

# VAWA 2013: Strangulation and Suffocation

Leslie A. Hagen

National Indian Country Training Coordinator

[Leslie.Hagen3@usdoj.gov](mailto:Leslie.Hagen3@usdoj.gov)

## *United States v. Crawford*

- D strangled his girlfriend
- Assault occurred on the Blackfeet Indian Reservation
- Law enforcement obtained pictures
- The doctor documented a substantial risk of death
- D confessed to the FBI and pled guilty to one count of strangulation (18 U.S.C. § 113(a)(8))
- D sentenced in March 2014 to 30 months' imprisonment and 3 years of supervised release

## Scope and Severity of the Problem

“Many domestic violence offenders and rapists do not strangle their partners to kill them; they strangle them to let them know they can kill them – any time they wish.”

- Casey Gwinn

## Research Findings

- Recent studies have shown that 34% of abused pregnant women report being “choked”
- 47% of female domestic violence victims report being “choked”
- Victims of prior non-fatal strangulation are 800% more likely of later becoming a homicide victim at the hands of the same D

## Research Findings cont.

- The largest non-fatal strangulation case study (the San Diego Study) ever conducted to date found that most cases lacked physical evidence or visible injury of strangulation
  - Only 15% of Vs had a photo of sufficient quality to be used in court as physical evidence
  - No symptoms were documented or reported in 67% of cases
  - Major signs and symptoms of strangulation corroborated the assaults, but little visible injury detected

## Strangulation is a red flag.....

- When battered women were asked what made them believe they were in danger or not – the majority of women perceiving a great amount of danger in both a shelter and a hospital study mentioned “**choking**” as a tactic used against them that **made them believe their partner might kill them.**
  - Stuart & Campbell 1989

## Research Findings cont.

- Loss of consciousness can occur within 5 to 10 seconds and brain death within 4 to 5 minutes.
- The seriousness of internal injuries may take a few hours to be appreciated.
- Death can occur even days later.
- The absence of visible injury can result in the minimization of the assault

## Strangulation is often Minimized

- *By victims* – “he didn’t really choke me, he just had me in a headlock and I couldn’t breath.” – Plattsburgh, NY
- *By criminal justice professionals, including prosecutors, and medical personnel* – Escondido, CA case where victim had red eyes from strangulation and sought treatment, doctor told her she had pink eye
- *By defendants* – “Why are you arresting me? All I did was choke her.” – San Diego case
- *By the courts* – Jan 2001, Alvin Sales Jr. receives sentence of 3 mo jail, 5 yrs probation, and \$4,450 for funeral costs



# What is Strangulation?

- Terminology used to describe the act adds to misunderstanding
- It isn't choking or suffocation
  - Choking is the internal blockage of the airway preventing the victim from breathing
  - Suffocation is the obstruction of the airway at the nose or mouth

Strangulation is the external compression of the neck that can either directly block the airway, preventing breathing, or can impede the flow of blood to and from the brain by closing off arteries and jugular veins

Three forms of strangulation:

- Hanging
- Ligature (use of cord-like object)
- Manual (hands, forearm, kneeling on throat)

## How did USAOs used to charge such a crime?

- Assault Resulting in Serious Bodily Injury – 18 U.S.C. § 113(a)(6)
  - (a) a substantial risk of death;
  - (b) extreme physical pain;
  - (c) protracted and obvious disfigurement; or
  - (d) protracted loss or impairment of the function of a bodily member, organ, or mental faculty
- AUSA likely needed to call an expert witness

Amendments to the  
Federal Assault Statute  
18 U.S.C. § 113

Section 906 of VAWA 2013

**Effective date is March 7, 2013**

# Assault by Strangling or Suffocating

---

- A new felony assault provision has been added for committing an “[a]ssault of a spouse, intimate partner, or dating partner by strangling, suffocating, or attempting to strangle or suffocate”
- 18 U.S.C. § 113(a)(8)
- Punishable by a maximum sentence of 10 years imprisonment, a fine, or both.

## Definition of Strangling

---

- The term “strangling” means “intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of a person by applying pressure to the throat or neck, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.”
- 18 U.S.C. § 113(b)(4)

# Definition of Suffocating

---

- The term “suffocating” means “intentionally, knowingly, or recklessly impeding the normal breathing of a person by covering the mouth of the person, the nose of the person, or both, regardless of whether that conduct results in any visible injury or whether there is any intent to kill or protractedly injure the victim.”
- 18 U.S.C. § 113(b)(5)

## Definition of Dating Partner

---

- 18 U.S.C. § 2266(10)
- “dating partner” refers to a person who is or has been in a social relationship of a romantic or intimate nature with the abuser. Factors to consider include:
  - The length of the relationship;
  - The type of relationship; and
  - The frequency of interaction between the persons involved in the relationship



# Definition of Spouse or Intimate Partner

---

- 18 U.S.C. § 2266(7)(A)(i)
  - for purposes of sections other than 18 U.S.C. 2261A
    - (I) a spouse or former spouse of the abuser, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited as a spouse with the abuser, or
    - (II) a person who is or has been in a social relationship of a romantic or intimate nature with the abuser, as determined by the length of the relationship, the type of relationship, and the frequency of interaction between the persons involved in the relationship.

## Definition of Spouse or Intimate Partner Cont.

---

- 18 U.S.C. § 2266(7)(B)
  - “any other person similarly situated to a spouse who is protected by the domestic or family violence laws of the State or tribal jurisdiction in which the injury occurred or where the victim resides.”

# Amendment to the Major Crimes Act

---

- The Major Crimes Act, 18 U.S.C. § 1153(a), has been amended to capture all felony assaults under 18 U.S.C. § 113.
  - Assault with Intent to Commit Murder, Aggravated Sexual Abuse, or Sexual Abuse
  - Assault with Intent to Commit any Felony except Murder, Aggravated Sexual Abuse, or Sexual Abuse
  - Assault with a Dangerous Weapon
  - Assault Resulting in Serious Bodily Injury
  - Assault Resulting in Substantial Bodily Injury
  - Assault by Strangling or Suffocating

# Signs and Symptoms of Strangulation:

- Voice changes in 50% of victims
- Swallowing changes
- Breathing changes
- Mental status changes
- Involuntary urination or defecation
- Visible injuries to neck
- Petechiae
- Ligature marks
- Lung changes
- Brain damage

# Investigation Questions

- Describe and demonstrate method of strangulation
- Was it one hand?
- Was it two hands?
- From the front or behind?
- Was it the carotid restraint?
- Was a ligature used?
- Was D wearing jewelry? Look for pattern evidence
- Look for injuries consistent with method of strangulation
- Ask victim how she felt: “fuzzy, dizzy, can’t breath, saw stars”
- Document voice changes: tape interview, review 911 tape

# Investigation Questions Cont.

- Any symptoms like vomiting, involuntary urination or defecation?
- Where did assault happen?
- Look for other injuries
- Symptoms requiring immediate medical treatment: unconscious, one pupil larger than the other, convulsions or seizures, slurred speech, confusion or agitation
- What did the suspect say? “Die bitch, die”
- What did you see? “He seemed possessed”
- What did you think would happen? “I thought I was going to die”
- How did it stop? “I passed out” “My kids started screaming”
- What did you say? “I can’t breathe” “Your killing me”
- Ask victim to log symptoms

# Victim Testimony

- Studies show that 80 to 85% of abused women will deny allegations of abuse after the incident and will refuse to testify.
  - Will prosecutor be able to use hearsay evidence?
  - Crawford v. Washington, 541 U.S. 36 (2004)
  - Medical hearsay exception 803(4)

# Evidence

- Photographs
- Physical evidence
- Medical forms
- Expert testimony
- 911 recording



# Prosecuting The Strangulation Case

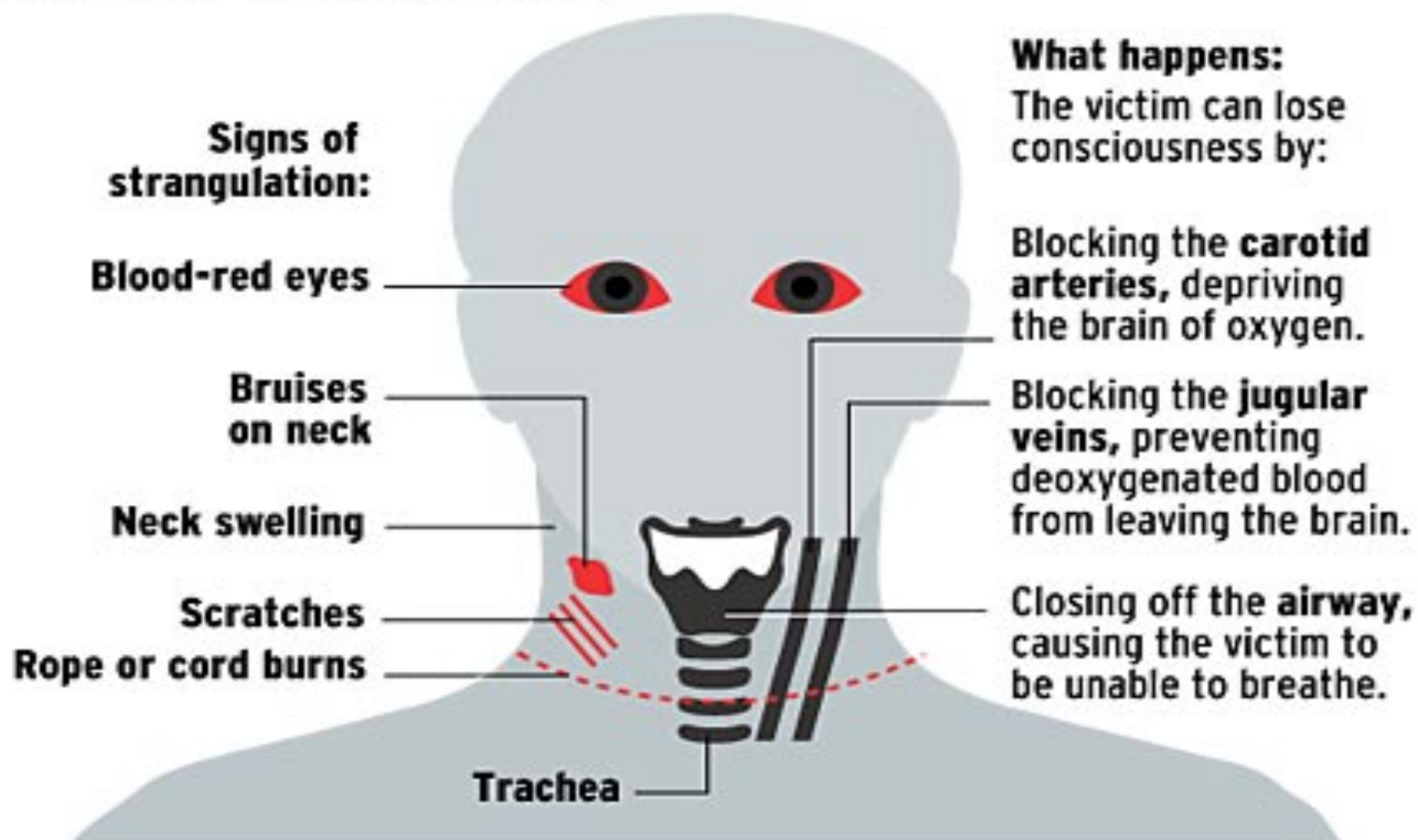
- Treat strangulation cases seriously
- Consider charging as a felony
- Use evidence-based prosecution techniques
- Identification of primary aggressor is a real issue
- Consider use of expert witness at trial
  - medical expert
  - police officer

# Graphic Photos

Warning

# ANATOMY OF STRANGULATION

When it's not fatal, strangulation can still cause significant injuries that are difficult to detect. That makes it more likely that the abuser will go unpunished.



# STRANGULATION

- NOT choking
- Intentional
  - Ultimate act of control

## U.S. Sentencing Commission Feb. 2014

*“The neck is so easy to grab, so vulnerable, so vital to all life, connecting breathing and heart to mind. The viciousness and harm of this terroristic act is far different than mere broken bones or a physical injury. I have suffered the range of these injuries and nothing comes close to strangulation and suffocation in sheer terror.”*

## Conclusion

- New provisions in § 113(a)(8) will allow more victims in IC to find protection under the law, but the enactment of new laws is not enough.
- All first responders must be able to identify when strangulation has occurred and must be willing to take the necessary steps to help victims.

## Additional Resources

- Training Institute on Strangulation Prevention
  - <http://strangulationtraininginstitute.com/index.php>
- DOJ's National Indian Country Training Initiative
  - Joint training with TISP proposed for week of Feb. 9th

Questions?