

## Case Summaries Supporting Attempted Murder Charges

### **People v. Vicary**

In *People v. Vicary*, Cal. App. Unpub. LEXIS 3602, (2014, California) the Defendant was convicted of attempted murder of his wife under PC166/187 where the victim was strangled to the point of unconsciousness, not breathing, mouth open and eyes rolled back into her head. Defendant did not let go until an independent witness yelled at the Defendant at which point he said, “She was going to leave” and then ran off. The witness then repeatedly shook the victim, and she started coughing and breathing again. The victim was then transported to the hospital. The victim also presented with petechiae, slight bruising on her neck, redness in her eyes, and neck and throat pain. **(Continued to apply pressure after loss of consciousness and bystander intervened).**

### **People v. McCann**

In *People v. McCann*, 126 A.D.3d 1031 (2015, Massachusetts), the Appellate Court found sufficient evidence of attempted murder in the second degree where victim testified defendant “choked” her for two to three minutes, causing her to black out. The strangulation left her unable to lift her head or swallow, caused hematomas in her eyes, impaired her vision for several days and caused chronic neck pain and an altered voice, and the pathologist explained that the victim lost consciousness because the blood supply to her brain had been cut off from strangulation and that, had defendant not released her, she would have died a minute or two later. **(Victim was very close to death based on expert testimony).**

### **Witham v. State**

In *Witham v. State*, Court of Appeals Case No. 39A01-1504-134, (2015, Indiana) the defendant strangled the victim with a ligature until she passed out. Prosecutor argued there is only one reason you would put a ligature around someone’s neck and that’s to kill them. It was not an accident. It was acting with a conscious object to kill and to “close the deal.” **(Use of a ligature).**



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### **State v. Fox**

In *State v. Fox*, 184 So.3d 886, (2016, Louisiana), the act of “choking” someone after the point of unconsciousness was a disproportionate use of force that went beyond self-defense. The act of choking another person was indicative of a specific intent to kill. **(Continued pressure after loss of consciousness).**

### **People v. Ryder**

In *People v. Ryder*, 44 NYS 3d 598, (2017, New York), an attempted murder conviction was upheld where the defendant strangled his mother while **she begged for her life** and until she lost consciousness. Defendant also threatened he was going to get a gun and kill her. Victim testified she saw black spots and lights flashing before “it all went black”. She lost **bladder function and thought she was going to die**. The absence of long-term serious injury to the mother did not preclude the finding of life-threatening actions by the Defendant. Court found that Defendant’s actions demonstrated his intent to kill. **(Continued pressure after loss of consciousness, urination, and she thought she was going to die and begged for her life).**

### **State v. Diaz**

In *State v. Diaz*, WL 3887341, unpublished, (2017, Louisiana), strangulation was upheld as attempted manslaughter where the victim was strangled twice, lost consciousness, had a garbage bag stuffed into her throat (literal choking), and was threatened with death. **(Strangled repeatedly, tried to escape and eventually escaped, strangled and suffocated, escalated and accelerated efforts to kill – use of a garbage bag stuffed in her throat).**



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### **State v. Pacheco**

In *State v. Pacheco*, 2019 WL 1567812 (2019, New Jersey), an attempted murder conviction was upheld where defendant told the victim “to die, to die already” and “die, die” while “choking” her twice to the point that she had difficulty breathing. He also repeatedly punched and kicked the victim. The appellate court held that defendant’s words combined with the prolonged period of intense choking, demonstrated the defendant intended to kill the victim. Victim begged the defendant not to kill her. “Please don’t kill me. Look at .. my boy that is right there. Take anything you want, but don’t kill me. I have children.” **(Repeated strangulation, repeated death threats, Defendant’s actions and words, victim thought she was going to die, begged for her life).**

### **People v. Sotomayor-Quan**

In *People v. Sotomayor-Quan*, 2021 Ill. App.(1<sup>st</sup>) 181617 (2021, Illinois-Unpublished), Defendant’s conviction for attempted first-degree murder affirmed. Victim testified she had been dating the defendant. They had been arguing for three days. On the day of the incident, defendant had a **“look of anger”** she had never seen before. Defendant strangled Victim twice causing everything to get blurry, go lack and her body go limp”. Victim tried to break free. Defendant repeatedly told her he was going to kill her, that she deserved to die and that she was going to die that day. Victim was eventually able to escape and ran a block and half. Defendant followed her in his car. Victim was able to ask a woman to call her mother. Victim hid until her mother arrived. Her mother took her to the hospital and took pictures of her. At the hospital, the Victim spoke to police. Defendant testified. He denied most of the victim’s statements, claimed self-defense and said he had no intent to kill the Victim

The trial court found defendant guilty. Regarding the attempted first-degree murder charge, the court stated, “it is probably the hardest crime to prove an intentional desire and intent to kill another person.” The court found that the state had proved that intent beyond a reasonable doubt. In making this finding, the court explained that it relied on the combination of defendant’s actions and words. Specifically, the court highlighted that defendant put his hands around the victim’s



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throat and strangled her while repeatedly stating that he wanted to kill her, I'm going to kill you, you deserve to die, you're going to die today, repeatedly saying you are going to die, during a lengthy ordeal. Court also stated "When you put your hands on another human being's throat and squeeze, that's intent. When you grab somebody around the throat, you are making a statement. When you keep your hands around the throat, you are making a stronger statement, and then when you throw in and add to the mix the language that was used here, according to Ms. Rivera, which demonstrated an intent to take her, it's not an accident." The court also observed that defendant may not have had the constant intent to kill the Victim "every single one of those moments" through the "lengthy ordeal that the complaining witness endured" but explained that this was not necessary for a finding of intent. **(Defendant's rage, demeanor, words, threats to kill, actions, repeated strangulations, Victim thought she was going to die, good language from the court how to distinguish intent to kill).**

### **State v. Navarez**

In *State v. Navarez*, 2022 WL 22926097, (2022, Colorado), Defendant was convicted by jury of attempted first degree murder, second degree assault, menacing, third degree assault and obstruction of telephone service. The state charged defendant with multiple counts of various domestic violence charges arising out of four separate events culminating in an escalation of violence where Defendant strangled the Victim and pushed her into the bathtub. When the Victim tried to call the police, Defendant threatened her: "Say anything and I'll f\*\*\*\*\*g kill you." Defendant then chased the Victim and strangled her a second time causing her to pass out and urinate on herself. When she regained consciousness, Defendant continued to strangle and threatened to kill her. Defendant eventually left the apartment with the Victim's phone. He appealed the denial of his motion to sever the charges from multiple incidents and the admission of the patrol officer's testimony about strangulation as it was expert testimony. Affirmed. While the Appellate Court believed some of the officer's testimony related to strangulation was expert testimony it was harmless especially since the evidence was overwhelming and his testimony was in response to a



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defense objection that the officer was speculating. Therefore, the defense invited testimony about the Officer's knowledge about the effects of strangulation which came from his experience and training. **(Multiple strangulations, multiple death threats, loss of consciousness, urination and trained officer's testimony on strangulation).**

### **State v. Smallwood**

In *State v. Smallwood*, 266 N.E.3d 530 (2025, Ohio), Defendant was convicted of attempted murder, abduction, felonious assault, domestic violence, violation of a protection order, intimidation and repeat violence offender specifications by jury trial. Defendant appealed, among other things, there was insufficient evidence to support his conviction of attempted murder. Appellate court disagreed. Victim testified Defendant strangled her during a heated argument until she blacked out. Defendant left and came back. Argument continued. Defendant accused her of cheating and then he strangled her a second time while yelling at her "you're going to die today you fucking bitch." She began to black out. She was able to escape by kicking the Defendant, running to the bathroom and ultimately kicking down a door to get out of the house. Defendant ultimately fled the scene, driving recklessly and striking a telephone pole. Defendant texted the Victim acknowledging he would likely go back to prison. Victim's statements were corroborated by 911 call, police observations and photos, forensic nurse who conducted the medical exam, signs and symptoms consistent with strangulation, and a forensic pathologist who testified as an expert. Court found ample evidence in the record to support the conviction of attempted murder. **(Documented history of domestic violence, threats, injury, corroboration, fleeing the scene, and partial admissions).**



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### **State v. Coleman**

In *State v. Coleman*, 343 Or.App. 299 (2025, Oregon), Defendant was convicted of attempted second degree murder, strangulation, unlawful use of a weapon, coercion, interference with making a report, fourth-degree assault and menacing. Victim called 911 to report Defendant attached three belts around her and tried to kill her. Defendant threatened “he was going to hang her up in the closet and watch the life drain out of her face.” He also forced a remote control into her mouth, and she had to force her hand underneath the belt to breathe. She begged him to stop. Her hands were numb from the pressure. The appellate court said there was no error in admitting expert testimony. Defendant argued the expert’s (Theresa Muncy) “testimony would be confusing and misleading because the state was trying to scare the jury into believe that strangulation is so dangerous and there’s this new science and there’s these new exam kits and things like that.” State argued the expert was relevant because it was intended to educate the jury about physiological facts that were not a matter of common knowledge, including that strangulation can occur by prevention blood flow to the brain as well as preventing air flow to the lungs. Second, the expert was help explain that it does not take much pressure or time for compression of the neck or throat to cause injury or death, which was relevant because the Defendant was charged with attempted murder and attempted assault requiring the state to prove he took “a substantial step” toward killing or injuring the Victim. The Appellate Court agreed with the State. The expert testimony provided the jury with information about how easily and quickly a person can sustain injury or death from strangulation. Trial court also had no duty sua sponte to exclude testimony about the Rossen Study from 1943, although morally repugnant in that it may have involved injuring or killing test subjects. Ethical concerns do not automatically render a scientific conclusion invalid. **(Death threats, ligature, begged Defendant to stop, Expert Testimony explained how strangulation could quickly cause injury and/or death).**

