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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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BORDEN, J., concurring. I fully join the well reasoned majority opinion. I write briefly only to underscore my view, expressed by the majority as well, that any challenge to a kidnapping conviction based on either the slightness of the degree of movement or the brevity of the length of time of the restraint, must be reserved for a constitutional claim of vagueness of the statute as applied.

I concede that where, as in the present case, the degree of movement of the victim, or the length of time she was forcibly restrained, may appear to be very slight, and where those same facts may form part of the elements of the conviction for attempted sexual assault in the first degree, it may seem counterintuitive to conclude that the evidence was nonetheless also sufficient for a conviction of kidnapping. It would be appealing to decide, as the dissent does, that in a given case the degree of movement or time of forcible restraint is too de minimus to constitute kidnapping. The fact that it may be counterintuitive to me, however, is not sufficient to disregard two well established doctrines in our criminal law jurisprudence, both of which the majority aptly articulates.

The first is that conviction for two or more distinct offenses is not precluded, as a matter of law, simply because the same facts constitute those offenses. *State* v. *Wilcox*, 254 Conn. 441, 465, 758 A.2d 824 (2000); *State* v. *Andrews*, 108 Conn. 209, 215, 142 A. 840 (1928). Thus, the fact that the defendant's conduct constituted both kidnapping and attempted sexual assault does not preclude a conviction for both. The second is that kidnapping does not require any particular minimum degree of movement or length of time of physical restraint. *State* v. *Wilcox*, supra, 465; *State* v. *Chetcuti*, 173 Conn. 165, 170, 377 A.2d 263 (1977). Thus, the arguable slightness of the movement and brevity of the forcible restraint, on the facts of the present case, do not, in my view, preclude the kidnapping conviction on the basis of insufficiency of the evidence. In fact, we have implicitly rejected any notion that a slight degree of asportation or detention could create a jury question regarding whether a kidnapping was merely "incidental" to the underlying crime also committed by the defendant. *State* v. *Chetcuti*, supra, 170. It would be contrary to the legislative scheme for us to reenter that fray, and would amount to micromanaging what is essentially a charging decision by the state, as the state candidly conceded in oral argument before this court.

I would, therefore, confine any challenge based on these considerations to a claim that the kidnapping statute was unconstitutionally vague as applied to the

facts of the particular case. Our case law suggests that such a challenge could be made in an appropriate case—again, as the majority points out. Such a challenge, however, would raise issues of a different dimension. A vagueness challenge on those grounds would require an inquiry into such questions as whether the statute gave fair notice to the defendant, and whether it permitted unconstitutionally unrestrained discretion in enforcement of the criminal law. See, e.g., *State* v. *McMahon*, 257 Conn. 544, 552, 778 A.2d 847 (2001), cert. denied, 534 U.S. 1130, 122 S. Ct. 1069, 151 L. Ed. 2d 972 (2002); *State* v. *Ehlers*, 252 Conn. 579, 584, 750 A.2d 1079 (2000). Because the defendant has not raised such a challenge, either in the trial court or in this court, I would decline to consider the question.

I therefore join the majority opinion in full, and concur in its judgment.