).

COUNSEL: I think pointing to the shoulder?

BROOKS: Yeah. The shoulder blade area in the back on the back of the person.

Id., at 82-83. Clearly, Brooks never admitted during his deposition that he was on Mohamed's back in any place other than the right shoulder blade area.

Plaintiff also cites Brooks's affidavit in which he averred that after removing his knee and shin from Mohamed's right shoulder blade area, Brooks "maintained his hand on [Mohamed's] right arm and a hand on [Mohamed's] back while watching Mohamed." Aff. of James Brooks, dkt. # 40, at ¶¶ 110-111. However, there is no evidence to support plaintiff's assertion that in "maintaining" a hand on Mohamed's back, Brooks was exerting pressure rather than simply resting his hand there. At his deposition, Brooks testified that after he removed his knee from Mohamed's shoulder blade area, he stayed next to Mohamed and "put" his hand on Mohamed's lower back area. Dep. of James Brooks, dkt. #18, at 80. Brooks testified that he put his hand there "figuring if he does start to resist then, then I can push him back down to the ground, hopefully keeping him in that place." Id. Brooks stated that by that time, Mohamed was no longer arching with his upper torso, so Brooks started

to focus on Mohamed's breathing. Id. Although Brooks was never asked whether he did push Mohamed back to the ground, he testified that Mohamed was no longer resisting with his upper body after he was handcuffed, making it unlikely that Brooks would have needed to push him back. Furthermore, defendant Murphy testified that she never saw anyone apply any pressure to Mohamed other than when Brooks put his knee on Mohamed's shoulder blade area.

In sum, nothing in Brooks's deposition testimony or his affidavit supports plaintiff's contention that these documents hold proof from which an inference may be drawn that Brooks applied pressure to Mohamed's back in any location other than his shoulder blade area. Also lacking is any evidence to suggest that by referring to Mohamed's "shoulder area," Brooks was including Mohamed's neck; Brooks expressly denied placing any pressure on Mohamed's neck and plaintiff provides no eye witness testimony to the contrary. Because Brooks's deposition and affidavit are inadequate to put into dispute defendants' proposed findings, I have found it undisputed for the purpose of deciding this motion that Brooks placed pressure only on Mohamed's right shoulder blade area.

Having failed to create a genuine dispute of material fact concerning defendant Brooks's testimony that he applied pressure only to Mohamed's right shoulder blade area, plaintiff cannot succeed on her excessive force claim against Brooks. Confronted with a man who had been reported to have been running into traffic, had assaulted a passerby and was resisting arrest, it was reasonable for the officers to restrain him in a prone position to

incapacitate him and to protect him from doing further harm to himself or others. As part of this process, it was reasonable for defendant Brooks to attempt to restrict the continued movement of Mohamed's right arm and upper torso so that the handcuffing process could be completed. McCarty's testimony confirms that defendant Brooks did not hit, sock, slap, punch or kick Mohamed or apply force to him in a manner that carried the potential to injure him.

Plaintiff suggests that the record shows that Brooks continued to maintain pressure on Mohamed even after he had stopped resisting, but the evidence does not bear this out. Plaintiff concedes that once on the ground, Mohamed was still resisting, kicking and attempting to lift his chest up and pull his arms apart so he could not be handcuffed. Plaintiff also concedes that Brooks got off Mohamed after the handcuffing was completed and that Mohamed continued to kick for at least some time after he was handcuffed. There is simply no evidence in the record to support plaintiff's suggestion that Brooks continued to apply weight to Mohamed after he had stopped moving.

Plaintiff also points out that an expert in police practices, Dennis Waller, has expressed the opinion that defendant Brooks violated standard training when he placed weight on Mohamed's shoulder while Mohamed was prone. "However, 42 U.S.C. § 1983 protects plaintiffs from constitutional violations, not violations of state laws or, in this case, departmental regulations and police practices." Scott v. Edinburg, 346 F.3d 752, 760 (7th Cir. 2003) (citations omitted). The only issue before the court is whether defendant

Brooks's use of force to effectuate the arrest of Mohamed was a reasonable seizure consistent with the Fourth Amendment. Id. Evidence that he might have violated police practices is irrelevant to this analysis. Soller v. Moore, 84 F.3d 964, 969 (7th Cir. 1996).

Finally, plaintiff suggests that defendant Brooks's actions were inappropriate given that he knew from a previous contact with Mohamed that Mohamed was mentally ill. However, she fails to present any evidence to support that argument. In light of plaintiff's concession that it was reasonable for the officers to take Mohamed to the ground, handcuff him, and apply the leg restraints, defendant Brooks's knowledge of Mohamed's mental illness does nothing to advance plaintiff's claim.

Whether Mohamed was mentally ill or not, defendant Brooks would not have been justified under the circumstances in using deadly force to restrain Mohamed, a point Brooks concedes. See Tennessee v. Garner, 471 U.S. 1 (1985) (holding that deadly force is appropriate only in certain situations). For a particular application of force to be classified as "deadly," it must at least "carry with it a substantial risk of causing death or serious bodily harm." Estate of Phillips v. City of Milwaukee, 123 F.3d 586, 593 (7th Cir. 1997) (quoting Robinette v. Barnes, 854 F.2d 909, 912 (6th Cir. 1988)). Under this standard, applying pressure to a person's right shoulder blade area for 30-45 seconds cannot be characterized as "deadly" force. Even assuming Brooks might have applied pressure to a greater extent than he says he did, plaintiff has adduced no evidence to show that Brooks's action of exerting pressure with his knee and shin on Mohamed's right shoulder blade area carried

with it a substantial risk of causing death or serious bodily harm. In fact, absent some evidence that the actions taken by defendant Brooks carried such a risk, plaintiff cannot prevail even if those actions might somehow have caused Mohamed's injuries. See Robinette, 854 F.2d at 912 (officer did not use excessive force in releasing police dog to search for suspect where dog's seizure of suspect's neck resulting in death was "extreme aberration from the outcome intended or expected"). The undisputed evidence shows that defendant Brooks applied force to Mohamed's body in a manner and for a time period not likely to cause any serious injury to Mohamed. Given Mohamed's behavior prior to his arrest, the rapidly evolving situation and the officers' reasonable belief that Mohamed presented a threat to himself and others if he were not restrained, defendant Brooks's actions were objectively reasonable under the circumstances.

Absent specific evidence of any wrongdoing on the part of Brooks or any other officer, plaintiff is left only with the severe nature of Mohamed's injuries. Plaintiff points out that the officers did not observe anything to suggest that Mohamed was physically injured before they took him to the ground and that her expert, Dr. Adelman, is of the opinion that Mohamed could not have resisted the officers as described had he had his injuries prior to the struggle. Even assuming this evidence would be admissible at trial (an open question, given the conclusory nature of Dr. Adelman's opinion), it would not be enough to get plaintiff to a jury. To show excessive force, a plaintiff must do more than merely point to

the fact that he incurred injuries while in the custody of law enforcement officers. Estate of Phillips, 123 F.3d at 594; Brownell v. Figel, 950 F.2d 1285, 1292 (7th Cir. 1991).

In Estate of Phillips, the plaintiffs alleged that the defendant officers had failed to monitor the decedent after they had placed him on the ground in a prone position. Although plaintiffs conceded that none of the officers or citizen bystanders on the scene had reported any deficient monitoring, they pointed to the decedent's death during his encounter with the police officers as proof that the monitoring must have been insufficient. The court rejected plaintiffs' argument, explaining:

Despite any evidence in the record that the officers failed to monitor Mr. Phillips in a manner that was reasonable under the tense and rapidly moving circumstances they faced, the plaintiffs say that Mr. Phillips' demise is all the evidence they need of unreasonableness. The plaintiffs' claim, therefore, essentially rests on "logic akin to the doctrine of *res ipsa loquitur*." Brownell v. Figel, 950 F.2d 1285, 1292 (7th Cir. 1991). In Brownell the plaintiff "maintain[ed] that the fact he left the hospital able to move and returned a quadriplegic" raised an inference "that the officers at the lockup employed excessive force." Id. at 1292. Yet we affirmed the district court's decision to grant summary judgment to the defendants because, "in the absence of any evidence of specific wrongdoing, Brownell's excessive force claim [was] speculative and fail[ed] to raise any material issue of fact for trial." Id. at 1293. Here, the plaintiffs' claim similarly is speculative. Absent any evidence to prove that the officers in this case were unreasonable in their handling of Mr. Phillips once he was cuffed on the floor, the reasonableness question ought not be submitted to a jury.

Estate of Phillips, 123 F.3d at 594-595.

Plaintiff attempts to distinguish Estate of Phillips, pointing out that the court noted that the decedent did not have any injuries that were consistent with trauma, id. at 590, whereas Mohamed did have such injuries. Similarly, in Brownell, 950 F.2d at 1293, the

court noted that Brownell had no bruises or other signs of excessive force. However, the court did not suggest in either case that the mere presence of injuries consistent with trauma would have spared the plaintiff from summary judgment. Whether a plaintiff has adduced evidence sufficient to create a triable issue in an excessive force case is a fact-specific inquiry that depends upon the circumstances of each case. Although Mohamed's injuries might be enough to permit an inference of excessive force had the struggle occurred out of sight, in this case defendants' detention of Mohamed occurred in broad daylight on one of the most heavily traveled streets in the city. It was witnessed by a number of people, including nurse McCarty. Despite the number of persons who witnessed the incident, plaintiff has found no one who saw Brooks apply pressure to Mohamed's neck or any other part of his body in a manner that was consistent with the fatal injuries found on autopsy or that carried a substantial risk of causing death or serious bodily harm. Cf. Champion v. Outlook Nashville, Inc., 380 F.3d 893 (6th Cir. 2003) (five lay witnesses testified that they saw officers lying on top of decedent while he was prone on ground with face towards carpet); Drummond ex rel. Drummond v. City of Anaheim, 343 F.3d 1052 (9th Cir. 2003) (eyewitnesses saw two officers kneeling on plaintiff's neck and upper torso after plaintiff had stopped resisting and was complaining that he could not breathe); Frazell, 102 F.3d at 880 (witnesses saw officers deliver several blows to plaintiff after plaintiff was restrained). In this situation, the mere fact of injury is not enough to create a material issue for trial.

The bottom line is that plaintiff can only speculate about how her son got injured. I empathize with her desire to place responsibility for her son's death upon someone. It is human nature to seek an explanation for such a loss. However, plaintiff cannot avoid summary judgment by "simply show[ing] that there is some metaphysical doubt as to the material facts." Matshushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986) (footnote omitted). As in Brownell, even if one agrees that plaintiff has some evidence that would support an inference that Mohamed was not injured before his encounter with the police officers, her claim fails because she has adduced no evidence of specific wrongdoing. Beyond her failed attempt to reconstruct Brooks's testimony, plaintiff has adduced no evidence to support her theory that Brooks applied force to Mohamed's neck or chest, much less that he did so in a manner that carried a substantial risk of causing death or serious bodily harm.

Absent evidence that defendant Brooks's actions were objectively unreasonable, plaintiff's excessive force claim against defendant Brooks fails. It follows that plaintiff's failure-to-intervene claims against defendants Murphy, Grady and Mueller must fail as well. Accordingly, in light of plaintiff's concession that it is appropriate to grant summary judgment to defendants on her remaining claims, summary judgment will be granted in favor of defendants on all of the claims asserted in plaintiff's complaint.

ORDER

IT IS ORDERED that:

1. The motion of defendants City of Madison, Patrick Grady, Herbert Mueller and Jessica Murphy for summary judgment is GRANTED; and
2. The motion of defendant James Brooks is GRANTED.

The clerk of court is directed to enter judgment in favor of defendants and close this case.

Entered this 5th day of November, 2004.

BY THE COURT:

BARBARA B. CRABB
District Judge