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The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

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FLYNN, J., dissenting. I respectfully disagree with part IV B of the majority opinion and would reverse the judgment of the trial court.

I agree with the defendant's argument that the court instructed the jury as to the charge of burglary in the first degree on a theory of criminal liability that is not cognizable. The claim involves the second element of burglary, namely, that the defendant must have intended to commit a crime in the building he unlawfully entered. See D. Borden & L. Orland, 5A Connecticut Practice Series: Criminal Jury Instructions (3d Ed. 2001) § 12.1, p. 292. In charging on this element of intent, the court instructed that the state must prove that the "unlawful entry was effected or occurred with the defendant's intent to commit a crime in that building and [the court stated that] *the specific crime is attempted assault* . . . ." (Emphasis added.) This statement was later reinforced when the court stated that "such premises constituted a building . . . that the unlawful entry was effected or occurred with the defendant's intent to commit a crime in that building, and *I said that the specific crime is attempted assault* . . . ." (Emphasis added.)

"As a general matter, [t]he jury is presumed, in the absence of an indication to the contrary, to have followed the instructions of the trial court." (Internal quotation marks omitted.) *State* v. *Vargas*, 80 Conn. App. 454, 468, 835 A.2d 503 (2003), cert. denied, 267 Conn. 913, 840 A.2d 1175 (2004). If the jury followed the judge's instructions, as it was supposed to do, then to convict the defendant of burglary in the first degree, it would had to have determined that he had intended to commit the inchoate crime of attempted assault. An "attempt" of a crime is accomplished "when a person intentionally does or omits to do anything which, under the circumstances as he believes them to be, is an act or omission constituting a substantial step in a course of conduct planned to culminate in his commission of the crime." (Internal quotation marks omitted.) *State* v. *Gombert*, 80 Conn. App. 477, 495–96, 836 A.2d 437 (2003), cert. denied, 267 Conn. 915, 841 A.2d 220 (2004). The defendant also must have possessed the specific intent to commit the underlying crime. An attempt is an inchoate crime, meaning that it is unfinished or begun with the proper intent but not finished. By charging that the state had to prove that the defendant unlawfully entered the building with the intent to commit an attempted assault, the court, in effect, charged the jury that the defendant had to be proved to have unlawfully entered the premises intending only to attempt an assault but not to complete it. Thus, the defendant would have had no intent actually to commit the underlying crime of

assault and, therefore, he did not enter the building with the intent to commit a crime.

The majority states that jurors do not leave their common sense at the courthouse door and that the jury should have been able to determine that it had to find that the defendant entered the building with the intent to commit the crime of assault, and not attempted assault as the court instructed. Although we note that the defendant and the state agreed on the state's theory of the case and that the information stated that the defendant had to have possessed the intent to commit a crime within the building, I do not agree that the jury necessarily disregarded the court's instructions.[1] "[G]reater weight is likely to have been given by the jury to a later statement than to an earlier one; and this principle operates at times to cure an error in the earlier statement, but on the other hand, if the later instruction is erroneous, it is apt to result in a new trial. In fact error in a later statement has frequently been held not to have been cured by an earlier correct charge." W. Maltbie, Connecticut Appellate Procedure (2d Ed. 1957) § 95, p. 114. The last word the jury heard on the crime it had to find that the defendant had intended to commit was the court's charge that the specific crime was attempt to commit assault. This instruction was not just "inartful" as the majority claims, it did not charge conduct constituting a crime. Our standard of review is not whether the jury actually was misled, but only if it is reasonably possible that the jury was misled. Because the court charged the jury that it could convict the defendant of something that was not a crime and because the jury is presumed to have followed the instruction, I do not see how we can say that the jury could not reasonably have been misled and the defendant harmed. Therefore, I respectfully dissent.

[1] I note that the court specifically stated that "[i]t is exclusively the function of the court to state the rules of law that govern the case with instructions as to how you are to apply them. It is your obligation to accept the law as I state it. You must follow all of my instructions and not single out some and ignore others. They are all equally important."