

MPD officer Lt. Johnny Mercil testimony on April 6, 2021



Eric Nelson:

You were asked a series of questions about whether this appears to be a trained Minneapolis neck restraint.

Johnny Mercil:

Yes, I was asked that.

Eric Nelson:

And you said no, correct?

Johnny Mercil:

Correct.

Eric Nelson:

But you hedged a little bit and said it may be some other training.

Johnny Mercil:

Perhaps.

Eric Nelson:

What would that training be?

Johnny Mercil:

Using body weight to control. However, I will add that we tell officers to stay away from the neck when possible and if you're going to use body weight to pin, to put it on your shoulder and be mindful of position.

Eric Nelson:

All right. And if we can take this down and just to the witness, I'd like to display a couple of... This is page 41 of Exhibit 126. Just show this to the witness. Can you see that, sir?

Johnny Mercil:

Not yet.

Speaker 3:

It's supposed to be up.

Eric Nelson:

Sorry. This is already in evidence, but in this bottom corner here, do you see a photograph of an individual demonstrating how to handcuff a person?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And that knee is across the neck of that individual, correct?

Johnny Mercil:

The knee is on his far shoulder.

Eric Nelson:

Across the neck, the base of the neck.

Johnny Mercil:

The shin would be from his toes up to the knee. Yes, his shin is across the back of the neck.

Eric Nelson:

All right. So that's when we're talking about prone handcuffing. This is a specific kind of photograph that demonstrates the placement of a knee as it applies to prone handcuffing, correct?

Johnny Mercil:

Correct.

Eric Nelson:

And ultimately, if that person were to be handcuffed and circumstances dictated the officer would be permitted to continue to hold his knee in that same position. Agreed?

Johnny Mercil:

I would say yes. However, we've cautioned officers that be mindful of the neck area and to look for the shoulder for placement.

Eric Nelson:

Okay. Perfect. We can take this down. Can we take that down, Your Honor?

I'm going to show you what has been introduced as Exhibit 56 already. Can you see that, sir?

Johnny Mercil:

A little glare, but yes sir.

Eric Nelson:

It appears to be the-

Judge:

You can stand up.

Johnny Mercil:

Sure. Yes, sir.

Eric Nelson:

What appears to be the paramedic checking the carotid pulse of Mr. Floyd?

Johnny Mercil:

Yes, sir.

Eric Nelson:

In your experience, this is already admitted as Exhibit 56. In your experience, would you be able to touch the carotid artery if the knee was placed on the carotid artery?

Johnny Mercil:

No, sir.

Eric Nelson:

Sir, I'm showing you what's been marked for identification purposes as Exhibit 1045, 1-0-4-5. Can you just generally take a look at that?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Now, in terms of, do you recognize that this appears to be a still photograph taken from the body-worn camera of one of the involved officers?

Johnny Mercil:

That's what it appears to be, yes.

Eric Nelson:

There's a timestamp on it that indicates May 25th, 2020 at 2020 3:32.

Johnny Mercil:

Yes, sir.

Eric Nelson:

And can you see two officers in this area here holding Mr. Floyd?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Let me clear this. Here, does that appear to be the placement of one officer's knee and leg?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Does that appear to be across the shoulder blade to the base of the neck?

Johnny Mercil:

Now, the shin appears to be across the shoulder blade. I don't know if I can tell you where the knee is.

Eric Nelson:

I would offer a 1045.

Judge:

All right. At 1045 is received.

Eric Nelson:

Permission to publish. Can we clear that? Okay. So what we're seeing here again, this is at 8:23 and 32 seconds, correct?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And obviously this is taken from one of the body cameras and here you can see down in that area, the leg placement of the officer, correct?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And based on your observation of this photograph, it appears that the shin is coming from the top of the shoulder across the shoulder blade, correct?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And it appears to be at an angle pointed in towards the squad car, correct?

Johnny Mercil:

Yes, sir.

Eric Nelson:

All right. We can take this down, Your Honor. I think I accidentally closed. Hang on one second.

Speaker 5:

It looks like the defense attorney, Eric Nelson's having some technical difficulties pulling up one of the-

Eric Nelson:

Sir, I'm showing you what's been marked for identification purposes as 1046. Does that appear to be a similar angle?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And I apologize, it was actually Officer Wayne's body worn camera, 1045 and 1046. Again, can you see what appears to be the placement of the leg of one of the officers at the shoulder blade of Mr. Floyd?

Johnny Mercil:

It appears so.

Eric Nelson:

You can see in this area here what appears to be the back or the calf area coming across the shoulder blade, correct?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Again, the timestamp is 10:26 and 40 seconds.

Johnny Mercil:

Yes, sir.

Eric Nelson:

And does that knee placement appear to be similar to the placement in the previous exhibit?

Johnny Mercil:

The last exhibit, sir?

Eric Nelson:

Yes.

Johnny Mercil:

Yes.

Eric Nelson:

And that was roughly a couple of minutes after, right?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Okay. I would offer exhibit 1046. 8:26 and 40 seconds. 20:26, 40. Okay.

Judge:

1046 is received.

Eric Nelson:

Permission to publish? So again, it's a little hard to see in this particular photograph, but if we look in this general area here, correct, you can see the placement of the knee. Correct?

Johnny Mercil:

I can see the general area of the placement of the knee. Yes.

Eric Nelson:

And again, here we have what appears to be the shin coming over the top of Mr. Floyd's shoulder blade.

Johnny Mercil:

That's what it appears, sir.

Eric Nelson:

And that would be angled in towards the squad car, correct?

Johnny Mercil:

Correct.

Eric Nelson:

Take that down, your Honor. Sir, I'm showing you what's been marked for identification purposes as exhibit 1047. Does that also appear be a still frame image taken from a body-worn camera of a Minneapolis police officer?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Timestamp being 8:27 and 49 seconds.

Johnny Mercil:

Yes, sir.

Eric Nelson:

2027-49, correct?

Johnny Mercil:

Correct.

Eric Nelson:

And it appears that the officer wearing this body-worn camera has now stood up, correct?

Johnny Mercil:

It's a different angle, so yes.

Eric Nelson:

From higher to lower, correct?

Johnny Mercil:

Lower to higher, sir.

Eric Nelson:

All right. It appears that the camera is at a higher angle looking down.

Johnny Mercil:

Yes, sir.

Eric Nelson:

And can you see in this photograph, what appears to be the knee and shin placement of the officer?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And would you agree that it appears that the knee is placed in the center between Mr. Floyd's shoulder blades?

Johnny Mercil:

It appears to be between his shoulder blades, sir. Yes.

Eric Nelson:

I'd offer 1047.

Judge:

Any objection? 1047 is received.

Eric Nelson:

Permission to publish? So again, here in this particular photograph, you can see the placement of Mr. Chauvin's knee in between the shoulder blades of Mr. Floyd, correct?

Johnny Mercil:

Yes, sir.

Eric Nelson:

All right. And it happens to be right here that moment when the carotid artery is being palpated by the EMT.

Johnny Mercil:

Yes, sir.

Eric Nelson:

We can take this down. Should be one last photograph, sir. Again, does this appear to be a photograph taken from, or a still frame image of a Minneapolis police body camera?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Time being 10:28 and 29 seconds.

Johnny Mercil:

Yes, sir.

Eric Nelson:

Excuse me. 2028-29.

Johnny Mercil:

2028-29, sir. Yes.

Eric Nelson:

Which would be 8:28, 29.

Johnny Mercil:

Correct.

Eric Nelson:

And again, can you see the placement of Officer Chauvin's knee?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Can you see Mr. Floyd's head?

Johnny Mercil:

Yes, sir.

Eric Nelson:

I'd offer 10-48.

Judge:

Any objection? 1048 is received.

Eric Nelson:

Permission to publish. Again, it's a little hard to see here. Can you see Mr. Floyd's head in that area?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And Mr. Chauvin, Officer Chauvin's knee between the shoulder blades of Mr. Floyd?

Johnny Mercil:

Yes, sir.

Eric Nelson:

Does this appear to be a neck restraint?

Johnny Mercil:

No, sir.

Eric Nelson:

Does this appear to be a prone hold that an officer may apply with his knee?

Johnny Mercil:

Yes

Eric Nelson:

You can take that down your Honor. Now, you have talked about taking a or holding a person in the prone position after they have stopped resisting. Do you recall talking about that?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And are there circumstances in your career where you have had to use your body weight to hold a suspect down for longer periods of time than say two or three seconds?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And are there times where you have had to use your body weight to hold a suspect down for 10 minutes?

Johnny Mercil:

I'm not sure if I've ever had held somebody down for 10 minutes or not. I don't have any recollection of that sir.

Eric Nelson:

Is it possible?

Johnny Mercil:

Yes, it's possible.

Eric Nelson:

And there are circumstances again that an officer has to take into consideration in terms of continuing to use their body weight regardless of whether the person is resisting or not resisting right?

Johnny Mercil:

Can you rephrase that?

Eric Nelson:

Sure. Sometimes an officer has called for EMS, correct?

Johnny Mercil:

That's correct.

Eric Nelson:

And sometimes an officer may hold a person using their body weight to restrain them awaiting the arrival of EMS, correct?

Johnny Mercil:

Yes, sir.

Eric Nelson:

You've done that yourself?

Johnny Mercil:

I have.

Eric Nelson:

And sometimes you had to... Or was it fair to say that you've had to train officers to use their body weight to continue holding them until EMS arrives?

Johnny Mercil:

As long as needed to control them. Yes.

Eric Nelson:

You would agree that a scene where force has been used and a crowd congregates and is voicing their displeasure or their concern or whatever you want to say, that can be a chaotic situation for an officer, right?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And you would agree also that what you train Minneapolis police officers to do relevant to their use of force is to consider the totality of the circumstances, agreed?

Johnny Mercil:

Yes, sir.

Eric Nelson:

And you train officers that the decision to use force is from their perspective.

Johnny Mercil:

Yes, sir.

Eric Nelson:

Not the perspective, hindsight being 2020.

Johnny Mercil:

That's correct.

Eric Nelson:

That's the specific policy of Minneapolis police department.

Johnny Mercil:

I believe that's Graham v. Connor, sir.

Eric Nelson:

That is encapsulated or incorporated into the Minneapolis police policy on the use of force, correct?

Johnny Mercil:

Correct.

Eric Nelson:

Because situations are rapidly evolving, correct?

Johnny Mercil:

That's correct.

Eric Nelson:

And sometimes just because of an incident is 10 minutes long or 20 minutes long, that doesn't mean that it can't instantaneously change.

Johnny Mercil:

That's correct.

Eric Nelson:

Right? What may not be a threat one second can be a threat the next.

Johnny Mercil:

Correct.

MPD officer Lt. Johnny Mercil testimony on April 6, 2021



Prosecution:

You're familiar with the circumstances that bring you here today, is that right?

Johnny Mercil:

Yes, sir.

Prosecution:

I need to show you a photo that's been received into evidence. It's exhibit 17. I'd like to publish that. All right. You see exhibit 17 and you see the defendant on top of a subject that you know to be George Floyd. Is that right?

Johnny Mercil:

Yes, sir.

Prosecution:

Is this a use of force?

Johnny Mercil:

Yes, sir.

Prosecution:

If you could take that down, please. I want you to discuss, in terms of using force and using it safely, what you teach your trainees about sort of the frailty of the human body. It's important to be careful with people, is that right?

Johnny Mercil:

Oh yes. It's very important to be careful.

Prosecution:

And there's some parts of the body that are more prone to injury than others, correct?

Johnny Mercil:

That's correct.

Prosecution:

And you train on that, is that right?

Johnny Mercil:

Yes, sir.

Prosecution:

If we could display exhibit 119, page 49. Now this is from strike training. Is that right?

Johnny Mercil:

That's correct.

Prosecution:

But it does it generally helpful in describing what some of the more sensitive parts of the human body are as you train Minneapolis police officers?

Johnny Mercil:

Related to strikes? Yes.

Prosecution:

Could it be related to other types of restraint as well?

Johnny Mercil:

I think it gets stretched that some. I don't know exactly. What's the question exactly again? I'm sorry.

Prosecution:

Is it fair to say that the areas that are marked in red, the red zones are more prone to injury than other parts of the body that could be serious?

Johnny Mercil:

Yes.

Prosecution:

So for example, the neck.

Johnny Mercil:

Yes.

Prosecution:

And the head.

Johnny Mercil:

Correct.

Prosecution:

And the sternum of the chest, is that right?

Johnny Mercil:

Yes, sir.

Prosecution:

And this wouldn't just pertain to strikes, it could also pertain to pressure, couldn't it?

Johnny Mercil:

Yes.

Prosecution:

Is that something you probably knew before you even did any use of force training?

Johnny Mercil:

Yes, sir.

Prosecution:

I'd like you to then discuss with the jury, the concept of neck restraints. And if we could publish it, page 52 of the exhibit. And looking at the time period that you were doing this training, neck restraints were authorized by MPD policy, correct?

Johnny Mercil:

Yes, sir.

Prosecution:

Can you please describe the training that you provided to Minneapolis police officer regarding the use of neck restraints?

Johnny Mercil:

Yes, sir. We'd go over the techniques, definitions of neck restraints. Then we'd go through different reps of the neck restraint to get the officers comfortable in doing it.

Prosecution:

Could you just give the jury an overview of what a neck restraint is?

Johnny Mercil:

Yes, sir. So neck restraint is constricting the sides of a person's neck and they refer to it as a vascular neck restraint. So you're slowing the blood flow to and from the brain with the intent to gain control of a subject.

Prosecution:

And there are two different types of neck restraints in the MPD policy. Is that correct?

Johnny Mercil:

Yes, sir.

Prosecution:

And those are what?

Johnny Mercil:

The two levels are conscious neck restraint. So that means you've wrapped somebody up and they're still conscious. You can gain compliance with many people with that. And then there's unconscious and that's applying pressure until the person when they're not complying, you put enough pressure that they become unconscious and then therefore comply.

Prosecution:

How does one actually apply a neck restraint?

Johnny Mercil:

We teach a couple of different techniques, but the basic idea is you use your elbow as a landmark and you place your arm across. So your bicep would be on one side of the neck and your arms on the other side of the neck. And then there's a couple of different hand placements, but then you apply pressure with head pressure on both sides of the neck to gain compliance.

Prosecution:

And you, you were demonstrating, you were using your arm to do that.

Johnny Mercil:

That's correct.

Prosecution:

And it also be done with the leg?

Johnny Mercil:

It can be done with the leg.

Prosecution:

Does MPD train on how to do it with the leg?

Johnny Mercil:

We may show the younger officers in the academy, what that looks like, but we don't train leg neck restraints with the officers in service. As far as my knowledge, we never have.

Prosecution:

How would a trained neck restraint work? I'm sorry. How would a trained a leg neck restraint work?

Johnny Mercil:

People who have watched MMA, so professional fighters, they call it a triangle choke and I use the term choke loosely, that's just what it's called. But that's when you place your leg over somebody's back, across their side of their neck and then you trapped their arm. And so the person ends up having one arm in and their arm causes pressure on one side and the leg causes pressure on the second. And you can actually render somebody unconscious if you hold that long enough.

Prosecution:

What part of the leg?

Johnny Mercil:

Usually it's the inner thigh.

Prosecution:

Inner thigh. So in this scenario using a leg to do a neck restraint, would the knee sort of replace the elbow in terms of placement, or how would you describe it?

Johnny Mercil:

I would say the knee doesn't really replace the elbow. Your thigh would be across the side of somebody's neck, your leg across their back. And you protect the airway really with the space that's created with their arm being pinned in there.

Prosecution:

If you could please display next page, page 53. Use of neck restraints. Can you describe in using those concepts of proportionality when it's authorized to use a neck restraint and the two different varieties?

Johnny Mercil:

Yes, sir. On subjects who were actively aggressive, which means assaultive. They're actively resisting and other techniques haven't worked, you can use it then. And then on the bottom it says, note that you can't use it against subjects who are passively resistant.

Prosecution:

And if you could go to the next slide, page 54. And after a neck restraint is applied, there are certain guidelines that you train that have to be followed. Is that right?

Johnny Mercil:

That's correct.

Prosecution:

For the care of the individual upon whom the neck restraint was applied.

Johnny Mercil:

Yes, sir.

Prosecution:

And if we could publish exhibit 110 again, and bringing this specific topic back to the concept of proportionality, could you enlarge this please? Do you have one a stylus up there?

Johnny Mercil:

Yes, I do.

Prosecution:

You can touch the screen and make a mark here. An unconscious neck restraint is when the person would actually be rendered unconscious, correct?

Johnny Mercil:

That's correct.

Prosecution:

And intentionally so.

Johnny Mercil:

Yes, sir.

Prosecution:

Could you please underline unconscious neck restraint as you see it in this response and control guide?

Johnny Mercil:

Yes, sir.

Prosecution:

What level of subject activity would be required to use an unconscious neck restraint?

Johnny Mercil:

Well, according to this chart is in the red area, so it would be active aggression.

Prosecution:

Okay. And do you agree with that?

Johnny Mercil:

Yeah, I think on the last slide, we talked about active resistance if other techniques didn't work, but definitely active aggression is where it's placed.

Prosecution:

If we look then you can also find a conscious neck restraint and that's the neck restraint that's used for the purpose of control, correct?

Johnny Mercil:

Correct.

Prosecution:

Could you underline where that is in this force continuum? Exhibit 110. And so the conscious neck restraint is authorized in circumstances where there's in fact active resistance. Is that right?

Johnny Mercil:

Yes, sir.

Prosecution:

So then if there was something like passive resistance, the conscious neck restraint nor the unconscious neck restraint would be authorized, is that right?

Johnny Mercil:

Would not be authorized?

Prosecution:

Would not be authorized.

Johnny Mercil:

That is correct.

Prosecution:

And an unconscious neck restraint would not even be authorized for some forms of active resistance, would it?

Johnny Mercil:

That's correct.

Prosecution:

And if the subject is offering no resistance, obviously then no neck restraint would be authorized.

Johnny Mercil:

That's correct.

Prosecution:

Or any restraint would?

Johnny Mercil:

Or any?

Prosecution:

Or any restraint, if there's no-

Johnny Mercil:

Generally, no.

Prosecution:

Okay. In addition to the classroom training, you actually teach officers, show them physically how to do these sort of neck restraints.

Johnny Mercil:

Yes, sir.

Prosecution:

At this time I'd like to republish exhibit 17. Sir, is this an MPD trained neck restraint?

Johnny Mercil:

No, sir.

Prosecution:

Has it ever been?

Johnny Mercil:

A neck restraint? No, sir.

Prosecution:

Is this a MPD authorized restraint technique?

Johnny Mercil:

A knee on the neck, would be something that does happen in use of force, that isn't unauthorized.

Prosecution:

And under what circumstances would that be authorized? How long can you do that?

Johnny Mercil:

I don't know if there's a timeframe. It would depend on the circumstance at the time.

Prosecution:

Which would include what?

Johnny Mercil:

The type of resistance you're getting from the subject that you're putting the knee on.

Prosecution:

And so if there was, say, for example, the subject was under control and handcuffed, would this be authorized?

Johnny Mercil:

I would say no. You can take that down, please.