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# What does it mean to choke, strangle or suffocate someone; from a criminal law perspective

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Section 315A of the Criminal Code (Qld) provides that a person commits a crime if the person unlawfully chokes, suffocates or strangles another person, without the other person's consent, and either:

- the person [offender] is in a domestic relationship with the other person [victim]; or
- the choking, suffocation or strangulation is associated with domestic violence under the *Domestic and Family Violence Protection Act 2012*.

## How do we define the terms choke, strangle and suffocate?

Interestingly, the terms "choke", "strangle" and "suffocate" are not defined in the legislation.

At first glance, the terms may appear to be readily definable. For example, if you were to ask a person what they consider suffocation to mean, they may give the example of putting a pillow over another person's face. They might also associate the term "choking" with something being inside the mouth or throat so as to stop the flow of air.

However, what happens if the pillow only covers a person's mouth and they can still breathe through their nose? Does that still constitute suffocation? Can a person still be choked even though there is no constriction to the internal part of their throat?

The definition of the terms "strangle" and "suffocate" are yet to be considered by the courts but, as outlined below, the meaning of "choke" has been considered in the following two recent Queensland cases.

# *R v HBZ* [2020] QCA 73 – considered the legal meaning of "choke"

In the decision of *R v HBZ*, the Court of Appeal considered the legal meaning of the word "choke".

## The facts

- In HBZ, the complainant and defendant were having an argument when HBZ (the defendant) became aggressive.
- The complainant told him that he had to stop or she was going to call the police.
- He didn't stop so the complainant called triple zero on her mobile phone.
- HBZ then wrestled the phone from the complainant's hand, hung up and smashed it on the ground beside the bed.
- HBZ used his right hand so that it was almost in a "V" around the complainant's throat and rather than squeezing, he sat on top of her and used his body as the force to stop her from speaking.
- The complainant was unable to speak, felt pains in her chest and had black spots in her vision.
- She asked HBZ three or four times to stop, before she ran out of breath.
- It was probably for 70 seconds for which she could not breathe.

The appeal turned on the trial judge's assessment that 'choking' must involve HBZ "*stopping or hindering the complainant's breathing."*

## Decision

Counsel for HBZ argued that "choking" means stopping the breath by internal pressure and that it must have a different meaning to the other words "strangle" and "suffocate". The Court of Appeal didn't accept that argument and decided that:

*"'chokes' must be construed as the act of the perpetrator that **hinders or restricts the breathing of the victim** and does not require proof that breathing was completely stopped, although the hindering or restriction of the breathing would encompass the stopping of the breathing."*

There must be a detrimental effect on the breathing of the victim. However, the conduct will still amount to choking even if:

- the restriction is of a short duration;
- there is no lasting injury; and
- there is no complete stoppage of breath of the victim.

# *R v AJB* [2019] QDC 169 – considered the legal meaning of "choke"

- In *R v AJB* there was an altercation between AJB (the defendant) and her daughter.
- AJB punched her daughter in the face and allegedly choked her by placing an arm around her daughter's throat – similar to a chokehold.
- At the trial, the complainant gave evidence that when AJB had her hand around her throat, she must have been able to breathe because she was yelling and telling AJB to stop.
- In the absence of the breathing being impeded, the defence argued that the vital element was unable to be proven.

His Honour Judge Coker considered the meaning "choke" and whether the offence required the victim to have stopped breathing.

His Honour concluded that:

*"the evidence at its highest did not involve evidence of a stopping of breath…even at a minimum, for one breath or one second."*

Consequently, the jury was directed to return a verdict of not guilty in relation to the choking charge.

# Conclusion

Whilst the law in respect of this offence is still developing, these two decisions suggest that a vital element of the offence is the hindering of breath in some way. For an offence to have occurred there must be some pressure that results at least in the restriction of the victim's breathing.

Signs that may illustrate a restriction of breathing, which were present in *HBZ's* case are:

- an inability to speak;
- the appearance of black dots in the victim's vision;
- pain in the victim's chest; and/or
- feeling disoriented.

If you or a family member are charged with any offence of violence, we recommend that you obtain legal advice from an experienced criminal practitioner as soon as possible.

# Get help from a criminal lawyer

Gilshenan &Luton have significant experience in all areas of criminal defence including any offences of violence.

## Contacting Gilshenan &Luton

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