

Violence: Recognition, Management, and Prevention

A REVIEW OF 300 ATTEMPTED STRANGULATION CASES PART I: CRIMINAL LEGAL ISSUES

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Abstract—Three hundred strangulation cases, submitted for misdemeanor prosecution to the San Diego City Attorney's Office, were evaluated to determine the signs and symptoms of attempted strangulation that could be used to corroborate the victim's allegation of being "choked" for purposes of prosecution. The study reveals that a lack of training may have caused police and prosecutors to overlook symptoms of strangulation or to rely too heavily on the visible signs of strangulation. Because most victims of strangulation had no visible injuries or their injuries were too minor to photograph, opportunities for higher level criminal prosecution were missed. © 2001 Elsevier Science Inc.

Keywords—strangulation; domestic violence; violence; felony; misdemeanor; documentation

INTRODUCTION

This is a study conducted by the San Diego City Attorney's Office of 300 domestic violence cases involving attempted strangulation that were submitted for misdemeanor prosecution. As background, the San Diego City Attorney's Office prosecutes all misdemeanor crimes within the City of San Diego and Poway. The San Diego District Attorney's Office prosecutes all felonies within the City of San Diego and all misdemeanors outside the

City's jurisdiction. Approximately 85% to 90% of all domestic violence cases that are submitted for prosecution within the City limits will be handled as misdemeanors by the San Diego City Attorney's Domestic Violence Unit.

Most domestic violence cases, including cases involving strangulation, are prosecuted under Penal Code section 273.5, Spousal Abuse, and can be charged as either a misdemeanor or a felony (1). A domestic violence case involving strangulation also can be prosecuted under Penal Code Section 243(e), a simple battery involving a partner (a misdemeanor) (2); Penal Code section 245(a), assault with the intent to commit great bodily injury (a misdemeanor or a felony) (3); or Penal Code section 187 pursuant to section 664, attempted murder (felony only) (4). A misdemeanor conviction for a domestic violence case carries a lower sentence than a felony. It has a maximum sentence of one year in local jail and no more than a \$10,000 fine. A felony conviction for a domestic violence case carries a higher sentence including prison terms of 2 years or more.

The decision to prosecute a domestic violence case involving strangulation either as a felony or a misdemeanor is a matter of prosecutorial discretion that depends on many factors, including but not limited to the level of violence; injury; statements from the victim, witness or suspect; any corroborating evidence such as

Table 1. Gathered Data

| Data Item | Description of Data Gathered | Police Report | 911 Tape | City or Court Record | Medical Records |
|-----------|---|---------------|----------|----------------------|-----------------|
| 1. | Defendant's case number, sex, age, and employment status | Yes | Yes | Yes | No |
| 2. | Victim's sex | Yes | Yes | No | Yes |
| 3. | Relationship of the Defendant and victim and length of relationship | Yes | Yes | No | Yes |
| 4. | Method of strangulation | Yes | Yes | No | Yes |
| 5. | Presence of children at the scene | Yes | Yes | No | Yes |
| 6. | Presence of signs or symptoms | Yes | Yes | No | Yes |
| 7. | Photos of any visible injuries | Yes | No | No | No |
| 8. | History of prior domestic violence | Yes | Yes | Yes | Yes |
| 9. | Disposition of the case | No | No | Yes | No |
| 10. | Evidence of medical treatment | Yes | Yes | Yes | Yes |
| 11. | Other observations | Yes | Yes | Yes | Yes |

photographs, witnesses, 911 tapes, medical records; and criminal history of the suspect and witnesses.

This study was prompted by the deaths of two teenage girls in 1995. The murders of these two teenagers caused San Diego City Attorney Casey Gwinn to ask: "*What evidence can be obtained by police officers in order to corroborate that a surviving victim has been strangled, which can later be used for either misdemeanor or felony prosecution?*"

In answering this question, it was also believed that other objectives could be achieved, such as improving the quality of criminal investigations, increasing the number of attempted strangulation cases that are prosecuted as misdemeanors or felonies, enhancing victim safety, and ensuring that offenders be held accountable for the crimes they commit.

MATERIALS AND METHODS

Three hundred strangulation cases were selected from domestic violence, elder abuse, and child abuse cases on file with the San Diego City Attorney's Office, Domestic Violence Unit. The cases used in the sample were submitted for misdemeanor prosecution by the Domestic Violence Unit of the San Diego Police Department or referred for misdemeanor prosecution by the San Diego District Attorney's Office from 1990 through 1997. The files generally contained the following information: an arrest or crime report; a detective's follow-up report; a printout of the 911 tape; the 911 tape; the defendant's or the victim's criminal history; and, in a few cases, medical records.

The files that were selected all contain a 911 call from a reporting party requesting police assistance in a case involving domestic violence. The names and identities of

these individuals have been protected for purposes of this study. The reporting parties include victims, suspects, neighbors, children, and unknown witnesses. Police were immediately dispatched in response to the 911 call, usually arriving at the scene within 5 to 30 min of the initial call. Statements from victims, witnesses, and suspects were usually taken within an hour of the initial 911 call and, in virtually all cases, no later than 48 h after the initial 911 call.

The cases used for this study were selected from among 14,000 case files maintained by the San Diego City Attorney's Office, Domestic Violence Unit. The factual summary for each case file was reviewed for any indication that the case involved a "choking" incident. When the factual summary stated that the victim reported having been "choked," then the case was included in the sample. The selected files were examined for information pertaining to strangulation. The relevant data from the police report was transcribed onto a table. To perform the analysis described in the present study, the data were subsequently transferred onto a Microsoft Excel spreadsheet.

Information obtained from four sources, each containing data relevant to selected cases, was tabulated (Table 1).

RESULTS

Defendant's Age, Sex, and Employment Status

Fifty-nine percent of the suspects were believed to have been employed and working in the following fields: professional (9%), business (24%), self-employed (3%), laborer (46%), skilled laborer (8%), and military (18%). The average age was 31.9 years of age.

Victim's Sex

Most of the victims were women (99%). The four cases involving women defendants were female to male (2), female to female (1), and mother to child (1).

Relationship and Length of Relationship between the Defendant and Victim

The suspect was the victim's male husband (25%); live-in partner (37%); parent of her child, "co-parent" (26%); former partner such as a husband, boyfriend or live-in (6%); or a current boyfriend (6%). The average length of the relationship was 4.3 years.

Method of Strangulation (Manual or Garroting)

The victims reported being "choked" by their partner's hands (97%) or with a ligature (3%). When victims described being choked by their partner's hands (manual strangulation), they indicated that the suspect used one hand, two hands, an arm, or a "choke hold." Some women stated that they were strangled on the ground, bed, or sofa while being straddled by the suspect. Some stated that they were strangled while pinned against a wall. In some cases the women reported that they were lifted off the ground during the strangulation. Most of the police reports simply indicated that the suspect "choked" the victim, without providing any further detail as to the method of strangulation.

When a ligature was used to strangle the victim (garroting), the suspects used objects such as electrical cords, mops, belts, ropes, towels, turtleneck sweaters, bras, or bathing suit tops. In one case, the victim reported that her boyfriend put a plastic bag over her head and tried to suffocate her.

Presence of Children at the Scene

Children witnessed the strangulation in at least 41% of the cases, although it is believed this number could be higher because of reluctance of the victim to report that a child was present or because of failure of the officer to record the presence of children.

Presence of Signs or Symptoms of Strangulation

Focusing on the visible signs of strangulation, the data show that while police officers documented an allegation of strangulation in all of the cases, they reported no visible injuries in half of the cases. The majority of

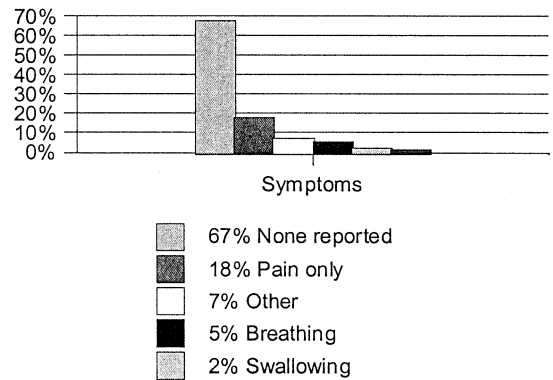


Figure 1. Symptoms reported by strangulation victims.

visible injuries observed by police officers appeared to be minor in nature, and were described as redness, cuts, scratches, or abrasions to the neck. Other visible injuries documented by police officers included red marks to the neck (often three red marks), thumb-print bruising (in one case bruising that was not apparent immediately after the incident was photographed 2 days later), fingerprint bruising (either fingertips or digital outline of finger marks), long red scratch marks, bruising under the chin, on the jawline or behind the ear(s), tiny red spots on the neck or eyes, or dual bloody-red eyes.

Focusing on the symptoms, the following information was reported by victims and documented in police reports: "pain only"—believed to be either to the neck or throat (18%), voice changes (1%), breathing changes (5%), problems swallowing (2%), no symptom documented or reported (67%), and other symptoms (7%) Figure 1.

The other symptoms varied including raspy voice, coughing, a sore throat, a sore throat for a few days, "throat felt like it closed down," nausea, vomiting, vomiting blood, pain to ear, headaches, loss of consciousness, feeling like she was going to pass out, lightheadedness, seeing "black and white" or "black spots," hyperventilation, defecation, uncontrollable shaking, pupils not the same size, trouble walking, trouble moving neck, and loss of memory.

Photographs of Visible Injuries Caused by Strangulation

When injuries were visible (149 cases), officers either took instant print photographs (114 cases) or did not take photographs because the injuries were described as "too minor to photograph" (35 cases) Figure 2. Of the 114 cases with photographs, only 45 cases contained photographs where an injury was visible in the picture (40%).

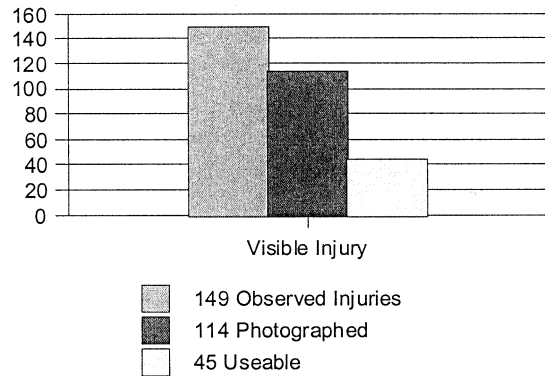


Figure 2. Observed and photographed visible injuries caused by strangulation.

There were 69 cases with unusable photographs (60%), either because the injuries were too minor to show up on a photograph or the photograph was of poor quality. Blur caused by camera movement or missed focus, and lack of contrast caused by flash overexposure were the typical problems for the poor quality photographs.

Out of the total sample of 300 cases, only 15% (45 cases) had a photograph of sufficient quality to be used in court as physical evidence of strangulation. In other words, most victims of strangulation lacked sufficient physical evidence of being strangled because they either had no visible injury (50%) or their injuries were too minor to photograph (35%). These minor injuries included redness on the neck and small cuts or scratches. In 12% of the cases, minor injuries were not even photographed. In 23% of the cases, minor injuries were photographed but the resulting photographs were not of sufficient quality to be useful (Figure 3).

History of Prior Domestic Violence

There was a history of prior domestic violence in 89% of the cases. In some of these cases, the suspect had been repeatedly prosecuted for domestic violence by the City Attorney's Office, either with the same victim or a different victim. These repeat offenders were likely to have an extensive criminal history involving other crimes and a few were identified as gang members.

Medical Attention

Victims sought medical attention within 48 h of the incident in only 5% of the cases. Medical attention appears to have been sought primarily because of per-

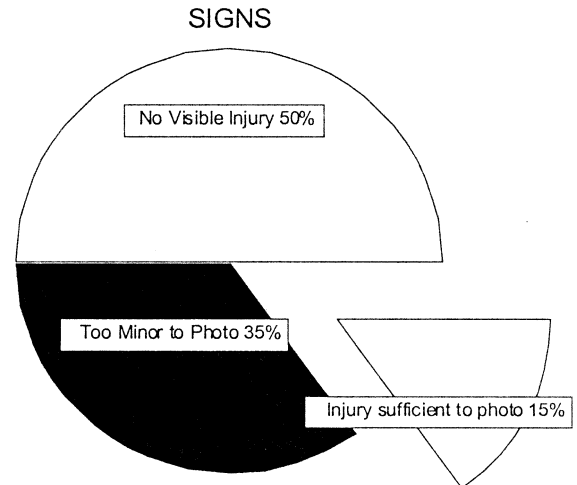


Figure 3. Proportion of injuries not visible, those too minor to photograph, and injuries sufficient to photograph.

sistent pain, voice changes, problems breathing, or trouble swallowing. When medical treatment was obtained, the medical observations were strikingly more robust. For example, in one case the officer described the visible injury as "red abrasion to the neck" while the attending physician described the same injury as "multiple linear contusions to both sides of neck with overlying redness, mild edema and tenderness." The difference between the officer's description and the Emergency Physician's description is quite significant for the prosecutor.

Other Observations (Threats & Pregnancy)

Threats were documented in 40 cases, but specific threats were only recorded in six cases (Table 2). A total of 10 victims identified themselves as being pregnant at the time of the incident. In one case, the victim had a miscarriage within 24 h of being strangled.

Disposition of the Case

Overall, 75% of the cases submitted for prosecution were prosecuted as a new complaint or used for probation revocation. Prosecution of strangulation cases generally occurred when there was evidence of injuries from other forms of violence, independent corroboration of being strangled, and a prior history of domestic violence. Cases were rejected for prosecution (25%) when there was little corroboration of the strangulation or uncertainty regarding the identity of the primary aggressor.

Table 2. Specific Threats

| Sample Size | Documented Threat | Suspect | Victim |
|-------------|--|-------------------------------------|------------------------|
| 296 | "I can easily cut off your air supply by shutting off your carotid artery" | Employed 42 year old male physician | Wife |
| 82 | "I am going to commit an OJ on you and leave no marks" | Employed 26 year-old military male | Wife |
| 133 | "Dear God, please forgive me for what I am about to do" | Unemployed 19 year-old male | Live-in girlfriend |
| 165 | "I'm going to pop your neck" | Employed 33 year-old laborer | Mother of his children |
| 169 | "I'm going to choke you to death" | Employed 34 year-old businessman | Mother of his children |
| 273 | "Die, die" | Unemployed 19 year-old male | Former girlfriend |

DISCUSSION

As discussed above, this study was undertaken by the San Diego City Attorney's Office as a result of the deaths of two teenage girls. In March 1995, a 17 year-old girl made a 911 emergency call to the San Diego Police Department. She reported being "choked" by her 21 year-old former boyfriend. Police were dispatched immediately and arrived at the scene within minutes. When the police arrived, the victim recanted and her injuries were fading. Redness to the neck was all the officers could see. The suspect immediately claimed self-defense and the victim refused to give any additional statements. No arrest was made because of the lack of independent corroboration. The case was subsequently closed by the police department as it did not meet the City Attorney's Issuing Guidelines. A week later, her former boyfriend stabbed her to death in front of her stunned friends.

Six months later, another teenager died as a result of domestic violence. She was 16 years old, pregnant, and the mother of an 18 month-old daughter. She was found dead in a dirt field, having been strangled to death and then set on fire by her 18 year-old former boyfriend. The deaths of these two teenagers were shocking and a sobering reminder of the reality of teen relationship violence. Focusing on the first case, the City Attorney's Office questioned whether its issuing guidelines were adequate when strangulation was alleged. Why did the officers believe there was insufficient evidence to prove that she was "choked?" Could the criminal investigation have been improved in some way? Could additional evidence have been obtained to prosecute the case? If so, what evidence was missing to establish the victim had, in fact, been "choked?"

To answer these questions, City Attorney Casey Gwinn requested then Head Deputy City Attorney Gael Strack to learn more about strangulation by contacting specialists, researching the medical literature, and reviewing strangulation cases that had been submitted for

prosecution. The objective was to determine if there were any patterns—any particular signs and symptoms associated with strangulation—that could be documented and later used to prove that a victim had been strangled.

The City Attorney's Office consulted with Dr. George McClane, an Emergency Physician with Sharp Healthcare and Dr. Dean Hawley, a forensic pathologist and Professor of Pathology at Indiana University, School of Medicine, to help correlate the results of the study to the current body of literature on strangulation and practice.

The study shows that most suspects (99%) are males in their thirties. Fifty-nine percent of the times, the suspects were employed. They worked in a wide variety of professions. The suspect was living with the victim for four years on average. Children were present at least 41% of the time. Ten victims were reported to be pregnant at the time of the assault. A significant number (89%) of these couples also had a prior history of domestic violence. The prior history finding suggests that victims in this study had experienced repeated violence over a significant period of time and that the violence had escalated to the point of attempted strangulation—a potentially lethal level of violence (5). Given that most victims were still living with the suspect in ongoing relationships with children, the victims in the study were clearly at high risk for future violence. In the first case that prompted this study, the suspect's violence escalated to murder when "choking" didn't control the victim.

Many of the police reports neglected to clearly document how the victim was strangled, the specific appearance of visible injuries, the duration of the strangulation, what threats were being made, and what symptoms the victims were experiencing. This is a weakness in the study.

Although the reports frequently did not describe the specific method of manual strangulation, the study shows that most victims were strangled manually. When a specific mode of manual strangulation was documented, victims described several methods such as being stran-

gled by one hand, two hands, or the use of a chokehold. They also described being strangled from the front, from the rear, pinned against the wall, or while being straddled on the floor or bed.

Further study needs to be conducted to clearly document which types of injuries will be found with which methods of strangulation. Even though this study was clearly lacking in details, certain patterns are indicated. For example: cases where the victims reported being strangled with one hand and where visible injuries were present frequently exhibited thumb-print bruising or red marks from the fingers or fingertips.

The varying location of the visible injuries (such as redness, red marks, or bruising) under the chin, near the jaw line, behind the ear, on the neck, on the back of the neck, on the chest, and in the shoulder area, also suggests a need to carefully examine the victim for injuries. In this study, petechiae appear to be primarily located in the eyes. In one case, the officer and the detective noted red marks to the neck but upon reviewing the photograph years later, it was evident that the officers had failed to document the petechiae to the victim's eyes.

The study reveals that most victims lacked physical evidence of strangulation: 50% of the victims had no visible injuries and 35% of the victims had injuries too minor to photograph (given the available photographic equipment).

The selected files show that unless the victim had significant visible injuries or complained of continuous pain requiring medical attention, the police were inclined to handle the incident as minor—almost as if the victim had been slapped, rather than having been strangled. Further, the victims often failed to mention their symptoms or declined medical attention, even when they were having difficulty breathing.

At the time of the original study in 1995 through 1996, medical training concerning attempted strangulation cases was not being offered at the police academy nor in domestic violence conferences. (Today, however, training videos such as the Law Enforcement Television Network's video on "Detecting Strangulation" produced in 1997 are available.) Because the medical consequences of strangulation were poorly understood in the law enforcement and legal communities, potentially relevant information was not collected and recorded in the files. Not only is this a weakness in the study, but the collected data therefore tend to understate the severity of the problem.

The combination of limited visible injuries, a poor understanding of the medical significance of symptoms, the victim's failure to report symptoms, and the victim's unwillingness to seek medical attention may have caused police and prosecutors to unintentionally minimize or trivialize the seriousness of the actual violence (6). Un-

der these circumstances, it is not surprising that police and prosecutors reached a finding that there was insufficient probable cause for an arrest or insufficient evidence for a conviction in a "choking" case.

CONCLUSION

The findings from this study reveal the seriousness of strangulation. Even though the victims in this study did not die, they nevertheless experienced a serious and potentially lethal form of physical violence. Understandably, police and prosecutors overlooked symptoms and focused on visible injuries to prove strangulation. No one knew what questions to ask the victim to determine if she had any symptoms, such as voice changes, breathing changes, pain from swallowing, or demonstrable psychological changes. The study reveals a lack of documentation, inadequate equipment, and the need for medical training on strangulation.

By understanding what signs and symptoms to look for, what questions to ask, where to look for injuries, and how to take better close-up photographs, cases previously thought to be inadequate to prosecute can be prosecuted as misdemeanors and cases previously thought to be misdemeanors can and should be prosecuted as felonies. Obtaining better equipment to document minor injuries and injuries on dark skinned victims, and improving the overall quality of the investigation of an attempted strangulation are important elements of higher level prosecution.

Further work needs to be done. In particular, more studies of surviving victims are needed to determine whether there are other signs and symptoms of strangulation that would assist the law enforcement and medical communities in their mission.

Strangulation is a felonious assault and may be an attempted homicide under California Penal Code section 187 pursuant to section 664. Strangulation is a form of power and control that can have devastating psychological long-term effects on its victims in addition to a potentially fatal outcome.

Acknowledgments—The authors thank San Diego City Attorney Casey Gwinn, Ellen Taliaferro, MD and Candace M. Mosley, JD, Director of National Programs, National College of District Attorneys. This study was conducted because City Attorney Casey Gwinn believes those in the domestic violence community should never let a victim die in vain. It is essential to learn from the tragic deaths of victims, and to develop strategies that will enhance the response of domestic violence professionals. This study was written because of Taliaferro's words of encouragement and her belief that it is important to share what is learned to promote the health and safety of all

affected persons. We thank Candace Mosley for her diligent work against domestic violence. Her work, and support from the National College of District Attorneys, have made this collaboration possible.

REFERENCES

1. California Penal Code section 273.5(a) states "Any person who willfully inflicts upon a person who is his or her spouse, former spouse, cohabitant, former cohabitant or the mother or father of his or her child, corporal injury resulting in a traumatic condition, is guilty of a felony, and upon conviction thereof shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not more than one year, or by a fine of up to six thousand dollars (\$6,000) or by both that fine and imprisonment."
2. California Penal Code section 243(e)(1) states "When a battery is committed against a spouse, a person with whom the defendant is cohabiting, a person who is the parent of the defendant's child, former spouse, fiancé or fiancée, or a person with whom the defendant currently has, or has previously had, a dating or engagement relationship, the battery is punishable by a fine not exceeding two thousand dollars (\$2,000), or by imprisonment in a county jail for a period of not more than one year, or by both that fine and imprisonment. If probation is granted, or the execution or imposition of the sentence is suspended, it shall be a condition thereof that the defendant participate in, for no less than one year, and successfully complete, a batterer's treatment program, as defined in Section 1203.097, or if none is available, another appropriate counseling program designated by the court. However, this provision shall not be construed as requiring a city, a county, or a city and county to provide a new program or higher level of service as contemplated by Section 6 of Article XIII B of the California Constitution."
3. California Penal Code section 245(a)(1) states "Any person who commits an assault upon the person of another with a deadly weapon or instrument other than a firearm or *by any means of force likely to produce great bodily injury* shall be punished by imprisonment in the state prison for two, three, or four years, or in a county jail for not exceeding one year, or by a fine not exceeding ten thousand dollars (\$10,000) or by both the fine and imprisonment." (Emphasis added).
4. California Penal Code section 187(a) states "Murder is the unlawful killing of a human being or a fetus, with malice aforethought." Section 664 states "Every person who attempts to commit any crime, but fails shall be punished where no provision is made by law for the punishment of those attempts . . .".
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