UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PAUL RIETHMEIER, as guardian of the estate of REX RIETHMEIER, a protected person,

Plaintiff,

Case Number 24-10799
Honorable David M. Lawson

and

MICHIGAN DEPARTMENT OF HEALTH AND HUMAN SERVICES,

Intervening Plaintiff,

v.

OAKLAND COUNTY, JEREMY BABIAK, ZACHARY JENSEN, JAMES RICHARDSON, ANDREW ASARO, BRIAN BURKE, JR, JAMES FITZPATRICK, MARK GANEY, STEVEN GARCIA, JORDAN GEYER, ROSS OGANS, BRYAN OTTO, BRIDGET SITERLET, and JULIEN TERRY,

Defendants.
_____/

OPINION AND ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

Rex Riethmeier was arrested in September of 2021 and taken to the Oakland County Jail. He was suffering an apparent mental health crisis at the time, and corrections officers determined that his behavior required that he be placed in a restraint chair. As the officers attempted to secure him in the chair, some of them used physical techniques that interfered with his ability to breathe, and Riethmeier went into cardiac arrest. He was revived after nearly ten minutes without a pulse, but the incident left him severely impaired. Riethmeier's father, Paul Riethmeier, as guardian for his estate, brings claims against the officers and the County, asserting that they violated his civil

rights and caused his injuries. The defendants have moved for summary judgment, asserting, among other arguments, that qualified immunity shields them from liability. Fact questions preclude summary judgment as to the plaintiff's excessive force claims against two of the officers, and a failure-to-intervene theory and a deliberate indifference theory also are viable as to several other defendants. The evidence also supports a claim against Oakland County based on its failure to train its corrections officers on the recognition of respiratory distress when coercive pressure point techniques are used. However, the remainder of the claims, including the other municipal liability claims against the County, cannot proceed. The motion for summary judgment, therefore, will be granted in part and denied in part.

I.

Paul Riethmeier has been named as the guardian for the estate of his son, Rex Riethmeier. Rex will be referred to by his last name throughout this opinion. The facts offered by the parties come from the discovery materials, which include video footage capturing much of Riethmeier's experience at the Oakland County Jail.

On September 12, 2021, officers of the Wixom Police Department responded to a 911 call concerning a car parked in a grassy area outside an apartment building. Police Report, ECF No. 31-2. The officers quickly determined that the car was Riethmeier's and went to his unit to speak with him. No feature of those officers' interaction with Riethmeier is part of the claims in this case. Nonetheless, the encounter went poorly, and the officers ultimately placed Riethmeier in custody after a nearly a five-minute struggle during which Riethmeier was tased several times. *Ibid.*; Dep. of Andrew Tabor, ECF No. 31-3, PageID.292. As a result of the struggle, paramedics responded to the scene to evaluate Riethmeier, but he refused treatment. Medical Records, ECF No. 31-5, PageID.361. The paramedics wrote in their report that Riethmeier was "agitated and

diaphoretic" and that it was "unclear" whether he was experiencing a "psychiatric episode," but they determined that he did not have any life-threatening conditions. *Ibid.* The Wixom officers transported Riethmeier to the Oakland County Jail on charges of felonious assault on a public official. ECF No. 31-2, PageID.245. One of the officers recalled that Riethmeier made several nonsensical remarks during the ride to the jail, which he assumed was a sign of intoxication. Tabor dep., ECF No. 31-3, PageID.291.

According to the video record, Riethmeier arrived at the Oakland County Jail shortly after 11:30 p.m. Jail officers escorted him to a cell and directed him to remove his pants for a strip search. Incident Report, ECF No. 31-6, PageID.369. The search was captured on the jail's security cameras, but the footage lacks audio and few details are discernable because Riethmeier's body is blocked by the bodies of several deputies. *See* Intake Video, ECF No. 66-2. According to the author of the incident report, Riethmeier refused to comply with the officers' instructions, so the deputies placed him in the "Cell Extraction Escort Position," prompting him to resist by pulling away and kicking at them. Incident Report, ECF No. 31-6, PageID.369-70. The deputies forced him to the ground using knee strikes, where they completed the search. *Id.* at PageID.370. The officers left him in the cell, and a paramedic "cleared" him by speaking to him briefly through the cell door. Intake Video, at 11:52:16-11:52:40. He was placed on suicide watch and provided an anti-suicide garment. Incident Report, ECF No. 31-6, PageID.370.

Riethmeier remained in the cell for approximately ten hours. At around 10:30 a.m. the next morning, jail footage shows Riethmeier began bumping on the cell window with his fist to get the attention of jail staff. R6 First Restraint Chair Video, at 14:13-14:20. A few minutes later, he began hitting the window with his head. *Id.* at 15:49-16:10. Jail staff approached and spoke to Riethmeier, who appeared visually agitated. *Id.* at 16:10. The jail's cell extraction team then

entered Riethmeier's cell and placed him in a restraint chair, a process that lasted several minutes. *Id.* at 17:59-23:16.

A restraint chair restricts an individual from moving his arms and legs. Oakland County's policy at the time specified that use of a restraint chair should be restricted only for situations where it is "absolutely necessary." Jail Policies, ECF No. 67-1, PageID.3785. Permissible uses include preventing "self-injury," protecting staff and other inmates, and maintaining safety "when an inmate's behavior is violent, disruptive, or uncooperative and de-escalation measures have been exhausted." *Ibid.* When a restraint chair is used, medical staff "shall be notified immediately . . . [and] will inform Sheriff's Office personnel of any contraindication to restraint chair placement." *Ibid.* The inmate should be housed in the clinic and "[m]edical staff shall check the inmate upon placement in the restraint chair to provide any necessary treatment and monitor and document the inmate every thirty (30) minutes, thereafter." *Ibid.*

The officers followed that policy after they placed Riethmeier in the chair. He was wheeled to the clinic, where medical staff inquired about his medical history. Riethmeier denied any experience with schizophrenia; however, when asked if he knew where he was, he responded that he was "at God's house." First Restraint Chair Video, Part 2 (Handheld Camera), at 3:31-3:49.

Riethmeier remained in the restraint chair at the jail clinic until about 2:25 p.m., and jail medical staff assessed him approximately every thirty minutes. Medical Records, ECF No. 31-15. Deputies then removed him from the restraint chair and returned him to his cell. Removal Video Vols. 1 & 2 (Hand-Held Camera), at 00:00-11:36. However, at around 2:39 p.m., Riethmeier once again began bumping his head on the windows of the cell. *See* Second Restraint Chair Video (Cell View), at 2:58-3:10. An officer approached and spoke with Riethmeier briefly. *Id.* at 3:15-3:40.

About ten minutes later, Riethmeier began hitting his head on the window once more. *Id.* at 13:30-13:55.

Sergeant Jeremy Babiak, who was working in the jail's control room, notified Sergeant Zachary Jensen, who ordered the jail staff to place Riethmeier back into the restraint chair. *Id.* at 14:30; Zachary Jensen dep. ECF No. 32-4, PageID.487; Jeremy Babiak dep., ECF No. 33-5, PageID.874-75. It is this second use of the restraint chair that is the primary focus of the plaintiff's claims in this litigation. Officers Andrew Asaro, Brian Burke, James Fitzpatrick, Mark Ganey, Steven Garcia, Jordan Geyer, James Richardson, Ross Ogans, Bryan Otto, and Julien Terry participated in placing Riethmeier into the restraint chair. Officer Bridget Siterlet was present and made a video recording of the incident, per the jail's protocol. Jensen and Sergeant James Richardson observed from a few feet away. Incident Report, ECF No. 32-3, PageID.462. Babiak remained in the control room. Babiak dep., ECF No. 33-5, PageID.874-75

The officers walked Riethmeier out of the cell with his hands torqued upwards behind his back and his head held downwards to the floor. Second Restraint Chair Video (Cell View), at 17:10-17:42. He was not wearing any clothes. *Ibid.* Burke, who had control of Riethmeier's arms, asked another officer to contact the clinic. Second Restraint Chair Video (Handheld Camera), at 00:18. The officers led him to the restraint chair, which was located in a hallway outside the cells, and began working to secure his legs to the chair. Riethmeier let out a scream, and one of the officers told him to "knock it off." *Id.* at 00:37-00:42. In an effort to secure Riethmeier's right foot, Fitzpatrick stepped on it, pushing it into the bare metal bottom of the chair. *Id.* at 1:00-1:02. While the officers secured his feet, Geyer cradled Riethmeier's head in a downward position. Riethmeier's knees spasmed. *Id.* at 1:27-1:41. About a minute later, Otto,

who was crouched on the ground beside Riethmeier's legs, stated that Riethmeier had spit on him, although that is not evident from the video. *Id.* at 2:17.

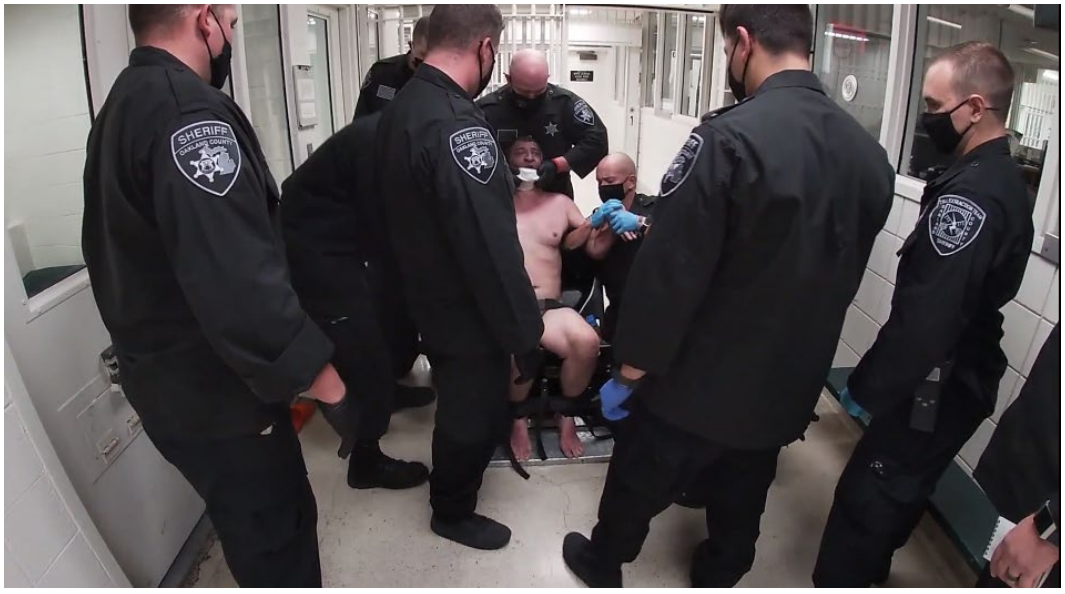
It is difficult to see from the footage what occurred next, but Riethmeier can be heard screaming while one of the deputies stated, "You keep it up, you're going to get tasered." *Id.* at 2:22. Someone — the officers say it was Riethmeier — shouted "Fuck you." *Id.* at 2:29. As Riethmeier moved as if to sit down, Geyer jerked his neck downwards and commanded him to "Stand the fuck up." *Id.* at 2:31. Richardson urged the deputies to "regain [their] composure." *Id.* at 2:38. Riethmeier can be heard breathing rapidly, and then screamed again as the officers manipulated his hands, which remained elevated behind his back. *Id.* at 3:08. Ogans placed a spit hood over Riethmeier's head. The officers then forced him down into the chair and began attempting to secure him, warning him repeatedly that if he resisted he would be tasered. *Id.* at 3:15-3:31.

The officers' bodies obstruct the camera's perspective on Riethmeier at this point in the footage. One of the officers can be heard informing the others that Riethmeier still had a gap between his body and the chair. *Id.* at 3:35. Ogans testified that he placed his knee on Riethmeier's lap and placed his hands "somewhere around the shoulder, chest area" and used a "jugular notch pressure point" for approximately one to two seconds to get him properly seated. Ross Ogans dep., ECF No. 32-11, PageID.708-12. The jugular notch pressure point technique targets the void space located at the top of the sternum and at the base of the neck between the clavicle bones. *Id.* at PageID.708.

Many of the officers stated during their depositions that Riethmeier resisted in various ways as they attempted to secure him. Fitzpatrick stated that Riethmeier attempted to "pull away," "fail[ed] to comply," "lift[ed] his feet," "spit[]," and "lift[ed] himself up off of the chair." James

Fitzpatrick dep., ECF No. 32-10, PageID.678. Otto testified that Riethmeier was trying to "move around" and "struggling to break our control." Bryan Otto dep., ECF No. 32-8, PageID.610. Ogans stated that Riethmeier was "actively resisting." Ross Ogans dep., ECF No. 32-11, PageID.716. Deputy Mark Ganey, who took control of Riethmeier's head from behind the chair, stated that Riethmeier exhibited an "extreme amount of resistance." Mark Ganey dep., ECF No. 32-12, PageID.743. And Steven Garcia stated that Riethmeier was "constantly moving around" and "resisting more than we normally encountered." Steven Garcia dep., ECF No. 33-1, PageID.780.

These perspectives are not all evident from the video recording. In fact, as the officers worked to secure Riethmeier, one can hear him make snort-like, guttural noises starting at approximately 3:48 in the video recording, which was after Ogans had placed his knee across his lap area. About twenty seconds after Riethmeier first can be heard making the noises, Jensen warned the other deputies to "watch [Riethmeier's] breathing." *Id.* at 4:08. But Officer Ganey held Riethmeier's head tightly, placing his hands on Riethmeier's cheeks and his fingers under his jawline, apparently using another disabling pressure point technique at the hypoglossal area. *Ibid.*



(Second Restraint Chair Video, at 4:17).

Riethmeier's mouth was partially covered by the solid portion of the spit hood and his face began to take on a discolored hue. He continued to make guttural noises as if he was struggling to breathe. From behind the camera, Siterlet urged the deputies to "watch that spit hood." *Id.* at 4:21. Ganey testified that he applied a one-to-two second pressure point control technique to Riethmeier's hypoglossal nerves under his jawbone in order to secure his compliance. Ganey dep., ECF No. 32-12, PageID.748. This is somewhat visible on the video, but it is not clear precisely how long Ganey maintained pressure. Second Restraint Chair Video, at 4:35-4:40. What is evident is that by this point, Ganey held the solid portion of the spit hood over Riethmeier's nose and mouth; Ogans then placed his knee back onto Riethmeier's lap and leaned on it. *Id.* at 4:34-5:00.

(Second Restraint Chair Video, at 4:34).

As deputies Burke, Fitzpatrick, Otto and Terry continued their coercive work, Ogans lifted his leg and stepped backwards. His body blocks a view of Riethmeier's head at this point in the video, but Riethmeier's knees are visible moving erratically from side to side. *Id.* at 5:10. Then — more than a minute after Riethmeier first made the unusual breathing noises — one deputy

remarked "Oh, Jesus," while another called out for the nurse. *Id.* at 5:17-5:20. It is not possible to see what about Riethmeier's condition prompted this reaction. An officer directed the others to "pull that mask off" and "open his airway." *Id.* at 5:28-5:31. Another officer ordered Riethmeier to be removed from the restraint chair. The officers unfastened the straps and placed Riethmeier on the floor, where they administered CPR along with members of the jail's medical staff, who had just arrived.

Richardson accompanied Riethmeier to the hospital. ECF No. 32-3, PageID.462. According to Riethmeier's hospital records, a member of the jail's staff stated (falsely) that Riethmeier had "suddenly lost consciousness" after "hitting his head against the wall." Hospital Records, ECF No. 66-17, PageID.3755. The discharge notes state that Riethmeier experienced cardiac arrest and was without a pulse for seven minutes. *Ibid.* That may understate the severity of the event because the video depicts responders continuing CPR for at least ten minutes. *See* Second Restraint Chair Video (Parts 1 & 2), at 6:36-8:21, 0:00-9:11. Riethmeier survived the ordeal, but he suffered lasting debilitating effects. He has little recollection of his experience at the Oakland County Jail. Rex Riethmeier dep., ECF No. 71-5, PageID.3950. Due to the effects of his injuries (he is unable to walk), Riethmeier presently resides at a nursing facility. Paul Riethmeier dep., ECF No. 66-18, PageID.3759.

Riethmeier filed suit on March 28, 2024 against Oakland County and all of the jail officers who were involved in the incident. He asserts that the individual defendants violated his rights under the Fourth and Fourteenth Amendments, some by using excessive force and others by failing to intervene to prevent it (Count I), and were deliberately indifferent to his serious medical needs (Count II). He contends that Oakland County (Count III) and the officers with supervisory roles (Count IV) also are liable for his injuries. The plaintiff also brings two counts under state law

against the individual defendants, including a claim titled "gross negligence" (Count V) and a claim for assault and battery (Count VI). On April 11, 2025, the defendants moved for summary judgment on all of the plaintiff's claims, and the plaintiff responded. Paul Riethmeier was substituted as the named plaintiff on May 15, 2025. The Court heard oral argument on August 13, 2025.

II.

Summary judgment is appropriate "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). When reviewing the motion record, "[t]he court must view the evidence and draw all reasonable inferences in favor of the non-moving party, and determine 'whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law.'" *Alexander v. CareSource*, 576 F.3d 551, 558 (6th Cir. 2009) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 251-52 (1986)). "The court need consider only the cited materials, but it may consider other materials in the record." Fed. R. Civ. P. 56(c)(3).

The party bringing the summary judgment motion must inform the court of the basis for its motion and identify portions of the record that demonstrate that no material facts are genuinely in dispute. *Alexander*, 576 F.3d at 558 (citing *Mt. Lebanon Pers. Care Home, Inc. v. Hoover Universal, Inc.*, 276 F.3d 845, 848 (6th Cir. 2002)). "Once that occurs, the party opposing the motion then may not 'rely on the hope that the trier of fact will disbelieve the movant's denial of a disputed fact' but must make an affirmative showing with proper evidence in order to defeat the motion." *Ibid.* (quoting *Street v. J.C. Bradford & Co.*, 886 F.2d 1472, 1479 (6th Cir. 1989)). The existence of video evidence, where its authenticity is undisputed, is cause for a slight modification

to the standard: "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Scott v. Harris*, 550 U.S. 372, 380 (2007)).

A. Federal Claims Against Individual Defendants

The plaintiff's complaint states several claims against individual actors, but it does not differentiate among them. Instead, the plaintiff refers to Jeremy Babiak, Zachary Jensen, James Richardson, Andrew Asaro, Brian Burke, Jr, James Fitzpatrick, Mark Ganey, Steven Garcia, Jordan Geyer, Ross Ogans, Bryan Otto, Bridget Siterlet, and Julien Terry as "the Defendant deputies," ECF. No 1, Page ID.5, but he does not ascribe specific conduct to any single individual. The defendants do not do much better in their summary judgment motion. Their main argument is that on all the federal claims, all the individual defendants are entitled to qualified immunity.

It is well established that qualified immunity insulates state actors from liability so long "as their conduct does not violate clearly established statutory or constitutional rights of which a reasonable person would have known." *Harlow v. Fitzgerald*, 457 U.S. 800, 818 (1982). Once the qualified immunity defense is raised, Riethmeier "must show that (1) the defendant violated a constitutional right and (2) that right was clearly established." *McDonald v. Flake*, 814 F.3d 804, 812 (6th Cir. 2016) (citing *Quigley v. Tuong Vinh Thai*, 707 F.3d 675, 680 (6th Cir. 2013)). This defense requires a close look at the contours of each of the constitutional rights asserted by the plaintiff; the "court must not 'define clearly established law at a high level of generality.'" *Tlapanco v. Elges*, 969 F.3d 638, 649 (6th Cir. 2020) (quoting *Kisela v. Hughes*, 584 U.S. 100, 104 (2018)). Although the defendants do not development the argument, "[e]ach officer can be held liable only for his own wrongdoing," so each officers' actions must be viewed individually.

See Reed v. Campbell Cnty., Kentucky, 80 F.4th 734, 748 (6th Cir. 2023) (citing *Binay v. Bettendorf*, 601 F.3d 640, 650 (6th Cir. 2010)); *Brown v. Knapp*, 75 F.4th 638, 647 (6th Cir. 2023).

The wholesale arguments in the parties' briefs do not facilitate that task. Nonetheless, the Court must examine the record to identify each defendant's conduct as to each claim. Because the qualified immunity defense is raised at the summary judgment stage, the Court must weave the summary judgment standard into each step of the qualified immunity analysis. *Scott*, 550 U.S. at 378. The plaintiff is obliged to demonstrate with evidence in the record both that the challenged conduct violated a constitutional right and that the right was clearly established at the time. *McDonald*, 814 F.3d at 812. "If the plaintiff fails to establish either element, the defendant is immune from suit." *T.S. v. Doe*, 742 F.3d 632, 635 (6th Cir. 2014). But under the summary judgment standard, the Court must view the facts in the light most favorable to the plaintiff, *Saucier v. Katz*, 533 U.S. 194, 201 (2001); "[i]n qualified immunity cases, this usually means adopting . . . the plaintiff's version of the facts," *Scott*, 550 U.S. at 378. The Court must consider separately each officer's entitlement to qualified immunity. *Brown*, 75 F.4th at 647 (quoting *Smith v. City of Troy*, 874 F.3d 938, 944 (6th Cir. 2017) (per curiam)).

Most of the critical events were recorded on video media. At this stage of the case, "facts must be viewed in the light most favorable to the nonmoving party only if there is a 'genuine' dispute as to those facts." *Scott*, 550 U.S. at 380 (citing Fed. R. Civ. P. 56(c)). "When opposing parties tell two different stories, one of which is blatantly contradicted by the record, so that no reasonable jury could believe it, a court should not adopt that version of the facts for purposes of ruling on a motion for summary judgment." *Ibid.* If the Court finds after viewing a video recording of events in question that a party's "version of events is so utterly discredited by the record that no reasonable jury could have believed him," it may not "[rely] on such [a] visible fiction," and

instead must "view[] the facts in the light depicted by the videotape." *Id.* at 380-81. However, the Sixth Circuit has explained that, in its attempt to reconcile variances between the testimonial and video evidence, the Court may "only rely on the videos over the [testimony] to the degree the videos are clear and 'blatantly contradict' or 'utterly discredit' the plaintiff's version of events." *Fried v. Garcia*, No. 24-3330, 2024 WL 5040629, at *2 n.3 (6th Cir. Dec. 9, 2024) (quoting *Bell v. City of Southfield*, 37 F.4th 362, 364 (6th Cir. 2022); citing *Scott*, *supra*) (cleaned up). And any "relevant gaps or uncertainties left by the videos" must be taken in the light most favorable to the plaintiff. *Nash v. Bryce*, --- F.4th ----, 2025 WL 2778548, at *12 (6th Cir. Sept. 30, 2025) (quoting *LaPlante v. City of Battle Creek*, 30 F.4th 572, 578 (6th Cir. 2022)).

The plaintiff brings this claim under 42 U.S.C. § 1983, which provides a vehicle for individuals to seek redress in court for violations of rights secured by the Constitution and laws of the United States. To state a claim under that section, "a plaintiff must set forth facts that, when construed favorably, establish (1) the deprivation of a right secured by the Constitution or laws of the United States (2) caused by a person acting under the color of state law." *Dominguez v. Corr. Med. Servs.*, 555 F.3d 543, 549 (6th Cir. 2009) (quoting *Sigley v. City of Parma Heights*, 437 F.3d 527, 533 (6th Cir. 2006)).

1. Excessive Force

Count I of the complaint confounds claims styled as "excessive force" and "failure to intervene." ECF No. 1, PageID.11. These are separate theories of liability brought via section 1983. Because there is no vicarious liability under section 1983, *Flagg v. City of Detroit*, 715 F.3d 165, 174 (6th Cir. 2013) ("Under § 1983, there is no *respondeat superior* or vicarious liability.") (quoting *Collins v. City of Harker Heights*, 503 U.S. 115, 122 (1992)), the plaintiff must establish the personal involvement of the so-called supervisors, which is discussed below.

But first, the plaintiff asserts that the defendants' use of force against him violated his rights under the Fourth and Fourteenth Amendments. Which of these amendments applies depends on his status at the time of the incident. The Sixth Circuit declares that the Fourth Amendment governs excessive force claims brought by "free citizens," *Burgess v. Fischer*, 735 F.3d 462, 472 (6th Cir. 2013), the Eighth Amendment applies to convicted prisoners, *ibid.*, and the Fourteenth Amendment's Due Process Clause is the relevant provision for pretrial detainees, *ibid.* However, the court of appeals has explained that "Fourth Amendment protections extend through police booking until the completion of a probable cause hearing," at least for individuals arrested without a warrant. *Coley v. Lucas Cnty., Ohio*, 799 F.3d 530, 537 (6th Cir. 2015); *Aldini v. Johnson*, 609 F.3d 858, 866 (6th Cir. 2010); *Assi v. Hanshaw*, 625 F. Supp. 3d 722, 741 (S.D. Ohio 2022). At the time of the incident giving rise to his claims, Riethmeier had not appeared for a probable cause hearing, so the Fourth Amendment supplies the applicable standard here, although "under either [the Fourth or Fourteenth] amendment, the court would employ the same objective test for excessive force." *Clay v. Emmi*, 797 F.3d 364, 369 (6th Cir. 2015)

Under either amendment, a pretrial detainee must show "that the force purposely or knowingly used against him was objectively unreasonable." *Kingsley v. Hendrickson*, 576 U.S. 389, 397 (2015); *Graham v. Connor*, 490 U.S. 386, 396-97 (1989). The inquiry "turns on the 'facts and circumstances of each particular case,'" *Kingsley*, 576 U.S. at 397 (quoting *Graham*, 490 U.S. at 396). "A court must make this determination from the perspective of a reasonable officer on the scene, including what the officer knew at the time, not with the 20/20 vision of hindsight." *Ibid.* Relevant factors include

> the relationship between the need for the use of force and the amount of force used; the extent of the plaintiff's injury; any effort made by the officer to temper or to limit the amount of force; the severity of the security problem at issue; the threat reasonably perceived by the officer; and whether the plaintiff was actively resisting.

Ibid. The Supreme Court also has recognized that realities of maintaining order in detention facility are relevant to the analysis in light of the state's "legitimate interests in managing a jail." *Id.* at 399; *Chaney-Snell v. Young*, 98 F.4th 699, 719 (6th Cir. 2024). And the Sixth Circuit has suggested that "respond[ing] to a medical or mental health emergency" is a relevant consideration. *Palma v. Johns*, 27 F.4th 419, 429 (6th Cir. 2022).

The plaintiff identifies two distinct instances that, in his view, constitute illegal excessive force. He says that the decision to place him in the restraint chair *and* the manner in which the deputies restrained him constituted unconstitutional uses of force. Both have been recognized as viable theories of liability. *Assi*, 625 F. Supp. 3d at 743.

a. Confinement in the Restraint Chair

In *Assi*, the court held unequivocally "that confinement in a restraint chair can supply the force necessary to support an excessive force claim." *Ibid.* More recently, the Sixth Circuit in has reached the same conclusion. *Howell v. NaphCare, Inc.*, 67 F.4th 302, 321 (6th Cir. 2023) ("Excessive force raises the question of what harm Howell incurred based on Jordan's decision to place him in the restraint chair, instead of a decision that did not involve the force inherent in restraints, such as returning him to his cell or leaving him unrestrained in an observation room."). But the *Howell* court acknowledged a dearth of caselaw in this circuit analyzing the use of restraint chairs in the excessive force context. It did, however, turn to a Tenth Circuit opinion by then-Judge Gorsuch, which emphasized that restraint devices can serve the government's legitimate interest in safety in facilities that house pretrial detainees, although some harsh restraints may serve no permissible government interest. *Howell*, 67 F.4th at 321 (citing *Blackmon v. Sutton*, 734 F.3d 1237, 1241 (10th Cir. 2013)). The relevant question, according to the court of appeals, is "what harm [the detainee] incurred based on [the official's] decision to place him in the restraint chair

. . . ." *Ibid.* Still, to succeed, Riethmeier must demonstrate that the decision was objectively unreasonable under the circumstances. *See Kingsley*, 576 U.S. at 397. The evidence does not support that proposition.

The record is clear that Sergeant Jensen made the decision to order the officers to place Riethmeier into the restraint chair for the second time. It came after officials observed Riethmeier hitting his head against the window of his cell and reported the behavior to Jensen. The plaintiff disputes that Jensen's response was appropriate because the footage does not depict Riethmeier hitting the cell's window hard enough to trigger concerns of suicidality. But Jensen testified that he made the decision after deputies informed him that Riethmeier had started "banging his head." Jensen dep., ECF No. 32-4, PageID.486. He also stated that Riethmeier had been held in an observation cell because he was being assessed a suicide risk. *Id.* at PageID.484-85.

The plaintiff argues that Jensen should have attempted to deescalate the situation before ordering the restraint chair and points out that when deputies approached Riethmeier to speak with him he stopped banging his head. Yet the facts available to Jensen at the time he made his decision suggested that Riethmeier actively was engaged in self-harm and had already been placed in the restraint chair during the prior shift. *Id.* at PageID.485. The plaintiff has not directed the Court to any evidence that Jensen was aware of any more information and has not suggested an alternative that would have prevented Riethmeier from resuming hitting his head on the cell window.

It bears mentioning that the harm Riethmeier alleges he suffered was caused primarily by the *manner* in which he was restrained, rather than the officers' decision to use the restraint chair. As the court observed in *Assi*, "the injury caused by confinement in a restraint chair generally accumulates over time, based on the progressive discomfort and irritation of being unable to move one's limbs." 625 F. Supp. 3d at 744. Riethmeier's restraint never progressed that far, lending

further support to the idea that the decision to restrain him itself did not amount to excessive force. It was not objectively unreasonable for Jensen to direct Riethmeier to be confined in the restraint chair and for the other officers to implement that order. *See Howell*, 67 F.4th at 321; *see also Blackmon*, 734 F.3d at 1242 (recognizing that officials had a "legitimate interest in restraining [a detainee] from [] attempts at self-harm.").

The plaintiff also contends that the defendants violated Oakland County's policies that obligated jail staff to contact medical staff when they observe self-harm, require medical clearance before placing a detainee in a restraint chair, and require staff to provide detainees an opportunity for cardiovascular circulation before being placed back into a restraint chair. But the policy for notifying medical staff does not rule out taking immediate protective measures, including restraint chair use. The jail's policies make clear that the use of a restraint chair is an option to prevent self-injury. *See* ECF No. 67-1, PageID.3785. Contrary to the plaintiff's belief, the policies also do not require medical evaluation *before* placement in a chair. *Ibid.* That is hardly surprising given the exigencies where jail staff may find such restraints necessary. The plaintiff also cites Jensen's testimony that he was trained that detainees must be removed from a restraint chair and "stood up for circulation" every four hours. Jensen dep., ECF No. 32-4, PageID.491. But this requirement also does not appear in the jail's policies, and it also is not clear how it is relevant to the reasonableness of the use of force here, since Riethmeier had been released from his initial placement in the restraint chair after four hours. Moreover, policy violations, even if established, are not necessarily constitutional violations. *See Griffith v. Franklin Cnty.*, Kentucky, 975 F.3d 554, 582 (6th Cir. 2020).

b. Force in Securing Plaintiff in Chair

The plaintiff's claim that the officers used excessive force in the process of restraining him the second time is more substantial. He pleads this claim against all the defendant officers, but his

brief focuses principally on the officers' use of pressure points on his neck and jaw area, along with the placement of a spit hood that allegedly created asphyxiating conditions, and only officers Geyer, Ganey, and Ogans employed that type of force according to the video and deposition evidence. Geyer held Riethmeier's head in a downward position while maneuvering him to the restraint chair, forcing it in a downward direction several times. *See* Restraint Video, at 0:00-2:46; Geyer dep., ECF No. 32-5, PageID.534. Once the officers placed Riethmeier in a sitting position, Ogans used his leg and bodyweight to force him down and used a jugular notch pressure point to force Riethmeier to sit flush against the bottom of the chair. Restraint Video, at 3:45-4:11; Ogans dep., ECF No. 32-11, PageID.708, 712-713. Once Riethmeier was seated, Ganey held his head with his fingers wrapped underneath Riethmeier's jaw. He used his fingers to apply pressure to the hypoglossal pressure point. He also held the spit hood close to Riethmeier's nose and mouth. Ganey dep., ECF No. 32-12, PageID.745, 752; Restraint Video, at 4:08-5:27. The plaintiff does not explain how any of the other defendants, who appear merely to have worked to secure his arms and legs into the restraint chair, employed force that objectively was unreasonable for the purpose of placing an individual in a restraint chair.

The defendants contend that there is no genuine dispute of material fact that the pressure points were used "properly" only for one to two seconds to gain control of Riethmeier, who was "resisting," and there is no evidence that the use of these pressure points led to Riethemeier's cardiac arrest. ECF No. 31, PageID.217; ECF No. 71, PageID.3874. The plaintiff disagrees. He submits that the video evidence demonstrates that several of the pressure points were improperly applied and that the defendants continued to use force even after it was obvious that he was struggling to breathe. He also emphasizes that the evidence demonstrates that the combination of the deputies' application of pressure to various parts of his body while he was partially restrained

and his face covered with a spit hood was "overwhelming," and that a reasonable jury viewing the video could disbelieve the defendants' contention that he was resisting.

The record presents genuine issues of material fact that preclude the Court from determining as a matter of law that the force used by two of the officers was reasonable. The defendants place great weight on the video evidence, but the individual defendants frequently struggled during their depositions to identify precisely where in the video they employed pressure points, although they acknowledge using them. They also contend that they applied the pressure points "properly," but that does not answer the ultimate — and the relevant — question whether the force used by each officer was reasonable under the totality of the circumstances.

Starting with Geyer, the footage depicts him holding Riethmeier's head tightly between his hands in a downward direction as the other officers begin to strap Riethmeier's legs into the restraint chair. Initially, the *Kinglsey* factors do not point to the conclusion that this force was excessive. Restraining Riethmeier's head reasonably was related to the officers' task of securing him in the restraint chair. Moreover, the plaintiff does not suggest that his injuries derived from Geyer's head-hold, and Riethemeier cannot be heard exhibiting the guttural breathing noises while Geyer held his head. But at approximately the 2:30 mark of the video, Geyer appears to have pushed Riethmeier's head further towards the ground and shouted at him to "Stand the fuck up," Restraint Video, at 2:30-2:35, seemingly contradictory commands. This appears to have been in reaction to Riethmeier "spitting" on one of the deputies securing the leg straps. Although this is not clearly documented in the video footage, Riethmeier also does not deny it. It is well settled that "'active resistance to an officer's command can legitimize' an officer's use of force." *Cretacci v. Call*, 988 F.3d 860, 870 (6th Cir. 2021) (quoting *Hanson v. Madison Cnty. Det. Ctr.*, 736 F. App'x 521, 531 (6th Cir. 2018)). The use of force by Geyer was brief and there is no indication

that it was connected to the plaintiff's ultimate injuries. There are no clear instances in the record of Geyer exerting excessive force against Riethmeier.

Next, Ogans. When the officers placed Riethmeier into a seated position in the restraint chair, one officer remarked that "he's still got a gap below him." Restraint Video, at 3:35. Ogans can be seen moving in and placing his knee on Riethmeier's lap and leaning on it with his full bodyweight. *Id.* at 3:47-4:08. Ogans also testified that he applied pressure with his fingers to Riethmeier's jugular notch — the area above the sternum at the windpipe — while he had his knee on Riethmeier's lap, although that move is not captured on the video recording. Ogans dep., ECF No. 32-11, PageID.712. He explained that he believed Riethmeier was not seated appropriately in the chair and the force was necessary to make him "sit his bottom, butt, if you will, down into the chair correctly." *Id.* at PageID.714; *see also* Post-Incident Report, ECF No. 32-3, PageID.465 ("This was done in an attempt to get him secured into the restraint chair."). One might conclude that, like Geyer's, Ogans's use of force was reasonable in light of its relationship to the task of getting Riethmeier properly secured in the restraint chair. But Ogans' use of force is distinct, and the timing is critical, because excessive force claims must be evaluated "temporal segment by temporal segment." *Marden v. Cnty. of Midland*, No. 15-14504, 2017 WL 1104960, at *5 (E.D. Mich. Mar. 24, 2017). At approximately 3:48 on the time stamp, Riethmeier can be heard making a snorting sound. Restraint Chair Video, at 3:48. A jury reasonably could view this as compelling evidence that he was struggling to breathe, which casts Ogans's subsequent conduct in a different light. From that point, Ogans shifts *more* of his weight (which he estimated at his deposition was 285 pounds) onto Riethmeier. *Id.* at 3:50-3:53. He also testified that he could not recall when precisely in this sequence he first applied pressure to Riethmeier's jugular notch. Ogans dep., ECF No. 32-11, PageID.712. Due to the location of this pressure point, it is obvious that misapplication

could inhibit the detainee's breathing. What's more, Ogans placed and removed his knee from Riethmeier's lap area twice more, all while Riethmeier was struggling to breathe. *Id.* at 4:20-5:01.

Ogans contends that Riethmeier was actively resisting "until he was not," *id.* at PageID.716, but the video does not confirm that. And it is not apparent how Riethmeier could have actively resisted or posed any serious threat to the officers during this period, since by this time his legs were secured to the chair, several deputies had control of his arms, he had a spit hood on his head, and he was audibly struggling to breathe. A reasonable jury could conclude that Ogans's force was excessive under the circumstances.

That brings us to Ganey, whose conduct is the most problematic. After the officers seated Riethmeier in the chair and worked to secure his arms, the video footage depicts Ganey clutching Riethmeier's head from behind with the palms of his hands on Riethmeier's cheekbones and his fingers wrapped under his jaw. *Id.* at 4:10, 4:17. By this point, the officers had placed a spit hood over Riethmeier's head. The spit hood is divided into an upper and a lower section. The upper section is mesh to permit individuals to see out; the lower section is an opaque "paper-like material." Ogans dep., ECF No. 32-11, PageID.715. Ganey explained that during the restraint chair process, at least one officer maintains control over a subject's head to prevent it from moving around and keep the subject from biting or spitting. Ganey dep., ECF No. 32-12, PageID.744. If the subject resists, he would apply pressure to the hypoglossal pressure point located beneath the jawbone. *Id.* at PageID.745. Ganey says he used the pressure point on Riethmeier once at sometime between the 4:34 and 4:41 timestamp on the video. *Id.* at PageID.748. The parties dispute whether the use of this pressure point was proper. *See* ECF No. 66, PageID.3593. More problematic than the propriety of the technique is that the video footage of the incident supports the conclusion that Ganey's hold effectively pinned the spit hood across Riethmeier's nose and

mouth so that he could not breathe properly. *See* Restraint Chair Video, at 4:17, 4:35. That conclusion is supported by officer Bridget Siterlet's audible warning to Ganey to "watch that spit hood," *id.* at 4:19-4:22, although she testified that her intention was to convey that the mesh portion of the spit hood was too low, allowing Riethmeier to spit through it, Bridget Siterlet dep., ECF No. 33-3, PageID.819. The defendants point to case law generally permitting the use of spit hoods on detainees in certain circumstances, but the focus of the plaintiff's claim is not the spit hood itself but in how he believes it was held against his face in a manner that impaired his breathing.

Ganey testified that his use of force was necessary because Riethmeier "resisted the entire time" by "moving his head" and "could potentially bite at someone, headbutt somebody." Ganey dep., ECF No. 32-12, PageID.749. However, the officers' descriptions of Riethmeier's continuous active resistance are not borne out by the footage of the incident. And even if Riethmeier resisted by "moving his head," a reasonable jury could conclude that the movement was in response to Ganey's tactics that effectively prevented him from breathing — a vital life function — and that Ganey's use of force was excessive under the circumstances.

The plaintiff has offered sufficient evidence to show that defendants Ogans and Ganey violated his rights under the Fourth and Fourteenth Amendments, thereby satisfying the first step of the qualified immunity analysis. The officers argue, however, that even if the force they used was excessive, there was no clearly established law putting them on notice that their specific conduct was unconstitutional. The Supreme Court has recognized that the fact-specific nature of excessive force claims means that "police officers are entitled to qualified immunity unless existing precedent 'squarely governs' the specific facts at issue." *Kisela*, 584 U.S. at 104 (citation omitted). "[T]he general legal rule . . . that officers cannot use excessive force" is not sufficiently specific. *Gambrel v. Knox Cnty.*, 25 F.4th 391, 400 (6th Cir. 2022). But case law in the Sixth

Circuit clearly established in September of 2021 that officers exceeded the reasonable use of force when they applied substantial pressure to Riethmeier's head and neck area in a manner that created asphyxiating conditions when restraining him while he was not actively resisting. *See Luneen v. Vill. of Berrien Springs, Michigan*, No. 22-2044, 2023 WL 6162876, at *9 (6th Cir. Sept. 21, 2023) (defining the question for qualified immunity in that case as "whether it was clearly established in October 2018 that it was excessive force for an officer to apply substantial pressure that creates asphyxiating conditions to the back and neck of suspect who was clearly distressed, unarmed, and not actively resisting as they attempted to handcuff him"). More precisely, officers may not employ "'substantial or significant pressure' that creates asphyxiating conditions in order to restrain a subject who does not pose a material danger to the officers or others." *Martin v. City of Broadview Heights*, 712 F.3d 951, 961 (6th Cir. 2013). This prohibition has been settled law in this Circuit at least since *Champion v. Outlook Nashville, Inc.* was decided in 2004. 380 F.3d 893 (6th Cir. 2004). In that case, officers placed heavy pressure on the back of a prone suspect, who already had been handcuffed and was incapacitated. 380 F.3d at 903. The court also recognized that the officers' knowledge of the subject's diminished mental state was relevant to the analysis. *Id.* at 904. Likewise in *Martin*, the court of appeals concluded that officers used excessive force in arresting an "unarmed, minimally threatening, and mentally unstable" suspect when they placed their bodyweight on the suspect's body, struck him multiple times, "restrained his neck or chin, and placed him in a torso lock." *Martin*, 712 F.3d at 960. And in *Griffith v. Coburn*, the court concluded that a jury permissibly could conclude that officers used excessive force when they applied a neck restraint to an unarmed and emotionally disturbed man in the course of arresting him at his home. 473 F.3d 650, 658 (6th Cir. 2007). The court of appeals' admonitions against the application of restraint techniques creating asphyxiating conditions to suspects not actively

resisting, unfortunately, have become all too common. *E.g.*, *Hopper v. Phil Plummer*, 887 F.3d 744, 754 (6th Cir. 2018); *Kulpa for Est. of Kulpa v. Cantea*, 708 F. App'x 846, 853 (6th Cir. 2017); *Hulon v. City of Lansing, Michigan*, No. 23-1937, 2025 WL 817492, at *2 (6th Cir. Mar. 14, 2025). Recall that the defendants' rationale for confining Riethmeier in a restraint chair was for his own welfare. It is incongruous to accept that the defendants would save him by asphyxiating him.

Ogans and Ganey used excessive force by creating asphyxiating conditions to a detainee who could not reasonably be characterized as actively resisting and who did "not pose a material danger to the officers or others." *Martin*, 712 F.3d at 961. Ogans applied substantial pressure to Riethmeier's lap and applied pressure to his jugular notch region. Ganey held a spit hood tightly over Riethmeier's face, held his head tightly, and applied pressure to the hypoglossal pressure point underneath Riethmeier's jaw over his windpipe. At the time they applied their force, Riethmeier's legs were already secured to the restraint chair, and several other officers maintained control over the rest of his body. Case law in this circuit indisputably put the officers on notice that they could not permissibly restrain in this manner detainees who exhibited little to no active resistance or immediate threat.

The defendants offer several responses. They insist that Riethmeier was actively resisting throughout the restraint chair placement. "Active resistance includes 'physically struggling with, threatening, or disobeying officers.'" *Rudlaff v. Gillispie*, 791 F.3d 638, 641 (6th Cir. 2015). Whether Riethmeier actively resisted the officers' attempts to place him in the restraint chair on this record must be determined by a jury. Although many of the officers on the scene testified that Riethmeier resisted, the video shows that any resistance largely had ceased by the time Ganey and Ogans used their force. And the principal acts of Riethmeier's resistance cited by Ganey and Ogans consisted of him moving his head from side to side and failing to place his body flush with

the base of the restraint chair. These instances are not clearly evident on the video tape, and the latter more naturally can be characterized as "mere noncompliance [which] is not active resistance." *Woodcock v. City of Bowling Green*, 679 F. App'x 419, 423 (6th Cir. 2017). The former, taken in the light most favorable to the plaintiff, reasonably can be viewed as Riethmeier's attempt to breathe. *Cf. Martin*, 712 F.3d at 962 ("The officers object that Martin actively fought with them to avoid being handcuffed. But we are bound to view the evidence in the light most favorable to the estate. The record here supports the inference that Martin struggled to cast the officers' weight from his back so he could breathe.").

The defendants next argue that there is no clearly established law forbidding the use of "pressure point techniques" for one to two seconds "in the face of continuous resistance" from a detainee who was "committing self harm." ECF No. 31, PageID.218. That argument, however, assumes a set of facts from the defendants' viewpoint; those facts are reasonably in dispute. Moreover, there is *no evidence* that Riethmeier was committing acts of self-harm at the time the officers used the force here. More than five minutes had passed since he last struck his head against the cell window. And in any event, the plaintiff's claim is not premised solely on the officers' use of "pressure point techniques" but on their use of force on his body, head, and neck area, along with Ganey's use of the spit hood in a manner that appears to have obstructed Riethmeier's airway.

The defendants also cite *Wiley v. City of Columbus*, 36 F.4th 661 (6th Cir. 2022). In that case, a man named Jaron Thomas called 911 to request medical assistance after he used cocaine and believed he had overdosed. When police arrived at Thomas's home to secure the scene so that he could receive treatment from paramedics, he ran from the home and "started violently rolling around and sporadically contorting his body" and "aggressively" resisted the officers' attempts to

subdue him. *Wiley*, 36 F.4th at 665. As the officers continued their attempts to restrain him, "he continued being uncooperative and combative." *Ibid.* One officer employed a so-called "maximum resistor technique," which involved placing some of his bodyweight over Thomas's legs, which were bent at the knee and placed against his buttocks. *Id.* at 666. Another officer secured Thomas's hands and placed his left knee on Thomas's "back/hip area above the buttocks." *Ibid.* The officers restrained him in that position for approximately ninety seconds, but his breathing began to slow, and he later went into cardiac arrest and died. The county coroner attributed Thomas's cardiac arrest and death to a "cocaine induced delirium," but a medical expert for Thomas's estate disagreed, finding that his cardiac arrest was caused by the officers' forcible restraint, which precluded adequate breathing. *Id.* at 666-67. The court of appeals held that the defendant officers were entitled to qualified immunity on the plaintiff's excessive force claim, holding that no case put the officers on notice that their conduct — "under the circumstances of [Thomas's] erratic and combative behavior" — would violate his rights. *Id.* at 670.

Wiley is distinguishable on at least two bases. First, the decedent in that case "consistently resisted efforts to be restrained" and the officers were attempting to stop him from kicking them. *Id.* at 669. The facts here do not suggest a similar level of resistance when viewed in the light most favorable to the plaintiff. Second, the court relied on an officer's uncontroverted testimony that he did not put pressure on the decedent's breathing cavity, and no video footage contradicted that conclusion. *Ibid.* Here, the video footage raises substantial questions about the force applied by both Ogans and Ganey. The plaintiff's excessive force claims against these two defendants must be resolved at trial. The excessive force claims against defendants Babiak, Jensen, Richardson, Asaro, Burke, Fitzpatrick, Garcia, Geyer, Otto, Siterlet, and Terry will be dismissed.

2. Failure to Intervene

The plaintiff also combined a claim for failure to intervene in count I of the complaint. He says that each of the defendant deputies violated Riethmeier's Fourth Amendment rights during his placement in the restraint chair because they (1) should have intervened to stop Riethmeier from being placed into the restraint chair initially and (2) should have intervened to stop the chairing once they observed Riethmeier's "obvious signs of distress." ECF No. 66, PageID.3621. The first theory is a nonstarter. The decision to order Riethmeier to be placed into a restraint chair was not objectively unreasonable, so there is no basis to hold the officers liable for failing to intervene. *Floyd v. City of Detroit*, 518 F.3d 398, 406 (6th Cir. 2008) (including as an element of a failure to intervene claim that excessive force was used).

The second theory is viable: "a police officer who fails to act to prevent the use of excessive force may . . . be held liable where '(1) the officer observed or had reason to know that excessive force would be or was being used, and (2) the officer had both the opportunity and the means to prevent the harm from occurring.'" *Floyd*, 518 F.3d at 406 (quoting *Turner v. Scott*, 119 F.3d 425, 429 (6th Cir. 1997)). However, "officers cannot be held liable under this theory if they do not have 'a realistic opportunity to intervene and prevent harm.'" *Wells v. City of Dearborn Heights*, 538 F. App'x 631, 640 (6th Cir. 2013). The Sixth Circuit has recognized that "an officer generally can stop ongoing force that lasts for a minute or more," *Chaney-Snell*, 98 F.4th at 722, but a court must not group "discrete" and "fleeting" episodes into one continuous use of force when determining whether an officer had a chance to intervene, *id.* at 725. In *Chaney-Snell*, the court of appeals discussed a ten-second benchmark. *Id.* at 722 ("[A]n officer without forewarning generally will not have the ability to stop a colleague's force if the force continues for "ten seconds or less[.]") (citing *Pineda v. Hamilton Cnty.*, 977 F.3d 483, 493 (6th Cir. 2020)). Against an

assertion of qualified immunity, the operative question therefore is whether "a reasonable officer could [have] believe[d] that each incident ended too quickly to trigger 'a duty to intercede.'" *Id.* at 723 (quoting *Barton v. City of Lincoln Park*, 726 F. App'x 361, 367 (6th Cir. 2018)). Besides time, other relevant factors include whether the force was discrete or continuous, whether the officers "were distracted by other duties," and whether there was any indication that would signal an intent to use force ahead of time. *Ibid.*

The fact that defendants Burke, Fitzpatrick, Otto, and Terry were actively engaged in securing the plaintiff in the restraint chair at the time Ogans and Ganey used the near-lethal force precludes liability on a failure-to-intervene theory as to those defendants, because their concentrated focus on securing Riethmeier into the chair during the critical moments precludes a finding that they had an adequate opportunity to intervene. *See Wright v. City of Euclid, Ohio*, 962 F.3d 852, 872 (6th Cir. 2020) (observing that "[i]n *Smith*, we held that when one officer was 'occupied trying to gain control of [the plaintiff's] arms while [the other officer] was deploying his taser,' no reasonable juror could find that the officer had the opportunity and the means to prevent the excessive force") (quoting *Smith v. City of Troy, Ohio*, 874 F.3d 938, 945 (6th Cir. 2017)). Similarly, defendant Babiak was in a separate room during the incident and had no opportunity to intervene during the time that Ogans and Ganey were applying the asphyxiating pressure to Riethmeier. The video footage of the incident makes clear, however, that officers Jensen, Richardson, Asaro, Garcia, Geyer, and Siterlet were *not* directly engaged in securing Riethmeier to the restraint chair and played an on-the-scene role as observers during the critical moments.

The plaintiff does not contend that these six officers stood by throughout the entire episode; instead, he alleges that they failed to step in when it actually mattered and when it was obvious that Ogans and Ganey were inflicting near fatal force. The defendants argue that they did not have

the opportunity to take action until Riethmeier went into cardiac arrest, but the video does not support that claim. Riethmeier first exhibited signs of agonal breathing at the 3:48 timestamp on the video, shortly after Ganey and Ogans began applying force; the officers only began to take action to remove Riethmeier from the restraint chair at approximately 5:25 on the video — more than a minute and a half later. Although there was little prior indication that the officers would use *excessive* force to place Riethmeier in the restraint chair, Ganey and Ogans' use of force — particularly Ganey's problematic head-hold — was continuous over the course of the critical minutes. By 2021, it was clearly established that an officer with a sufficient opportunity to intervene to prevent excessive force has a duty to take action to end it. *See Ontha v. Rutherford Cnty., Tennessee*, 222 F. App'x 498, 506 (6th Cir. 2007) (stating that the court of appeals has recognized a duty to intervene where the "underlying episode of excessive force has spanned a sufficient period of time for a nearby defendant to both perceive what was happening and intercede to stop it."). A jury must decide whether Garcia, Richardson, Geyer, Asaro, Jensen, and Siterlet violated Riethmeier's rights by failing to intervene to stop the use of force over the course of this minute and a half. However, a failure-to-intervene claim against Ganey and Ogans is redundant, since they were the source of the alleged excessive force.

3. Deliberate Indifference

The plaintiff alleges that the defendants were deliberately indifferent to his serious medical needs in two ways: (1) they ignored clear signs that he required psychiatric services and instead "chose to punish" him by "by restricting his movement and re-confining him in the restraint chair without mental health treatment," ECF No. 66, PageID.3625; and (2) they ignored the signs of respiratory distress exhibited by Riethmeier as they attempted to place him in the restraint chair the second time.

The Fourteenth Amendment's Due Process clause guarantees the right of pretrial detainees to be free from deliberate indifference by officials to their serious medical needs. *City of Revere v. Massachusetts Gen. Hosp.*, 463 U.S. 239, 244 (1983) (stating that the rights of a pretrial detainee are "at least as great as the Eighth Amendment protections available to a convicted prisoner"); *Richmond v. Huq*, 885 F.3d 928, 937 (6th Cir. 2018). Before 2021, the governing test for such claims in this circuit was the same for convicted prisoners (to whom the Eighth Amendment applied) and pretrial detainees (who looked to the Fourteenth Amendment). *See Gibson v. Abate*, No. 24-1929, 2025 WL 1913247, at *3 (6th Cir. July 11, 2025) (citing *Bays v. Montmorency Cnty.*, 874 F.3d 264, 268 (6th Cir. 2017)). That test has both an objective and a subjective component. "For the objective component, the plaintiff needed to show that he had a 'sufficiently serious' medical need." *Hulon v. City of Lansing, Michigan*, No. 23-1937, 2025 WL 817492, at *3 (6th Cir. Mar. 14, 2025) (quoting *Farmer v. Brennan*, 511 U.S. 825, 834 (1994)). "And for the subjective component, the plaintiff needed to show that 'an official kn[ew] of and disregard[ed] an excessive risk to . . . health or safety.'" *Ibid.* (quoting *Farmer*, 511 U.S. at 837).

That changed in 2021 when the Sixth Circuit decided *Brawner v. Scott County*, 14 F.4th 585 (6th Cir. 2021), where the court of appeals held that the Supreme Court's decision in *Kingsley v. Hendrickson*, 576 U.S. 389, 397-98 (2015), which eliminated the subjective component of the similar test for excessive force claims, required a modification to the subjective component of the test for deliberate indifference claims brought by pretrial detainees. The court concluded that plaintiffs needed to "prove 'more than negligence but less than subjective intent — something akin to reckless disregard.'" *Brawner*, 14 F.4th 596 (quoting *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1071 (9th Cir. 2016)). This standard requires plaintiffs establish that the defendants "acted deliberately (not accidentally), [and] also recklessly 'in the face of an unjustifiably high risk of

harm that is either known or so obvious that it should be known.'" *Helphenstine v. Lewis Cnty.*, 60 F.4th 305, 315-16 (6th Cir. 2023) (quoting *Brawner*, 14 F.4th at 596) (alteration in original).

However, *Brawner* was decided on September 22, 2021. The events described in the plaintiff's amended complaint occurred approximately one week prior — on September 12 and 13 of 2021. The court of appeals has made clear that the *Brawner* test does not apply to actions before it was decided and that the only clearly established law applicable to events that occurred before *Brawner* is the court of appeals' decision applying the *Farmer* standard, which requires a plaintiff to demonstrate that an officer "consciously" disregarded a serious medical risk. *Lawler as next friend of Lawler v. Hardeman Cnty., Tennessee*, 93 F.4th 919, 928 (6th Cir. 2024); *Wiertella v. Lake Cnty., Ohio*, 141 F.4th 775, 781 (6th Cir. 2025). Therefore, although the parties briefed this issue under the *Brawner* line of cases, the plaintiff must demonstrate a genuine dispute of material fact under the typical Eighth Amendment test.

The evidence does not support the plaintiff's first theory of liability for deliberate indifference, that is, that his obvious need for psychiatric services was not provided. It is true that he exhibited signs of obvious mental distress, such as hitting his head against the cell window. But the undisputed evidence establishes that Riethmeier would have received medical attention after he was placed in the restraint chair. Oakland County's policies governing restraint chair usage state that "Medical and Program Services staff" were to be informed "immediately" about an inmate's placement in the restraint chair; medical staff also were required to "check the inmate upon placement in the restraint chair to provide any necessary treatment and monitor and document the inmate every thirty (30) minutes thereafter." Jail Policies, ECF No. 67-1, PageID.3785. The policy also mandated that inmates placed in restraint chairs be housed in the jail's clinic. *Ibid.* Furthermore, Sergeant Jensen testified that medical staff were trained to respond once jail staff

announced that they had initiated the restraint chair process. Jensen dep., ECF No. 32-4, PageID.496. He explained that medical staff and a "caseworker" would come once the officers had "prevented [the inmate] from harming themselves." *Id.* at PageID.494. During his first stint being confined in the restraint chair, Riethmeier was monitored by medical staff in accordance with these policies. Therefore, the defendants cannot be said to have "disregarded" the risk posed by Riethmeier's self-harm. Their response would have triggered some level of medical care for Riethmeier. *Cf. Arrington-Bey v. City of Bedford Heights, Ohio*, 858 F.3d 988, 993 (6th Cir. 2017) (observing that no established law required officers take a mentally unstable inmate to a hospital instead of a jail where he would be screened medically).

The plaintiff responds that this medical care would not have fully addressed Riethmeier's psychiatric needs. However, the case law draws a distinction "between cases where the complaint alleges a complete denial of medical care and those cases where the claim is that a prisoner received inadequate medical treatment." *Westlake v. Lucas*, 537 F.2d 857, 860 n.5 (6th Cir. 1976). "Where a prisoner alleges only that the medical care he received was inadequate, federal courts are generally reluctant to second guess medical judgments." *Alspaugh v. McConnell*, 643 F.3d 162, 169 (6th Cir. 2011) (citation omitted).

The plaintiff enjoys more success with his second theory. The deliberate indifference stems from defendants Ogans and Ganey confronting a detainee struggling to breathe because of the force they were exerting, and instead of backing off, they continued to compromise his breathing with pressure on his windpipe and smothering him with the spit hood. In a similar vein, the evidence shows that officers Garcia, Richardson, Geyer, Asaro, Jensen, and Siterlet stood by for at least a minute and a half while Riethmeier was in obvious distress, struggling to breathe. The defendants respond that they tried to undo the damage by administering resuscitation after

they realized that Riethmeier had arrested, and they rely on two cases to support their position: *Arrington-Bey* and *Marden v. County of Midland*, No. 15-14505, 2017 WL 1104960 (E.D. Mich. March 24, 2017). Both of those cases have some facts in common with the present matter, but there are distinguishing features.

In *Arrington-Bey*, a detainee who had been exhibiting bizarre behavior and potential mental problems threw an officer to the floor in jail and began choking him. 858 F.3d at 992. Another officer jumped on the detainee's back, and other officers worked to secure him in a restraint chair. During the struggle, the detainee experienced a "cardiac event" and later died. *Ibid.* The court of appeals held that qualified immunity shielded the jailers from liability because no case put them on notice that mental instability of the sort exhibited by the detainee necessarily required immediate medical attention and there was nothing to suggest they were aware of the heart attack that ended up killing him. 858 F.3d at 994. In the present case, however, there is evidence that the officers *did know* that Riethmeier required medical attention based on his audible agonal breathing *during* the process of securing him in the chair.

In *Marden*, jail officers struggled with a detainee who was exhibiting signs of severe mental distress, including spreading urine and feces on himself and his cell. 2017 WL 1104960, at *3. The detainee grabbed the testicles of one of the officers struggling to restrain him, prompting the officer to punch him in the head three times. The officers eventually confined Marden, and a nurse administered a shot of an anti-psychotic medication. Concerned that the still struggling inmate might spit, the officers placed a spit hood over his head. The officers soon noticed that Marden was struggling to breathe and requested a nurse's assistance, but they did not remove the spit hood from the detainee's head. The nurse advised the officers that placing Marden into a chair would be beneficial. However, he soon lost consciousness and ultimately passed away. *Ibid.*

The *Marden* court acknowledged that the case was unusual in the sense that the officers did provide care for the detainee and his injuries arose in part from their attempts to obtain care for him. The court emphasized, for instance, that when Marden audibly struggled to breathe, the defendants sought medical attention for him and ultimately directed that he be placed in a chair to support his breathing. 2017 WL 1104960, at *8. The court therefore focused on whether the officers' decision to place the spit hood on the inmate and keep it there was deliberately indifferent to his medical condition, which included his "inability to breathe." Answering that question in the negative, the court reasoned that although the defendant was aware that the plaintiff was struggling to breathe and required treatment, the plaintiff failed to offer any evidence the defendant knew that using a spit hood would exacerbate his condition. The court also observed that the plaintiff had not cited any case law establishing that the use of a spit hood itself creates an obvious risk, *id.* at *9, and held that qualified immunity required dismissal of the claim.

Like *Marden*, this case arises in the context of an ill-fated attempt to address a detainee's medical need. That context, however, does not insulate officers from liability if, in the course of rendering aid, they are deliberately indifferent to a detainee's medical need that emerges. *Marden*'s holding is consistent with that idea, and one could argue that there is no liability here because a spit hood was placed on Riethmeier's head and the officers sought to render aid once they observed breathing difficulties. However, those stand-out factual similarities obscure the plaintiff's core theory: that Riethmeier exhibited signs of agonal breathing almost a minute and a half before anyone responded and rendered aid.

As discussed earlier, the plaintiff's burden under the law in effect at the time is to show that each defendant "perceived facts from which to infer substantial risk to the [detainee], that he did in fact draw the inference, and that he then disregarded that risk." *Comstock v. McCrary*, 273

F.3d 693, 702-03 (6th Cir. 2001). Proof of an officer's state of mind can come "in the usual ways" — with direct or circumstantial evidence. *Farmer*, 511 U.S. at 842.

The defendants point to testimony from many of the officers present that they did not perceive Riethmeier to be struggling to breathe until they noticed his skin color change and he went unconscious. But a reasonable jury could attribute knowledge to the defendants of Riethmeier's audible gasping sounds and change in skin color much earlier in the incident. *Cf. Hopper*, 887 F.3d at 757 (attributing knowledge to multiple officers who were on the scene of a medical emergency and could have heard the inmate's pleas for help). Moreover, the fact that Jensen called out for the officers to watch Riethmeier's breathing tends to prove both that the problem was sufficiently obvious that the officers *could* have perceived it and that after his warning the other officers were on notice that it posed an issue. Siterlet's advice for Ganey to "watch that spit hood" further supports the subjective element. About a minute passed after these warnings before the officers summoned medical help. Restraint Video, at 4:06-5:20. In the meantime, they did nothing. Even in the heat of the moment, there is sufficient evidence to create a jury question that the officers on the scene consciously disregarded the risk posed by Riethmeier's breathing struggles.

There is sufficient evidence to create a fact question on the objective element as well. To assess whether a medical need is objectively serious, the Sixth Circuit has directed courts to ask whether it is "one that has been diagnosed by a physician as mandating treatment *or* one that is so obvious that even a lay person would easily recognize the necessity for a doctor's attention." *Blackmore v. Kalamazoo Cnty.*, 390 F.3d 890, 897 (6th Cir. 2004). The second option applies here. Where an inmate ultimately receives treatment but complains about the delay in receiving care, he "need not present verifying medical evidence to show that, even after receiving the delayed

necessary treatment, his medical condition worsened or deteriorated." *Id.* at 900. "Instead, it is sufficient to show that he actually experienced the need for medical treatment, and that the need was not addressed *within a reasonable time frame*." *Ibid.* (emphasis added).

The plaintiff posits that each of the officers were deliberately indifferent to Riethmeier's medical needs as soon as Riethmeier first made noises consistent with "agonal breathing" and they did not immediately act. It is true that some of them sprang to action after Riethmeier went into cardiac arrest. But by then the damage had been done. It is also true that officers may be spared liability "if they responded reasonably to the risk, even if the harm ultimately was not averted." *Farmer*, 511 U.S. at 844. But attempting to fix the damage caused by a completed constitutional violation does not annul the deliberately indifferent conduct after the fact. Defendants Jensen, Richardson, Asaro, Garcia, Geyer, Siterlet, Ogans and Ganey are not entitled to qualified immunity on the deliberate indifference claim. There is no evidence however, that defendants Burke, Fitzpatrick, Otto, Babiak, or Terry actually observed Riethmeier's obvious distress or were in a position to do anything about it. They are entitled to qualified immunity on this claim.

B. Municipal Liability

The plaintiff alleges that Oakland County is liable for Riethmeier's injuries. It is well known that a municipality cannot be held vicariously liable on federal constitutional claims based on the conduct of their employees. *Monell v. Dep't of Soc. Servs.*, 436 U.S. 658, 691 (1978) (holding that "a municipality cannot be held liable [under section 1983] solely because it employs a tortfeasor — or, in other words, a municipality cannot be held liable under § 1983 on a *respondeat superior* theory"). Instead, to prevail on a claim for municipal liability, the plaintiff must prove the existence of "an illegal policy or custom by demonstrating one of the following: (1) the existence of an illegal official policy or legislative enactment; (2) that an official with final decision

making authority ratified illegal actions; (3) the existence of a policy of inadequate training or supervision; or (4) the existence of a custom of tolerance or acquiescence of federal rights violations." *Burgess v. Fischer*, 735 F.3d 462, 478 (6th Cir. 2013). The plaintiff alleges a policy of inadequate training, a policy of failing to investigate uses of force, and the existence of a custom of tolerating rights violations. The record supports only one of these theories.

1. Failure to Train

The plaintiff points to four areas where, he believes, the County failed to train its corrections officers: (1) "using pressure points to the neck area that can impact breathing and cause a loss of consciousness," (2) "documented voluntary versus involuntary bodily reactions from the use of pressure point restraint tactics," (3) "signs and symptoms of respiratory distress," and (4) "regarding the risks of death associated with restraint chair usage." ECF No. 66, PageID.3629.

The failure to train equates to deliberate indifference if a plaintiff offers evidence that demonstrates either "a pattern of similar constitutional violations by untrained employees and [the defendant's] continued adherence to an approach that it knows or should know has failed to prevent tortious conduct by employees, thus establishing the conscious disregard for the consequences of its action . . . necessary to trigger municipal liability"; or "a single violation of federal rights, accompanied by a showing that [the defendant] has failed to train its employees to handle recurring situations presenting an obvious potential for a constitutional violation." *Shadrick v. Hopkins Cnty.*, 805 F.3d 724, 738-39 (6th Cir. 2015) (cleaned up); *see also City of Canton v. Harris*, 489 U.S. 378, 388-90 (1989).

The plaintiff has not come close to establishing a pattern because he has not offered evidence of any similar constitutional violations by the City's police department. *Shadrick*, 805 F.3d at 738-39. He *has* provided dozens of incident reports, spanning hundreds of pages, that

document the use of restraint chairs on detainees and inmates experiencing acute mental illness. *See* ECF Nos. 38-52. But he has not identified any incident that mirrors the facts here, where the officers' use of the restraint chair resulted in substantial injury. That leaves him with the obligation to show "that [the defendant] has failed to train its employees to handle recurring situations presenting an obvious potential for a constitutional violation." *Shadrick*, 805 F.3d at 738-39. That, in turn, requires a showing that it is "obvious that the failure to train will lead to certain conduct, *and* [that it is] obvious (*i.e.*, clearly established) that the conduct will violate constitutional rights." *J.H. v. Williamson Cnty., Tennessee*, 951 F.3d 709, 721 (6th Cir. 2020) (quoting *Arrington-Bey*, 858 F.3d at 995).

a. Pressure Points, Breathing, and Respiratory Distress

The plaintiff asserts the County should have provided training on the danger that if pressure points were misused, a corrections officer may impair a detainee's ability to breathe, and, correspondingly, how to identify signs of respiratory distress if it occurs. He points out that the risk of harmful effects from using pressure points was outlined in the County's manual, but the deputies all testified that they were unaware that improperly using the techniques could cause injury. It is well known that the use of pressure points to subdue a subject can inhibit the vital function of breathing and cause positional asphyxia. *See*, *e.g.*, *Wiley v. City of Columbus, Ohio*, 36 F.4th 661, 666 (6th Cir. 2022); *Hopper v. Phil Plummer*, 887 F.3d 744, 756 (6th Cir. 2018); *Kulpa for Est. of Kulpa v. Cantea*, 708 F. App'x 846, 850 (6th Cir. 2017); *Lunneen v. Vill. of Berrien Springs, Michigan*, No. 22-2044, 2023 WL 6162876, at *7 (6th Cir. Sept. 21, 2023). Yet all of the officers on the scene testified that did not have training on identifying respiratory distress or responding to that condition.

All of these individuals were corrections officers who were authorized to use the restraint chair, and it was foreseeable that coercive techniques, like the use of pressure points, would be involved in the deployment of that device. The fact that so many officers testified that they did not have training on respiratory distress is strong evidence that the County simply failed to provide that training. And the inability of a corrections officer, whose duties regularly include placing detainees in restraints, to identify signs of respiratory distress, particularly if those signs may be mistaken for active resistance, represents a failure in training "so obvious" that "the inadequacy [is] likely to result in the violation of constitutional rights." *City of Canton*, 489 U.S. at 390. Although there is evidence that the County did provide monthly training to deputies about how to use pressure points generally when placing individuals in restraint chairs, *see* Richardson dep., ECF No. 32-9, PageID.645; Ogans dep., ECF No. 32-11, PageID.702, 708, there is no corresponding evidence that any training addressed the recognition of or response to respiratory distress. In fact, many of the deputies testified that they never were trained in how to recognize respiratory distress. *See, e.g.*, Burke dep., ECF No. 32-7, PageID.570; Richardson dep., ECF No. 32-9, PageID.643, 648; Ganey dep., ECF No. ECF No. 32-12, PageID.753; Siterlet dep., ECF No. 33-3, PageID.818; Garcia dep., ECF No. 33-1, PageID.784. Officer Jensen, for instance, testified that he did observe Riethmeier's breathing issues but nevertheless failed to act. The evidence is sufficient to create a material fact issue supporting the idea that "the inadequacy [of training] was closely related to or actually caused the injury." *Jackson v. City of Cleveland*, 925 F.3d 793, 834 (6th Cir. 2019) (quoting *Ciminillo v. Streicher*, 434 F.3d 461, 469 (6th Cir. 2006)).

b. Voluntary and Involuntary Reactions

The plaintiff next insists that the defendants should have been trained on "voluntary versus involuntary bodily reactions from the use of pressure point restraint tactics." He does not explain

what this means or how inadequate training on this topic led to a violation of Riethmeier's rights. One could speculate that the plaintiff thinks that the officers misinterpreted certain movements exhibited by Riethmeier during the restraint process as signs of active resistance when, in reality, they were the effects of the pressure point techniques themselves. But any failure by the County to train the deputies on this topic — a proposition that the plaintiff does not support with any citation of the record — would not result obviously in the violation of an individual's rights. Moreover, multiple deputies testified that they actually received training that appears substantially similar to the training that the plaintiff says was missing. Richardson testified that he trained corrections staff that applying a pressure point technique "for too long" may increase the resistance and "agitation" of detainees. Richardson dep., ECF No. 32-9, PageID.646. Burke testified similarly. Burke dep., ECF No. 32-7, PageID.565, 568 (stating that a jugular notch pressure point "could elevate [a recipient's] aggression level"). And Ogans testified that he was trained that applying multiple pressure points could cause "escalation." Ogans dep., ECF No. 32-11, PageID.711. The plaintiff has not created a fact dispute about the adequacy of the County's training on this topic.

c. Death from Restraint Chair Usage

The plaintiff also contends that the County is liable for failing to train its staff about "the risks of death associated with restraint chair usage." Once again, the plaintiff has not identified specific evidence from which a factfinder might infer that the lack of training on this topic would lead to unconstitutional conduct. The plaintiff's most viable theory is that the officers caused his injuries, not the restraint chair itself. Moreover, County policy already requires medical monitoring when restraint chairs are employed. *See* ECF No. 67-1, PageID.3785.

2. Failure to Investigate

The plaintiff asserts that the County is liable because it failed to investigate the officers' use of force adequately, effectively ratifying it. The evidence does not support this theory.

"To establish *Monell* liability for ratification based on a failure to investigate, a plaintiff needs to show 'not only an inadequate investigation in this instance,' but also 'a clear and persistent pattern of violations' in earlier instances." *Hart v. Michigan*, 138 F.4th 409, 425 (6th Cir. 2025) (quoting *Pineda v. Hamilton Cnty.*, 977 F.3d 483, 495 (6th Cir. 2020)). The earlier inadequate investigations must concern "comparable claims." *Pineda*, 977 F.3d at 495 (quoting *Stewart v. City of Memphis*, 788 F. App'x 341, 344 (6th Cir. 2019)). This requirement flows from section 1983's causation element, that is, that "there . . . be a link between the local entity's failure to investigate and the plaintiff's injury." *Ibid.* (cleaned up). "[A]n entity's failure to investigate the plaintiff's specific claim will, by definition, come *after* the employee's action that caused the injury about which the plaintiff complains," so a single failure to investigate cannot have caused the plaintiff's injury. *Ibid.*

Here, the plaintiff never identifies the final policy maker whose failure to conduct an adequate investigation could bind the County. More problematic, however, is that he cites only the alleged failure to investigate the use of force in Riethmeier's case. The cases he cites in support of his theory, *Lewis v. Manier*, No. 15-10363, 2015 WL 7075924, at *4 (E.D. Mich. Nov. 13, 2015), and *Morrison v. Bd. of Trs. of Green Twp*., 529 F. Supp. 2d 807, 825 (S.D. Ohio 2007), predate the standards outlined in *Pineda*. Moreover, the County attached evidence that its Special Investigations Unit did investigate the use of force. *See* ECF No. ECF No. 32-3, PageID.466-68. "That the investigator found the use of force appropriate — a conclusion that may be incorrect —

does not suggest that the City failed to take meaningful action." *Groth v. City of Birmingham*, 761 F. Supp. 3d 1031, 1059 (E.D. Mich. 2025).

3. Custom of Tolerating Civil Rights Violations

Finally, the plaintiff seeks to establish *Monell* liability with evidence of an unwritten policy of "punishing" detainees who engage in self-harm by placing them into restraint chairs without medical intervention. He points to jail records from incidents on January 21, 2021, May 15, 2021, June 18, 2021, August 24, 2021 (before the Riethmeier incident) that involved detainees engaged in self-harm, including head-banging, who deputies immediately placed into restraint chairs. Jail Records, ECF No. 67-3. He says that the pattern continued on at least seven more occasions. One problem he identifies is that medical staff did not evaluate the detainees before their placement in restraint chairs, as he believes the County's policy requires. Oakland County responds that its policy does not require pre-evaluation by medical staff before detainees are placed in a restraint chair. That is the more accurate reading of the County's policy. *See* ECF No. 67-1, PageID.3785 ("Medical staff shall check the inmate *upon placement in the restraint chair* to provide any necessary treatment and monitor and document the inmate every thirty (30) minutes, thereafter." (emphasis added)).

But the plaintiff's concern is broader: he argues that medical staff do not provide adequate mental health services once detainees are confined in the restraint chair, so a reasonable jury could conclude that the device is being used unlawfully as a punitive measure. This theory is interesting, but it founders on the finding, above, that the officers' decision to place Riethmeier in the restraint chair was objectively reasonable in light of their belief that he posed a risk of harm to himself. The plaintiff also does not explain how the use of the restraint chair in any of the other incidents was constitutionally problematic in light of the evidence that those detainees were documented to have been committing acts of self-harm.

* * *

The plaintiff has not created a fact dispute on the County's liability on his theories based on the failure to investigate uses of force or the toleration of rights violations, but there is sufficient evidence of a claim based on the failure to train to defeat the summary judgment motion.

C. State Law Claims

In counts V and VI of the amended complaint, the plaintiff pleads claims under state law, anticipating the defense of state governmental immunity. "Under Michigan law, government employees are generally immune from tort liability for injury to a person if they are acting within the scope of their authority, performing government functions, and their conduct does not amount to gross negligence that is the proximate cause of the injury or damage." *Gillman v. City of Troy, Michigan*, 126 F.4th 1152, 1161 (6th Cir. 2025) (citing *Burwell v. City of Lansing*, 7 F.4th 456, 477 (6th Cir. 2021); Mich. Comp. Laws § 691.1407(2)) (cleaned up).

1. Gross Negligence

The plaintiff asserts that the defendant officers were grossly negligent by using excessive force in restraining Riethmeier, failing to intervene to end that use of force, and acting with deliberate indifference to his medical needs. Michigan law does not recognize a free-standing gross negligence claim. *Herriges v. Cnty. of Macomb*, No. 19-12193, 2020 WL 3498095, at *10 (E.D. Mich. June 29, 2020). "Allegations of gross negligence derive their relevance from the need to plead around certain defenses," like governmental immunity. *Ibid.* Claims labeled "gross negligence" are assessed as claims of ordinary negligence, "using traditional tort principles without regard to the defendant's status as a government employee." *Rakowski v. Sarb*, 269 Mich. App. 619, 628, 713 N.W.2d 787, 794 (2006) (citing *Beaudrie v. Henderson*, 465 Mich. 124, 134, 631 N.W.2d 308, 313 (2001)).

Gross negligence "means conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Mich. Com. Laws § 691.1407(8)(a). This description of gross negligence "suggests 'almost a willful disregard of precautions or measures to attend to safety and a singular disregard for substantial risks.'" *Wood v. City of Detroit*, 323 Mich. App. 416, 424, 917 N.W.2d 709, 714 (2018) (quoting *Tarlea v. Crabtree*, 263 Mich. App. 80, 90, 687 N.W.2d 333 (2004)). It also requires a showing of proximate causation, which means "whether it was foreseeable that the defendant's conduct could result in harm to the victim." *Ray v. Swager*, 501 Mich. 52, 65, 903 N.W.2d 366, 372 (2017). Michigan courts are wary of transforming intentional tort claims into negligence claims. *VanVorous v. Burmeister*, 262 Mich. App. 467, 483, 687 N.W.2d 132, 143 (2004). To determine whether a claim sounds in negligence or is an artfully pleaded intentional tort claim, the Court must assess the "gravamen of [the] plaintiff's claim against [the] defendant." *Latits v. Phillips*, 298 Mich. App. 109, 120, 826 N.W.2d 190, 197 (2012). In the use-of-force context, Michigan courts have held that allegations that rely on the same wrongful conduct as the intentional tort claims are fully premised on the intentional tort claims. *See Hill v. City of Detroit*, No. 348798, 2021 WL 137381, at *2 (Mich. Ct. App. Jan. 14, 2021); *Graves v. Hedger*, No. 346257, 2020 WL 6937058, at *7 (Mich. Ct. App. Nov. 24, 2020); *see also Scott v. City of Battle Creek*, No. 21-11, 2021 WL 7161975, at *8 (W.D. Mich. Nov. 17, 2021), *report and recommendation adopted*, No. 21-11, 2022 WL 136459 (W.D. Mich. Jan. 14, 2022). However, the Sixth Circuit has stated that gross negligence claims are not barred when plaintiffs ground their negligence claim in a defendant's "fail[ure] to follow certain procedures and statutory obligations" or otherwise demonstrated "that the defendant owed him a duty of care." *Brent v. Wayne Cnty. Dep't of Hum. Servs.*, 901 F.3d 656, 701 (6th Cir. 2018). And the Sixth Circuit has found allegations that a defendant "breached his 'duty to perform [his] employment

activities so as not to endanger or cause harm to Plaintiffs' . . . sufficiently distinct from . . . separately-pleaded intentional torts." *Richards v. City of Jackson*, 788 F. App'x 324, 337 (6th Cir. 2019).

In this case, the plaintiff's response brief indicates that his gross negligence theory is related to his core federal claims: that the officers used excessive force, failed to intervene, and were deliberately indifferent to his medical needs. The excessive force claim is essentially the same as an assault-and-battery intentional tort claim, discussed below.

The plaintiff's failure to intervene theory may be sufficiently distinct from an intentional tort theory of liability. *See Beals v. Michigan*, 497 Mich. 363, 377, 871 N.W.2d 5, 13 (2015) ("[W]e reject the defendant's suggestion that a governmental employee's failure to intervene can never constitute the proximate cause of an injury."); *but see Thompson v. City of Detroit*, No. 361316, 2023 WL 6170536, at *11 (Mich. Ct. App. Sept. 21, 2023) (characterizing a police officer's failure to intervene as satisfying the elements of an intentional tort). The Court has found above that fact questions precluded summary judgment for several of the defendants on the plaintiff's federal failure-to-intervene claim. But the plaintiff has not developed any argument that the facts that give rise to federal liability on that theory amount to gross negligence, that is "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." Mich. Comp. Laws § 691.1407(8)(a). In fact, the plaintiff's brief focuses primarily on the deliberate indifference theory. The Court must conclude, therefore, that the plaintiff has abandoned his claim that a failure to intervene amounts to such gross negligence that a state law negligence claim is viable.

The plaintiff focuses his argument on the idea that a negligence claim based on the officers' deliberate indifference to his medical needs is conceptually distinct from an intentional tort claim

and therefore is not barred by *VanVorous*. There is some support for that position. *See Lippett v. Adray*, No. 18-11175, 2023 WL 3774508, at *6 (E.D. Mich. June 2, 2023) (Borman, J.) (explaining that "courts have found that negligence claims that are based on the same facts as constitutional *deliberate indifference* claims do not run afoul of *VanVorous*, because deliberate indifference claims contain allegations of a mental state short of full intent and similar to that in negligence claims."); *cf. Burwell v. City of Lansing, Michigan*, 7 F.4th 456, 477 (6th Cir. 2021) (examining both a deliberate indifference and a negligence claim). The court of appeals has explained that "[s]ince deliberate indifference is a very high standard of culpability that exceeds gross negligence, a deliberate indifference finding will necessarily entail a gross negligence finding, but not necessarily the other way around." *Burwell*, 7 F.4th at 477 (cleaned up). The Court has held that qualified immunity does not shield the defendants Ogans, Ganey, Garcia, Richardson, Geyer, Asaro, Jensen, and Siterlet from liability on a deliberate indifference claim.

The defendants do not offer any meaningful argument in opposition to this theory, despite it being raised prominently in the plaintiff's response brief. And the record facts demonstrate that those officers' culpability was "akin to willful, wanton, or reckless misconduct" for many of the reasons described above. *Ibid.* (quoting *Reilly v. Vadlamudi*, 680 F.3d 617, 627 (6th Cir. 2012)). Therefore, the plaintiff's gross negligence claim against defendants Ogans, Ganey, Garcia, Richardson, Geyer, Asaro, Jensen, and Siterlet may proceed.

2. Assault and Battery

The plaintiff alleges that all of the individual officers — again, without distinction — are guilty of the state law tort of assault and battery. Governmental immunity is also a defense to this claim.

An assault is "an attempt to commit a battery or an unlawful act which places another in reasonable apprehension of receiving an immediate battery." *Grawey v. Drury*, 567 F.3d 302, 315 (6th Cir. 2009) (quoting *People v. Nickens*, 470 Mich. 622, 685 N.W.2d 657, 661 (2004)). A battery is "an intentional, unconsented and harmful or offensive touching of the person of another, or of something closely connected with the person." *Nickens*, 685 N.W.2d at 661 (quoting *People v. Reeves*, 458 Mich. 236, 580 N.W.2d 433, 435 n.4 (1998)).

"To be entitled to governmental immunity, [a defendant] must establish that he (1) acted in the course of his employment and acted or reasonably believed that he was acting within the scope of his authority, (2) was performing a discretionary act, and (3) acted in good faith or without malice." *Ramsey v. Rivard*, 110 F.4th 860, 870 (6th Cir. 2024) (citing *Odom v. Wayne Cnty.*, 482 Mich. 459, 480, 760 N.W.2d 217, 228 (2008)). Unlike the qualified immunity defense "under federal law, the standard is subjective" so "an officer who believed in good faith that the force used was necessary is protected from liability for an assault and battery claim; whereas, an officer who acted with malicious intent is not." *Naji v. City of Dearborn, Michigan*, 120 F.4th 520, 526 (6th Cir. 2024) (citing *Shumate v. City of Adrian*, 44 F.4th 427, 451 (6th Cir. 2022)). The parties' briefs do not delve deeply into the subjective motivations of the officers. As discussed earlier, Ganey and Ogans are not entitled to qualified immunity on an excessive force claim. During their depositions, both officers explained that they believed their use of force was necessary because they perceived Riethmeier to be actively resisting. Ganey dep., ECF No. 32-12, PageID.749 ("[T]he whole time I had control of his jaws and holding there on his cheeks, from the start to the finish, he resisted the entire time, he was moving his head."); Ogans dep., ECF No. 32-11, PageID.709, 716 ("[T]he intent was . . . to get him into a completely seated position."). The plaintiff has not identified any facts that might cause a jury to question whether the officers

subjectively believed that their force was necessary. And the plaintiff has not developed any argument as to the other individual defendants.

III.

Fact questions preclude summary judgment as to the plaintiff's excessive force claims against defendants Ross Ogans and Mark Ganey; on the failure-to-intervene claim against defendants Steven Garcia, James Richardson, Jordan Geyer, Andrew Asaro, Zachary Jensen, and Bridget Siterlet; on the deliberate indifference claim against those same defendants, as well as Ogans and Ganey; on the failure to train claim against Oakland County, and on the state law gross negligence claim against defendants Ogans, Ganey, Garcia, Richardson, Geyer, Asaro, Jensen, and Siterlet. The other defendants are entitled to a judgment of dismissal as a matter of law on all the other claims.

Accordingly, it is **ORDERED** that the defendants' motion for summary judgment (ECF No. 31) is **GRANTED IN PART AND DENIED IN PART**.

It is further **ORDERED** that all claims against defendants Babiak, Burke, Fitzpatrick, Otto, and Terry; all federal claims for excessive force except the excessive force claim against defendants Ganey and Ogans based on the force used against Riethmeier when placing him in the restraint chair and the deliberate indifference claim; all other federal claims except the failure-to-intervene and deliberate indifference claims against defendants Garcia, Richardson, Geyer, Asaro, Jensen, and Siterlet; all but the failure-to-train claim against Oakland County; and all the state law claims except the gross negligence claims against defendants Ogans, Ganey, Garcia, Richardson, Geyer, Asaro, Jensen, and Siterlet are **DISMISSED WITH PREJUDICE**.

The motion is **DENIED** in all other respects.

s/David M. Lawson
DAVID M. LAWSON
United States District Judge

Dated: October 30, 2025