



How to Contact the VAW Resource Prosecutor

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Sidebar

The Court in the *Braxton* case (summarized on next page) held that the pattern jury instruction included the appropriate definition of "strangulation." That definition is found in the first footnote to N.C.P.I. Crim. 208.61. It defines strangulation as "a form of asphyxia characterized by closure of the blood vessels and/or air passages of the neck as a result of external pressure on the neck brought about by hanging, ligature, or the manual assertion of pressure."

Sword & Shield

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Strangulation: Building a Better Case

By Amber Lueken Barwick, Violence Against Women Resource Prosecutor

In early May, the Conference of District Attorneys presented a multidisciplinary training on "Building a Better Strangulation Case." Nearly 100 professionals gathered to learn more about this potentially lethal form of assault. One of the most important messages delivered by the expert trainers is that we as prosecutors and law enforcement agents need to treat these cases seriously, and we need to encourage the victims of these violent assaults to treat them seriously as well. That can be easier said than done, however, as these are often very difficult cases to prosecute and can lead to frustration for investigators, prosecutors and victims alike. The following questions and documentation may assist in determining the correct charges, as well as developing the necessary evidence to successfully prosecute a case of assault by strangulation.

INVESTIGATION AND PROSECUTION TOOLS:

(Adapted from *How to Improve Your Investigation and Prosecution of Strangulation Cases*, by Gael Strack, San Diego Assistant City Attorney and Dr. George McClane, Emergency Physician, October 1998, updated January 2003.)

Determine the Method or Manner of Strangulation:

- Ask victim to describe how she was strangled. (One or two hands? Forearm? With an object? Straddled? Pinned or held against a wall?)
- Ask victim where she was strangled and look for corroborating evidence.
- Ask victim how long the defendant strangled her.
- Ask victim how many times and how many different methods of strangulation were used.
- Ask victim to describe the amount of pressure used. (Perhaps on a scale of 1-10.)
- Ask victim to describe the amount of pain she felt. (Perhaps on a scale of 1-10.)
- Document points of contact and victim's demonstration of strangulation. Take photos if appropriate. (It may be best to ask the victim to demonstrate on someone else the manner in which she was strangled, so that she is not re-victimized and to avoid additional unintentional pressure or pain to her neck.)

Identify Visible Injuries:

- Check behind the ears, around the face, neck, scalp, chin, jaw, eyelids (including under the eyelids), shoulders and chest for injuries.
- Look for redness, scratch marks, scrapes, fingerprint marks, thumbprint bruising, ligature marks, bruising, tiny red spots (petechiae), swelling and/or lumps.
- Have the victim remove makeup to ensure your ability to see all injuries.
- Ask the victim to look in a mirror to assess for herself any swelling she may have, especially on her neck.

Practice Tip: It is important to keep in mind that the statute requires *physical injury*, not necessarily *visible injury*.

Identify Other Evidence (Including Symptoms and/or Internal Injury):

- Ask victim if she has any pain or had any pain during the assault. If so, document and observe the area of pain.
- Ask victim about head injuries or other injuries hidden by clothing.
- Ask victim if an object was used to strangle her. If so, photograph the object and collect it if possible.
- Ask victim if any property was damaged during the incident. If so, photograph the damage.
- Ask victim if she requires or required medical attention. Obtain a medical release if necessary.
- Ask victim if she was shaken during the strangulation. If so, did she suffer whiplash?
- Ask victim if she was thrown against the wall, on the floor, or to the ground. If so, did she suffer a concussion?
- Ask victim if she has or had difficulty breathing. Does she appear to be hyperventilating?
- Ask victim if she has or had pain in her throat.
- Ask victim if she has or had trouble swallowing.
- Ask victim if she experienced drooling after the incident.
- Ask victim (or her friends/family who are present) if she had any voice changes. (Hoarseness, raspy voice, loss of voice?)
- Ask victim if she experienced coughing.
- Ask victim if she felt dizzy, faint, or lost consciousness.
- Ask victim if she urinated or defecated as a result of the strangulation.
- Ask victim to gently feel for lumps on her neck.

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- Ask victim if she felt nauseated or if she vomited.
- Ask victim if she is or was pregnant at the time. If so, investigate possible miscarriage.

Practice Tip: Strangulation can cause internal injuries that can later cause complete obstruction of the airway, even up to 36 hours after the incident. It is strongly recommended that victims seek medical attention, especially if they report any of the above symptoms.

Establish Motive or Intent and Prepare for Victim Minimization/Recantation:

- Ask victim what the defendant said during the strangulation. Document these words by quoting the victim's words exactly.
- Ask victim to describe the defendant's demeanor and facial expression.
- If an object was used, determine whether the defendant brought the object to the scene in order to establish possible premeditation.
- Ask victim what she was thinking before, during and after the strangulation. (Did she think she was going to die?)
- Ask victim about prior incidents of strangulation and/or domestic violence.

Eliminate Defenses:

- Ask victim if she did anything to protect herself? (Did she scratch his hands, arms, face or neck in an attempt to stop him?)
- Observe and document any injuries to the defendant.
- Document the absence of injuries to the defendant.

LEGAL UPDATE:

Since the North Carolina General Assembly recognized assault by strangulation as a felony in 2004, very few cases have been decided by the North Carolina appellate courts that deal directly with the new criminal charge. Below are summaries of some of those cases.

***State v. Braxton*, 183 N.C. App. 36 (2007)**

The court upheld defendant's two convictions of assault by strangulation where there was evidence of two separate incidents in which the defendant grabbed the victim by the throat, causing her to have difficulty breathing. The court held that evidence that the victim had been strangled to the point of having difficulty breathing was sufficient to comprise "strangulation." The court rejected the defendant's argument that the definition of strangulation should be the complete closure of one's airways causing an inability to breathe. Instead, the court noted its approval of the definition of strangulation in footnote one of the Criminal Pattern Jury Instructions (N.C.P.I. – Crim. 208.61 (2005)).

***State v. Brunson*, 187 N.C. App. 472 (2007)**

Assault on a female is not a lesser-included offense of assault inflicting physical injury by strangulation, as each offense includes an element not present in the other.

***State v. Little*, 188 N.C. App. 152 (2008)**

There was sufficient evidence to support the element of strangulation when defendant wrapped his hands around the victim's throat and applied pressure until the victim lost consciousness.

***State v. Brooks*, 2008 N.C. App. LEXIS 978 (May 20, 2008) (Unpublished)**

Indictment for assault inflicting physical injury by strangulation was not fatally defective where it tracked the language of *Braxton*. The essential elements of the offense required to be alleged in the indictment are: (1) an assault on another person; (2) inflicting physical injury; (3) by strangulation.

***State v. Williams*, 689 S.E.2d 412, 2009 N.C. App LEXIS 2214 (Dec. 8, 2009)**

An indictment alleging assault by strangulation alleged the defendant strangled the victim by placing his hands around her throat. The court ruled that even if there was a variance between the allegation concerning the method of strangulation and evidence introduced at trial, the variance was immaterial and not fatal. The method of strangulation alleged in the indictment was surplusage and should be disregarded. There was sufficient evidence to support the defendant's conviction of assault by strangulation where the victim stated that she felt that the defendant was trying to crush her throat, he pushed down with his weight on her neck with his foot, she thought he was trying to "choke her out" or make her go unconscious, and she thought she was going to die. The court rejected the argument that the state must prove that the victim had difficulty breathing.

The defendant may not be sentenced by the court for the same conduct under both G.S. 14-32.4(b) (assault inflicting serious bodily injury, Class F felony) and G.S. 14-32.4(a) (assault by strangulation, Class H felony). Punishment can only be imposed for the assault inflicting serious bodily injury, which imposes a greater punishment than assault by strangulation.

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