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MCDONALD, C. J., concurring. Although I agree with the majority that the conviction of the defendant, Tony Niemeyer, for kidnapping in the first degree should be upheld, I write separately to express the view that the kidnapping statute; General Statutes § 53a-92; with its severe penalties should apply only “to true kidnapping situations and not . . . apply . . . to crimes which are essentially robbery, rape or assault and in which some confinement or asportation occurs as a subsidiary incident.” *People v. Lombardi*, 20 N.Y.2d 266, 270, 229 N.E.2d 206, 282 N.Y.S.2d 519 (1967). In *Lombardi*, the New York Court of Appeals had before it New York’s kidnapping statute; N.Y. Penal Law § 135.25; upon which our kidnapping statute was modeled.

In *People v. Gonzalez*, 80 N.Y.2d 146, 153, 603 N.E.2d 938, 589 N.Y.S.2d 833 (1992), that court later said “[t]he guiding principle is whether the restraint was so much the part of another substantive crime that the substantive crime could not have been committed without such acts and that independent criminal responsibility may not fairly be attributed to them.” (Internal quotation marks omitted.) Where the abduction and the underlying crime are not discrete but simultaneous and there is a minimal asportation immediately preceding another

offense, the abduction should not be considered a kidnapping. Where, however, the manner of abduction is egregious, the New York Court of Appeals concluded that, regardless of other circumstances, a kidnapping does occur. *Id.*

The evidence in this case was that the defendant walked toward the victim in a threatening manner, and she retreated into her bedroom. The defendant followed her into that room and beat her over a period of two to three hours, bruising her, blackening her eyes and severing an artery to her liver. While doing so, he continued to berate her in a jealous rage and spit in her face. Like the victim in *Gonzalez* she was “subjected to a prolonged episode of unremitting terror and physical brutality.” (Internal quotation marks omitted.) *Id.* I would conclude that the evidence of restraint supports the conviction for kidnapping. The jury could find that restraint was not “merely incidental” to the assault. *State v. Lee*, 177 Conn. 335, 343, 417 A.2d 354 (1979).
