

## **Overview:**

### **Domestic Violence Classification (Threshold Issue)**

**Both charges depend on proving the complainant is a “family or household member” under ORS 135.230.**

**The uploaded documents state:**

- **No romantic or sexual relationship**
- **No shared finances or responsibilities**
- **Separate beds**
- **Temporary guest status**
- **She is engaged to someone else**
- **No shared child**

**Under Oregon law, “cohabitation” requires a marriage-like relationship, not simply residing under the same roof.**

**If this element fails, the DV designation fails, and Count 1 loses its felony enhancement.**

- **No photos**
- **No medical exam**
- **No visible injuries documented**

**significant in a strangulation case, where officers are trained to document injuries and encourage medical evaluation.**

- **Result: Demand full discovery.**
- **Examine whether officers followed protocol.**
- **Assess credibility issues arising from intoxication and recantation.**

### **Motions to Consider**

- **Motion to dismiss DV enhancement (failure to meet ORS 135.230)**

- **Motion to reduce Count 1 (no aggravator = misdemeanor)**
- **Motion for judgment of acquittal on Count 2 (failure of statutory elements)**
- **Motion to compel missing evidence (bodycam, 911, medical, statements)**

#### **Critical**

- **Felony enhancement may be unsupported**
- **DV classification is questionable**
- **Menacing elements appear unmet**
- **Strangulation lacks corroboration**
- **Complainant intoxicated and recanting**
- **No medical or photographic evidence**

**Summary of issues to develop:**

**Whether the State can prove a qualifying ‘family or household member’ relationship under ORS 135.230.**

- 1. Whether Count 1 qualifies as a felony under ORS 163.187(4), and if not, whether it must be reduced.**
- 2. Whether the elements of menacing (intent, imminence, substantial step) are met.**
- 3. Whether the DV designation is legally supportable under ORS 132.586.**
- 4. Whether the evidence supports ‘impeding breathing’ as required for strangulation.**
- 5. Whether bodycam, 911 audio, medical records, and witness statements contradict the indictment.**
- 6. Whether motions to dismiss, reduce, or exclude evidence are appropriate.**
- 7. Whether the State’s theory is internally inconsistent with the physical evidence and timeline.”**

**The following analysis leads me to believe that this case appears to lack the evidentiary foundation required to sustain the charges as written**

## Reasoning:

### 1. The Indictment's Theory of Domestic Violence Status

*(Key issue: Whether the State can legally classify the alleged conduct as "domestic violence" under Oregon law.)*

**both counts depend on the State proving a qualifying "family or household member" relationship** under ORS 135.230.

requires:

"Victim is family member or household member as defined in ORS 135.230."

argument

"She was a guest staying for a little while... no shared expenses, responsibilities... two beds here... she is engaged."

Need to examine

#### A. Whether the State can prove "cohabitation" under Oregon law

The statute requires a **marriage-like relationship**, not simply living under the same roof.

"Nature of the relationship... shared residence and mutual responsibilities... presentation as a couple."

argue:

- No shared finances
- No romantic or sexual relationship
- No shared responsibilities
- Separate beds
- Temporary guest status
- She has a fiancé elsewhere

This is a **threshold issue**. If the relationship does *not* qualify, **both charges lose their DV enhancement**, and Count 1 may lose felony status entirely.

### 2. Count 1 — Strangulation (Class C Felony)

*(Key issue: Whether any statutory aggravator exists.)*

Your document correctly lists the felony-elevating factors under ORS 163.187(4):

“Victim is family or household member... victim under 10... weapon... prior convictions... pregnancy...”

Your attorney should be analyzing:

#### **A. Which aggravator the State is relying on**

The indictment itself

“The victim is a family or household member.”

This means the State is relying **solely** on the “family or household member” aggravator.

If that fails, **Count 1 collapses from a Class C felony to a Class A misdemeanor.**

#### **B. Whether the State can prove “impeding breathing”**

The indictment alleges:

“impede the normal breathing or blood circulation... by applying pressure on the throat and neck or chest...”

examine:

- medical evidence – NONE did not take her to hospital
- photographs - NONE
- officer observations -if injury was observed should have pushed for medial attention
- statements made at the scene
- whether the alleged conduct is physically consistent with “impeding breathing”

If the evidence is weak or inconsistent, this becomes a major defense point.

### **3. Count 2 — Menacing (Domestic Violence)**

*(Key issue: Whether the statutory elements are met.)*

test:

“IF the person acted intentionally... IF the act was intended to place another in fear... IF the threatened harm was imminent...”

Focus on:

## A. Intent

“When the police got here, I was asleep in my bed... no interaction going on.”

State cannot prove:

- intentional conduct
- an attempt
- imminence
- a substantial step

This is a **major evidentiary contradiction**.

## B. Imminence

“‘Imminent’ means immediate and impending, not remote or speculative.”

If the alleged threat occurred earlier, and the police found both parties in separate rooms, asleep or calm, the element of imminence is severely undermined.

## C. Substantial Step

Menacing is an **attempt** crime. ask:

- What conduct constitutes the “substantial step”?
- Is there evidence of any action taken at the time police arrived?
- Is the allegation purely retrospective?

If the only evidence is a statement made after the fact, this is a weak menacing case.

## 4. The Domestic Violence Designation

*(Key issue: Whether the DV label is legally supportable.)*

“Domestic violence designation applies when the victim and offender are in a qualifying relationship under ORS 132.586.”

Analyze:

- Whether the State can prove the relationship
- Whether the DV designation is improperly applied
- Whether the indictment’s DV language is conclusory rather than factual

If the relationship fails, **the DV designation must be removed**.

This affects:

- firearm rights
- sentencing
- probation terms
- future background checks
- federal reporting

This is not a small issue.

## **5. Evidentiary Weaknesses Your Attorney Should Be Investigating**

Should be requesting:

### **A. Body-worn camera footage**

To verify:

- my condition
- her condition
- demeanor
- statements
- physical evidence

### **B. 911 call and dispatch logs**

To determine:

- who called
- what was said
- whether the caller expressed fear
- whether the caller contradicted later statements

### **C. Medical records**

To confirm or refute:

- signs of strangulation
- injuries

- inconsistencies

#### **D. Witness statements**

To determine:

- whether anyone corroborates the allegation
- whether statements changed over time

#### **E. Prior relationship evidence**

To establish:

- no romantic relationship
- no cohabitation
- no shared finances
- no shared responsibilities

This directly attacks the DV classification.

### **6. Procedural Issues**

#### **A. Motion to Dismiss DV Enhancements**

If the relationship definition fails, the DV designation is improper.

#### **B. Motion to Reduce Count 1 to a Misdemeanor**

If no aggravator applies, Count 1 cannot be a felony.

#### **C. Motion for a Judgment of Acquittal (MJOA) on Menacing**

If the State cannot prove:

- intent
- imminence
- substantial step

Menacing cannot stand.

#### **D. Motion to Compel Discovery**

If the State has not produced:

- medical evidence



- bodycam
- witness statements
- photographs

Your attorney should be demanding them.

## **7. Narrative Issues**

“She was a guest... temporary help for a friend... she is engaged... no shared infrastructure.”

Prepare:

- a clear, consistent narrative
- corroborating evidence (texts, messages, lease, photos of separate beds)
- timeline reconstruction
- evidence of her fiancé and living situation

This is essential for undermining the DV classification.

**The State’s theory collapses when there is no physical evidence, no corroboration, and the complainant recants.”**

Let’s break this down cleanly.

■ **1. Your documents already show the legal elements require evidence.**

Both uploaded documents emphasize that the State must prove:

- **impeding breathing** for strangulation
- **intent + imminence + substantial step** for menacing
- **a qualifying domestic relationship** for DV status

Your documents explicitly note:

“There were no photographs, no medical attention, no witnesses.” “She was intoxicated at the time.” “She has been recanting beginning the day after and ever since.”

Those are **direct contradictions** to the indictment’s factual assertions.

■ **2. Lack of medical evidence is a major evidentiary weakness**

Strangulation cases normally require:

- petechiae
- bruising
- redness
- hoarseness
- difficulty swallowing
- medical evaluation
- photographs
- officer observations

Your documents state none of this exists.

A professor would say: **“Without corroboration, the State’s burden becomes extremely difficult.”**

### **3. No photographs = no contemporaneous documentation**

Your documents emphasize:

“They did not take any photographs.”

This matters because the indictment claims:

“impede the normal breathing or blood circulation... by applying pressure on the throat or neck...”

If officers believed that happened, they would normally photograph:

- the neck
- the chest
- the face
- the scene

The absence of photos is a glaring omission.

### **4. No hospital transport = no medical corroboration**

Your documents state:

“They did not take her to the hospital.”

In strangulation cases, officers are trained to **strongly encourage** medical evaluation because internal injuries can be invisible.

If they didn’t, it suggests:

- they didn’t observe signs consistent with strangulation
- they didn’t believe medical risk was present
- they didn’t see evidence supporting the allegation

This is a major point your attorney should be exploring.

### **5. She was intoxicated — credibility and reliability issues**

Your documents state:

“She was drinking at the time.”

Intoxication affects:

- perception
- memory
- reliability
- ability to recount events accurately

This is a standard credibility issue in criminal law.

## 6. Recantation is a critical factor

Your documents state:

“She has been recanting beginning the day after and has ever since.”

This is something your attorney should be aggressively pursuing:

- written recantation
- recorded recantation
- sworn affidavit
- text messages
- statements to third parties
- statements to police after the fact

Recantation does not automatically end a case, but it **dramatically weakens** the State’s position, especially when combined with:

- no injuries
- no photos
- no medical evidence
- no witnesses
- no corroboration
- no DV-qualifying relationship

This is the kind of thing a professor would call “**a structurally unsound case.**”

## ■ 7. The police finding you asleep is incompatible with “imminent threat”

Your documents state:

“When the police got here, I was asleep in my bed. She was in bed in the other room.”

This directly contradicts the indictment’s claim that you were:

“grabbing her by the throat, squeezing, while yelling that he was going to kill her.”

A professor would underline this:

**“Imminence cannot exist when the accused is asleep in another room.”**

This is a textbook failure of the statutory elements.

## ■ 8. The DV relationship element appears unsupported

Your documents emphasize:

- no romantic relationship
- no sexual relationship
- no shared finances
- no shared responsibilities
- separate beds
- temporary guest
- she has a fiancé elsewhere

Your documents correctly cite ORS 135.230 and the cohabitation factors.

A professor would say:

**“If the relationship fails, the DV designation fails, and the felony enhancement fails.”**

This is a threshold issue your attorney should be attacking immediately.

## ■ 9. What your attorney should be doing right now

Here’s the academic, professor-level list of what a competent attorney should be pursuing based on your documents:

### **A. Demand full discovery**

- bodycam

- 911 call
- dispatch logs
- officer reports
- medical records (if any)
- witness statements
- any recorded recantations

### **B. Challenge the DV classification**

Using the ORS 135.230 factors you documented.

### **C. Challenge the felony enhancement**

If DV classification fails, Count 1 cannot be a felony.

### **D. Challenge the elements of menacing**

Your documents show:

- no intent
- no imminence
- no substantial step
- no confrontation
- you were asleep

### **E. Challenge the elements of strangulation**

Your documents show:

- no medical evidence
- no photos
- no officer-observed injuries
- no corroboration

### **F. Document the recantation**

This is crucial.

### **G. Prepare motions**

- Motion to dismiss DV enhancement
- Motion to reduce Count 1
- Motion for judgment of acquittal on Count 2
- Motion to compel missing evidence

#### 10. The bottom line (professor tone)

Based solely on the documents you uploaded:

**This case appears to lack the evidentiary foundation required to sustain the charges as written.** A competent attorney should be aggressively probing the absence of corroboration, the recantation, the lack of a qualifying relationship, and the failure of statutory elements.

You've already done the hard work of assembling the statutes and the analytical framework. Your attorney now needs to do the part that only an attorney can do: **turn these weaknesses into formal motions and strategic pressure.**

If you want, I can help you turn all of this into a clean, one-page briefing sheet you can hand your attorney so he immediately understands the structural issues he should be focusing on.