

# Indiana Case Law Defining Bodily and Serious Bodily Injury

## IC 35-31.5-2-29

### "Bodily injury"

Sec. 29. "Bodily injury" means any impairment of physical condition, including physical pain.

*As added by P.L.114-2012, SEC.67.*

## IC 35-31.5-2-204.5

### "Moderate bodily injury"

***Effective 7-1-2014.***

Sec. 204.5. "Moderate bodily injury" means any impairment of physical condition that includes substantial pain.

*As added by P.L.158-2013, SEC.376.*

## IC 35-31.5-2-292

### "Serious bodily injury"

Sec. 292. "Serious bodily injury" means bodily injury that creates a substantial risk of death or that causes:

- (1) serious permanent disfigurement;
- (2) unconsciousness;
- (3) extreme pain;
- (4) permanent or protracted loss or impairment of the function of a bodily member or organ; or
- (5) loss of a fetus.

*As added by P.L.114-2012, SEC.67.*

## SUMMARY

### Bodily injury

- Pain alone qualifies
- Pokes in the head and a shove

### Serious bodily injury-sufficient

- No bright line rule to differentiate from "bodily injury"
- Victim on crutches/unable to work for months
- Lacerations to head and face requiring stitches
- Contusions to temple, black eye, vision problems, lingering headaches; even though victim discounted injuries at trial, jury could infer that there was extreme pain based on other testimony, photographs, and medical records
- victim was hit in the face and chest with a pool cue, kicked repeatedly for several minutes, had his leg broken in 3 places, was in the hospital for 4 days and in a cast for 3 months, and still walking with a limp at trial
- a brick can be a deadly weapon sufficient to support conviction for serious bodily injury

- victim suffered severe injuries and heavy bleeding and swelling; he spent 2 days/nights at the hospital, and medical records showed he had fractures around his eyes and other facial trauma, rib fractures, and a punctured lung
- victim's testimony that defendant repeatedly struck her with a belt, causing severe pain and leaving marks on her body (victim under the age of 14)
- victim passed out in the yard when she attempted to get help and suffered multiple abrasions, contusions, and tenderness over her entire body and described her pain as severe
- permanent loss of a tooth sufficient to sustain conviction for aggravated battery
- testimony that assailant struck her repeatedly with hands and fists, causing her severe pain and leaving marks on her body
- medical records showed that victim was prescribed pain medication, suffered fractures to nasal bones and other facial trauma as well as bruising, and continued to experience pain and other effects from the injury 2 years later
- out of consciousness for a minute after assailant hit her, and had pain around her face and head for about a week; emergency room records showed she thought she may have blacked out for a few seconds and complained of pain\*
- a forceful blow to the back of the head knocking the victim down and causing him to remain in a semiconscious state for a short period\*
- testimony that victim was knocked unconscious and suffered a concussion and fractured nose
- victim testified that assailant choked him, struck him in the face and head, hit him in the head with a flat iron, and repeatedly stabbed him in the head with a fork, which injury required 18 stitches; unnecessary for state to prove extreme pain
- victim's injuries required surgery and 2 days of hospitalization, and physician testified as to the extent of the injuries
- broken nose, eyes swollen shut, lacerations and bruises to face, neck, chest, and extremities, and 20 stitches required for nose and head injuries
- proof shown that victim sustained a large laceration requiring 17 stitches, extreme pain, unconsciousness, disfigurement, and a black eye
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\* this was found under IC 35-41-1-25, repealed, defining SBI as 1) serious permanent disfigurement, 2) unconsciousness, 3) extreme pain, or 4) permanent or protracted loss or impairment of the function of a bodily member or organ

Serious bodily injury – Insufficient:

Davis v. State, 813 N.E.2d 1176 (INSC 2004): The court said an assault resulting in an abrasion on the victim's knee, a laceration to her upper lip, and a fractured little finger were insufficient to meet the statutory definition for serious bodily injury. Deference to fact finder not absolute.

Hand v. State, 863 N.E.2d 386 (INCA 2007): DV situation where husband hit wife several times causing 2 black eyes and bruising to her mouth, shoulders, and hand; for 4-5 days she said she put ice and hot packs on her injuries to keep the swelling down and lessen the bruising. However, at trial no evidence of extreme pain was presented and she downplayed the incident at trial; photographs of injuries were insufficient where there were no broken bones, she did not seek medical attention, and there was no evidence that she took any pain medication for her injuries.

BODILY INJURY – specific case facts:

Bailey v. State, 979 N.E.2d 133 (INSC 2012): The IN Supreme Court says that any pain is bodily injury. Pain alone is sufficient to prove bodily injury. That case explicitly rejects a threshold standard of physical pain to qualify as bodily injury (defendant poked victim in the head repeatedly and later shoved her – sufficient for bodily injury).

SERIOUS BODILY INJURY: this is a little murkier and seems to be very fact sensitive, but I found several cases that address it.

Vaillancourt v. State, 695 N.E.2d 606 (INCA 1998) held that the term “extreme pain” could be understood by persons of average intelligence and is therefore not unconstitutionally vague (also under IC 35-41-1-25 as above).

Sufficient:

Minniefield v. State, 569 N.E.2d 734 (INSC 1991): D appealed on sufficiency of evidence for "serious bodily injury." The victim had to walk with crutches and was unable to work for several months; the court said his injuries were in line with injuries in previous cases where the victim was found to have suffered serious bodily injury, and noted that "whether bodily injury is 'serious' is a question of degree and...reserved for the fact finder."

Williams v. State, 520 N.E.2d 1261 (INSC 1988): evidence of lacerations to head and face requiring stitches was "ample" to show serious bodily injury.

Sutton v. State, 714 N.E.2d 694 (INSC 1999): victim suffered contusion to temple, plus injuries extensive enough that physician ordered Xrays to determine whether she had facial fractures, also black eye, vision problems, and lingering headache were substantial evidence of probative value for the finder of fact to determine it was serious bodily injury, even where the victim discounted the injuries during the trial.

Judy v. State, 470 N.E.2d 380 (INSC 1984): evidence was sufficient to support a finding of serious bodily injury where the victim testified that he was hit in the face and chest with a pool cue, kicked repeatedly for several minutes, had his leg broken in 3 places, was in the hospital for 4 days and in a cast for 3 months, and still walking with a limp at trial.

Treadway v. State, 924 N.E.2d 621 (INSC 2010): a brick can be a deadly weapon sufficient to support conviction for serious bodily injury.

Mendenhall v. State, 963 N.E.2d 553 (INCA 2012): evidence sufficient where victim suffered severe injuries and heavy bleeding and swelling; he spent 2 days/nights at the hospital, and medical records show he had fractures around his eyes and other facial trauma, rib fractures, and a punctured lung. Court said it gives considerable deference to the fact finder, there is no bright line rule to differentiate bodily injury from serious bodily injury, but the evidence here is sufficient.

Kimbrough v. State, 911 N.E.2d 621 (INCA 2009): “the amount of time that [victim] was in pain from the injury that [defendant] inflicted with the table leg was relevant as to whether that object constituted a deadly weapon. Put another way, if it was established that [victim] sustained pain for a long period of time after being hit with the table leg, it was more probable that the table leg inflicted--or was readily capable of inflicting--serious bodily injury. Therefore, evidence regarding the duration of [victim’s] pain was highly probative as to whether Kimbrough used the table leg as a deadly weapon when committing the battery.

Whitlow v. State, 901 N.E.2d 659 (INCA 2009): “[Victim/juvenile’s] testimony that [defendant] repeatedly struck her with a belt, causing severe pain and leaving marks on her body is sufficient to support [defendant’s] conviction for battery resulting in serious bodily injury.

Hurst v. State, 890 N.E.2d 88 (INCA 2008): SBI affirmed where a 285 lb. man repeatedly punched, hit, and kicked a 120 lb. woman over 2 hours; victim passed out in the yard when she attempted to get help and suffered multiple abrasions, contusions, and tenderness over her entire body and described her pain as severe.

Smith v. State, 881 N.E.2d 1040 (INCA 2008): permanent loss of a tooth sufficient to sustain conviction for aggravated battery.

Buckner v. State, 857 N.E.2d 1011 (INCA 2006): A stun gun is a deadly weapon; victim’s testimony that assailant struck her repeatedly with hands and fists, causing her severe pain and leaving marks on her body, was sufficient to support a conviction for battery as a class C felony.

Fleming v. State, 833 N.E.2d 84 (INCA 2005): aggravated battery – element “substantial risk of death” does not require expert testimony (Wilcher v. State, 771 N.E.2d 113) and neither does “protracted loss or impairment of the function of a bodily member or organ.” Even though no medical expert testified, medical records showed that victim was prescribed pain medication, suffered fractures to nasal bones and other facial trauma as well as bruising, and continued to experience pain and other effects from the injury 2 years later – this was sufficient evidence of serious bodily injury.

Jones v. State, 810 N.E.2d 777 (INCA 2004): victim testified that she was out of consciousness for a minute after assailant hit her, and had pain around her face and head for about a week; emergency room records showed she though she may have blacked out for a few seconds and complained of pain – sufficient to prove serious bodily injury (but this was under IC 35-41-1-25, repealed, defining SBI as 1) serious permanent disfigurement, 2) unconsciousness, 3) extreme pain, or 4) permanent or protracted loss or impairment of the function of a bodily member or organ).

Beanblossom v. State, 530 N.E.2d 741 (INSC 1988): a forceful blow to the back of the head knocking the victim down and causing him to remain in a semiconscious state for a short period sufficient proof of bodily injury (again, under IC 35-41-1-25, repealed).

Isaacs v. State, 673 N.E.2d 757 (INSC 1996): testimony that victim was knocked unconscious and suffered a concussion and fractured nose sufficient evidence of serious bodily injury.

Channell v. State, 658 N.E.2d 925 (INCA 1995): court rejected challenge to sufficiency of evidence of SBI based on the fact that the state did not show victim was in extreme pain; victim testified that assailant choked him, struck him in the face and head, hit him in the head with a flat iron, and repeatedly stabbed him in the head with a fork, which injury required 18 stitches.

Scott v. State, 632 N.E.2d 761 (INCA 1994): no error for lower court to dismiss defendant’s motion to dismiss battery charge where victim’s injuries required surgery and 2 days of hospitalization, and physician testified as to the extent of the injuries.

Dausch v. State, 616 N.E.2d 13 (INSC 1993): broken nose, eyes swollen shut, lacerations and bruises to face, neck, chest, and extremities, and 20 stitches required for nose and head injuries sufficient to prove SBI.

McGee v. State, 495 N.E.2d 537 (INSC 1986): sufficient evidence of SBI presented where proof shown that victim sustained a large laceration requiring 17 stitches, extreme pain, unconsciousness, disfigurement, and a black eye.