

Physical Injury

“Physical injury” means impairment of physical condition or substantial pain. ORS 161.015(7). Physical injury must result from some form of external violence that produces a harmful effect upon the body. *See State v. Capwell*, 52 Or App 43, 47 (1981).

I. Impairment of physical condition – Harm to the body that results in a reduction in one’s ability to use the body or a bodily organ for less than a protracted period of time. *State v. Higgins*, 165 Or App 442, 446-47 (2000). The impairment must be material rather than de minimis, and materiality is a function of case-specific circumstances including the character, degree, and duration of the asserted impairment. *State v. Hendricks*, 273 Or App 1, 11, 359 P3d 294, 300 (2015).

- A. Scratches and scrapes with no accompanying pain and requiring no medical attention are insufficient to constitute physical injury. *Higgins*, 165 Or App at 447.
- B. The defendant pulling clumps of the victim’s hair out was insufficient to demonstrate physical injury by impairment of physical function given a lack of evidence regarding whether the victim’s scalp was left exposed, whether the lost hair interfered with protection of the victim’s skin or temperature regulation, or even whether the lost hair was noticeable to anyone including the victim. *State v. Lewis*, 266 Or App 523, 527 (2014).
- C. The defendant, who pushed the victim causing him to fall and hit his head resulting in a small, half-inch gash, caused physical injury because the gash impaired the ordinary function of the skin, a bodily organ, by causing bleeding that resulted in medical personnel advising a hospital visit and impinging the skin’s ability to protect the inner body from infection. *State v. Hart*, 222 Or App 285, 292 (2008).
- D. A swollen lip interferes with the ordinary function of the mouth, and thus constitutes physical injury. *Higgins*, 165 Or App at 448 (citing *State v. Cetto*, 66 Or App 337, 340 (1984) *rev den*, 296 Or 712 (1984) *overruled on other grounds by State v. Larson*, 139 Or App 294 (1996)).
- E. Defendant caused physical injury when he forcefully covered the victims face with a pillow for five seconds, completely preventing her from breathing and forcing her into “survival mode.” *Hendricks*, 273 Or App at 12-13.

- F. Physical injury was found as a result of impairment of physical condition after the defendant dragged the victim off her bed onto a hardwood floor, into the hallway hitting the doorjamb on the way out, and into another room where he kicked her in the torso and struck her head against the floor several times. The victim testified that she had difficulty conducting normal activities such as using stairs or lifting small objects as a result. *State v. Glazier*, 253 Or App 109, 113 (2012) *rev den*, 353 Or 280 (2013)

II. Substantial pain – The degree and duration of the pain suffered by the victim must be ample or considerable to establish substantial pain rather than fleeting or inconsequential. *Lewis*, 266 Or App at 527.

- A. While the defendant may have caused “some pain” when he pulled clumps of the victim’s hair out, as evidenced by her yelling “ouch, stop it” a couple of times, the evidence was insufficient to demonstrate substantial pain based on the duration and magnitude of the pain. *Id.* at 529-30.
- B. Evidence was insufficient to demonstrate substantial pain when the defendant struck a car window, causing it to shatter and scatter glass onto a sleeping toddler who said “owie” and pointed to a couple of tiny cuts. *State v. Anderson*, 221 Or App 193, 194-95 (2008).
- C. The victim testified that it “hurt” and caused a “stinging sensation” when the defendant kicked and hit him with a gas can, but he suffered no bruising, sought no medical attention, and did not miss any work. Thus, the record was insufficient to support a finding of substantial pain given that no evidence indicated the pain was anything more than fleeting. *Capwell*, 52 Or App at 46-47.
- D. The state’s evidence, if believed, that a victim’s pain was at first sharp, 3 or 4 on a scale of 1-10, and then throbbing for about 24 hours after being kicked in the arm by the defendant was sufficient to support a finding of substantial pain even without bruising or medical attention. *State v. Poole*, 175 Or App 258, 261 (2001).
- E. A victim suffered substantial pain when she had a headache lasting an hour or so after being struck in the head by a closed umbrella. *State ex rel. Juvenile Dep’t of Multnomah Cty. v. Greenwood*, 107 Or App 678, 682 (1991).
- F. Evidence that the victim’s shoulder “popped” during the attack, that she was still in pain at least an hour after the attack, with a swollen eye, tender elbow and back, was sufficient to support a finding of substantial pain. *State v. Pipkin*, 245 Or App 73, 77 (2011) *aff’d*, 354 Or 513 (2013).