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ZARELLA, J., dissenting. The majority concludes that the jury likely was misled by the trial court's instruction that, to find the defendant, Cornelius Flowers, guilty of burglary in the first degree, the jury must determine, inter alia, that the defendant had entered the victim's apartment unlawfully with the intent to commit an attempted assault therein. Specifically, the majority concludes that the trial court's instruction improperly permitted the jury to find the defendant guilty of burglary in the first degree if it determined that the defendant "had entered the [victim's] apartment not intending to complete a crime therein . . . but rather intending just to attempt to commit a crime." I would conclude, however, that it is not reasonably possible that the jury was misled by the trial court's improper instruction because both attempt to commit assault in the first degree; General Statutes §§ 53a-59[1] (a) and 53a-49 (a) (2);[2] and assault in the first degree; General Statutes § 53a-59 (a); require proof of the same mental state, namely, "intent to cause serious physical injury to another person . . . ." General Statutes § 53a-59 (a) (1) and (4). Because the trial court's instruction permitted the jury to find the defendant guilty of burglary in the first degree only if it found that the defendant had entered the victim's home unlawfully with intent to cause serious physical injury to another person, I would affirm the judgment of the Appellate Court. Accordingly, I respectfully dissent.

To illuminate the flaws in the majority's reasoning, I first turn to General Statutes § 53a-101 (a), which provides in relevant part that "[a] person is guilty of burglary in the first degree when he enters or remains unlawfully in a building with *intent to commit a crime therein* . . . ." (Emphasis added.) It is well established that, "[t]o constitute burglary . . . the accused must have entered, remained, or broken and entered with the requisite specific criminal intent, and the gravamen of the offense is the intent with which a breaking and entry has been effected." 12A C.J.S. 218–19, Burglary § 44 (2004). Thus, the crime of burglary "is complete once there has been an unlawful entering or remaining in a building with the intent to commit a crime in that building," regardless of whether the accused ever acts on his or her initial criminal intent. *State* v. *Little*, 194 Conn. 665, 675, 485 A.2d 913 (1984); see also 12A C.J.S. 224, supra, § 48 ("[t]o constitute burglary it is not necessary that the intended crime shall be committed or attempted to be committed, as the offense is complete as soon as the premises are broken and entered . . . with the necessary intent, and the success or failure of the venture is immaterial"). For example, when "the claim is that the crime intended to be committed by the burglar was larceny, the fact that there [was] no

actual larceny does not bar a conviction for burglary. . . . The larceny, if committed, is a separate and distinct offense.'' (Citations omitted.) *State* v. *Little*, supra, 675–76.

With this background in mind, I now address whether burglary with intent to commit attempted assault in the first degree is a cognizable crime. General Statutes § 53a-49 (a) provides in relevant part that a person is guilty of an attempt to commit a crime if he or she acts with ''the kind of mental state required for commission of the crime . . . .'' This court previously has observed that ''[i]t is plain from a reading of . . . § 53a-49 (a) that the intent required for attempt liability is the [same] intent required for the commission of the substantive crime. The criminal result must be the conscious object of the actor's conduct.'' *State* v. *Almeda*, 189 Conn. 303, 307, 455 A.2d 1326 (1983). Pursuant to General Statutes § 53a-59 (a) (1) and (4), the mental state required for commission of assault in the first degree is ''intent to cause serious physical injury to another person . . . .'' Moreover, the crime of assault in the first degree is complete once the defendant ''causes such injury to such person or to a third person . . . .'' General Statutes § 53a-59 (a) (1) and (4). Thus, a defendant who attempts to commit assault in the first degree intends to cause serious physical injury to another person and, consequently, necessarily intends to commit the completed crime of assault in the first degree.

The majority concludes, however, that a defendant who intends to commit attempted assault may intend ''only to attempt an assault but not to complete it.'' (Internal quotation marks omitted.) This conclusion finds no support in either law or logic. If a defendant does not intend to complete the crime of assault in the first degree, that is, if he does not intend to cause serious physical injury to another person, then he does not have the mental state necessary to attempt to commit assault in the first degree. See generally 22 C.J.S. 144, Criminal Law § 115 (b) (1989) (''[a]ttempt' with respect to a crime has been held *more comprehensive than* '*intent*', in that intent is a quality of mind and implies a purpose only, while an attempt implies an effort to carry that purpose to execution'' [emphasis added]).

Moreover, the mental state necessary to attempt to commit assault in the first degree and the result of the completed crime are in perfect congruence. Thus, the present case easily is distinguishable from *State* v. *Almeda*, supra, 189 Conn. 303, and its progeny. In *Almeda*, the defendant, John A. Almeda, Jr., was convicted of attempt to commit manslaughter in the first degree in violation of General Statutes § 53a-55 (a) (1) and § 53a-49 (a) (2). General Statutes § 53a-55 (a) provides in relevant part that a person is guilty of manslaughter in the first degree when ''(1) [w]ith intent to cause serious physical injury to another person, he

causes the death of such person or of a third person . . . .'' We determined that § 53a-55 (a) (1) is ''analogous to the concept of involuntary manslaughter''; *State* v. *Almeda*, supra, 308; because ''[n]o intent to cause death is required.'' Id., 309. Consequently, we concluded that the crime of attempt to commit involuntary manslaughter is not a cognizable crime because it ''requires a logical impossibility, namely, that the actor in his attempt intend that an unintended death result.'' Id.; see also *State* v. *Crosswell*, 223 Conn. 243, 263, 612 A.2d 1174 (1992) (''persons cannot attempt or conspire to commit an offense that requires an unintended result'' [internal quotation marks omitted]); cf. *State* v. *Beccia*, 199 Conn. 1, 5, 505 A.2d 683 (1986) (conspiracy to commit arson in third degree not cognizable crime because arson requires reckless mental state); 2 W. LaFave, Substantive Criminal Law (2d Ed. 2003) § 11.3 (b), pp. 215–16 (Defendant logically cannot attempt to commit completed crime that ''consists of recklessly or negligently causing a certain result, for if there were an intent to cause such a result then the attempt would not be to commit that crime but rather the greater crime of intentionally causing such result. For example, so long as the crime of attempt is deemed to require an intent-type of mental state, there can be no such thing as an attempt to commit criminal-negligence involuntary manslaughter. The consequence involved in that crime is the death of the victim and an act done with intent to achieve this, if an attempt at all, is attempted murder.'' [Internal quotation marks omitted.]). Unlike *Almeda*, the present case does not present a logical impossibility because the result of the completed crime of assault in the first degree, namely, serious physical injury to another person, necessarily is intended when one possesses an ''intent to cause serious physical injury to another person . . . .'' General Statutes § 53a-59 (a) (1) and (4).

I emphasize that it is immaterial, for purposes of this appeal, whether the jury reasonably could have found that the defendant ever had acted on his intent to cause serious physical injury to another person. See General Statutes § 53a-49 (a) (2) (requiring ''an act or omission constituting a substantial step in a course of conduct planned to culminate in [the] commission of the crime''). This is because, as I previously explained, the gravamen of the crime of burglary is the criminal intent with which the breaking and entering has been effected. See 12A C.J.S. 218–19, supra, § 44. It is not necessary that the defendant ever commit or attempt to commit the intended crime. See *State* v. *Little*, supra, 194 Conn. 675–76. Accordingly, it is sufficient that the jury reasonably could have found that the defendant had entered the victim's apartment unlawfully with intent to cause serious physical injury to another person therein.

Finally, I address the defendant's claim that, because the crime of burglary is an inchoate crime in that it

requires only an intent to commit a separate crime upon unlawful entry, the crime intended cannot be another inchoate crime such as attempt to commit assault in the first degree. Specifically, the defendant claims that "the trial court's instruction that the defendant could burglarize a dwelling with the intention of committing an attempted crime therein amounts to an attempted attempt, which does not exist at law." (Internal quotation marks omitted.) This claim has no merit because it suffers from the same logical flaw as the majority opinion, namely, reliance on the theory that one who intends to attempt to commit the crime of assault in the first degree does not intend to complete it. As I previously explained, there is no substantive distinction between intent to commit attempted assault in the first degree and intent to commit assault in the first degree. Accordingly, I would reject the defendant's claim.

For the foregoing reasons, I would conclude that it is not reasonably possible that the jury was misled by the trial court's improper instruction. See *State* v. *Chandler*, 342 N.C. 742, 752, 467 S.E.2d 636 (trial court's improper instruction that burglary can be committed with intent to commit attempted larceny not plain error because, inter alia, "the crucial element in burglary is the intent to commit a larceny, which is the identical intent necessary to commit an attempted larceny"), cert. denied, 519 U.S. 875, 117 S. Ct. 196, 136 L. Ed. 2d 133 (1996). Viewing the trial court's instruction as a whole, I would conclude that it was adequate to explain to the jury that the defendant could not be found guilty of burglary in the first degree unless it determined that the defendant had entered the victim's apartment unlawfully with intent to cause serious physical injury to another person.[3] Accordingly, I respectfully dissent.

[1] General Statutes § 53a-59 (a) provides in relevant part: "A person is guilty of assault in the first degree when: (1) With intent to cause serious physical injury to another person, he causes such injury to such person or to a third person by means of a deadly weapon or a dangerous instrument; or . . . (4) with intent to cause serious physical injury to another person and while aided by two or more other persons actually present, he causes such injury to such person or to a third person . . . ."

[2] General Statutes § 53a-49 (a) provides in relevant part: "A person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for commission of the crime, he . . . (2) 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."

[3] The trial court instructed the jury in relevant part: "The state has charged the defendant with the crime of attempt to commit assault in the first degree in that, *with the intent to commit the crime of assault in the first degree*, he intentionally, under circumstances as he believed them to be, took actions that were a substantial step in a course of conduct that the defendant had planned to culminate in his commission of the crime of attempted assault in the first degree. Is that correct? General Statute[s] [§] 53a-49 (a) (2) states: *a person is guilty of an attempt to commit a crime if, acting with the kind of mental state required for the commission of a crime*, he intentionally does or omits to doing 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 a crime.

"*The first element the state must prove beyond a reasonable doubt is that*

the [*defendant*] *had the kind of mental state required for the commission of the crime of attempted assault in the first degree*.'' (Emphasis added.)

The trial court thereafter instructed the jury on the essential elements of attempt to commit assault in the first degree: ''The defendant is charged with the crime of attempted assault in the first degree in violation of [§] 53a-59 (a) (4) of the Penal Code, which provides as follows—and I've already defined 'attempt' for you, and you are to recall and apply that definition—a person is guilty of assault in the first degree when, *with intent to cause serious physical injury to another person* and while aided by two or more other persons actually present, he causes such injury to such person or to a third person.

''For you to find the defendant guilty of this charge, the state must prove the following elements beyond a reasonable doubt: *one, that the defendant intended to cause serious physical injury to another person*; two, that the defendant caused serious physical injury to another person—to that person or another person; and three, that the defendant did so while aided by two or—here, in this case, while aided by two other persons actually present.'' (Emphasis added.)