AA. DEFINITIONS

TITLE: Brook v. State
INDEX NO.: AA.
CITE: (2d Dist. 5/26/83), Ind. App., 448 N.E.2d 1249
SUBJECT: Definitions - sawed-off shotgun
HOLDING: D's conviction for dealing in sawed-off shotguns was pro-per where gun conformed to statutory definition: shotgun having one or more barrels less than 18 inches & any weapon made from a shot-gun if overall length is less than 29 inches (Ind. Code 35-23-9.1-1, now Ind. Code 35-47-1-10). Here, D possessed shotgun with 15 7/8 inch barrel & overall length of 29 inches. D contends "&" in statute requires both short barrel & short overall length. Ct. finds 2 legislative intentions revealed in statute: short barrel yields decreased range thus, shotgun has minimal utility as hunting/sporting tool; short overall length renders shotgun concealable & more likely to be used as a weapon. Held, conviction for dealing in sawed-off shotguns affirmed.

TITLE: Doss v. State
INDEX NO.: AA.
CITE: (4th Dist. 9/27/84), Ind. App., 470 N.E.2d 732
SUBJECT: Definitions - possession
HOLDING: Tr. Ct. erred in giving instruction defining "possession" which failed to state possession requires knowing exercise of control. Possession as used in Ind. Code 35-47-5-4 (dealing in sawed off shotgun), is not defined by code; Ct. presumes legislature intended word to have plain, ordinary meaning. Brook, App., 448 N.E.2d 1249. Black's Law Dictionary definition of possession includes knowingly. See Fyock, 436 N.E.2d 1089 (constructive possession requires knowledge of object's presence/nature). Here, D tendered instruction defining possession as "knowing exercise," which Tr. Ct. refused. Importance of instruction reflected by jury's request of copy of instruction during deliberations. Held, reversed.

TITLE: Gaunt v. State
INDEX NO.: AA.
CITE: (12/30/83), Ind., 457 N.E.2d 211
SUBJECT: Definitions - dwelling; attached garage
HOLDING: Conviction for Class B burglary (dwelling), Is not contrary to law where D broke into garage attached to home. Abbott, App., 371 N.E.2d 721. Here, Ct. rejects D's contention that case can be distinguished from Abbott because garage in that case contained freezer full of food & was used for family recreation (pool table). Ct. notes this garage was attached to house, contained interior connecting door & was used for household storage (a purpose connect to family living). "It is enough that [D] entered a private part of the [victim's] dwelling." Davis, App., 376 N.E.2d 545. Held, conviction affirmed.

TITLE: Hunter v. State
INDEX NO.: AA.
CITE: (5/21/86), Ind., 492 N.E.2d 1067
SUBJECT: Definitions - aspiration
HOLDING: Ct. rejects D's contention that no evidence of essential element of aspiration (removal of automobile from one place to another) was presented at his trial for armed robbery. Evidence of aspiration need only show that item was moved a slight distance; distance need not be substantial. Neal, 14 N.E.2d 590. Here, owner testified that although D did not leave scene of robbery in car, he did drive car into ditch where it became stuck. When owner returned to scene with sheriff, car was not in place where he left it. This is sufficient evidence to prove aspiration. Held, conviction affirmed.

RELATED CASES: Coleman, 339 N.E.2d 51 (reasonable fear of use of force/violence, when combined with aspiration, is sufficient to sustain kidnapping conviction).

TITLE: Irvin v. State
INDEX NO.: AA.
CITE: (2d Dist. 12/31/86), Ind. App., 501 N.E.2d 1139
SUBJECT: Definitions - exert control over property
HOLDING: Evidence was insufficient to support finding that D exerted control over stolen car where she was merely passenger in car which her boyfriend was driving. Ct. finds very little IN authority as to precise meaning of "exerts control." Word "possess" is contained in statutory definition (Ind. Code 35-43-4-1(a)), however, Ct. finds definition circular in that possession of a thing means having it under one's control, *citing* Williams, 253 N.E.2d 242. Ct. looks to other jurisdictions to find that mere passenger does not exert control. Ct. distinguishes Correll, 486 N.E.2d 497, there D exerted control over car in which he was a passenger by forcing driver at gun point to follow his directions. Ct. rejects state's argument that lesser degree of control distinguishes criminal conviction from theft. Held, conviction reversed.

TITLE: Johnson v. State
INDEX NO.: AA.
CITE: (11/17/83), Ind., 455 N.E.2d 932
SUBJECT: Definitions - deadly weapon
HOLDING: An automobile can be deadly weapon if used or intended to be used in manner readily capable of causing serious bodily harm even though an automobile is not particularly defined as a deadly weapon by statute. See Ind. Code 35-41-1-2, now Ind. Code 35-41-1-8. Here, D struck 2 women individually with her car, following an altercation between the 3 women. Held, attempted murder convictions affirmed.

RELATED CASES: Perry, 500 N.E.2d 1205 (Rape 51(1); tear gas pistol); Clark, 498 N.E.2d 918 (Rob 24.1(3); BB pistol); Maynard, 490 N.E.2d 762 (A & B 80; tire iron); Corder, 467 N.E.2d 409 (baseball bat); Lamb, 462 N.E.2d 1025 (Rape 51(4); screwdriver used in threatening manner & accompanied by verbal threats); Glover, 441 N.E.2d 1360 (pellet gun); Murphy, App., 453 N.E.2d 1026 (shotgun used as bludgeon); Williams, App., 451 N.E.2d 687 (pellet gun); Pettit, App., 439 N.E.2d 1175 (unloaded firearm).

TITLE: Jones v. State
INDEX NO.: AA.
CITE: (1st Dist. 12/15/83), Ind., 457 N.E.2d 231
SUBJECT: Definitions - dwelling; cabin retreat
HOLDING: Evidence was sufficient to sustain conviction for Class B burglary (dwelling) where 3-room log cabin was furnished, used by owner/family members/friends often & owner slept overnight in cabin on day of burglary. Here, D *cites* 3 cases decided under predecessor statute holding that summer fishing camps/temporary retreats are not dwellings. Ct. notes when legislature amends statute, presumption arises legislature intended to change law. IN Alcoholic Beverage Comm. v. OSCO Drug, Inc., App., 431 N.E.2d 823. Where prior provisions were construed by Ct's., it is presumed legislature was responding to those appellate decisions in replacing such provisions. Matter of the Estate of Waltz, App., 408 N.E.2d 558. Ind. Code 35-41-1-2 defines dwelling to include "place of lodging." Websters defines lodging to include temporary place to stay/sleeping accommodations. Ct. finds statute includes this cabin. Because owner was staying in cabin on night of burglary, case also governed by Smart, 190 N.E.2d 650, decided under predecessor statute. Held, conviction affirmed.

TITLE: Keith v. State
INDEX NO.: AA.
CITE: (06-20-19), Ind. Ct. App., 127 N.E.3d 1221
SUBJECT: Mental injuries do not qualify as "bodily injury"
HOLDING: State failed to prove beyond a reasonable doubt that burglary resulted in serious bodily injury sufficient to elevate Defendant's offense to a Level 1 felony. During trial, the victim's sons testified that after the offense, their father's Alzheimer's dementia had taken a downward spiral and he was ultimately taken to a psychiatric hospital and transferred to an assisted living facility. The victim was not expected to return home or live independently again. Additionally, the victim's neurologist opined that his changes in behavior were likely caused by the offense because victim had experienced a rapid, acute decline immediately after the events. The State thus alleged that Defendant had caused serious bodily injury in the form of "permanent or protracted loss or impairment of the function of [the victim's] min."

Court of Appeals reversed, noting that a serious bodily injury must be a bodily injury, which is defined as "any impairment of physical condition." Ind. Code § 35-31.5-2-292. "Although the mind has a physical location in the brain, its functioning is primarily mental, not physical. Thus, any impairment to its functioning is not primarily the impairment of a physical condition. To hold otherwise would be to eviscerate the meaning of the term 'physical condition' and would conceivably allow the State to charge a defendant with an offense resulting in serious bodily injury whenever it negatively impacted the victim's mental state." Held, Level 1 felony burglary conviction reversed and remanded for resentencing as a Level 3 felony.

TITLE: Lewis v. State
INDEX NO.: AA.
CITE: (4th Dist., 12-24-08), Ind. App., 898 N.E.2d 429
SUBJECT: Bodily injury - sufficient evidence
HOLDING: Evidence was sufficient to support Defendant's conviction for Robbery Resulting in Bodily Injury as a Class B felony. "Bodily injury" is defined as "any impairment of physical condition, including physical pain." Here, victim testified that Defendant punched him with his fist "pretty hard." Although the victim testified that "it didn't feel good," in response to the prosecutor's question of whether it hurt, he responded "I don't think I was worried about [it] at the time. I think my adrenaline was running." Although the victim may have gamely attempted to minimize the physical pain he felt by stating that his adrenaline was running, the jury was free to infer from his comments that he was hit "pretty hard" and that "it didn't feel good" that he indeed felt physical pain, thus experiencing bodily injury. Held, judgment affirmed; Crone, J., concurring to clarify that this decision does not suggest that any degree of pain, no matter how slight, is sufficient to constitute bodily injury; Kirsch, J., dissenting on basis that the jury could only speculate as to whether the punch amounted to pain, which is insufficient to support the Class B felony.

TITLE: McDonald v. State
INDEX NO.: AA.
CITE: (9/2/82), Ind., 439 N.E.2d 588
SUBJECT: Definitions - "dwelling"
HOLDING: "'Dwelling' means a building, structure, or their enclosed space, permanent or temporary, movable or fixed, that is a person's home or place of lodging." Ind. Code 35-41-1-2, now Ind. Code 35-41-1-10. Four room house (furnished with stove, refrigerator & bed) to which utilities were connected but not operational & in which owner's son stayed while painting & remodeling it was a dwelling. Held, conviction affirmed.

TITLE: Nelson v. State
INDEX NO.: AA.
CITE: (2nd Dist., 4-30-96), Ind. App., 664 N.E.2d 386
SUBJECT: Serious bodily injury
HOLDING: Death is included in definition of serious bodily injury under Ind. Code 35-41-1-25, construing language "creates a substantial risk of death". Here, robbery conviction was elevated to class A felony because victim was fatally shot.

TITLE: Ricks v. State
INDEX NO.: AA.
CITE: (3d Dist. 3/29/83), Ind. App., 446 N.E.2d 648
SUBJECT: Definitions - serious bodily injury (SBI)
HOLDING: Evidence of unconsciousness, substantial pain & impaired function of victim's back, neck & shoulders supports Class C battery conviction. Here, D struck 83-year-old, "somewhat retarded" man with his open hand, causing victim to fall to the floor & strike his head on a door casing. D then struck victim twice more with his closed fist. Victim's injuries included a laceration to the forehead, black eye, brief unconsciousness & pain in neck, shoulder & back which persisted for a month. Ct. finds: "In the case before us it cannot be said that the evidence established such unconsciousness, extreme pain or protracted impairment of function, or combination thereof, that it can properly be said that the fact finder was within its province in finding `serious bodily injury.'" Nonetheless, given standards of appellate review, Ct. finds substantial evidence to sustain conviction. No medical evidence was presented; victim never consulted a physician. Ct. recommends that state proffer competent professional medical evidence in cases of this kind. Held, conviction affirmed.

RELATED CASES: Jones, App., 810 N.E.2d 777 (victim's testimony that she was unconscious for a "minute," was hurt when D hit her & suffered pain around her face & head for about a week (supported by medical documents) sufficiently established SBI); Lipka 479 N.E.2d 575 (Rob 26; whether injury is "serious" is question of fact, see Barbee, 369 N.E.2d 1072; ¼ inch puncture wound to chest, which required medical attention at scene & hospital, constituted SBI; Ct. distinguishes Hill, 424 N.E.2d 999 where robber struck passerby with toy gun causing ¼ inch laceration to forehead, which was not SBI); Larry, 477 N.E.2d 94 (Rob 11; officer who received bruises on upper leg & buttocks from fall when jumping from path of D's car did not suffer SBI); Phares, App., 506 N.E.2d 65 (Indict 113; it was not necessary to allege specifics of SBI, *citing* Moody, 448 N.E.2d 660; SBI proven where 8 stitches were required to close head wound; see also Bailey, 472 N.E.2d 1260); Miller, App., 449 N.E.2d 1119 (Negl 144; SBI shown where victim testified she was shot in arm, suffered pain, lost use of arm for 2 months & was hospitalized for 9 days; evidence of bullet wound is sufficient to support finding of great bodily harm, *citing* Padgett, App., 380 N.E.2d 96).

TITLE: Sheppard v. State
INDEX NO.: AA.
CITE: (4th Dist. 11/5/85), Ind. App., 484 N.E.2d 984
SUBJECT: Coercion
HOLDING: Evidence was insufficient to support D's conviction for AOJ. Here, D made phone call to robbery witness (who was acquaintance of 2 years & employee of business robbed) on 7/26, asking her not to pick him out of lineup. On 7/16, D wrote witness letter asking her not to identify him. D made at least one other phone call to witness, who then contacted police in an effort to stop D from harassing her. Phone call on 7/26 was basis of AOJ charge. Ct. extensively discusses meaning of word "coercion," dictionary & case law definitions. Ct. finds D did not exert pressure on will of witness; therefore, D did not "coerce" witness, as word is used in OJ statute. Absent any indication to witness of consequences of her failure to obey D's instructions, his statement to her amounts to nothing more than a request. Held, conviction reversed. Conover DISSENTS, finding coercion.

TITLE: Smith v. State
INDEX NO.: AA.
CITE: (4th Dist., 4-22-96), Ind. App., 664 N.E.2d 758
SUBJECT: Estate is "person" within meaning of theft statute
HOLDING: Although estate is not specifically included within definition of "person" as defined under Ind. Code 35-41-1-22, Ct. held that decedent's estate is person for purposes of theft statute. Accordingly, there was no reversible error in allowing State to amend charging information or in charging D with theft of over $100,000 from estate. Like corporation, Limited Liability Company, partnership, unincorporated association, or government entity, estate is fictitious legal entity which may possess property & be subject of crime against that property. Held, conviction affirmed.

RELATED CASES: Pagan, App., 809 N.E.2d 915 *overruled* on other grounds, Davidson v. State, 926 N.E.3d 1023 (Ind. 2010) (sole proprietorship may qualify as a "person" that can be victim of crime).

TITLE: Stepp v. State
INDEX NO.: AA.
CITE: (11/7/84), Ind., 470 N.E.2d 66
SUBJECT: Definitions - bodily injury (BI)
HOLDING: Evidence was sufficient to sustain D's conviction for Class A attempted robbery. Here, D contends there was insufficient proof of BI because victim did not seek medical attention for his wounds. Victim was struck in arm by shotgun pellets. Victim testified to digging pellets out of his arm & to swelling. Victim's arm bore scars from wounds in 4 places on day of trial. Ind. Code 35-41-1-2 defines BI as "any impairment of physical condition, including physical pain." Held, conviction affirmed.

RELATED CASES: Bailey, 979 N.E.2d 133 (Ind. S. Ct. 2012) (because any physical pain is sufficient to prove bodily injury, D's wife's testimony that the poking and shoving hurt was sufficient to prove the bodily injury element of domestic battery); Toney, 961 N.E.2d 57 (Ind. Ct. App. 2012) (evidence that victim suffered physical pain satisfied bodily injury element of class A felony burglary); Lewis, App., 898 N.E.2d 429 (victim's testimony that the D hit him "pretty hard" and that "it didn't feel good" was sufficient to prove physical pain and thus bodily injury); Payne, 484 N.E.2d 16 (Rob 2; robbery statute, which incorporates definition of BI is not unconstitutionally vague; here, D struck victim in face, bruising face & making jaw sore for several days); Outlaw 484 N.E.2d 10 (BI suffered by purse snatch victim who resisted was natural/probable consequence of events/circumstances surrounding robbery, *citing* Moon, 419 N.E.2d 740; held, conviction affirmed); Brown, 480 N.E.2d 938 (Rob 24.1(2); bump, red marks, & pain lasting 2-3 days, caused by being struck with handgun barrel, constitutes BI).