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STATE OF CONNECTICUT *v.* MORLO M.*
(AC 41474)

Alvord, Bright and Norcott, Js.

Syllabus

Convicted of the crimes of assault in the first degree, risk of injury to a child and unlawful restraint in the first degree in connection with the beating of the victim, who was the mother of his four minor children, the defendant appealed to this court, claiming that the evidence was insufficient to support his convictions. The defendant had dragged the victim by her hair down stairs into the basement of their home, where he kicked, punched and choked her on three consecutive nights while the children, who ranged in age from fifteen months to thirteen years, were alone on the upper floors of the home. After the defendant left the house on the third day, the victim was brought to a medical center, where staff members observed bruising on her scalp, face, chest, back, legs, arms and left side. The victim also was determined to have had a subconjunctival hemorrhage in her left eye, a broken rib and fluid in her pelvic region. *Held*:

1. The defendant could not prevail on his claim that the state failed to prove that he caused the victim serious physical injury and, thus, that the evidence was insufficient to support his conviction of assault in the first degree: the jury reasonably could have found that the defendant caused the victim to suffer either serious disfigurement or a serious loss or impairment of the function of any bodily organ and, thus, a serious physical injury, as the victim and C, a medical center staff member, testified consistently with one another as to the extensive bruising that covered much of the victim's body, the noticeable injuries to her head and face, and that the victim had lost consciousness during one of the defendant's beatings of her, which the jury was free to credit or disregard; moreover, C testified that the bruising was literally everywhere on the body of the victim, who had a subconjunctival hemorrhage in her left eye, and a police officer who took the victim's statement at the medical center saw that she was missing hair and had a swollen face and a bloodshot eye.
2. The defendant's claim that the evidence was insufficient to support his conviction of risk of injury to a child was unavailing; the jury reasonably could have inferred that the defendant put the children at risk of impairment of their health or morals, as the children had no access to parental care during the three nights when he beat the victim in the basement and did not permit her to leave the basement until the morning, the jury was free to credit a psychologist's testimony that the children may have been traumatized as a result of having observed the extensive physical injuries to the victim, and the state did not have to prove actual harm to the children, as the defendant was charged under the portion of the risk of injury statute (§ 53-21 (a) (1)) that required that he have the general intent to perform an act that created a situation that put the children's health and morals at risk of impairment.
3. The evidence was sufficient to support the defendant's conviction of unlawful restraint in the first degree, as the defendant's intent to unlawfully restrain the victim was independent from his intent to assault her: the jury reasonably could have found that the defendant evinced an intent to restrict the victim's liberty to move freely within the house when he seized her by her hair and dragged her into the basement and separately could have reasonably found that he evinced an extreme indifference to human life on the basis of his independent acts of kicking, punching and choking the victim in the basement for three consecutive nights; moreover, the jury reasonably could have found that the defendant's act of dragging the victim down a full flight of stairs by her hair subjected her to a substantial risk of injury, as it presented a real or considerable opportunity for her to have suffered an impairment to her physical condition or to have suffered pain.

Argued March 10—officially released July 7, 2020

Procedural History

Two substitute informations charging the defendant, in the first case, with five counts of the crime of risk of injury to a child and with one count of the crime of tampering with a witness, and, in the second case, with the crimes of assault in the first degree, unlawful restraint in the first degree and strangulation in the first degree, brought to the Superior Court in the judicial district of Fairfield, where the court, *Kavanewsky, J.*, granted the state's motion for joinder; thereafter, the matter was tried to the jury before *Pavia, J.*; verdicts and judgments of guilty of five counts of risk of injury to a child, tampering with a witness, assault in the first degree and unlawful restraint in the first degree, from which the defendant appealed to this court. *Affirmed*.

Judie Marshall, assigned counsel, with whom, on the brief, was *David J. Reich*, assigned counsel, for the appellant (defendant).

Linda F. Currie-Zeffiro, assistant state's attorney, with whom, on the brief, were *John C. Smriga*, state's attorney, and *Colleen Zingaro*, supervisory assistant state's attorney, for the appellee (state).

ALVORD, J. The defendant, Morlo M., appeals from the judgments of conviction, rendered following a jury trial, of one count of assault in the first degree in violation of General Statutes § 53a-59 (a) (3), five counts of risk of injury to a child in violation of General Statutes § 53-21 (a) (1), and one count of unlawful restraint in the first degree in violation of General Statutes § 53a-95 (a).[1] On appeal, the defendant claims that the evidence was insufficient to support his convictions. We disagree and, accordingly, affirm the judgments of the trial court.

The following facts, which the jury reasonably could have found, and procedural history are relevant to this appeal. In the early morning hours of November 28, 2016, the victim, who is the mother of the defendant's four minor children, called the defendant from a gas station to ask that he pick her up and drive her back to the house where they both resided. The victim had been out drinking with someone other than the defendant. Soon after the victim and the defendant arrived at the house, the defendant seized the victim by her hair, dragged her down to the basement of the house, and proceeded to beat her. The defendant kicked, punched, and choked the victim. During this time, the victim's seven children were asleep on upper floors of the house[2] and, thus, did not witness the victim being dragged down into the basement by the defendant. The victim could not leave the basement until the defendant ceased beating her. Subsequently, in the morning of November 28, the victim and the defendant emerged from the basement and sat on their living room couch. The victim remained on the couch throughout the daytime hours of November 28 because of the injuries she sustained from the defendant's beating of her. While the victim remained on the couch, her older children were at school, and her sixteen year old nephew assisted her by caring for her young children. Following the older children's return from school, all of the children were fed and went upstairs.

At nighttime on November 28, 2016, the defendant commanded the victim to return down into the basement. The victim obeyed the defendant's command because she was already hurt and did not want to defy him. The children were upstairs and in their beds when the victim and the defendant went down into the basement. Once they were in the basement, the victim again was beaten by the defendant. The defendant hit and choked the victim, and ripped out parts of her hair.

In the early morning of November 29, 2016, the victim emerged from the basement after a second night of being beaten. The victim's children were still asleep when the victim came up from the basement. The victim spent that day as she spent the day before, resting on

the couch. Although she did not know the extent of her injuries, the victim was in pain and thought that she might have broken ribs. Following the return of the older children from school, all the children were fed and then went upstairs. The victim again was beaten on November 29 for a third night in a row. On one of the three nights during which she was beaten, the victim lost consciousness. Following the beatings, the victim's side and head in particular were hurting her.

When the defendant left the house on the third day, the victim contacted a friend, F, who picked up the victim, her seven children, and her nephew, and took them all to a hotel. The victim left the house in a rush, fearing that if she remained there any longer, she would die. The victim's injuries were visible and seen by her children. While at the hotel, the victim, a veteran of the armed forces, called her peer counselor at the United States Veterans Administration Hospital. The victim informed her counselor that she was in pain, had a limited amount of money, and needed to travel to her foster mother in Georgia. The victim's counselor first encouraged the victim to seek treatment at the Veterans Affairs Medical Center in West Haven (medical center). On December 2, 2016, after encouragement from her counselor and because she remained in pain, wanted to know the extent of her injuries, and desired treatment, the victim went to the medical center with her children and nephew. At the medical center, the victim had her injuries photographed, vitals measured, and body imaged. A blood test was also performed. Staff at the medical center observed that the defendant had bruising on her scalp, face, chest, back, legs, arms, and left side. Some of the bruises were more recent than others. The victim also had a subconjunctival hemorrhage in her left eye, parts of her hair torn out, and tenderness in sections of her body, particularly her left chest and left abdomen.

The victim told medical center staff that over the last few days she had been kicked, punched, dragged by her hair, choked, and that she lost consciousness. Initially, the victim did not disclose who caused her injuries to medical center staff. Eventually, however, the victim did tell the staff that the defendant caused her injuries. The police and the Department of Children and Families (department) were summoned to the medical center and, upon their arrival, took sworn, written statements from the victim. Officer Jonathan Simmons, of the Bridgeport Police Department, who took the victim's statement at the medical center, observed the victim as having parts of her hair missing, a swollen face, and a bloodshot eye.

The victim was evaluated by Julia Chen, a resident at the medical center who specialized in vascular and general surgery. Imaging revealed that one of the victim's ribs on her left side was fractured and that there

was indeterminate fluid in her pelvic region. On the basis of the location of the victim's bruising and the fluid in her pelvic region, Chen and other staff at the medical center were concerned that the victim might have had an injury to her spleen. There was also concern that the victim might be bleeding internally. It was recommended to the victim that she be evaluated at Yale-New Haven Hospital (hospital) because the hospital had a trauma center and the medical center did not. Although Chen was not concerned that the victim faced an immediate risk of death, she recommended further evaluation because she was concerned that the victim had very serious internal injuries. Moreover, although Chen could not conclusively determine that the victim's spleen was injured, her concern prompted a recommendation that the victim pursue further evaluation because "a splenic hemorrhage could be very bad."

Contrary to the medical advice given to her, the victim did not seek further evaluation at the hospital and discharged herself from the medical center. The victim did not seek further evaluation at the hospital because she could not take her children with her. Following her discharge from the medical center, the victim received assistance from a battered women's shelter that enabled her, her children, and her nephew to stay at a hotel. On December 5, 2016, they all checked out of the hotel and rode a bus to the home of the victim's foster mother in Georgia.

While in Georgia, F contacted the victim and urged her to speak with the defendant. F told the victim that the defendant wanted to speak with their twin children because it was their birthday. The victim spoke with the defendant several times while she was in Georgia. During one of their conversations, the victim told the defendant that she had made a statement to the police that identified him as the cause of her injuries. The defendant told the victim that she had to return to Connecticut to "fix" her statement so that he would not get into any trouble.

Following this conversation, the defendant drove to Georgia. After arriving at the home of the victim's foster mother in Georgia, the defendant picked up the victim and five children and proceeded to drive back to Connecticut.[3] They arrived in Connecticut on December 20, 2016, and stayed at the apartment of the defendant's sister. On December 21, the defendant drove the victim to the police station, where she changed her statement to the police at the defendant's behest. The victim changed her statement to allege that another male was the cause of her injuries. The victim and the defendant then returned to the apartment.

Thereafter, on December 21, 2016, police officers travelled to the apartment. The police officers were met by an adult male and female, who provided no information regarding the whereabouts of the defen-

dant, the victim, or the victim's children. As the police officers were leaving, they observed a child in the living room area of the apartment through a window. At approximately 4:30 p.m. on December 22, the police officers returned to the apartment with a warrant for the defendant's arrest. The victim, who was outside as the police arrived, ran into the apartment, gathered her children, and brought them down into the basement. The police officers located the defendant outside the apartment, in the process of moving a television, and executed the arrest warrant. The police officers then entered the house and found the victim and her children in the basement.

Subsequently, the defendant was charged in two consolidated informations with assault in the first degree, unlawful restraint in the first degree, strangulation in the first degree, five counts of risk of injury to a child, and tampering with a witness. The jury found the defendant guilty of all counts with the exception of strangulation in the first degree, of which he was found not guilty. The defendant received a total effective sentence of fifteen years of incarceration, execution suspended after ten years, followed by five years of probation.[4] This appeal followed. Additional facts will be set forth as necessary.

At the outset, we set forth the following established review principles relevant to each of the defendant's insufficiency of the evidence claims raised in this appeal. "In reviewing the sufficiency of the evidence to support a criminal conviction we apply a [two part] test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [jury] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . .

"We also note that the jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"Additionally, [a]s we have often noted, proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [jury], would have resulted in an acquittal. . . . On appeal, we do not ask whether there

is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is reasonable view of the evidence that supports the [jury's] verdict of guilty." (Internal quotation marks omitted.) *State* v. *Taupier*, 330 Conn. 149, 186–87, 193 A.3d 1 (2018), cert. denied, 586 U.S. 1148, 139 S. Ct. 1188, 203 L. Ed. 2d 202 (2019).

I

The defendant first claims that there was insufficient evidence to convict him of assault in the first degree because the state failed to prove that he caused serious physical injury to the victim. We disagree.

Section 53a-59 (a) provides in relevant part that "[a] person is guilty of assault in the first degree when . . . (3) under circumstances evincing an extreme indifference to human life he recklessly engages in conduct which creates a risk of death to another person, and thereby causes serious physical injury to another person . . . ."[5] General Statutes § 53a-3 (4) defines "serious physical injury" as "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ . . . ." "Whether an injury constitutes a 'serious physical injury' . . . is a fact intensive inquiry and, therefore, is a question for the jury to determine." *State* v. *Irizarry*, 190 Conn. App. 40, 45, 209 A.3d 679, cert. denied, 333 Conn. 913, 215 A.3d 1210 (2019). "[Despite] the difficulty of drawing a precise line as to where physical injury leaves off and serious physical injury begins . . . we remain mindful that [w]e do not sit as a [seventh] juror who may cast a vote against the verdict based upon our feeling that some doubt of guilt is shown by the cold printed record . . . and that we must construe the evidence in the light most favorable to sustaining the verdict." (Internal quotation marks omitted.) Id., 45 n.6.

We conclude that there was sufficient evidence to support the jury's finding that the defendant caused serious physical injury to the victim. The jury reasonably could have concluded that the defendant caused the victim either serious disfigurement or serious loss or impairment of the function of any bodily organ.

" 'Serious disfigurement' is an impairment of or injury to the beauty, symmetry or appearance of a person of a magnitude that substantially detracts from the person's appearance from the perspective of an objective observer. In assessing whether an impairment or injury constitutes serious disfigurement, factors that may be considered include the duration of the disfigurement, as well as its location, size, and overall appearance. Serious disfigurement does not necessarily have to be permanent or in a location that is readily visible to others." *State* v. *Petion*, 332 Conn. 472, 491, 211 A.3d

991 (2019).

In *State* v. *Barretta*, 82 Conn. App. 684, 846 A.2d 946, cert. denied, 270 Conn. 905, 853 A.2d 522 (2004), the following evidence was presented concerning the victim's injuries: "[T]he victim sustained numerous severe bruises, abrasions and contusions across the trunk of his body. He also had an imprint and welts on his back that caused his skin to be a varied color of purple and blue, with additional visible injuries to his upper left shoulder and neckline. Further abrasions were visible on his collarbone, and there were bruises on his breastbone. Additionally, the medical testimony, given by an attending physician's assistant, described extensive and severe bruising that covered more of the victim's body than the photographs reflected and caused the victim to be tender to pressure across his back and left side." Id., 690. This court noted that "the term 'serious physical injury' does not require that the injury be permanent," "a victim's complete recovery is of no consequence," and "the fact that the skin was not penetrated [is not] dispositive." Id., 689–90. On the basis of the evidence in the *Barretta* record, this court could not conclude that the jury unreasonably found that the victim suffered serious physical injury, namely, serious disfigurement. Id., 690.

In this case, the victim and Chen testified consistently with one another as to the extensive bruising that covered the victim's body. The victim's scalp, face, chest, back, legs, arms, and left side were all bruised. Chen testified that the victim's bruising was "literally everywhere . . . ." Moreover, the victim had a subconjunctival hemorrhage in her left eye, had portions of her hair torn out, and experienced tenderness in various parts of her body. Simmons corroborated the visibility of the victim's injuries, noting that when he met with her at the medical center, he observed her as having missing hair, a swollen face, and a bloodshot eye. In addition, photographs of the victim's injuries were admitted into evidence for the jury to view during its deliberations. Although there was no evidence that the victim's injuries left permanent scarring, there was ample evidence as to the visibility of the bruising that covered much of the victim's body and of the noticeable injuries to her head and face. Under the factors set forth in *Petion*, and in light of the guidance of *Barretta*, we cannot conclude that there was insufficient evidence from which the jury could find that the victim suffered serious disfigurement and, thus, serious physical injury.[6]

We now turn to whether the jury reasonably could have concluded that the defendant caused the victim serious loss or impairment of the function of any bodily organ.[7] In *State* v. *Rumore*, 28 Conn. App. 402, 613 A.2d 1328, cert. denied, 224 Conn. 906, 615 A.2d 1049 (1992), this court held that the jury reasonably could have concluded that the victim suffered serious impairment of

the function of any bodily organ on the basis of evidence that the victim became unconscious after the defendant grabbed her by her ankles, causing her to fall to the ground. Id., 405, 415. More specifically, the court stated that § 53a-3 (4) "does not require that the impairment of the organ be permanent. The jury could properly interpret the evidence to prove that the victim's brain was not functioning at a cognitive level when she was unconscious and thus was impaired." Id., 415. In this case, the victim testified that, during one of the three nights when she was beaten by the defendant in the basement, she lost consciousness. The victim's testimony was corroborated by Chen, who testified that the victim informed medical center staff that she lost consciousness at some point during the defendant's repeated beating of her. The jury was free to credit or disregard this testimony.[8] See id. ("[i]t is axiomatic that it is the function of the jury to consider the evidence, draw reasonable inferences from the facts proven and to assess the credibility of witnesses"). On the basis of this testimony, we conclude that there was sufficient evidence from which the jury reasonably could have found that the victim suffered a serious loss or impairment of the function of any bodily organ and, thus, a serious physical injury.[9] See id.

II

The defendant next claims that there was insufficient evidence to convict him of five counts of risk of injury to a child. The defendant argues that his conviction of those counts was predicated on the children having been found by the police in the basement of the apartment and that he "did nothing to encourage or orchestrate the children being placed in the basement." (Emphasis omitted.) The state responds that "the cumulative force of the evidence established that the defendant's conduct—beating the children's mother—led to a series of situations inimical to the children's psychological or mental health." We agree with the state and, accordingly, reject the defendant's claim.

Section 53-21 (a) provides in relevant part that "[a]ny person who (1) wilfully or unlawfully causes or permits any child under the age of sixteen years to be placed in such a situation that the life or limb of such child is endangered, the health of such child is likely to be injured or the morals of such child are likely to be impaired, or does any act likely to impair the health or morals of any such child . . . shall be guilty of (A) a class C felony for a violation of subdivision (1) . . . ." "The general purpose of § 53-21 is to protect the physical and psychological well-being of children from the potentially harmful conduct of adults. . . . Our case law has interpreted § 53-21 [a] (1) as comprising two distinct parts and criminalizing two general types of behavior likely to injure physically or to impair the morals of a minor under sixteen years of age: (1) deliber-

ate indifference to, acquiescence in, or the creation of situations inimical to the minor's moral or physical welfare . . . and (2) acts directly perpetrated on the person of the minor and injurious to his moral or physical well-being. . . . Thus, the first part of § 53-21 [a] (1) prohibits the creation of *situations* detrimental to a child's welfare, while the second part proscribes injurious *acts* directly perpetrated on the child. . . .

"Under the situation portion of § 53-21 [a] (1), the state need not prove actual injury to the child. Instead, it must prove that the defendant wilfully created a situation that posed a risk to the child's health or morals. . . . The situation portion of § 53-21 [a] (1) encompasses the protection of the body as well as the safety and security of the environment in which the child exists, and for which the adult is responsible." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Padua*, 273 Conn. 138, 147–48, 869 A.2d 192 (2005). "Because risk of injury to a child is a general intent crime, proof of [s]pecific intent is not a necessary requirement . . . . Rather, the intent to do some act coupled with a reckless disregard of the consequences . . . of that act is sufficient to [establish] a violation of the statute. . . . As a general intent crime, it is unnecessary for the [defendant to] be aware that his conduct is likely to impact a child [under age sixteen]." (Citations omitted; internal quotation marks omitted.) *State* v. *James E.*, 327 Conn. 212, 223, 173 A.3d 380 (2017).

In a substitute information, the state charged the defendant with five counts of risk of injury to a child in connection with conduct "beginning on or about November 27, 2016, through December 22, 2016," that "wilfully and unlawfully cause[d] a child under sixteen (16) years of age . . . to be placed in a situation that his health and morals were likely to be impaired."[10] The information thus reflects that the state charged the defendant under the "situation" portion of § 53-21 (a) (1). Accordingly, the state did not have to prove actual harm to the children but, rather, that the defendant had the general intent to perform an act that created a situation putting the children's health and morals at risk of impairment. We conclude that there was sufficient evidence from which the jury reasonably could have found the defendant guilty of five counts of risk of injury to a child.

On three consecutive nights, the defendant, by forcing the victim down into the basement, beating her, and not permitting her to leave the basement until morning when they went up together, rendered the victim incapable of caring for her children, who ranged in age from fifteen months to thirteen years and were located alone on the upper floors of their home. In so doing, the defendant risked the health of the minor children, as they had no access to parental care during these three

nights. See *State* v. *Branham*, 56 Conn. App. 395, 398–99, 743 A.2d 635 (evidence that defendant left three young children unattended in apartment for approximately one hour deemed sufficient for jury to find that physical well-being of children was put at risk), cert. denied, 252 Conn. 937, 747 A.2d 3 (2000); *State* v. *George*, 37 Conn. App. 388, 389–90, 656 A.2d 232 (1995) (affirming defendant's conviction of risk of injury to child for leaving seventeen month old infant unattended in car between 8 and 9 p.m.).[11]

Moreover, the defendant's beating of the victim left her with numerous, visible physical injuries that were observed by the children. At trial, Wendy Levy, a clinical psychologist, testified that children witnessing a caregiver with physical injuries caused by abuse can be traumatized because they could develop a fear that they, too, will be subjected to abuse. The jury was free to credit Levy's testimony and to infer that, because the children in this case observed the extensive physical injuries to the victim, their mother and caregiver, they may have been traumatized. See, e.g., *State* v. *Thomas W.*, 115 Conn. App. 467, 475, 974 A.2d 19 (2009), aff'd, 301 Conn. 724, 22 A.3d 1242 (2011); see id., 475–76 ("[I]t is within the province of the jury to draw reasonable and logical inferences from the facts proven. . . . The jury may draw reasonable inferences based on other inferences drawn from the evidence presented." (Internal quotation marks omitted.)). Because the defendant's beating of the victim established this potential sequence, the jury reasonably could have inferred that he put the children at risk of impairment of their health and morals.

III

The defendant's final claim is that there was insufficient evidence to convict him of unlawful restraint in the first degree because there was no evidence presented to the jury of (1) a substantial risk of injury to the victim or (2) an intent to unlawfully restrain that was independent from his intent to commit assault under § 53a-59 (a) (3). We disagree.

Under § 53a-95 (a), "[a] person is guilty of unlawful restraint in the first degree when he restrains another person under circumstances which expose such other person to a substantial risk of physical injury." " 'Restrain' means to restrict a person's movements intentionally and unlawfully in such a manner as to interfere substantially with his liberty by moving him from one place to another, or by confining him either in the place where the restriction commences or in a place to which he has been moved, without consent." General Statutes § 53a-91 (1). "Physical injury" is defined as "impairment of physical condition or pain . . . ." General Statutes § 53a-3 (3). "Merriam-Webster's Collegiate Dictionary (10th Ed. 1999) defines 'substantial' as 'real' and 'considerable,' and courts often have defined the word 'sub-

stantial' in that way." *State* v. *Dubose*, 75 Conn. App. 163, 174–75, 815 A.2d 213, cert. denied, 263 Conn. 909, 819 A.2d 841 (2003).

"Unlawful restraint in the first degree is a specific intent crime. . . . A jury cannot find a defendant guilty of unlawful restraint unless it first [finds] that he . . . restricted the victim's movements with the intent to interfere substantially with her liberty. . . . [A] restraint is unlawful if, and only if, a defendant's conscious objective in . . . confining the victim is to achieve that prohibited result, namely, to restrict the victim's movements in such a manner as to interfere substantially with his or her liberty." (Citations omitted; emphasis omitted; internal quotation marks omitted.) *State* v. *Jackson*, 184 Conn. App. 419, 433–34, 194 A.3d 1251, cert. denied, 330 Conn. 937, 195 A.3d 386 (2018). "To convict a defendant of unlawful restraint in the first degree, no actual physical harm must be demonstrated; the state need only prove that the defendant exposed the victim to a substantial risk of physical injury." (Internal quotation marks omitted.) *State* v. *Cotton*, 77 Conn. App. 749, 776, 825 A.2d 189, cert. denied, 265 Conn. 911, 831 A.2d 251 (2003).

We reject the defendant's argument that, under the circumstances of this case, the intent to commit unlawful restraint under § 53a-95 (a) was one and the same with the intent to commit the assault in the first degree under § 53a-59 (a) (3). Our appellate guidance reflects that the requisite mental states for each crime are distinct from one another. Compare *State* v. *Colon*, 71 Conn. App. 217, 226, 800 A.2d 1268 (concluding that § 53a-59 (a) (3) requires that the defendant "must be shown to have had *the general intent to engage in conduct evincing an extreme indifference to human life*" (emphasis added)), cert. denied, 261 Conn. 934, 806 A.2d 1067 (2002), with *State* v. *Jackson*, supra, 184 Conn. App. 433 ("[a] jury cannot find a defendant guilty of unlawful restraint unless it first [finds] that he . . . restricted the victim's movements with *the intent to interfere substantially with her liberty*" (emphasis added; internal quotation marks omitted)). The victim testified that, in the early morning hours of November 28, 2016, the defendant seized her by her hair and dragged her down into the basement, where he proceeded to beat her. On the basis of this evidence, the jury reasonably could have found that the defendant evinced an intent to restrict the victim's liberty, namely, her liberty to move freely within the house. Separately, the jury reasonably could have found that the defendant evinced an extreme indifference to human life on the basis of his independent acts of kicking, punching, and choking the victim in the basement for three consecutive nights after dragging her down the stairs.[12]

We further reject the defendant's argument that there was insufficient evidence of a substantial risk of injury

to the victim. On the basis of the evidence presented at trial, the jury reasonably could have found that the defendant's act of dragging the victim down a full flight of stairs by her hair subjected her to a substantial risk of injury because it presented a "real" or "considerable" opportunity for her to have suffered an impairment to her physical condition or to have suffered pain. See General Statutes § 53a-3 (3); *State* v. *Dubose*, supra, 75 Conn. App. 174–75.

The judgments are affirmed.

In this opinion the other judges concurred.

* The defendant's motion to open the judgment was granted on October 20, 2020. This opinion has been superseded by *State* v. *Morlo M.*, 206 Conn. App. 660, 261 A.3d 68 (2021).

In accordance with our policy of protecting the privacy interests of the victims of the crime of risk of injury to a child, we decline to use the defendant's full name or to identify the victims or others through whom the victims' identities may be ascertained. See General Statutes § 54-86e.

[1] The defendant was also convicted of one count of tampering with a witness in violation of General Statutes § 53a-151, which he does not challenge on appeal. The defendant was found not guilty of one count of strangulation in the first degree in violation of General Statutes § 53a-64aa (a) (1) (B).

[2] On November 28, 2016, the age of the victim's seven children ranged from approximately fifteen months to thirteen years. The defendant is the father of the victim's four youngest children. Each of the five counts of risk of injury to a child with which the defendant was charged alleged risk of injury as to a different minor child.

[3] The victim's oldest child and her four youngest children accompanied her and the defendant back to Connecticut. The victim's two other children and her nephew were left in Georgia.

[4] The defendant received the following concurrent sentences: fifteen years of incarceration, execution suspended after ten years, followed by five years of probation for assault in first degree; five years of incarceration for unlawful restraint in the first degree; five years of incarceration for each of the five counts of risk of injury to a child; and five years of incarceration for tampering with a witness.

[5] Although the defendant argues that the victim's injuries did not expose her to a risk of death, his argument in this regard appears to be directed to whether the victim suffered a serious physical injury and not to the other elements of § 53a-59 (a) (3). In fact, he specifically states in his principal brief: "It is the appellant's contention that the state failed to prove that the defendant caused serious physical injury to [the victim]." To the extent that the defendant's reference to the victim not having faced a risk of death is a challenge to the statutory requirement that the defendant must have created a risk of death, we are not persuaded. It is the defendant's *actions*, not the results of those actions, which must create a risk of death. See *State* v. *James E.*, 154 Conn. App. 795, 807, 112 A.3d 791 (2015) ("[t]he risk of death element of the [assault in first degree] statute focuses on the conduct of the defendant, not the resulting injury to the victim" (internal quotation marks omitted)), aff'd, 327 Conn. 212, 173 A.3d 380 (2017). The jury could have reasonably concluded that the defendant's *actions* of dragging the victim down the basement stairs and beating her on three consecutive nights was reckless conduct that evinced an extreme indifference to human life and created a risk of death. That his actions may not have resulted in a risk of death is irrelevant.

[6] We note that *Barretta* was decided prior to *Petion*, and that in *Petion*, our Supreme Court remarked that, in *Barretta*, this court did not consider how the dictionary definition of "disfigurement" was modified by the term "serious." *State* v. *Petion*, supra, 332 Conn. 480 n.7. The court in *Petion* declined to express a view as to whether *Barretta* was correctly decided. Id.

Thereafter, the court in *Petion* concluded that the scar from a knife wound on the victim's left arm was insufficient to constitute serious disfigurement. Id., 477, 494–95. Nevertheless, the court stated that it "agree[d] that, in assessing the seriousness of the disfigurement, the jury was not limited to considering the injury in its final, fully healed state. See, e.g., *State* v. *Barretta*, supra, 82 Conn. App. [690] (contusions and severe bruising all over body from beating with baseball bat established serious disfigurement)." *State* v. *Petion*, supra, 322 Conn. 497. The court was not convinced, however, that the appearance of the victim's injury prior to its healing was sufficient to constitute serious disfigurement. Id.

Although *Barretta*'s viability in the wake of *Petion* has not been examined, we conclude that there was sufficient evidence in this case from which the

jury reasonably could find that the victim's injuries persisted throughout her head and body and, thus, were sufficient to constitute serious disfigurement under the *Petion* factors.

[7] Although it is not necessary, we discuss an additional type of serious physical injury to the victim that reasonably could have been found by the jury.

[8] The defendant argues that because the victim self-reported her loss of consciousness, without any details as to its timing, and did not receive any treatment, there is insufficient evidence of an impairment of the function of a bodily organ. We disagree because the defendant's arguments correspond to the weight of the evidence that was presented to the jury regarding the victim's loss of consciousness, not its sufficiency.

[9] The defendant argues that the victim's decision not to go to the hospital for further evaluation and, instead, to travel to Georgia with her children, who she was actively caring for, supports a conclusion that the victim did not have a serious physical injury. We reject this argument because the testimony relied on by the defendant does not displace the evidence from which the jury reasonably could have concluded that the victim suffered a serious physical injury.

[10] Contrary to the defendant's argument that his conviction of five counts of risk of injury to a child were based on the children having been found by the police in the basement of the apartment, the state's charging document, the evidence presented at trial, and the state's closing arguments reveal that the basis of the state's charges was the defendant's continuing course of conduct from November 27, 2016, through December 22, 2016.

[11] During oral argument before this court, the defendant's appellate counsel argued that the thirteen year old child could care for the six younger children. Counsel provided no support for this argument and we find it imprudent and unavailing.

[12] The defendant did not contest the sufficiency of the evidence as to the intent element of the charge of assault in the first degree under § 53a-59 (a) (3). See part I of this opinion. We discuss the evidence presented to the jury that supports the defendant's intent to commit an assault to illustrate the severability of that evidence from the evidence supporting the defendant's intent to unlawfully restrain the victim.