

IN THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES

UNITED STATES,

Appellee

v.

Abraham L. PORATH
Staff Sergeant (E-6)
United States Marine Corps,

Appellant

SUPPLEMENT TO PETITION FOR
GRANT OF REVIEW

Crim. App. Dkt. No. 202400223

USCA Dkt. No. 26-0105/MC

TO THE JUDGES OF THE UNITED STATES COURT OF APPEALS
FOR THE ARMED FORCES:

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Issues Presented

I

Did the lower court err by reviewing the military judge's failure to provide the members with a necessary definition as a refusal to provide a requested instruction?

II

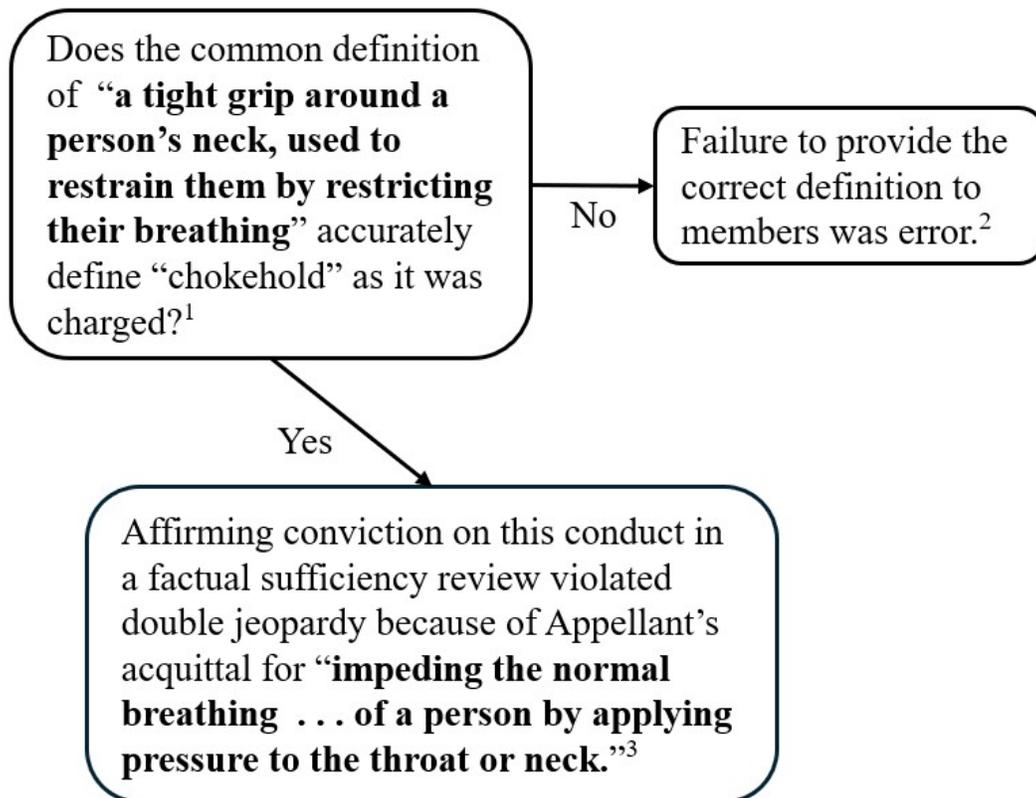
Did the lower court err in conducting its factual sufficiency review by considering facts for which Appellant was acquitted?

Introduction

For a singular act involving only seven seconds of conduct, Appellant was charged with two offenses: (1) strangling his wife; and (2) putting his wife in a chokehold. However, both strangulation and a chokehold describe the same act. And as the Government charged them, the strangulation charge is the lesser-included offense of the chokehold charge. The members acquitted Appellant of the lesser-included offense of strangulation. Thus, the lower court could not affirm the greater offense (chokehold) as factually sufficient without considering—as fact—the allegations of the acquitted lesser-included offense (strangulation). This violates double jeopardy principles.

Conversely, if the two offenses are separate acts (rather than lesser and greater offenses), the military judge erred when—over defense objection—he failed to provide the members with a definition for “chokehold” that distinguished it from “strangulation.”

These opposing interpretations of the case present an intractable dichotomy. Plainly put, if “strangulation” and a “chokehold” are separate and distinct acts, then a distinguishing definition was required—but not given. But if the two acts *are* interchangeable, then Appellant’s acquittal on one—and the lower court’s finding affirming the conviction of the other in a factual sufficiency review—violates double jeopardy:



Even though Appellant raised this at trial and on appeal, the lower court declined to address this intractable dichotomy.⁴ Instead, it myopically focused on whether Appellant provided a definition of “chokehold” to distinguish it from

¹ Google search results for “chokehold,” <https://www.google.com/search?q=chokehold> (emphasis added) (last visited Jan. 21, 2026).

² See *United States v. Wolford*, 62 M.J. 418, 419 (C.A.A.F. 2006).

³ Manual for Courts-Martial, United States, pt. IV, para. 77.b.(4)(d)(iii) (2024) [hereinafter MCM].

⁴ *United States v. Porath*, No. 202400223, slip op. at 6 (N-M. Ct. Crim. App. Nov. 24, 2025).

“strangulation.”⁵ Appellant provided two such definitions.⁶ Yet the lower court inexplicably stated that he did not.⁷

Statement of Statutory Jurisdiction

Appellant submitted a timely appeal to the Navy-Marine Corps Court of Criminal Appeals (NMCCA) which reviewed the case under Article 66(b)(3), Uniform Code of Military Justice (UCMJ). Appellant invokes this Court’s Article 67(a)(3), UCMJ, jurisdiction.

Statement of the Case

Appellant was charged with, and pled not guilty to, two specifications of domestic violence, one specification of aggravated assault-strangulation, one specification of child endangerment, two specifications of wrongful possession of a controlled substance, and two specifications of obstructing justice in violation of Articles 128b, 128, 119b, 112a, and 131b, UCMJ.⁸

Consistent with his pleas, a panel of members with enlisted representation acquitted Appellant of: (a) the specification for aggravated assault-strangulation; (b) the two specifications for wrongful possession; and (c) one of the specifications for obstructing justice.⁹ Contrary to his pleas, the panel convicted Appellant of the

⁵ *Id.* at 4-6.

⁶ R. at 1103, 1105.

⁷ *Porath*, slip op. at 5.

⁸ R. at 1250; Entry of Judgment at 1, 4.

⁹ *Id.*

two specifications of domestic violence, the one specification of child endangerment, and one of the two specifications for obstructing justice.¹⁰ The members sentenced him to a reduction to pay grade E-1 and a bad-conduct discharge.¹¹

Appellant raised three assignments of error concerning instructional error, factual sufficiency, and unreasonable multiplication of charges. In response, the lower court merged the two specifications of domestic violence because they “stemm[ed] from the same altercation,” but otherwise affirmed “the remaining findings and the adjudged sentence[.]”¹²

Statement of Facts

A. Appellant was charged with three offenses for a single course of conduct lasting mere seconds.

The Government charged Appellant with two specifications of domestic violence under Article 128b, UCMJ, for: (1) placing his wife in a chokehold; and (2) pushing her.¹³ The Government also charged him with strangling her in violation of Article 128, UCMJ, for the same course of conduct.¹⁴ The entire sequence of events detailed in these three specifications spanned no more than

¹⁰ *Id.*

¹¹ R. at 1373; Entry of Judgment at 2.

¹² *Porath*, slip op. at 10.

¹³ Charge Sheet at 1.

¹⁴ R. at 1190.

thirty seconds.¹⁵ The Government argued at trial that the action in all three specifications lasted only about seven seconds.¹⁶

B. The Defense filed a motion for unreasonable multiplication of charges and multiplicity.

The Defense argued at trial that the charge of placing his wife in a chokehold (Article 128b) and the charge of strangling his wife (Article 128) addressed the same act and were therefore both multiplicitous and an unreasonable multiplication of charges (UMC).¹⁷ The Defense asked the military judge to dismiss one of the specifications as a remedy.¹⁸

C. The military judge permitted the separate charges for “chokehold” and “strangling” for purposes of “exigencies of proof”—but never instructed the members as to any difference between these alleged acts.

The military judge ruled the Government could proceed on both the “chokehold” charge (Article 128b) and the “strangling” charge (Article 128) “as exigencies of proof,” but the Government would “be required to affirmatively state on the record at the next session of Court which offense it would keep if there

¹⁵ Prosecution Ex. 12 at 1:41.

¹⁶ R. at 1190.

¹⁷ Appellate Ex. XXXVII at 1-6.

¹⁸ *Id.* at 8-9. The Defense also moved that Charge I, Specification 1 (chokehold) and Specification 2 (pushing) were “substantially a single interaction” and UMC. *Id.* at 7-8. Following his conviction on both, the military judge merged the specifications only for sentencing purposes. R. at 1190. The lower court corrected this error by merging the convictions as well. *Porath*, slip op. at 10.

[were] a guilty finding to both.”¹⁹ The Government stated it would keep the “strangling” charge (Article 128).²⁰

Responding to the military judge’s refusal to dismiss either the “chokehold” or the “strangling” specification, the Defense requested that an instruction be provided to the members to define “chokehold” to differentiate it from “strangling.”²¹ The military judge refused and never provided any definition for “chokehold” to the members.²² The members subsequently acquitted Appellant of the “strangling” charge (Article 128) but convicted him of the “chokehold” charge (Article 128b).²³

D. The lower court addressed these issues solely as a denial of a requested instruction.

On appeal, Appellant raised these issues as an intractable dichotomy between (1) factual insufficiency implicating double jeopardy, and (2) instructional error.²⁴ The lower court declined to address the dichotomy and instead reviewed the instructional error as “a military judge’s denial of a defense-requested instruction.”²⁵ The lower court further asserted that Appellant failed to trigger

¹⁹ Appellee Response to Court Order to Produce Documents, App. A at 1.

²⁰ R. at 406.

²¹ R. at 1142; *see* R. at 1102-19.

²² R. at 1142-43.

²³ R. at 1250.

²⁴ Appellant’s Br. at 6, 12-15; Appellant’s Reply at 4-7.

²⁵ *Porath*, slip op. at 4.

factual sufficiency review.²⁶ The lower court did not resolve the interchangeability of a “chokehold” and the acquitted charge of “strangling” but reasoned that because “Appellant grabbed [his wife’s] throat with his hands . . . there is no possibility that we could be clearly convinced that the finding of guilty [for chokehold] was against the weight of the evidence.”²⁷

Reasons to Grant Review

I.

The lower court err by reviewing the military judge’s failure to provide the members with a necessary definition as a refusal to provide a requested instruction.

“A military judge is obligated to ‘assure that the accused receives a fair trial.’”²⁸ “This obligation includes the duty to ‘provide appropriate legal guidelines to assist the jury in its deliberations. . . .’”²⁹ “Failure to provide correct and complete instructions to the panel before deliberations begin may amount to a

²⁶ *Porath*, slip op. at 7.

²⁷ *Id.*

²⁸ *United States v. Wolford*, 62 M.J. 418, 419 (C.A.A.F. 2006) (quoting *United States v. Graves*, 1 M.J. 50, 53 (C.M.A. 1975)).

²⁹ *Id.* (quoting *United States v. McGee*, 1 M.J. 193, 195 (C.M.A. 1975)).

denial of due process.”³⁰ “When deciding whether the military judge properly instructed a panel, this Court uses a de novo standard of review.”³¹

A. An alternative definition for “chokehold” was required but not given.

As the Government has previously acknowledged in this case, terms that are “generally known and in universal use do not need *judicial* definition.”³² But here, the generally known and universally used definition of chokehold (“a tight grip around a person’s neck, used to restrain them *by restricting their breathing*”³³) is synonymous with the acquitted conduct of strangulation (“impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck”³⁴).

The members were never given *any* definition of “chokehold”—let alone one that distinguished it from the acquitted act of strangulation. Instead, they were left “to define [chokehold] for themselves because the terminology is -- is commonly used in society.”³⁵ But the commonly used definition of “chokehold”

³⁰ *Id.* (citing *United States v. Jackson*, 6 M.J. 116, 117 (C.M.A. 1979)).

³¹ *United States v. Bailey*, 77 M.J. 11, 14 (C.A.A.F. 2017) (citing *United States v. Schroder*, 65 M.J. 49, 54 (C.A.A.F. 2007)); *United States v. Mott*, 72 M.J. 319, 325 (C.A.A.F. 2013).

³² *United States v. Bailey*, 77 M.J. 11, 15 (C.A.A.F. 2017) (emphasis added); see Government Answer at 13.

³³ Google search results for “chokehold,” <https://www.google.com/search?q=chokehold> (emphasis added) (last visited Jan. 21, 2026).

³⁴ MCM, pt. IV, para. 77.b(4)(d)(iii) (2024).

³⁵ R. at 1142.

was not what the Government’s charge required nor what the Government argued.³⁶

The lower court erroneously asserted that it was sufficient for the military judge to provide definitions merely for “violent offense” and “offensive touching.”³⁷ But that runs afoul of this Court’s holding in *United States v. English* that “when [the Government] narrowed the scope of the charged offense by alleging the particular type of force, it was required to prove the facts *as alleged*.”³⁸ Therefore, the members were required to find “chokehold” *as Government alleged*—not just a “violent offense” or an “offensive touching.” But the members could not do so, because they were never given the definition of chokehold *as the Government was alleging it*.

“When an instruction contains ‘misdemeanors’ of even a single element of an offense, ‘the erroneous instruction precludes the jury from making a finding on the *actual* element of the offense’ and violates the Constitution’s Sixth

³⁶ *Compare* R. at 1106 (“It is the government’s position that chokehold is different from strangulation, in that, strangulation specifically involves the restriction of air or blood flow.”), *with* Google search results for “chokehold,” <https://www.google.com/search?q=chokehold> (last visited Jan. 21, 2026) (“a tight grip around a person’s neck, used to restrain them by restricting their breathing.”).

³⁷ *Porath*, slip op. at 5.

³⁸ *United States v. English*, 79 M.J. 116, 120 (C.A.A.F. 2019) (emphasis added).

Amendment.”³⁹ Surely, an erroneous instruction that relies on an unspoken misdescription similarly precludes the members from making a finding on the actual element of the offense.

The lower court erroneously affirmed the military judge’s failure to provide a complete and accurate description of the first element of Article 128b. In doing so, it sanctioned a departure from the accepted and usual course of judicial proceedings thereby warranting this Court’s review.⁴⁰

B. The relevant issue is *not* whether the military judge denied a defense-requested instruction.

The lower court incorrectly analyzed the instructional error as “a military judge’s denial of a defense-requested instruction [and reviewed] for an abuse of discretion.”⁴¹ In ruling against Appellant, the lower court inconsistently reasoned that “Appellant falls short of even qualifying for review . . . [because] he never requested a specific definition of ‘choke hold’ from the military judge.”⁴² This shows one of the defects in the lower court’s opinion: How can the issue be a denial of a defense-requested instruction if the Defense did not request a specific instruction?

³⁹ *United States v. Rodriguez*, No. 201500247, 2017 CCA LEXIS 42, at *14 (N-M. Ct. Crim. App. Jan. 30, 2017) (quoting *Neder v. United States*, 527 U.S. 1, 9-10, 12 (1999)) (emphasis in original).

⁴⁰ C.A.A.F. Rule 21(b)(5)(F).

⁴¹ *Porath*, slip op. at 4.

⁴² *Porath*, slip op. at 5 (space between “choke” and “hold” in original).

Notwithstanding, the lower court’s opinion also misapprehends the facts because the Defense offered at least two definitions of a chokehold: one involving the use of Appellant’s arms;⁴³ and a “definition of chokehold from the Department of Justice.”⁴⁴ Nonetheless, the lower court’s misguided reliance on whether the defense requested a specific instruction is irrelevant because “[t]he military judge is not required to give the specific instruction requested by counsel [] *as long as the issue is adequately covered in the instructions.*”⁴⁵ Here, the issue was not adequately covered because the military judge provided *no* definition of “chokehold” to the members.⁴⁶ Accordingly, the question remains whether the members received proper instruction. This is comparable to a situation where the defense indicates a desire for the standard benchbook instruction and the military judge refuses to provide *any* instruction whatsoever. Regardless of the defense request, the relevant issue is still whether the military judge properly instructed the members, and that question is reviewed *de novo*.⁴⁷

By analyzing this issue only as a denial of a requested instruction, the lower court failed to properly apprehend and analyze the military judge’s lack of proper

⁴³ R. at 1103.

⁴⁴ R. at 1105.

⁴⁵ R.C.M. 920(c) Discussion.

⁴⁶ R. at 1142-43.

⁴⁷ *Bailey*, 77 M.J. at 14.

instruction to the members and reviewed under the wrong standard—contrary to applicable decisions of this Court.⁴⁸ Accordingly this Court should grant review.

II.

The lower court erred in conducting its factual sufficiency review by considering facts for which Appellant was acquitted.

“In an appeal of a finding of guilty . . . the [CCA] may consider whether the finding is correct in fact upon request of the accused if the accused makes a specific showing of a deficiency in proof.”⁴⁹

A. Factual sufficiency review was triggered by the members’ findings.

In *United States v. Valencia*, the lower court held that to obtain factual sufficiency review “an appellant must identify a weakness in the evidence admitted at trial to support an element (or more than one element) and explain why, on balance, *the evidence (or lack thereof) admitted at trial contradicts a guilty finding.*”⁵⁰

Based on the evidence admitted at trial, the members found that Appellant did not strangle his wife.⁵¹ And the definitions of “strangle” and “chokehold” are

⁴⁸ See C.A.A.F. Rule 21(b)(5)(B); *Bailey*, 77 M.J. at 14; *Mott*, 72 M.J. 319, 325 (C.A.A.F. 2013).

⁴⁹ 10 U.S.C. § 866(d)(1)(B)(i)-(ii) (2024).

⁵⁰ *United States v. Valencia*, 85 M.J. 529, 535 (N-M. Ct. Crim. App. 2024).

⁵¹ R. at 1350.

legally and functionally indistinguishable.⁵² Accordingly, the members' finding regarding strangulation necessarily "*contradicts a guilty finding*" for chokehold.⁵³ The lower court erred in finding that this contradiction did not trigger factual sufficiency review.⁵⁴

B. Because of the member's findings, the NMCCA was precluded from affirming Appellant's conviction for the chokehold—but did anyway.

"A Court of Criminal Appeals cannot find as fact any allegation in a specification for which the fact-finder below has found the accused not guilty."⁵⁵

This rule finds its basis in the right against double jeopardy because "such action creates the possibility that the court would affirm a finding of guilt based on an incident of which the appellant had been acquitted by the factfinder at trial."⁵⁶

There is one exception to this general rule, which does not apply here:

When the same evidence is offered at trial to support two different offenses, a Court of Criminal Appeals is not necessarily precluded from considering the evidence that was introduced in support of the charge for which the appellant was acquitted when conducting its Article 66(c), UCMJ, legal and factual sufficiency review of the charge for which the appellant was convicted. Defendants are generally acquitted of offenses, not of specific facts, and thus to the extent facts form the basis for other offenses, they remain permissible for appellate review.⁵⁷

⁵² See *infra* notes 61-63 and referencing text.

⁵³ *Valencia*, 85 M.J. at 535.

⁵⁴ *Porath*, slip op. at 7.

⁵⁵ *United States v. Stewart*, 71 M.J. 38, 41-43 (C.A.A.F. 2012) (quoting *United States v. Walters*, 58 M.J. 391, 395 (C.A.A.F. 2003)).

⁵⁶ *Id.* at 42 (quoting *United States v. Wilson*, 67 M.J. 423, 428 (C.A.A.F. 2009)).

⁵⁷ *United States v. Rosario*, 76 M.J. 114, 117 (C.A.A.F. 2017).

Here, had the lower court properly conducted a factual sufficiency review, it would have determined that the two offenses (lasting seven seconds) are not different offenses. Based on the Government’s charging, the acquitted specification (Article 128 strangulation) is a lesser-included offense of the convicted specification (Article 128b domestic violence by chokehold).

Elements of Art. 128b, UCMJ:

- | |
|---|
| (a) That the accused committed a violent offense ; and
(b) That the violent offense was committed against a spouse, intimate partner, or immediate family member of the accused. ⁵⁸ |
|---|

In the first element of Article 128b, “[t]he term “**violent offense**” means a violation of . . . **10 U.S.C. § 928 (article 128)**[.]”⁵⁹ Here, the “violent offense” charged by the Government was a “chokehold.”⁶⁰ And, a “chokehold” has the same meaning as “strangulation” under Article 128:

⁵⁸ MCM, pt. IV, ¶ 78a.b.(1)(a) (2024).

⁵⁹ *Id.* ¶ 78a.c.(1) (2024) (emphasis added); *see* R. at 1161-62 (“The term ‘violent offense’ means a violation of Assault Consummated by a Battery in violation of Article 128, UCMJ.”).

⁶⁰ Charge Sheet at 1.

Definitions of “chokehold”	Definition of “strangulation” under Article 128, UCMJ:
“a tight grip around a person’s neck, used to restrain them by restricting their breathing.” ⁶¹	“Intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck” ⁶²
“[c]hokeholds apply pressure to the throat or windpipe and <i>restrict an individual’s ability to breathe.</i> ” ⁶³	

Thus, the lower court was precluded from considering the allegations in the strangulation charge to affirm the chokehold conviction. The acquitted act of “strangulation” (Article 128) *is* the violent offense (“chokehold”) charged as the first element of Article 128b. Accordingly, the lower court erred when it affirmed Appellant’s conviction of a “chokehold” under Article 128b because it had to consider—as fact—the allegation for which he was acquitted.

⁶¹ Google search results for “chokehold,” <https://www.google.com/search?q=chokehold> (last visited January 21, 2026)

⁶² MCM, pt. IV, para. 77.b.(4)(d)(iii).

⁶³ Memorandum from the Deputy Att’y Gen. Subj: Chokeholds & Carotid Restraints; Knock & Announce Requirement, U.S. Dep’t of Justice, (Sept. 13, 2021) (emphasis added); *see also* Colo. Rev. Stat. § 18-1-707 (2024); Fla. Stat. Ann. § 943.1735 (2024); 720 Ill. Comp. Stat. Ann. 5/7-5.5 (2024); Iowa Code § 804.8 (2024); Vt. Stat. Ann. tit. 20, § 2368 (2024); Del. Code Ann. tit. 11, § 607A (2021).

In affirming Appellant's conviction under Article 128b, the lower court exceeded its authority and violated Appellant's right against double jeopardy.⁶⁴ Consequently, this Court should grant review.⁶⁵

Conclusion

The lower court failed to address the intractable dichotomy between instructional error and factual sufficiency review present in this case. Further, the lower court failed to apply the right standard to its review of the instructional error issue. This Court should grant review in this case to provide guidance to the field and ensure the lower courts apply the law consistent with the accepted and usual course of judicial proceedings as well as the decisions of this Court.

Respectfully submitted,



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⁶⁴ *Stewart*, 71 M.J. at 41-43.

⁶⁵ C.A.A.F. Rule 21(b)(5)(B), (F).

Appendices

- A. *United States v. Porath*, No. 202400223, slip op. (N-M. Ct. Crim. App. Nov. 24, 2025).
- B. Memorandum from the Deputy Att’y Gen. Subj: Chokeholds & Carotid Restraints; Knock & Announce Requirement, U.S. Dep’t of Justice, (Sept. 13, 2021).
- C. Fla. Stat. Ann. § 943.1735 (2024).
- D. Del. Code Ann. tit. 11, § 607A (2021).
- E. Colo. Rev. Stat. § 18-1-707 (2024).
- F. Iowa Code § 804.8 (2026).
- G. 720 Ill. Comp. Stat. Ann. 5/7-5.5 (2024).
- H. Vt. Stat. Ann. tit. 20, § 2368 (2024).

Certificate of Compliance

This brief complies with the type-volume limitations of Rule 21 and 37 because it contains 3,206 words, and it has been prepared in 14-point, Times New Roman font.



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Certificate of Filing and Service

I certify that a copy of the foregoing was delivered to the Court and delivered to the Director, Appellate Government Division (Code 46), at Code46-DAC@us.navy.mil and to the Deputy Director, Administrative Support Division, Navy-Marine Corps Appellate Review Activity (Code 40), at Joshua.D.Ricafrente.civ@us.navy.mil on March 4, 2026.



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This opinion is subject to administrative correction before final disposition.

United States Navy - Marine Corps
Court of Criminal Appeals

Before
DALY, HARRELL, and KORN
Appellate Military Judges

UNITED STATES
Appellee

v.

Abraham L. PORATH
Staff Sergeant (E-6), U.S. Marine Corps
Appellant

No. 202400223

Decided: 24 November 2025

Appeal from the United States Navy-Marine Corps Trial Judiciary

Military Judges:
Stephen S. Reyes (Arraignment, Motions)
Andrew L. Braden (Motions)
Terrance J. Reese (Motions)
Matthew R. Brower (Trial)

Sentence adjudged 16 February 2024 by a general court-martial convened at Marine Corps Base Quantico, Virginia, consisting of officer and enlisted members. Sentence in the Entry of Judgment: reduction to E-1 and a bad-conduct discharge.¹

¹ Appellant received 289 days of pretrial confinement credit.

For Appellant:

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For Appellee:

Lieutenant Colonel Candace G. White, USMC

Lieutenant Lan T. Nguyen, JAGC, USN

Judge KORN delivered the opinion of the Court, in which Chief Judge DALY and Senior Judge HARRELL joined.

**This opinion does not serve as binding precedent, but
may be cited as persuasive authority under
NMCCA Rule of Appellate Procedure 30.2.**

KORN, Judge:

A general court-martial composed of members with enlisted representation convicted Appellant, contrary to his pleas, of one specification of child endangerment, two specifications of domestic violence, and one specification of obstructing justice, in violation of Articles 119b, 128b, and 131b, Uniform Code of Military Justice (UCMJ).² The members sentenced Appellant to reduction to pay grade E-1 and a bad-conduct discharge.

Appellant raises three assignments of error (AOEs):

I. Whether the military judge erred in failing to instruct the members on the definition of “chokehold” for Specification 1 of Charge I.

II. Whether the members’ acquittal of Appellant for strangulation, and the military judge’s failure to instruct the members on the definition of “chokehold” for Specification 1 of Charge I, resulted in a factually insufficient conviction incapable of being affirmed by this Court.

² 10 U.S.C. §§ 919b, 928b, 931b. The military judge found Appellant not guilty of one specification of wrongful possession of marijuana and one specification of obstructing justice pursuant to Rule for Courts-Martial 917, and the members found Appellant not guilty of one specification of aggravated assault by strangulation and one specification of wrongful possession of marijuana.

III. Whether charging two specifications of domestic violence for a continuous course of conduct lasting a matter of seconds constitutes an unreasonable multiplication of charges.

We find merit in AOE III and merge Specifications 1 and 2 of Charge I into a single specification.

I. BACKGROUND

Appellant’s convictions for domestic violence stem from an altercation with his wife, A.R.E., in their home on Marine Corps Base Quantico, Virginia. Appellant, who was staying in a barracks room due to ongoing marital issues, went to their home following an earlier argument that they had engaged in via text message. The argument continued in person and quickly devolved into physical violence.³ A home security camera recorded the argument. The recording shows Appellant pushing A.R.E. and grabbing her by the throat with his hands.⁴

Based on this violent interaction, the Government charged Appellant with two specifications of domestic violence, for “unlawfully placing Ms. A.R.E. in a choke hold,” and for “unlawfully pushing Ms. A.R.E.,” and with one specification of aggravated assault by strangulation, for “unlawfully strangling [A.R.E.] with his hands.”⁵ These three specifications led to a motion by Appellant to dismiss for multiplicity and unreasonable multiplication of charges (UMC).⁶ Appellant argued that Specification 1 of Charge I (domestic violence using a choke hold) and the sole Specification of Charge II (aggravated assault by strangulation) were both multiplicitous and unreasonably multiplied, as they addressed the same conduct.⁷ Appellant further argued that Specifications 1 and 2 (domestic violence by pushing) of Charge I constituted UMC, as they were part of a single interaction.⁸

The military judge initially deferred ruling on these motions, concluding that they were not yet ripe. He allowed the Government to proceed on all the

³ The child endangerment charge stemmed from the fact that this occurred in the presence of their five-year-old daughter.

⁴ Pros. Ex. 1.

⁵ Charge Sheet.

⁶ App. Ex. XXXVII.

⁷ App. Ex. XXXVII.

⁸ App. Ex. XXXVII.

specifications at issue but required the Government to choose whether to ultimately proceed on the aggravated assault or the domestic violence specification if Appellant were convicted of both. The Government informed the military judge that it would proceed on the aggravated assault charge. The members acquitted Appellant of aggravated assault, mooting this issue.

Appellant requested the military judge instruct the members on the definition of “choke hold,”⁹ but the military judge declined to do so. After the members found Appellant guilty of both specifications under Charge I, the military judge determined that the facts underlying the specifications were part of a continuing course of conduct and were therefore unreasonably multiplied for sentencing purposes. As a remedy, the military judge merged the specifications for sentencing.¹⁰

II. DISCUSSION

A. The military judge did not err by failing to instruct the members on the definition of “choke hold.”

We review a military judge’s denial of a defense-requested instruction for an abuse of discretion.¹¹ A military judge “has substantial discretionary power in deciding on the instructions to give” in response to requests by counsel.¹² To determine whether a military judge’s denial of a requested instruction amounts to an abuse of discretion, courts apply the three-part test from *United States v. Carruthers*, where an abuse of discretion occurs if: “(1) the requested instruction was correct; (2) the instruction was not substantially covered by the main instruction; and (3) the instruction was on such a vital point in the case that the failure to give it deprived the accused of a defense or seriously impaired its effective presentation.”¹³

⁹ In his brief to this Court, Appellant uses “chokehold” as a single word, and it is regularly transcribed that way in the record. However, the Government charged Appellant with “placing Ms. A.R.E. in a choke hold.” We make no determination whether a distinction exists between the two.

¹⁰ R. at 1294.

¹¹ *United States v. Bailey*, 77 M.J. 11, 14 (C.A.A.F. 2017).

¹² *United States v. Carruthers*, 64 M.J. 340, 345-46 (C.A.A.F. 2007) (quoting *United States v. Damatta-Olivera*, 37 M.J. 474, 478 (C.M.A. 1993)).

¹³ *Id.* (citation modified).

The military judge declined to give an instruction on the definition of “choke hold,” stating that because the act at issue was charged under the violent offense clause of domestic violence, which incorporates the underlying offense of assault consummated by a battery, “‘choke hold’ can just be accepted in the way that a panel of members would be presented with a -- a punch or a kick to define for themselves.”¹⁴ The military judge then instructed the members on the two elements of Specification 1 of Charge I: (1) that Appellant committed the violent offense of unlawfully placing A.R.E. in a choke hold; and (2) that at the time, A.R.E. was Appellant’s spouse.¹⁵ The military judge further defined “violent offense” as an assault consummated by a battery, and described “battery” as an unlawful infliction of “bodily harm,” which he defined as an offensive touching, however slight.¹⁶

Appellant’s argument that the military judge erred by not defining “choke hold” for the members fails to satisfy the initial prong of the three-part *Carruthers* test. In fact, Appellant falls short of even qualifying for review under the first prong of *Carruthers*, as he never requested a specific definition of “choke hold” from the military judge. The military judge explicitly discussed instructions for Specification 1 of Charge I multiple times, and while defense counsel continued to argue that it addressed the same conduct as Charge II, he repeatedly failed to offer a definition of “choke hold.”¹⁷ As we do not have a proposed instruction to review to determine if it was correct, we conclude that Appellant fails to meet the first prong of the *Carruthers* test.

With no proposed instruction for this Court to review, Appellant similarly cannot satisfy prongs two or three of the *Carruthers* test. However, even assuming Appellant had submitted an instruction defining “choke hold,” he would still fail to satisfy the second prong of the *Carruthers* test. This is because we concur with the military judge’s reasoning when he stated “[choke hold] does not need to be defined. It can just be accepted in the way that a panel of members would be presented with a -- a punch or a kick.”¹⁸ The military judge’s subsequent instructions on “violent offense” and “offensive touching” were legally correct and provided the members with the requisite understanding to reach a verdict.

¹⁴ R. at 1142.

¹⁵ App. Ex. LXX at 1.

¹⁶ App. Ex. LXX at 1-2.

¹⁷ See R. at 667, 1118-19.

¹⁸ R. at 1142.

Even if Appellant had proposed a correct instruction at trial to define “choke hold,” he would still fail to meet the final prong of the *Carruthers* test. The military judge’s decision not to provide a definition for the term in no way deprived Appellant of a defense, nor did it seriously impair his presentation at trial. There was no dispute about the precise acts which formed the basis for the charges in Appellant’s case. In fact, they were captured on video, and A.R.E. testified consistently with the video. There was therefore no possibility that Appellant was confused about what he was required to defend against. Instead, he was fully aware that the allegation against him in Specification 1 of Charge I was that he unlawfully put his hands around his wife’s throat and held her down, which may reasonably be characterized as a “choke hold.” In light of this, a definition of “choke hold” supplied by the military judge would not have provided him with an otherwise unavailable defense, aided in his ability to effectively present a defense case, or allowed him to more effectively attack the Government’s case. Absent the military judge providing a definition, Appellant was still able to present an effective, albeit ultimately unsuccessful, defense.

Appellant argues that this Court should apply a de novo standard of review to this issue, asking us to disregard the three-part *Carruthers* test created by our superior court and instead consider three issues that Appellant deems to be the “relevant questions” for this Court.¹⁹ We decline to adopt Appellant’s proposed method of review. Instead, we elect to follow the binding precedent of our superior court and apply the *Carruthers* test under an abuse of discretion standard. In so doing, because Appellant fails to satisfy any of the *Carruthers* prongs, we hold that the military judge did not abuse his discretion in declining to provide the members with an instruction defining the term “choke hold.”

¹⁹ According to Appellant:

The question before the Court is *not* whether the military judge denied a defense-requested instruction and thereby “deprived [the accused] of a defense or seriously impaired its effective presentation.” Instead, the relevant questions are (1) whether the members were properly instructed on the applicable definition for a term relied upon to prove an essential element, and (2) whether such instruction had “the effect of relieving the [Government] of its burden of persuasion beyond a reasonable doubt of every essential element,” or (3) whether such instruction led to a legally impossible and mutually exclusive verdict in violation of Appellant’s right against double jeopardy.

Appellant’s Reply Brief at 2-3 (citations omitted).

B. Appellant has not identified a deficiency in proof to trigger this Court’s factual sufficiency review.

This Court may consider whether a finding of guilty “is correct in fact upon request of an appellant who makes a specific showing of a deficiency in proof.”²⁰ If an appellant makes such a showing, this “Court may weigh the evidence and determine controverted questions of fact,” providing “appropriate deference to the fact that the trial court saw and heard the witnesses and other evidence.”²¹ If this “Court is clearly convinced that the finding of guilty was against the weight of the evidence, [we] may dismiss, set aside, or modify the finding, or affirm a lesser finding.”²²

Appellant argues that his conviction for the first specification of domestic violence is factually insufficient because “the members acquitted Appellant of ‘strangling’ his wife—which is the same conduct as placing her in a ‘choke-hold.’”²³ However, by merely identifying the findings in the case, where Appellant was convicted of one offense while acquitted of another, Appellant fails to identify a deficiency in proof which would trigger our factual sufficiency review. Any connection between Appellant’s acquittal on the aggravated assault by strangulation charge and the evidence supporting the domestic violence by “choke hold” conviction is based on unfounded speculation, and thus does not equate to a deficiency in proof. Appellant has therefore failed to establish the predicate requirement to initiate a factual sufficiency review.

Even if Appellant were correct that the acquittal on Charge II was a deficiency in proof that triggered a factual sufficiency review of Specification 1 of Charge I by this Court, no relief would be warranted. A.R.E. credibly testified that Appellant grabbed her throat with his hands, and her testimony was wholly corroborated by the security video. With such compelling and largely un rebutted incriminating evidence, there is no possibility that we could be clearly convinced that the finding of guilty was against the weight of the evidence.²⁴

²⁰ 10 U.S.C. § 866(d)(1)(B).

²¹ *Id.*

²² *Id.*

²³ Appellant’s Brief at 11.

²⁴ Appellant embeds a double jeopardy argument into his factual insufficiency claim. However, this argument is similarly unconvincing. The members clearly found that Appellant grabbing A.R.E. by the throat with his hands and holding her down constituted a “choke hold” and therefore amounted to the offensive touching required

C. The military judge abused his discretion by not finding an unreasonable multiplication of charges as applied to findings for Specifications 1 and 2 of Charge I.

We review a military judge’s ruling on UMC for an abuse of discretion.²⁵ “[Rule for Courts-Martial] 307(c)(4) directs that ‘[w]hat is substantially one transaction should not be made the basis for an unreasonable multiplication of charges against one person.’”²⁶ “If charges have been unreasonably multiplied, the accused may seek appropriate relief from the military judge.”²⁷ Appropriate relief for UMC as applied to findings is either dismissal of lesser offenses or merger of the offenses into one specification.²⁸

Courts consider five factors from *United States v. Quiroz* when determining if multiple findings of guilt constitute an unreasonable multiplication of charges: (1) whether the appellant objected at trial; (2) whether each charge and specification was aimed at distinctly separate criminal acts; (3) whether the number of charges and specifications misrepresented or exaggerated the appellant’s criminality; (4) whether the number of charges and specifications unreasonably increased the appellant’s punitive exposure; and (5) whether there was any evidence of prosecutorial overreaching or abuse in the drafting of the charges.²⁹

After the members found Appellant guilty of both specifications under Charge I, the military judge ruled on Appellant’s UMC motion. He determined that:

[T]he push for which [Appellant] was convicted . . . was not a separate and distinct incident from the chokehold . . . They were a continuous course of conduct. The chokehold was able to be carried out as a result of [Appellant] pushing down Ms. A.R.E.

under domestic violence. The fact that they found this while acquitting Appellant of aggravated assault by strangulation, which required “intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck” does not preclude this Court from affirming a finding of guilty for Specification 1 of Charge I.

²⁵ *United States v. Campbell*, 71 M.J. 19, 22 (C.A.A.F. 2012) (citing *United States v. Pauling*, 60 M.J. 91, 95 (C.A.A.F. 2004)).

²⁶ *United States v. Hardy*, 77 M.J. 438, 440 (C.A.A.F. 2017).

²⁷ *Id.*

²⁸ Rule for Courts-Martial 906(b)(12)(A).

²⁹ 55 M.J. 334 (C.A.A.F. 2001).

But for the push, the chokehold could not, thereafter, have naturally occurred. It was necessary in order to accomplish the hold of the victim.³⁰

The military judge ruled that the specifications were unreasonably multiplied “for sentencing purposes” and applied the remedy required under R.C.M. 906(b)(12)(B): merger for sentencing, reducing Appellant’s maximum potential confinement from 13 years to 9 years and 6 months.³¹ The issue before this Court is whether the military judge abused his discretion in finding UMC as applied to sentence instead of UMC as applied to findings.

Appellant should not be separately convicted for what amounts to a single, brief, uninterrupted attack involving multiple offensive touchings “united in time, circumstance, and impulse.”³² The unit of prosecution for the type of on-going assault found in this case is the number of times the assailant attacked the victim (in Appellant’s case—one), rather than the number of individual blows. Despite numerous developments in the law concerning multiplicity and UMC over the years, this remains true: “When Congress enacted Article 128, it did not intend that, in a single altercation between two people, each blow might be separately charged as an assault.”³³ We therefore conclude that the military judge abused his discretion by not finding UMC as applied to findings and by merging the specifications at issue for sentencing only.

We hold that multiple convictions for domestic violence stemming from the same altercation, both involving an underlying offense of assault consummated by a battery, were unreasonable in this case. As the facts clearly showed a single incident, we find a substantial basis in law and fact to consolidate the two domestic violence specifications into a single specification. Because the military judge merged the specifications at trial for sentencing purposes, Appellant suffered no prejudice in the sentencing phase, and we conclude that no additional relief is warranted.³⁴

³⁰ R. at 1294.

³¹ R. at 1294.

³² *United States v. Rushing*, 11 M.J. 95, 98 (C.M.A. 1981).

³³ *United States v. Morris*, 18 M.J. 450, 450 (C.M.A. 1984).

³⁴ Appellant seeks no additional relief on this issue before this Court.

III. CONCLUSION

Specifications 1 and 2 of Charge I are merged as follows: “In that Staff Sergeant Abraham L. Porath, U.S. Marine Corps, did, at or near MCB Quantico, Virginia, on or about 01 May 2023, commit a violent offense against Ms. A.R.E., the spouse of the said SSgt Porath, to wit: by unlawfully placing Ms. A.R.E. in a choke hold and unlawfully pushing Ms. A.R.E.” After careful consideration of the record and briefs of appellate counsel, we have determined that the remaining findings and sentence are correct in law and fact and that no error materially prejudicial to Appellant’s substantial rights occurred.³⁵ The remaining findings and the adjudged sentence are **AFFIRMED**.



FOR THE COURT:

Mark K. Jamison
MARK K. JAMISON
Clerk of Court

³⁵ Articles 59 & 66, UCMJ, 10 U.S.C. §§ 859, 866.



U.S. Department of Justice
Office of the Deputy Attorney General

The Deputy Attorney General

Washington, D.C. 20530

September 13, 2021

MEMORANDUM FOR ACTING DIRECTOR, BUREAU OF ALCOHOL, TOBACCO,
 FIREARMS & EXPLOSIVES
 ADMINISTRATOR, DRUG ENFORCEMENT
 ADMINISTRATION
 DIRECTOR, FEDERAL BUREAU OF INVESTIGATION
 DIRECTOR, FEDERAL BUREAU OF PRISONS
 DIRECTOR, UNITED STATES MARSHALS SERVICE
 INSPECTOR GENERAL, OFFICE OF INSPECTOR GENERAL
 HEADS OF LITIGATING COMPONENTS
 DIRECTOR, EXECUTIVE OFFICE FOR UNITED STATES
 ATTORNEYS
 UNITED STATES ATTORNEYS

FROM: THE DEPUTY ATTORNEY GENERAL *Lin M. M. M.*

SUBJECT: CHOKEHOLDS & CAROTID RESTRAINTS;
 KNOCK & ANNOUNCE REQUIREMENT

As members of federal law enforcement, we have a shared obligation to lead by example in a way that engenders the trust and confidence of the communities we serve. As part of that obligation, we are updating our Department of Justice policies on certain physical restraint techniques and on the execution of certain types of warrants.

In the wake of a number of recent tragedies, law enforcement around the nation is reexamining the way it engages with individuals who come into contact with the criminal justice system. The Department of Justice has undertaken a similar review and determined that the Department did not have consistent written policies across its law enforcement components on the use of “chokeholds” and the “carotid restraint” technique to subdue resisting suspects, or on the use of “no knock” entries when executing a warrant. Therefore, I am directing the Department’s law enforcement components to revise their policies to explicitly prohibit the use of chokeholds and the carotid restraint technique unless deadly force is authorized, and to limit the circumstances in which agents may seek to enter a dwelling pursuant to a warrant without complying with the “knock and announce” rule.

Chokeholds and Carotid Restraints

The use of certain physical restraint techniques – namely chokeholds and carotid restraints – by some law enforcement agencies to incapacitate a resisting suspect has too often led to tragedy. Chokeholds apply pressure to the throat or windpipe and restrict an individual’s ability to breathe. The carotid restraint technique restricts blood flow to the brain causing temporary unconsciousness. It is important that Department law enforcement components have an articulated policy in this area because these techniques are inherently dangerous.

It is a long-standing Department policy that “[l]aw enforcement officers and correctional officers of the Department of Justice may use deadly force only when necessary, that is, when the officer has a reasonable belief that the subject of such force poses an imminent danger of death or serious physical injury to the officer or to another person.” Policy Statement Use of Deadly Force, Approved by the Attorney General July 1, 2004. Given the inherent dangerousness of chokeholds and carotid restraints, and based on feedback from our law enforcement components on these techniques, Department law enforcement agents and correctional officers are hereby prohibited from using a chokehold or a carotid restraint unless that standard of necessity for use of deadly force is satisfied. Accordingly, Department law enforcement components will revise their policies to reflect this guidance prohibiting the use of chokeholds or carotid restraints by Department law enforcement agents and correctional officers, including federal task force officers, unless deadly force is authorized. Component heads will also ensure that personnel receive notice of this policy and that it is appropriately incorporated into training.

“No Knock” Entries

Federal agents are generally required to “knock and announce” their identity, authority and purpose, and demand to enter before entry is made to execute a warrant in a private dwelling. U.S. Const., amend. IV; 18 U.S.C. § 3109; see Hudson v. Michigan, 547 U.S. 586 (2006). Once that announcement is made, agents must wait a reasonable amount of time based on the totality of the circumstances to permit the occupant to open the door before making entry into a dwelling. See United States v. Banks, 540 U.S. 31 (2003). The Supreme Court has recognized, however, that there are certain situations where it is not constitutionally necessary to “knock and announce” before entering a dwelling—namely, where the officer has reasonable grounds to believe that knocking and announcing would create a threat of physical violence, likely result in destruction of evidence, or be futile. See Hudson, 547 U.S. at 589-90. Because of the risk posed to both law enforcement and civilians during the execution of “no knock” warrants, it is important that this authority be exercised only in the most compelling circumstances.

Today, I am announcing that law enforcement agents of the Department of Justice, including federal task force officers, will limit the use of “no knock” entries in connection with the execution of a warrant in the following ways.

First, an agent may seek judicial authorization to conduct a “no knock” entry only if that agent has reasonable grounds to believe at the time the warrant is sought that knocking and announcing the agent’s presence would create an imminent threat of physical violence to the agent and/or another person. Prior to seeking judicial authorization for a “no knock” entry, an agent must first obtain approval from both the Criminal Chief of the relevant U.S. Attorney’s Office (or a Deputy Chief in a Main Justice litigating component) and an Assistant Special Agent in Charge or Chief Deputy Marshal in the district. Once judicial authorization is obtained, agents may proceed without “knocking and announcing” their presence unless they learn of facts that negate the circumstances that justified this exception to the “knock and announce” rule.

Second, if an agent did not anticipate the need for a “no knock” entry at the time the warrant was sought, the agent may conduct a “no knock” entry only if exigent circumstances arise at the scene such that knocking and announcing the agent’s presence would create an imminent threat of physical violence to the agent and/or another person. If the agent relies on this exigent-circumstances exception in executing the warrant, the agent shall immediately notify his/her Special Agent in Charge or United States Marshal and provide written notice to the United States Attorney or relevant Assistant Attorney General.

Because this policy limits “no knock” entries to instances where there is an imminent threat of physical violence, it is narrower than what is permitted by law – for example, agents must “knock and announce” even when they have reason to believe that doing so could result in the destruction of evidence. In setting the policy this way, the Department is limiting the use of higher-risk “no knock” entries to only those instances where physical safety is at stake at the time of entry. Should an exceptional circumstance arise (e.g., in a national security matter) where no imminent threat of physical violence is present but an agent believes the evidence is so significant, and the risk of its destruction so pronounced, that a “no knock” entry is warranted, judicial authorization for a “no knock” warrant can be sought if approval is first obtained from the head of the law enforcement component and the United States Attorney or relevant Assistant Attorney General, with notice provided to the Office of the Deputy Attorney General.

Policy Revisions by Department Law Enforcement Components

The Department's law enforcement components shall immediately revise their policies to reflect this guidance prohibiting the use of chokeholds and the carotid restraint technique unless deadly force is authorized, and limiting "no knock" entries. Law enforcement component heads shall also report quarterly to the Deputy Attorney General regarding the number of "no knock" entries their agency executed during the prior quarter.

The Florida Senate

2024 Florida Statutes (Including 2025C)

<p><u>Title XLVII</u> CRIMINAL PROCEDURE AND CORRECTIONS</p>	<p><u>Chapter 943</u> DEPARTMENT OF LAW ENFORCEMENT</p> <p>Entire Chapter</p>	<p>SECTION 1735 Basic skills training related to use of force; use of force policies; contents.</p>
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943.1735 Basic skills training related to use of force; use of force policies; contents. —

(1) For the purposes of this section, the term:

(a) **“Chokehold” means the intentional and prolonged application of force to the throat, windpipe, or airway of another person that prevents the intake of air. The term does not include any hold involving contact with another person’s neck that is not intended to prevent the intake of air.**

(b) **“Excessive use of force” means use of force that exceeds the degree of force permitted by law, policy, or the observing officer’s employing agency.**

(2) The commission shall establish standards for the instruction of officers in the subject of use of force, and each employing agency in the state shall adopt policies in the subject of use of force. The standards and policies must include:

(a) Instruction on the proportional use of force.

(b) Alternatives to use of force, including de-escalation techniques.

(c) Limiting the use of a chokehold, if the employing agency authorizes the use of a chokehold, to circumstances where the officer perceives an immediate threat of serious bodily injury or death to himself, herself, or another person.

(d) The duty to intervene in another officer’s excessive use of force, which must require an on-duty officer who observes another officer engaging or attempting to engage in excessive use of force to intervene to end the excessive use of force or attempted excessive use of force when such intervention is reasonable based on the totality of the circumstances and the observing officer may intervene without jeopardizing his or her own health or safety.

(e) The duty to render medical assistance following use of force, which must require an officer who knows, or when it is otherwise evident, that a person who is detained or in custody is injured or requires medical attention to provide first aid or seek medical assistance when such action is reasonable based on the totality of the circumstances and the officer may do so without jeopardizing his or her own health or safety.

(f) Instruction on the recognition of the evident symptoms and characteristics of an individual with a substance abuse disorder or a mental illness and appropriate responses to an individual exhibiting such symptoms or characteristics.

(3) Beginning July 1, 2023, every basic skills course required in order for officers to obtain initial certification must include the standards for instruction required under this section.

History.—s. 5, ch. 2021-241.

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§ 607. Strangulation or suffocation; class B or D felony; penalty; affirmative defense.

(a) (1) A person commits the offense of strangulation if the person knowingly or intentionally impedes the normal breathing or circulation of the blood of another person by applying pressure on the throat or neck of the other person.

(2) A person commits the offense of suffocation if the person knowingly or intentionally prevents another person from breathing by blocking or obstructing the nose or mouth of the other person.

(b) (1) Except as provided in paragraph (b)(2) of this section, strangulation or suffocation is a class D felony.

(2) Strangulation or suffocation is a class B felony if:

a. The person used or attempted to use a dangerous instrument or a deadly weapon while committing the offense; or

b. The person caused serious physical injury to the other person while committing the offense; or

c. [Repealed]

d. The person was subject to an existing court order prohibiting contact with the victim at the time of the offense; or

e. The person committed the offense against a pregnant female; or

f. The person committed the offense against a child.

(c) Notwithstanding any provisions of this Code to the contrary, any person who commits an offense under subsection (a) of this section within 5 years of a prior conviction under either subsection (a) or (b) of this section or a substantially similar section of another state, shall receive a minimum sentence of 1 year at Level 5.

(d) The absence of visible bodily injury shall not preclude a conviction under this section.

(e) It is an affirmative defense that an act constituting strangulation was the result of a legitimate medical procedure.

77 Del. Laws, c. 256, § 1 (<https://legis.delaware.gov/SessionLaws?volume=77&chapter=256>); 83 Del. Laws, c. 392, § 1 (<https://legis.delaware.gov/SessionLaws?volume=83&chapter=392>);

§ 607A. Aggravated strangulation; penalty; defenses.

(a) As used in this section:

(1) "Chokehold" means of any of the following:

a. A technique intended to restrict another person's airway, or prevent or restrict the breathing of another person.

b. A technique intended to constrict the flow of blood by applying pressure or force to the carotid artery, the jugular vein, or the side of the neck of another person.

(2) "Law-enforcement officer" means as defined in § 222 of this title.

Document: C.R.S. 18-1-707

C.R.S. 18-1-707

Copy Citation

Statutes current through all legislation from First Regular and Extraordinary Sessions, 75th General Assembly (2025).

Colorado Revised Statutes Annotated Title 18. Criminal Code (Arts. 1 – 26) Article 1. Provisions Applicable to Offenses Generally (Pts. 1 – 11) Part 7. Justification and Exemptions from Criminal Responsibility (§§ 18-1-701 – 18-1-714)

18-1-707. Use of force by peace officers - definitions.

(1) Peace officers, in carrying out their duties, shall apply nonviolent means, when possible, before resorting to the use of physical force. A peace officer may use physical force only if nonviolent means would be ineffective in effecting an arrest, preventing an escape, or preventing an imminent threat of injury to the peace officer or another person.

(1.5)

(a) Pursuant to section 18-8-805 (1) and (2)(a)(I), peace officers shall not use, direct, or unduly influence the use of ketamine upon another person nor compel, direct, or unduly influence an emergency medical service provider to administer ketamine. If a peace officer violates this prohibition, the district attorney may charge the officer with any crime based on the facts of the case.

(b) As used in this subsection (1.5), unless the context otherwise requires, “unduly influence” means the improper use of power or trust in a way that deprives a person

of free will and substitutes another's objective.

(c) Notwithstanding subsection (1.5)(a) of this section, a peace officer who is also certified as an emergency medical service provider may administer ketamine pursuant to the restrictions set forth in section 25-3.5-209 and when the decision to administer ketamine is based on the emergency medical service provider's training and expertise.

(2) When physical force is used, a peace officer shall:

(a) Not use deadly physical force to apprehend a person who is suspected of only a minor or nonviolent offense;

(b) Use only a degree of force consistent with the minimization of injury to others;

(c) Ensure that assistance and medical aid are rendered to any injured or affected persons as soon as practicable; and

(d) Ensure that any identified relatives or next of kin of persons who have sustained serious bodily injury or death are notified as soon as practicable.

(2.5)

(a) A peace officer is prohibited from using a chokehold upon another person.

(b)

(I) As used in this subsection (2.5), "chokehold" means a method by which a person applies sufficient pressure to a person to make breathing difficult or impossible and includes but is not limited to any pressure to the neck, throat, or windpipe that may prevent or hinder breathing or reduce intake of air.

(II) "Chokehold" also means applying pressure to a person's neck on either side of the windpipe, but not to the windpipe itself, to stop the flow of blood to the brain via the carotid arteries.

(2.7)

(a) As used in this subsection (2.7), unless the context otherwise requires:

(I) "Mechanical restraint" means a physical device used to involuntarily restrict the movement of a person or the movement or normal function of a portion of a person's body.

(II) "Prone position" means a position in which a person is lying on a solid surface with the person's chest and abdomen positioned downward even if the person's face is turned to the side or the person has one shoulder lifted.

(III) "Prone restraint" means a use of physical force, including, but not limited to, the use of a mechanical restraint, in which the person who is being restrained is in a

804.8 Use of force by peace officer making an arrest.

1. A peace officer, while making a lawful arrest, is justified in the use of any force which the peace officer reasonably believes to be necessary to effect the arrest or to defend any person from bodily harm while making the arrest. However, the use of deadly force or a chokehold is only justified when a person cannot be captured any other way and either of the following apply:

a. The person has used or threatened to use deadly force in committing a felony.

b. The peace officer reasonably believes the person would use deadly force against any person unless immediately apprehended.

2. A peace officer making an arrest pursuant to an invalid warrant is justified in the use of any force which the peace officer would be justified in using if the warrant were valid, unless the peace officer knows that the warrant is invalid.

3. For purposes of [this section](#), “chokehold” means the intentional and prolonged application of force to the throat or windpipe that prevents or hinders breathing or reduces the intake of air.

[C51, §2844; R60, §4553; C73, §4205; C97, §5200; C24, 27, 31, 35, 39, §13472; C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, §755.8; C79, 81, §804.8]

[2013 Acts, ch 90, §238](#); [2020 Acts, ch 1037, §2](#)

Referred to in [§704.12](#)

Reasonable or deadly force, see [chapter 704](#)

(720 ILCS 5/7-5.5)

Sec. 7-5.5. Prohibited use of force by a peace officer.

(a) A peace officer, or any other person acting under the color of law, shall not use a chokehold or restraint above the shoulders with risk of asphyxiation in the performance of his or her duties, unless deadly force is justified under this Article.

(b) A peace officer, or any other person acting under the color of law, shall not use a chokehold or restraint above the shoulders with risk of asphyxiation, or any lesser contact with the throat or neck area of another, in order to prevent the destruction of evidence by ingestion.

(c) As used in this Section, "chokehold" means applying any direct pressure to the throat, windpipe, or airway of another. "Chokehold" does not include any holding involving contact with the neck that is not intended to reduce the intake of air such as a headlock where the only pressure applied is to the head.

(d) As used in this Section, "restraint above the shoulders with risk of positional asphyxiation" means a use of a technique used to restrain a person above the shoulders, including the neck or head, in a position which interferes with the person's ability to breathe after the person no longer poses a threat to the officer or any other person.

(e) A peace officer, or any other person acting under the color of law, shall not:

(i) use force as punishment or retaliation;

(ii) discharge kinetic impact projectiles and all other non-lethal or less-lethal projectiles in a manner that targets the head, neck, groin, anterior pelvis, or back;

(iii) discharge conducted electrical weapons in a manner that targets the head, chest, neck, groin, or anterior pelvis;

(iv) discharge firearms or kinetic impact projectiles indiscriminately into a crowd;

(v) use chemical agents or irritants for crowd control, including pepper spray and tear gas, prior to issuing an order to disperse in a sufficient manner to allow for the order to be heard and repeated if necessary, followed by sufficient time and space to allow compliance with the order unless providing such time and space would unduly place an officer or another person at risk of death or great bodily harm; or

(vi) use chemical agents or irritants, including pepper spray and tear gas, prior to issuing an order in a sufficient manner to ensure the order is heard, and repeated if necessary, to allow compliance with the order unless providing such time and space would unduly place an officer or another person at risk of death or great bodily harm.

(Source: P.A. 101-652, eff. 7-1-21; 102-28, eff. 6-25-21; 102-687, eff. 12-17-21.)

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**Vermont Statutes Annotated Title 20 Internal Security and Public Safety
(Pts. 1 – 12) Part 6A. Training of Law Enforcement Officers (Ch.
151) Chapter 151. Vermont Criminal Justice Council (Subchs. 1 –
2) Subchapter 1. General Provisions (§§ 2351 – 2372)**

§ 2368. Standards for law enforcement use of force

(a) Definitions. As used in this section:

- (1)** “Chokehold” means the use of any maneuver on a person that employs a lateral vascular neck restraint, carotid restraint, or other action that applies any pressure to the throat, windpipe, or neck in a manner that limits the person’s breathing or blood flow.
- (2)** “Deadly force” means any use of force that creates a substantial risk of causing death or serious bodily injury.
- (3)** “Force” means the physical coercion employed by a law enforcement officer to compel a person’s compliance with the officer’s instructions.
- (4)** “Imminent threat of death or serious bodily injury” means when, based on the totality of the circumstances, a reasonable officer in the same situation would believe that a person has the present ability, opportunity, and apparent intent to immediately