

Minnesota's New Domestic Abuse Strangulation Statute¹

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Between 20 and 40 women are murdered each year in Minnesota by a domestic partner, often as they are attempting to leave an abusive relationship. Lawyers and lay persons alike have strong opinions on when the government should intervene in internal family matters, and the costs of doing or not doing so.

A two-year old boy is lying on his back on the floor, kicking and crying as his father holds a plastic bag over his head. His mother, having heard the muffled cries, walks in to find the 6 foot 3, 290-pound father hovering over the tiny boy, whose limbs are flailing as he fights for air.

The father is former Vikings' defensive lineman Darrion Scott, who was charged earlier this year with felony domestic assault by strangulation, a relatively new criminal offense enacted by the Minnesota legislature in 2005. Scott asserted that he was trying to entertain his son by placing the plastic bag over his own head and pretending to be the "bogeyman." When his son became upset, Scott placed the bag over the child's head to show him that it would not hurt him. According to Scott, his son became even more upset and the bag became hooked on the boy's chin. Scott claims he was trying to remove the bag from his son's head when the boy's mother entered the room.

Scott admitted that his conduct was "stupid and reckless" and pled guilty to child endangerment, a gross misdemeanor carrying a penalty of up to one year in prison. In exchange, felony domestic assault by strangulation charges were dropped and Scott received a two-year stayed sentence and a \$200 fine. Scott faces up to a year in jail if he has any contact with his son, or the boy's mother other than contact approved by family court.

The charges and eventual sentence imposed against Darrion Scott are an example of the complicated nature of domestic violence. Victim advocates are frustrated by cases like Scott's that involve alleged strangulation but ultimately result in misdemeanor sanctions. Meanwhile, critics of the reach and power of domestic abuse laws cite a general concern that a parent's momentary misstep and lapse in judgment could result in criminal charges, or that the laws can be used to gain advantage in other proceedings, such as a child custody case. On both sides of the debate, lawyers and laypersons alike have strong opinions on when the government should intervene in internal family matters, and the costs of doing or not doing so.

"In cases such as this, our office strives to pursue justice," Hennepin County Attorney Mike Freeman stated in regards to the Scott case. "Domestic violence is pervasive in our society, and unfortunately, sometimes ignored. We take these cases very seriously and provide an array of resources to victims. Our award-winning Domestic Abuse Service Center is an example of the types of resources needed to address this problem."

A New Tool in Domestic Violence Prosecution: Passage and Impact of the Felony Strangulation Law

Between 20 and 40 women are murdered each year in Minnesota by their partner or spouse, often as they are attempting to leave the abusive relationship. Sometimes they are strangled. Sometimes they are shot or stabbed. Some have even been run down with a car or set on fire. Last year, 22 women and 10 children were killed, according to the Minnesota Coalition for Battered Women's annual Femicide Report.¹ Twenty-four children were left without mothers. Seven children were present at the time of the murder or discovered their mothers' bodies. For these children, this cycle of violence is likely to continue, as research has shown they are far more likely to fall into abusive relationships as adults, or become abusers themselves.²

Research has also shown that most domestic homicides are preceded by an incident of strangulation.³ Whether by use of an electrical cord, an article of clothing, an abuser's bare hands or even a plastic bag, strangulation is a red flag that violence is escalating and homicide is possible.⁴ After only 50 seconds of oxygen deprivation, the victim rarely recovers.

Until recently, Darrion Scott could not have been charged with felony domestic strangulation. In 2005, however, Minnesota became one of only six states to enact legislation making domestic abuse strangulation a felony, punishable by up to three years imprisonment, a fine of \$5,000, or both. Previously, episodes of domestic strangulation were chargeable as misdemeanors, with perpetrators serving little or no jail time.

The need for legislative change became apparent in connection with a groundbreaking experiment in domestic violence prosecution. In late September 2000, the Ramsey County Attorney's Office partnered with the St. Paul City Attorney's Office to focus on cases of domestic violence involving children. The two offices formed the Joint Domestic Abuse Prosecution Unit, or JPU, as a means to break the cycle of domestic violence from generation to generation, primarily by providing counseling to affected children and aggressively prosecuting incidents of domestic violence at their outset.

Since its creation, the JPU has taken a comprehensive approach to domestic violence prosecution and has been able to close some common gaps in the system. City and county offices work together to identify repeat abusers. City and county prosecutors identify escalating violence and parole violations they might have overlooked had they been working separately. Despite these advances, prosecutors identified a need for stricter penalties in cases of domestic strangulation, not only because of the lethality of these assaults, but also because strangulation frequently preceded even more violent episodes.

Ramsey County Attorney Susan Gaertner led the effort to make it a felony to strangle a family or household member. The legislation, introduced and passed in 2005, defines strangulation as "intentionally impeding normal breathing or circulation of the blood by applying pressure on the throat or neck or by blocking the nose or mouth of another person."⁵ Despite the legislation's quick passage and strong base of support (some legislators expressed surprise that this type of

violence was not already a felony), the law's impact is still being debated. In the wake of the Darrion Scott case, criticism and controversy will likely continue.

Assessing the Initial Impact of the Domestic Strangulation Statute

WATCH, an organization that monitors how courts handle cases of violence against women and children, issued a report in 2007 analyzing the strengths and weaknesses of the felony strangulation law.⁶ In compiling its report, WATCH relied on statewide charging statistics from the State Court Administrator's Office, textual reviews of 76 Hennepin County felony and misdemeanor cases, and interviews with 18 Hennepin County criminal justice personnel, including victim advocates, law enforcement officers, judges, city and county attorneys, and probation officers. The report cited the law for enhancing victim safety and holding offenders accountable, as well as for increasing general awareness of the severity and potential deadliness of domestic strangulation. WATCH also noted some inconsistencies in enforcement and offered recommendations for improvement.

During the law's first six months, WATCH found 17 cases that Hennepin County charged as misdemeanors rather than felonies, despite facts indicating that the defendants had placed their hands around the victims' necks. Prosecutors originally charged six of these cases as felonies, but later reduced them to gross misdemeanors or misdemeanors. WATCH pointed to a number of factors that may have influenced these charging decisions, including the precise terminology used to describe the assault, whether the victim received medical attention, and whether injuries were photographed or otherwise documented.

In 51 percent of the felony cases WATCH reviewed, the complaint included the word "strangle," whereas only 23 percent of the misdemeanor cases included the word. Similarly, 83 percent of felonies recited the statutory requirement of impeded breathing with phrases such as "almost lost consciousness," "could not breathe," "gasping for air," or "began to pass out." By comparison, only 12 percent of misdemeanor cases included this language. WATCH also noted that only 17 percent of felony cases and 12 percent of misdemeanor cases included photographs of injuries or other documentation showing "bruising," "red marks," "scratches," "raspy voice," "shortness of breath," or "lightheadedness." Large majorities of both felony cases and misdemeanor cases did not mention whether or not the victim needed medical attention. These gaps are significant not only for charging decisions, but also for successful prosecution. With victim recantation posing a significant obstacle at trial, physical evidence recovered and recorded at the scene of the crime remains crucial in securing a favorable verdict and protecting victims.

Understanding the Lethality of Domestic Violence

While it is not surprising that the domestic strangulation statute has not ended domestic violence, evidence shows that the legislation provides a useful tool for targeting the most serious offenders and holding them accountable. St.

Paul alone saw an appreciable reduction in the incidence of domestic violence crimes in the past year. There were 107 reports of domestic strangulation in 2007, a slight reduction from 115 in 2006. More startling, domestic violence related police calls were down 16%, from 8,667 in 2006 to 7,663 in 2007.⁷ In past years, as many as half of the homicides in St. Paul were domestic homicides. In 2007, only one homicide resulted from domestic violence, and that case involved the unusual instance of a woman killing a man. St. Paul Police Chief John Harrington has credited the felony strangulation law as an essential element in bringing about these changes.

Passage of the felony strangulation law is only one strategy for making Minnesota safer for spouses, partners, and children. For example, Ramsey County and St. Paul have begun compiling lethality assessments of offenders, and have developed a checklist for officers responding to domestic violence calls. One Hennepin County prosecutor has suggested streamlining and expediting procedures in domestic violence cases, since victims are less likely to minimize events closer to the time of the assault.

While domestic violence is an area where repeated offenses and death are particularly high, the public does not always understand its lethality. Even victims and abusers may minimize violent incidents as quarrelling that has gotten out of hand, not understanding how violence can escalate to murder. Passage of the felony strangulation law has already heightened awareness of the dangers of domestic violence and the need for proactive intervention. Ramsey County Attorney Gaertner has stated that “[t]he research is clear that strangulation is a very important predictor of domestic homicide and that strict enforcement of strangulation laws absolutely can enhance victim safety.” For other jurisdictions currently considering similar legislation, “[t]here simply isn’t any reason not to take this step.”

Notes

1. [Minnesota Coalition for Battered Women, Femicide Report, 2007](#), p. 5-6.
2. [U.S. Dept. of Justice, Breaking the Cycle of Violence: Recommendations to Improve the Criminal Justice Response to Child Victims and Witnesses, 1999](#), p. 4-7.
3. [Minnesota Coalition for Battered Women, Special Femicide Report: Strangulation and Women and Children Murdered in Minnesota, 1989-2005, 2005](#), p. 27-28.
4. [National Center for Prosecution of Child Abuse: “And then he Choked Me”: Understanding and Investigating Strangulation, 2007](#), p. 1-2.
5. [Minn. Stat. § 609.2247, Subd. 1\(c\)](#).
6. <http://www.watchmn.org/PDF/Jan07final%202-19-07.pdf>
7. Office of the Ramsey County Attorney, Domestic Violence Statistics, 2007.

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