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KATZ, J., dissenting in part. As recited by the majority, this court has stated on many occasions that a defendant may be convicted of both kidnapping and attempted sexual assault. While I agree that a defendant *may* be convicted of both crimes, the conviction of the defendant of both crimes under the facts of this case renders an absurd result. Therefore, I respectfully dissent.

The jury reasonably could have found the following facts. On the night of April 21, 1998, and into the early morning hours of April 22, 1998, the defendant, Peter Luurtsema, and the victim were in the victim's apartment in Manchester. At one point during the evening, after they had engaged in consensual oral sex in the kitchen, one of the victim's neighbors came over to the victim's apartment and the defendant and the victim moved into the living room to visit with him. As noted by the majority, after the neighbor left, the defendant pulled the victim to the floor in the living room, removed her pants and underpants, forced her legs apart and choked her. The defendant then moved toward the bathroom, at which time the victim escaped. The defendant was arrested and ultimately found guilty of one count each of attempted sexual assault in the first degree in violation of General Statutes §§ 53a-49 (a) (2) and 53a-70 (a) (1), kidnapping in the first degree in violation of General Statutes § 53a-92 (a) (2) (A), and assault in the second degree in violation of General Statutes § 53a-60 (a) (1).

In order to be convicted of kidnapping in the first degree pursuant to § 53a-92 (a) (2) (A), a defendant must abduct another person and restrain him or her with intent to inflict physical injury upon him or violate or abuse him sexually. " 'Abduct' means to restrain a person with intent to prevent his liberation by . . . using or threatening to use physical force or intimidation." General Statutes § 53a-91 (2) (B). " '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). The sexual assault statute itself provides in relevant part that "[a] person is guilty of sexual assault in the first degree when such person (1) compels another person to engage in sexual intercourse by the use of force against such other person or a third person, or by the threat of use of force against such other person or against a third person which reasonably causes such person to fear physical injury to such person or a third person . . . ." General Statutes § 53a-70 (a) (1).

When construing statutes, ''[w]e presume that laws are enacted in view of existing relevant statutes . . . because the legislature is presumed to have created a consistent body of law. . . . We construe each sentence, clause or phrase to have a purpose behind it. . . . In addition, we presume that the legislature intends sensible results from the statutes it enacts. . . . Therefore, we read each statute in a manner that will not thwart its intended purpose or lead to absurd results.'' (Citations omitted; internal quotation marks omitted.) *Collins* v. *Colonial Penn Ins. Co.*, 257 Conn.718, 728–29, 778 A.2d 899 (2001); accord *State* v. *Albert*, 252 Conn. 795, 807 n.15, 750 A.2d 1037 (2000) (construing criminal statute in manner to avoid bizarre result); *State* v. *Jimenez*, 228 Conn. 335, 341, 636 A.2d 782 (1994) (same).

A close reading of these statutes in the context of the present case reveals that the attempted sexual assault could not have been accomplished without ''restraining'' and ''abducting'' the victim, as those terms are defined in § 53a-91 (1) and (2) (B), respectively. To put it another way, kidnapping, according to the literal language of the statute, was *required* for the commission of the sexual assault under the state's theory of this case.[1] While kidnapping does not merge with sexual assault; see *State* v. *Amarillo*, 198 Conn. 285, 305, 503 A.2d 146 (1986) (''defendant may be convicted of two crimes that derive from the same conduct 'as long as the state [is] able to prove, beyond a reasonable doubt, all of the essential elements of each crime' ''); *State* v. *Chetcuti*, 173 Conn. 165, 170, 377 A.2d 263 (1977) (''the legislature of this state has seen fit not to merge the offense of kidnapping with sexual assault or with any other felony''); and the statute does not impose a time duration for the restraint nor any distance requirement for the asportation element; *State* v. *Chetcuti*, supra, 170; this court has indicated that there may be ''factual situations in which charging a defendant with kidnapping based upon the most minuscule movement would result in an absurd and unconscionable result . . . .'' (Citation omitted; internal quotation marks omitted.) *State* v. *Jones*, 215 Conn. 173, 180, 575 A.2d 216 (1990). I would conclude that this is just such a case.

In *Jones*, the defendant grabbed the victim as she was jogging down a road in a park and dragged her off into the woods, where he assaulted her. Id., 175. In rejecting the defendant's claim that the definition of restrain in § 53a-91 (1) was unconstitutionally vague, this court concluded that grabbing and dragging the victim off the road and into the woods constituted moving the victim from one place to another pursuant to §§ 53a-91 (1) and 53a-92 (a) (2) (A). Id., 180. Thus, the movement of the victim was more than minuscule, and the result was not absurd or unconscionable.

Since *Jones*, this court has continued to acknowledge that there may be factual situations wherein a charge

and conviction of kidnapping would render an absurd and unconscionable result. See *State* v. *Troupe*, 237 Conn. 284, 315, 677 A.2d 917 (1996); *State* v. *Tweedy*, 219 Conn. 489, 503, 594 A.2d 906 (1991). Neither of those cases, however, provided facts that would lead to such a result. In *Troupe*, the defendant, after repeated requests by the victim, refused to let her leave his apartment, both before and after he sexually assaulted her. *State* v. *Troupe*, supra, 315. In *Tweedy*, the defendant held the victim in her own apartment, and moved her to various rooms in her apartment before he sexually assaulted her. *State* v. *Tweedy*, supra, 503. In both *Troupe* and *Tweedy*, the defendants raised the claim that the provisions of the kidnapping statute were unconstitutionally vague.[2] We disagreed with the defendants because in each case there had been sufficient evidence to indicate that the defendant restrained or moved the victim in a manner that was more than miniscule. In *Troupe*, *Tweedy* and *Jones*, the restraint was not essential to the sexual assault; in other words, there was some evidence that the kidnapping was a discrete and distinct crime from the sexual assault. See also *State* v. *Wilcox*, 254 Conn. 441, 466, 758 A.2d 824 (2000) (defendant found to have ''forcibly grabbed the victim's arm in order to prevent her from exiting [his] vehicle,'' and proceeded to drive victim out to woods to sexually assault her); *State* v. *Briggs*, 179 Conn. 328, 330, 426 A.2d 298 (1979), cert. denied, 447 U.S. 912, 100 S. Ct. 3000, 64 L. Ed. 2d 862 (1980) (defendant got into victim's car, drove several miles to wooded area and sexually assaulted her). Thus, even when this court has held that a defendant may be convicted of kidnapping when it is '' 'integral or incidental' to the crime of rape''; *State* v. *Vass*, 191 Conn. 604, 614, 469 A.2d 767 (1983); the court was not presented with a factual scenario in which the movement or confinement of the victim was such that a conviction for kidnapping, in addition to sexual assault, would render an absurd or unconscionable result. See id., 606 (defendant took victim at knifepoint to back room of convenience store, where he sexually assaulted her).

In the present case, however, we are presented with a factual scenario that readily is distinguishable from the cases previously cited herein. The defendant was convicted of kidnapping either for confining the victim ''where the restriction commence[d],'' without which confinement the sexual assault that was attempted by the defendant physically could not be accomplished, or for pulling the victim from the sofa to the floor. Accordingly, I believe the evidence of the movement and confinement in this case falls into the realm of the ''miniscule movement'' admonition of *Jones*, resulting in an absurd and unconscionable result.[3] See *State* v. *Jones*, supra, 215 Conn. 180. I would therefore conclude that the defendant's conviction for kidnapping in the first degree must be reversed.

Accordingly, I respectfully dissent.

[1] In his closing argument, the assistant state's attorney highlighted the evidence that he was relying on in support of each of the four charges against the defendant. In particular, with respect to the restraint element essential for the kidnapping charge, the assistant state's attorney relied solely upon the evidence that the defendant had dragged the victim and pinned her to the floor. The relevant portion of his closing argument was as follows:

"The second count is kidnapping in the first degree. And I am sure you all recall that I asked each and every one of you on voir dire do you understand that you're under an obligation to accept and apply the law that's given you by the judge whether you agree with it or not, and you said yes, you could. And I said, in [particular], that might include kidnapping; you might be surprised to hear what the crime of kidnapping consists of, would you still, would you nonetheless follow the judge's instructions, set aside your own preconceived notion of what perhaps kidnapping is, follow the law you receive from the judge; and you all said yes, I could do that.

"Well, you might . . . hear Judge Mulcahy talk about . . . a kidnapping in the first degree involving the abduction of somebody and restraining them with the intent to inflict physical injury upon them or violate or abuse them sexually.

"Substitute the words Miss C for them. Let me read it again. Abducting Miss C and restraining Miss C with the intent to inflict physical injury upon her or violate her or abuse her sexually.

"There's that word again: intent. And, basically, you are going to be told about intent tomorrow morning. How do you tell intent? Well, there's a couple different ways you can tell intent. Sometimes the person might mention what's on their mind. That might tell you what intent is. But often it's a matter of inference. You use your own common sense, your own logic, infer from their conduct what their intent was on a given occasion.

"*Abduct means to restrain with intent to prevent liberation by use of physical force. What is the testimony here that goes with that portion of the kidnapping? Miss C's testimony. He dragged me to the floor. He pinned me to the floor. I couldn't move. I could only move when he got up to go to the bathroom, toward the bathroom.*

"*To restrain means to restrict Miss C's, in this particular case, restrict Miss C's movements intentionally and unlawfully in such a manner as to interfere substantially with her liberty by confining her in a place where the restriction commenced without her consent. She said she didn't consent to being on the floor. She was seated on the couch. She was dragged to the floor. She was pinned to the floor. She couldn't move.*

"Interestingly enough, you may very well hear from Judge Mulcahy tomorrow stating that the statute, the kidnapping statute, does not impose any time requirements for restraint, nor distance requirements for asportation to constitute the crime of kidnapping. In other words, we don't have a time clock going off to see how long somebody's restrained. We don't have a ruler to measure how far they're carried or dragged or moved.

"*She was on the couch. She was dragged to the floor and pinned there. I would submit to you, ladies and gentlemen, that that is a kidnapping in the first degree.*" (Emphasis added.)

[2] As the majority states in its opinion, the defendant in the present case does not raise the claim that the § 52-92 (a) (2) (A) is unconstitutionally vague as applied to his case. Because his claim challenging the sufficiency of the evidence does, however, require this court to interpret the kidnapping statute in a manner that will not thwart its intended purpose or lead to absurd results, review of the statute as it applies to the facts of this case is appropriate. See *State* v. *Ehlers*, 252 Conn. 579, 592–96, 750 A.2d 1079 (2000) (considering whether interpretation of General Statutes § 53a-196d would lead to absurd result when reviewing defendant's claim of insufficient evidence for conviction of possession of child pornography); *State* v. *Solek*, 66 Conn. App. 72, 76–79, 783 A.2d 1123, cert. denied, 258 Conn. 941, 786 A.2d 428 (2001) (considering whether interpretation of General Statutes § 53a-65 would lead to absurd result when reviewing defendant's claim of insufficient evidence for sexual assault conviction).

[3] Although there was evidence that the defendant choked the victim, and the jury *could* have looked to that evidence in connection with the kidnapping charge, notably, in his closing argument the assistant state's attorney did not mention the choking in connection with the requisite restraint of the victim by movement or confinement. See footnote 1 of this opinion citing the assistant state's attorney's closing argument with respect to the kidnapping

charge. Rather, that evidence was relied upon by the assistant state's attorney in support of the charges of attempted sexual assault in the first degree, attempted murder and assault in the second degree. The relevant portion of the state's closing argument regarding those three charges was as follows:

"Now, what was the evidence you heard about an attempted sexual assault in the first degree? First of all, what were the substantial steps taken here? First, Miss C testified that the defendant, when the two were seated on the couch in her living room, dragged her to the floor in her living room; second that he pinned her to the floor; third, that he got on top of her or over her; fourth, that he disrobed her from the waist down, taking off her pants and her panties; fifth, that he spread her legs wide by the ankles and spread her legs so violently that Miss C complained of pain and she was afraid for a while that there was ligament damage or that perhaps, perhaps even her legs might have been broken; sixth, Miss C struggled; seventh, the defendant, according to Miss C, choked Miss C.

"Was the purpose in the choking to overcome Miss C's resistance? What does the phrase plan to culminate in the commission of the crime of sexual assault in the first degree mean? Well, as a layperson, as a juror, as a fact finder, what you're met with is to look at the defendant's conduct. Why else does a man throw a woman on the floor, pin her on the floor, take off her pants and underpants, spread her legs, struggle with her, and then choke her, if not to sexually assault?

"You are going to hear the definition of sexual assault, so that it might aid you in determining whether or not I met my burden on the attempted sexual assault in the first degree. In a nutshell, you might hear something like this from Judge Mulcahy: that sexual assault in the first degree involves compelling another person to engage in sexual intercourse. Sexual intercourse may include either vaginal intercourse or oral intercourse, cunnilingus; that is, the male performing oral sex on the female, and—in this particular case—by the use of force. By the use of force.

"What force did we have here? Dragging her to the floor, pinning her to the floor so she couldn't move, and ultimately, taking off her pants and her panties and choking her.

* * *

"The crime of attempted murder. The information indicates that [the defendant], acting with the intent to cause the death of Miss C, intentionally did anything which under the circumstances as he believed them to be was an act constituting a substantial step in a course of conduct planned to culminate in his commission of the crime of murder by choking and strangling Miss C.

"So, again, you're going to grapple with, or you are going to have to consider, I should say, was there an intent to cause death. In other words, was his plan to culminate in the commission of [Miss] C's murder, that is, intending to cause her death, causes her death.

"Again, it's regarding the choking, the strangling. Interestingly enough, we have the testimony of Miss C. What was going on in her mind? She's concentrating on breathing. She couldn't breathe. She thought she would die. Attempted murder. She thought she would die.

* * *

"Assault in the second degree is the fourth and final count. And that involves intending to cause serious physical injury, you cause serious physical injury. Serious physical injury is defined as physical injury which causes a substantial risk of death for purposes of this statute.

"Remember [Arkady Katsnelson, a medical examiner for the state] yesterday testifying that a strangulation, manual strangulation, strangulation of the neck by the hands gives rise to a substantial risk of death? Because all it takes is thirty seconds of squeezing the carotid arteries to shut off the oxygenated blood supply to the brain and you die. You expire.

"What is physical injury defined as in the law? You will hear something like this: that physical injury means the impairment of physical condition or pain. You can certainly reasonably and logically infer from Miss C's testimony she was in pain when she was on the floor being choked. It hurt. Besides which, she's struggling to breathe. She's concentrating on breathing. She thought she would die. Isn't that an impairment of physical health, which is one of the definitions of physical injury?"