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## Research Paper

# Lethal asphyxiation due to sadomasochistic sex training — How some sex partners avoid criminal responsibility even though their actions lead to someone's death

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## ABSTRACT

**Introduction:** Erotic asphyxiation is a sexual phenomenon in which one partner reduces the other person's brain oxygen level through strangulation. This study analyzes deaths caused by sexually-motivated strangulation to cases of homicidal choking — summarizing criminal penalties for defendants, depending on the presence of drugs, or alcohol intoxication.

**Methods:** The mode of analysis involves three sources of data. First, a retrospective chart review of our clinics' two recent cases. Second, a meta-analysis of these materials in relationship to forensic reports obtained from prosecutor's office. Third, we examine the prevalence of death due to strangulation in erotic and non-erotic cases using central court database. Lastly, we provide the summary of interviews involving the country's only forensic unit, which investigates criminal cases involving voluntary and involuntary strangulation.

**Results:** In total, we analyzed 15 cases of sexual asphyxiation — 2 of our own; 5 reported in prosecutor's archives; 8 control cases ruled as a non-sexual homicide. The two of our clinical cases describe two victims of voluntary erotic asphyxiation, involving complex sexual environment in which a sexual partner accidentally strangled the other one during sex. The first case describes a 30 years-old female, who required all of her past sexual partners to choke her with hands in order to reach orgasm. The second case is that of a 41 years-old homosexual male, who was still a novice to kinky play and succumbed to death as a result of being tied with a set of ropes around his neck and body. By combining findings from the analysis of our clinic's cases with 5 files obtained from prosecutor's office — we are able to compare results of these cases to controls (involving homicidal suffocation using the plastic bag). In our cases, the defendants who avoid serving prison time for strangulating in course of erotic play typically exhibit these characteristics — at the time of the killing, they were not under influence of drugs; the deceased had documented (based on witness interview, review of personal items, or medical documentation) long-standing paraphilic disorder. In controls, the likelihood of being convicted of voluntary manslaughter was lower for people who acted under the influence of drugs but higher for those under the influence of alcohol.

**Conclusions:** These findings show that documented presence of paraphilic tendencies in the deceased might serve as grounds for not sentencing their sex partners for prison time if they acted to satisfy someone else's kinky needs.

## 1. Introduction

Asphyxiation is defined as a deprivation of oxygen to the brain following mechanical obstruction to respiration. The purpose is to induce the state of brain hypoxia with an intention to stimulate and escalate sexual experiences. It is one of the most dangerous paraphiliae due to the high risk of brain damage in the course of oxygen deprivation.<sup>1</sup> Erotic asphyxiation is typically sub-classified as a form of

sadomasochistic play.<sup>2</sup> Among its several characteristics, sexual choking tends to be a repetitive behavior, often happening in secrecy, and might co-occur with other paraphilias.<sup>3,4</sup> While there are many separate reports about this phenomenon, there are no official statistics tallying occurrence of death due to asphyxiation.<sup>5–14</sup> Some available evidence suggests that white males, between the age of 9–80, are the largest group of practitioners of sexual choking.<sup>15,16</sup>

Paraphilias are sexual tendencies, in the course of which people

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**Table 1**

Summary of 2008–2017 prosecuted cases of asphyxiation due to autoerotic behavior, or strangulation by sexual partner.

The data presented here summarize five recorded cases of death in course of sexual asphyxiation — either due to autoerotic play or inflicted by sexual partner. Please note cases involving presence of under-age minors or bystander instructions on acting out erotic asphyxiation were found not guilty of strangulating sexual partner. Meanwhile, those individuals who acted under influence of alcohol or who used rape pill were found guilty of their actions.

Case#	Age	Gender	Strangulation etiology	Where the body was found	Perpetrator	Guilty? Prison time?
1	15	Female	Bag placed over head; Autoasphyxiation; erotic asphyxiation	Forrest	16 years-old boyfriend	Not guilty, since the victim and perpetrator were under-age <sup>b</sup>
2	14	Male	Inhaled keyboard cleaning agent; Auto asphyxiation <sup>a</sup>	Home	No one directly involved, though close male friend provided idea for this mode of asphyxiation	None; accidental death
3	27	Female	Strangulation with hands; Erotic asphyxiation by sex partner	Vacation home	29 y/o male, not known to deceased	Not guilty, as the perpetrator and the deceased were under influence of drugs at the time of accident.
4	31	Female	Choking with a belt; Erotic asphyxiation by sex partner	Home	35 years-old boyfriend	Guilty, since death occurred during alcohol intoxication of the perpetrator; ruled intentional homicide.
5	26	Female	Choking with bag placed over head; Erotic asphyxiation by a client	Prostitute's apartment	57 years-old male, married	Guilty. The victim was given rape pill before the ordeal. Ruled as intentional homicide. Wife and two other women were witnesses in case and said that they were also involved in choking games, usually without involvement of drugs.

<sup>a</sup>Data from 2008 to 2017.<sup>b</sup>Male died due to self-administered infusion of keyboard cleaning spray; cause of death determined to be due to unilateral right lung rupture. No one was criminally charged in association with his death.<sup>c</sup>According to country's Criminal Penal Code, perpetrators under the age of 18 are rarely sentenced to serve prison sentence, even in cases of homicide. Instead, these individuals are usually placed in institutional correctional facility until they are 21 years-old.

derive sexual gratification by having sex with strange objects, in odd situations, or by fantasizing about unusual things.<sup>17</sup> In a way, these people require unusual sensory stimulus to attain sexual arousal and orgasm. In the case of asphyxiation, this stimulus is strangulation of the self (for instance, by tying a bag around the head) or a partner (by ropes or physically with hands).<sup>2,7,18</sup> The final result is brain hypoxia that causes hallucinogenic-like state.

It is important to make a clear distinction between autoerotic asphyxia and erotic asphyxia involving another person. Autoerotic asphyxia occurs when the person self-strangulates to experience heightened sexual pleasure, using the set of ropes, a plastic bag placed overhead, or other modes of self-controlled restriction of access to oxygen.<sup>19</sup> Among the most common etiologies of death due to autoerotic asphyxiation are hanging,<sup>16</sup> drowning,<sup>10</sup> chest compression, or inhalation of volatile substances.<sup>3</sup> Erotic asphyxiation involving another person occurs when one individual chokes another during sex in an effort to restrict oxygen level in the brain.

While there are many reports in newspapers regarding deaths occurring in the context of consensual erotic asphyxia, there appear to be very few in the forensic medical literature.<sup>20–22</sup>

The Polish law remains specific about the process of determining guilt in cases involving lethal strangulation or suffocation. First, the prosecutor files a case in criminal court, alongside police and autopsy reports. In cases where the perpetrator is identified (as is the case with this study), the court, at the prosecutor's request, appoints a forensic psychiatrist or psychologist to write an evaluation. In such evaluation, the court seeks to understand whether the defendant is able to stand trial, and what was the state of mind of that person at the time of the crime. In this process, forensic psychologist or psychiatrist works closely with police and a pathologist to collect all evidence relevant to the crime scene. In conjunction with these materials, a clinical interview (or lengthier, in-patient observation) takes place to assess the defendant. Based on this opinion, pathology report, and police summary sheet of the crime, the court proceeds with the case. Typically, the sentences for people accused of homicide range from 15 years to life, 2–10 years, or closed institutional treatment, depending on homicide's etiology — intentional, accidental, and psychiatric, respectively. In cases involving minors, most are placed in youth correctional facility until they're 21; the sentence may expend beyond that timeframe, depending on the court's decision.

The objective of the study is two-fold. First — to present descriptions of two cases involving a homosexual and heterosexual victims of consensual sexual strangulation; Second — to meta-analyze cases of sexual and non-sexual strangulation recorded in the national database; Third — to provide data from the interviews on why cases of erotic asphyxiation remain underreported in Poland; Fourth — to synthesize all findings, and to show under what circumstances defendants accused of strangulating their sex partners are guilty.

## 2. Methods

### 2.1. Overview

The study used evidence gathered by law enforcement, judicial authorities, and case study prepared by the forensics unit of our institution. The presented comparison is between two cases of lethal erotic asphyxiation evaluated in our clinic in reference to cases described in the national database. To control the study, we looked at prosecuted cases of non-sexual strangulation. The goal of these approaches is to understand under what circumstances courts dismiss cases against defendants accused of lethally strangulating their sexual partners.

We also conducted a retrospective assessment of witness-derived accounts, presenting additional evidence used by the court as means of dismissing charges against defendants. These accounts show that each victim's sexual exploration of asphyxiation was judged as desirable

modes of attaining sexual pleasure. As these kinds of sexual play carried the high risk of lethality known to the deceased, we show that the court took these data into account when dismissing charges against defendants.

## 2.2. Sources of data and analysis

First, we present two recent cases of erotic strangulation by sexual partner evaluated in our clinic. These cases were prepared by our forensics unit in June of 2016 (Case 1) and May 2017 (Case 2) for a male and female victim, respectively — including pathological and retrospective psychiatric evaluations for each victim, and full forensic assessment for their sexual partner involved in their deadly strangulation.

Second, we petitioned and received, 5 cases from the national prosecutor's office, outlining criminal investigations into deaths involving autoerotic asphyxiation and sexual strangulation by sexual partner in peer institutions, or entities, that occurred in the last 15 years. The details regarding these files are presented in Table 1.

Third, we interviewed five members of country's only forensic unit specializing in evaluating cases of death due to sexual strangulation. We did these interviews to better understand etiology of such cases, prosecution process, as well as an outcome of these criminal cases. We summarize conclusions of these conversations, providing representative quoted responses whenever appropriate.

As a control, we use files of cases involving intentional homicidal suffocation using the plastic bag as the murder weapon (details outlined in Table 2). The reason for using these materials in the analysis is that the mode of choking — that is, extent of controlling availability of air to the victim with plastic bag — is mechanistically very similar to reported cases of auto-erotic asphyxiation reported in literature.<sup>19,23–25</sup> Therefore, to do the analysis, we made an educated assumption that suffocation in sexually and non-sexually motivated murder cases involving the use of a plastic bag are similar in execution — and serve us well in controlling for the qualitative assessment of court proceeding outcomes.

All data were organized into a database and thematically coded in MaxQDA, version 12, using grounded theory. Due to complex and rich text data contained in each case file, this analytical approach allows for

maximized processing, organizing, and synthesizing new knowledge about clinical materials under investigation. To ensure appropriate analytical saturation, an external expert, a pathologist peer consultant, was hired to review the results and suggest revisions to the analysis.

## 3. Objectives

Using these three sources of information, we sought to determine: why deaths due to strangulation are underreported, the prevalence of deaths due to autoerotic asphyxiation or due to choking by a sexual partner, determine causes of death of each victim, assess in what cases people who strangled their sexual partner were convicted of homicide.

### 3.1. Inclusion and exclusion criteria

We included any legally accessible public records, distributed through the criminal courts, prosecutor's regional offices, or police records. The primary inclusion criteria for cases included in the analysis was the nature of the death of the victim — death due to asphyxiation by a sexual partner. For the primary analysis, cases had to feature death due to erotic asphyxiation, while for controls — cases had to include intentional asphyxiation using a plastic bag. The reason for using a plastic bag as gatekeeper murder tool is two-fold. First, the use of plastic bag in intentional suffocation is mechanistically similar to how cases of non-intentional erotic asphyxiation occur. Second, we wanted to minimize confounding aspects of typology of asphyxiation and court proceedings outcome when factoring in multiple ways of strangulation (i.e. choking with hands, using gas infused to someone's nostrils while force-closing the mouth, straps, belt etc.)

### 3.2. Ethics

Our institution's ethical guidelines permit publication of meta-analytical results of past clinical cases evaluated in forensic department. The condition of ensuring subject's anonymity is the primary requirement of this clause. We made sure that all personally identifying information is withheld throughout the text of this manuscript.

**Table 2**

Summary of 2008–2017 prosecuted cases of asphyxiation ruled as non-sexual homicide.

The data presented here summarize nine cases of death due to strangulation. Interestingly, all involved placing of a plastic bag over head, and use of restriction (tape or belt) to tighten the bag on the neck.

Case#	Age	Gender	Findings at autopsy	Toxicology report	Perpetrator - identified? Found guilty? <sup>a</sup>
1	31	Male	- petechiae in the conjunctiva - bruising under the epicardium	Negative	Male; Guilty and sentenced to 10 years in prison
2	25	Female	- slight pulmonary edema - internal status after recently passed childbirth	Psychiatric medication(s) in therapeutic concentration	Perpetrator not identified
3	28	Male	- a shallow bruise on the neck - petechiae in the conjunctiva, face and chest - massive aspiration of vomit	- alcohol in the blood of 1.6%, 2.4% urine - Toxicology positive for propane and butane	Male; Ruled accidental homicide; Guilty, but placed on a 5 year probation; Reason: strangulation occurred in course of severe alcohol intoxication of the perpetrator.
4	47	Male	- circular impression on the neck from belt - Single petechiae in the conjunctiva - bruising under the pleura - pulmonary edema	Toxicology positive for Phenobarbital at lethal concentration	Female, wife. Guilty and serves 15 years in prison for administering own medications in high concentration to husband, followed by choking him to death.
5	33	Male	- extensive petechiae in the conjunctiva, scalp and chest	- alcohol in the blood of 2.8%, 4.5% urine - Toxicology negative	Perpetrator not identified
6	27	Female	- pulmonary edema - bruising under the epicardium	Negative	Perpetrator not identified
7	29	Male	- petechiae under the pleura only - pulmonary edema	Toxicology positive for phenobarbital at below therapeutic level	Perpetrator not identified
8	15	Male	redness on the neck band	Negative	Male; Guilty, but placed in juvenile prison until age 21

<sup>a</sup> Age not provided to protect personally identifying information about perpetrators.

We received institutional ethics approval for conducting interviews with five members of the police unit, as well as for accessing national prosecutors database.

## 4. Results

### 4.1. Case 1

In 2016, the body of a 30-year-old woman was found in a rental apartment. At the scene of the event, there was a young man with whom she had been meeting for several months for kinky sex. On the day of the woman's death, she requested her partner to begin choking her with a hand and to restrict all of her "breathing holes" with a cloth. At one point, the man noticed that his partner had turned white and stopped moving. Concerned, he began assessing the woman's vital signs which were absent, prompting him to begin a heart massage and artificial mouth-lip breathing (he is an emergency medical technician by training). Police and the ambulance were called in. On arrival, the woman was pronounced dead. Partner revealed that the woman was increasingly interested in having him learn how to safely grab her neck and close her mouth — intended to induce a heightened state of sexual satisfaction. Behaviors of such a nature were often practiced by partners during meetings, though were less violent.

At autopsy, mucosal and cutaneous petechial hemorrhages were identified; Collar bone remained intact; Conjunctival petechial hemorrhages were not identified. Thyroid cartilage fracture was noted, hyoid bone was intact. Internal examination revealed no emboli in the pulmonary vasculature, or elsewhere in the body. There were no other signs of trauma or other injuries that would suggest signs of torture or extended homicidal ordeal. Review of past medical records from a primary physician showed no past history of medical conditions. We expected that patient would have records of past psychiatric treatment, given signs of long-standing distress caused by a paraphilia. However, the patient never participated in psychiatric, or psychological treatment for her problems with experiencing orgasm. At home, no bottles of medications or other substances were identified either. Evidently, the deceased elaborated on her problems to close friends only.

During an external examination, residues of bloody diarrhea around the face, chest, scalp, and perianal region were identified. At the height of the mandible, bloody plaques were located, indicating the pressure exerted by fingers of the male partner. On the left side of the neck, there were two parallel blood band impressions, perpendicular to the long axis of the body, spaced about 1.1 cm apart — an observation consistent with the typical presentation of finger pressure exerted on the neck by forced choking. Minor blood hematomas were found in the pericardial muscles, and in the vicinity of the left anterior bridge of the clavicle. There was also contusion at the level of the cervical spinal cord, as well as the surrounding soft tissues.

The victim's computer, secured for the investigation, had extensive electronic correspondence with a friend living in another country. The letters contained descriptions of the asphyxiation behavior involving several previous partners. The letters repeatedly showed information about victim's interest in having her neck restrained by the partners during sexual intercourse.

The victim described to her friend at least two episodes of losing consciousness during choking, which forced her partners to restore the woman's consciousness. The context of each note seemed positive — meaning that the victim did not seem concerned with possibly losing life to her fetishistic fantasy. In one note, the victim raised concerns with being unable to form a long-term relationship due to her interest in sex involving asphyxiation — kink not completely accepted by most of her past partners.

We also looked at witness accounts, available in the court records. One witness testified that the victim engaged in behavior involving sexual choking for many years and was aware of the dangers they carry. She has always emphasized that without gasping for breath during sex,

she cannot achieve any sexual satisfaction.

Victim's computer contained erotic films featuring asphyxiation of heterosexual partners, as well as regular gay sex. The computer also contained instructional videos and descriptions of cardio-respiratory resuscitation. During the investigation, three men who had been sex partners of the deceased were interviewed as witnesses. They pointed to the victim's obsession with the sexual behavior involving asphyxiation, which was the reason for the parting.

The woman required her partners to choke her with bare hands, which caused them great stress and discouraged prolonged sexual contact. Typically the victim would begin each sexual relationship by showing the male partner videos on her private computer featuring sexual choking, followed by resuscitation instructions if something went wrong.

During the investigation, members of the deceased's family testified that they had seen signs of trauma, such as abrasions and bruises on the neck of the victim but were unable to explain it logically. Also, the victim liked wearing scarves, even in the summer, which aroused the parents' suspicion that something was wrong. Our forensics department ruled that the patient had the propensity for a compulsive sexual behavior of paraphilic nature, requiring unusually violent sexual play. The final opinion stated that the victim would have been diagnosed with a paraphilic disorder, given witness accounts and evidence in the form of digital materials identified on her computer. Our opinion did not state any recommendation of guilt for a male partner. There is ample of evidence that the girlfriend has been dealing with paraphilic fantasies for at least five years.

The cause of death was determined to be accidental strangulation in the course of erotic asphyxiation, performed by a sexual partner. On grounds of this determination of the cause of death, the man who caused accidental death of the deceased was placed in temporary jail time while awaiting review of the case by the court. At the time of writing this manuscript, the man was determined to be guilty of involuntary strangulation of a sexual partner, though was not sentenced to any prison time. The reason is grounded on the evidence presented by our department to the court — accidental death due to unusual sex practices.

Our report to the court indicates that the deceased has had a long-standing paraphilia, requiring unusual sexual stimulus to experience orgasm. The evidence presented to the court includes archived records from a personal computer that include videos, articles, browsing history of the Internet, as well as a witness account of two individuals who are best friends of the deceased. All of these accounts show that the deceased has had long-standing paraphilic fetishism, requiring some form of breath control in order to experience orgasm. Two female witnesses, who reported knowing the strangled female for at least five years, reported having conversations with her about the difficulty in finding the long-term sexual partner due to her unusual kinky requirements. From these interviews, we also learned about how the victim became interested in kink. For at least three years, the deceased had been consistently researching topics related to erotic asphyxiation. It is evident that for at least sometimes she's been worried about the consequences of such behavior, particularly dying is a result of it. To minimize possibly unpleasant consequences of these kinky behaviors, the deceased collected extensive information on providing first aid in the course of drowning or losing consciousness due to oxygen deprivation. These materials included mostly videos and some electronic print instructions. After interviewing the individual who fatally strangled the deceased in course of sexual play, as well as to earlier sexual partners, it was evident that the victim would show these materials to them before having a sexual play. The reason is that she wanted these men to become comfortable and providing help, in the event that something went wrong and she lost consciousness during sex. For the most recent partner, showing these materials was also a way of encouraging his participation in erotic choking — by limiting fears associated with possibly lethal consequences.

All three individuals who were interviewed for the purpose of writing the court evaluation showed marked distress associated with past sexual behaviors involving unusual kinky sexual play — a requirement imposed on them by the deceased. All three individuals indicated having had a long-term proclivity toward engaging in kinky play — but in a milder form, involving domination or submission without elements of asphyxiation. All three men reported that their first encounter with erotic asphyxiation was with the deceased woman and no other partner.

Toxicology reports for the partner who fatally strangled the woman returned negative, showing that, at the time of death, no drugs were influencing his actions or the deceased.

#### 4.2. Case 2

The second case, evaluated in 2017, concerns a 41-year-old male, found dead in his apartment by a family member. He lived alone, and according to witnesses, was often visited by younger men, presumably for sex. On the day preceding the event, around 9 p.m., he was seen in the company of a man, around the age of 20–25 years-old, entering his place of residence. The investigation revealed that the deceased was homosexual. He had numerous sexual contacts with young men and liked perverse behavior.

Review of past medical history was negative. Ten years prior to death, the deceased was on fluoxetine for minor depression though it is unclear when he discontinued pharmacotherapy. At the time of death, the deceased did not take regularly any medications or participate in medical treatment.

During an examination of the scene of an accident, the deceased was lying on the bed, prone. The whole body was naked, without any signs of external trauma suggestive of struggle or fighting for life. In the vicinity of the bed, there were two white cords of about 3.1 and 3.3 m in length, as well as an intimate moisturizing gel. Based on death signs, the death happened between 9 and 11 h earlier.

On autopsy, he had no signs of active disease processes or anatomical abnormalities. During the external examination of his body, there was evidence of abrasion on the skin around the neck and a transverse track slightly below the thyroid cartilage. On the front surface, there was a two-lane furrow. Both furrows were almost perpendicular to the body's longitudinal axis and passed to the posterior surface where they merged in the occipital area. He's had conjunctival and petechial hemorrhages, no cutaneous hemorrhages. His collarbone remained intact, though was displaced superiorly from the typical anatomical position. The hyoid bone fracture was noted. In the report to the court of the second case, the death was ruled to be due to accidental strangulation by a sexual partner that caused brain hypoxia.

Analysis of the investigation material revealed that hands and feet of the victim were restrained by having them attached to the elements of the bed structure. An open loop of white rope was tied around the neck, the ends of which the sexual partner held and controlled the state of hypoxia while having unprotected anal intercourse.

None of the personal belongings of the victim helped us determine how long the victim has been interested in this kind of kink. Witness accounts, collected from past sexual partners, suggest that the man became interested in sexual asphyxiation within the last two years. Victim's apartment and a computer had no evidence of any pornographic materials, or written accounts — similar to those found in case number 1. Nevertheless, the system of ropes and sexual positioning on the bed suggest that the victim was not a novice to kinky play. We were not able to determine, whether he had any signs of the paraphilic disorder, though his actions that he might have had a long-standing interest in exploring an unusually dangerous sexual play, involving choking, might be a proof of his propensity for paraphilia-like behaviors.

Toxicology reports for both the deceased and the person and evolved an accidental death were negative. During an interview with

the individual charged with strangulating the deceased, he admitted to having been taking drugs in the past. At the time of the accident, drugs were not influencing his actions as has been determined through a blood test. The defendant has had been sober for at least two weeks prior to strangulating his partner, as evidenced by negative results on all tests, including of blood and urine. The defendant is HIV-positive, without any other sexually transmitted diseases. We did not get a definite answer whether the deceased knew about the HIV status of his sexual playmate, nor do we know whether the individual has informed other past sexual partners about his status.

Our final report cleared the defendant from the responsibility of intentionally killing his sexual partner in the course of kinky sexual play. The court determined that the man was in possession of illegal drugs in his apartment at the time of the arrest, leading to a sentence of six months in jail. Additionally, it was ruled that he would not be serving additional jail time in connection to sexually strangulating his partner, particularly that the prosecution team structured its argument for causing death as “accidental strangulation in course of consenting sexual play.”

In our analysis, we did not include reports from witnesses, or other sources — as these were limited. On the personal computer of the deceased, we found evidence that he's been engaging in sex with strangers for at least four years. His computer did not store any pornography, though his browsing history showed exploration of websites featuring kinky sexual play, including articles on erotic asphyxiation.

#### 4.3. Interviews

We contacted police unit in one of the large metropolitan areas, where they process investigations related to deaths due to asphyxiation. We inquired about statistics regarding death due to auto- or erotic-asphyxiation. We were informed that the police does not maintain official records. As there are no official police databases available for a meta-analysis, we interviewed five people involved in investigating country's deaths due to asphyxiation and report briefly on their take on the problem. Each individual has been working for the unit for at least 4 years, and all have combined the experience of forensic work of 29.6 years (youngest member having 4.3, and oldest having 9.2 years of experience). In the last 15 years, the Unit evaluated 81 cases of strangulation, determining that approximately 19 were due to autoerotic asphyxiation, 12 due to sexual strangulation performed by a sexual partner, 29 homicides, and 16 cases of suicide.

*“It is impossible to accurately determine the actual number of crimes in our country, as many of them do not become the subject of police proceedings at all. Such events fall into the so-called “dark category” and remain unaccounted for in databases” — 0001, police officer*

Why do law enforcement agencies do not investigate or document these cases?

*“One reason is the political one — we are a religious country, yet many people who do this kind of sex are very important, socially known people. Most often, however, the cause is that the offense is not reported, usually because the victim's relatives are afraid to disclose the cause of death.” — 0002, an employee in a criminal investigative unit*

*“People are ashamed and afraid, or they mistakenly think that a criminal act - like domestic violence - is normal, and that's why they do not report criminal offenses.” — 0003, one of the supervisors in criminal investigative unit*

The reasons may be that, for example, the perpetrator in deaths due to erotic asphyxiation (or intentional homicidal strangulation) faked suicide or misfortune, and tried to deceive the law enforcement agencies in this way.

*“[In Poland] Autoerotic deaths are most commonly caused by using a collar or rope compressing the neck. The penetrating person keeps tying*

*the ropes while the other person keeps feeling more hypoxic.” — 0004, the forensic pathologist*

*“Because autoerotic deaths are socially embarrassing, victims’ families sometimes try to hide the traces that point to the sexual nature of the accident.” — 0005, the forensic technician*

As a result, law enforcement agencies may come to the wrong conclusion that death was a result of suicide and not, as it really became, the effect of asphyxiation due to erotic or autoerotic play.

*“Although deaths due to erotic/autoerotic asphyxiation in Poland are rare, it is important to talk about them. Increasingly, young people often mimic what they find on the Internet, and the consequences can be tragic” — 0003, one of the supervisors in criminal investigative unit*

#### 4.4. Other cases of erotic asphyxiation

As outlined in Table 1, the other five cases of death due to erotic asphyxiation, either imposed by the victim or a sex partner, we notice a range of prosecution outcomes. In general, those defendants who were found guilty of homicide and sentenced to prison were either under the influence of alcohol or used pharmacologic means to render their sex partner unconscious. Meanwhile, in all other cases, the defendants were not found guilty of manslaughter mostly because their involvement was ruled as accidental.

## 5. Discussion

Our report describes clinical cases of two individuals, who died as a result of sexual choking. It remains to be determined whether being under the influence of drugs or alcohol should have influence over the scope of legal consequences for individuals who are accused of fatally strangulating their sexual partner in course of consensual kinky play. In our experience, it appears that not acting under the influence of any substances or alcohol acted as protective factor for the defendants. Furthermore, the forensic psychological evaluation appears to have had influenced the final judgment of the court — the judge decided that these men are young, inexperienced, and lured into the sexual fantasy world of the deceased. Therefore, the defendants became victims of the paraphilic fantasies and actions of the deceased. The conclusion here is that digital evidence identified on the personal computers of the deceased, as well as witness accounts — all proved their propensity for engaging in dangerous sex acts, underlined by untreated paraphilia.

While these findings are applicable in the context of the Polish law, it is important to examine instances of death due to auto/erotic asphyxiation in other countries as well. These analyses would permit the community of forensic experts to better understand how cases of auto/erotic asphyxiation are prosecuted in the different legal jurisdictions, based in Europe, Americas, or Asia — and to assess their outcomes. Understanding how criminal courts rule in cases involving possibly lethal paraphilia is particularly important for forensic experts whose opinion might act in favor of the defendant — that is, remove responsibility and prove innocence by showing that the defendant was a “tool” in the world of sexual fantasy of their sex partner. This distinction is different from the usual assumption that we make in cases involving someone’s death — that the defendant is presumed guilty as his or her actions led to death. Therefore, considering the presumed diagnosis of a paraphilia as a confounding reason for death is an important consideration in forensic case evaluations.

It is worth thinking about the extent of responsibility of sexual partners choking someone to death during consensual kinky sex. Given that these behaviors occur in the course of the consensual sexual relationship, involving high-risk behaviors, we are drawn to figuring out the acceptability of sadomasochism (SM) practices. While in a typical scenario, both SM players understand the extent of their sexual play, including the use of safe words and common sense — sometimes that is

not enough to ensure safety. In the criminal proceedings, there is no clear understanding of how consensual high-risk sexual behaviors are to be interpreted when someone is accused of murdering the other person. However, in fact, this supposed murder case might not be an intentional act of killing. Instead, it is a byproduct of something that both parties agreed to — before starting sex play. These considerations necessitate further work in the forensics of assessing death as a result of a consensual sadistic erotic play.

#### 5.1. Limitations

The analysis described here has few limitations. First, it is based on a single country’s prosecution database and personally processed cases involving erotic asphyxiation. Therefore, some conclusions, especially in regards to legal outcomes, might not apply to other geographic locations. Second, while we applied rigorous review of medical and legal documentation for each case, our mode of analysis, based on grounded theory, might unconsciously omit discussion of specific to each case details. To ensure that the analysis described here captured all of the most important information, an external forensic psychiatrist and a pathologist were consulted for an expert review of the conclusions of this study. Third, while we provide a summary of conversations with police unit regarding cases of death due to asphyxiation, due to privacy requirements of the police department, we are unable to provide extensive interview transcripts. Therefore, the readers are given select quoted responses that capture the essence of information that was collected from interviews, without compromising the safety of police operations.

## 6. Conclusions

Our analysis reports on two cases of death due to sexual asphyxiation. These examples might be helpful for other clinicians in assessing patients who have unusual sexual fantasies, or who are evaluating death cases involving erotic choking. Importantly, these findings add knowledge to the limited literature on interpreting guilt of defendants whose actions killed someone — even though both the defendant and their sexual partner had implied consent to engaging in risky sexual SM behaviors.

#### Conflicts of interest

The author reports no conflict of interest.

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