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STATE OF CONNECTICUT *v.* PETER LUURTSEMA
(SC 16745)

Sullivan, C. J., and Borden, Katz, Vertefeuille and Zarella, Js.

Argued September 24—officially released December 24, 2002

Glenn W. Falk, special public defender, for the appellant (defendant).

Timothy J. Sugrue, senior assistant state's attorney, with whom, on the brief, were *James E. Thomas*, state's attorney, and *Dennis J. O'Connor*, senior assistant state's attorney, for the appellee (state).

Opinion

ZARELLA, J. The defendant, Peter Luurtsema, was convicted, after a jury trial, of attempted sexual assault in the first degree in violation of General Statutes §§ 53a-49 (a) (2)[1] and 53a-70 (a) (1),[2] kidnapping in the first degree in violation of General Statutes § 53a-92 (a) (2) (A),[3] assault in the second degree in violation of General Statutes § 53a-60 (a) (1),[4] and, following a plea of nolo contendere, of being a persistent dangerous felony offender under General Statutes (Rev. to 1997) § 53a-40 (a).[5] On appeal[6] from the judgment of the trial court sentencing him to a total effective sentence of forty-five years imprisonment,[7] the defendant claims that: (1) the trial court improperly denied his motion to suppress the statement he gave to the police following his warrantless home arrest; and (2) the evidence was insufficient to convict him of kidnapping. We affirm the judgment of the trial court.

The trial court, *Mulcahy, J.*, denied the defendant's motion to suppress his statement. Thereafter, the case was tried to a jury on part A of the information, and the defendant was convicted of attempted sexual assault in the first degree, kidnapping in the first degree and assault in the second degree. The defendant then entered a plea of nolo contendere to part B of the information charging him with being a persistent dangerous felony offender, and the trial court, *Clifford, J.*, accepted the plea. Thereafter, the trial court, *Mulcahy, J.*, rendered judgment on the verdict and the plea. This appeal followed.

The jury reasonably could have found the following facts. On the evening of April 21, 1998, the defendant visited the victim at her apartment in Manchester. During the course of the night, the defendant and the victim consumed several beers and smoked crack cocaine. At some point prior to midnight, the victim consented to oral sex from the defendant. At approximately 1 a.m., Larry Brown, a neighbor, visited the victim in her apartment while the defendant was still there. Outside the presence of the victim, the defendant asked Brown to leave because he wanted to be alone with the victim. Brown complied with the defendant's request. At the time Brown left, he did not observe any marks on the victim's face.

Shortly after Brown's departure, the defendant and the victim were seated next to each other on the couch. The defendant proceeded to pull the victim to the floor and remove her pants and underpants. While they were on the floor, the defendant forced the victim's legs apart in an extremely harsh manner and began manually choking her to the point where she could no longer breathe. The defendant then got up and moved toward the bathroom, at which time the victim ran screaming from her apartment, naked from the waist down, to a convenience store across the street where the police were summoned.

Officer Edward Ciolkosz, of the Manchester police department, arrived at the convenience store at approximately 2:30 a.m. The victim was quite distraught at this time and displayed visible facial and neck injuries. The victim could not confirm that the defendant actually struck her in the facial area. The testimony presented at trial, however, revealed that the defendant was the only person in the victim's company between 1 a.m., when, according to Brown's testimony, he did not recall seeing any physical injuries, and 2:30 a.m., when the police and other witnesses observed the victim's condition. Further, the testimony of Arkady Katsnelson, an associate state medical examiner, revealed that the victim's injuries were consistent with manual strangulation. Ciolkosz subsequently escorted the victim back to her apartment, which was found to be unoccupied.

I

The defendant first claims that the trial court improperly denied his motion to suppress the statement he gave to the police following his warrantless home arrest. We disagree.

At the outset, we set forth the standard of review. "Our standard of review of a trial court's findings and conclusions in connection with a motion to suppress is well defined. A finding of fact will not be disturbed unless it is clearly erroneous in view of the evidence and pleadings in the whole record . . . . [W]here the legal conclusions of the court are challenged, we must

determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision . . . .'' (Internal quotation marks omitted.) *State* v. *Blackman*, 246 Conn. 547, 553, 716 A.2d 101 (1998). The issue presently before us is whether the trial court properly concluded that the defendant's statement was sufficiently attenuated from the taint of the unlawful arrest. None of the trial court's factual findings underlying its decision are in dispute. Thus, this issue raises purely a question of law, and our review is plenary. See *State* v. *Clark*, 255 Conn. 268, 279, 764 A.2d 1251 (2001); *State* v. *Blackman*, supra, 553.

The evidence on the motion to suppress was as follows. On April 22, 1998, Michael Morrissey, a detective for the Manchester police department, was assigned to investigate the case. Morrissey was informed that, in addition to being the subject of the complaint of the victim in this case, the defendant was the subject of an ongoing sexual assault investigation in connection with a prior incident. Morrissey determined that the present case involved more violence than the prior incident involved. In light of the information obtained during the investigation of the present case as well as the defendant's criminal history, Morrissey concluded that the defendant posed a threat to the community. On this basis, Morrissey went to the defendant's residence, without a warrant, for the purpose of arresting him. After knocking on the defendant's door without receiving an answer, Morrissey explained the circumstances to the superintendent of the building, who then granted him access to the defendant's residence. Once inside, Morrissey arrested the defendant.

Morrissey booked the defendant after transporting him to the Manchester police department at approximately 12:45 p.m. At 1 p.m. on the same afternoon, another member of the Manchester police department gave the defendant a standard notice of rights form as part of the standard booking procedure. Morrissey testified that the standard notice of rights sets forth a defendant's *Miranda*[8] rights. At 10 p.m., after the defendant was again informed of his *Miranda* rights, Morrissey approached the defendant seeking to interview him. The defendant stated that he understood his rights and that he was willing to talk. Approximately one hour later, nearly eleven hours after the initial arrest, the defendant provided Morrissey with a written statement. In his statement, the defendant denied ever having oral sex or intercourse with the victim, but stated that at different times on the day in question, they had been ''fooling around.'' The defendant further denied ever hitting or choking the victim and stated that he left her apartment at approximately 12:30 a.m. on April 22.

The trial court denied the defendant's motion to suppress and issued an oral decision for the record containing a complete statement of the factual and legal

justifications underlying its denial of the defendant's motion. The trial court found that Morrissey's arrest of the defendant was supported by probable cause, but that the arrest, which took place inside the defendant's home, was unsupported by the requisite warrant. The court concluded, however, that there was nothing in the facts to indicate that Morrissey had gone to the defendant's home seeking evidence. The court found that Morrissey did not conduct a search once inside the defendant's home, and that no evidence was obtained from inside the home. The court also found that ten or eleven hours had elapsed between the time of the unlawful arrest and the defendant's statement. The trial court also examined the reasons proffered by Morrissey as to why the circumstances necessitated the immediate arrest of the defendant rather than the procurement of an arrest warrant. After reviewing Morrissey's testimony, the court held that, although the present facts did not satisfy either the emergency or exigency exception to the warrant requirement, ''the issue [was] indeed a close one.'' It also found that the defendant had received *Miranda* warnings twice before giving the statement.

On the basis of these findings, the trial court, after concluding that the emergency and exigency exceptions to the arrest warrant requirement were not satisfied in this case, determined, nevertheless, that the defendant's statement was sufficiently attenuated from the taint of the unlawful arrest. The court stated that the ''[r]elevant factors to be considered in conducting an attenuation analysis are whether the defendant was given *Miranda* rights, the temporal proximity between the arrest and the statements sought to be suppressed, the presence of intervening circumstances and the purpose and flagrancy of the official misconduct.'' The trial court initially found a lack of temporal proximity, because ten or eleven hours had elapsed between the unlawful arrest and the defendant's statement. The court also determined that, under its interpretation of the controlling precedent; *State* v. *Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992); either the passage of time *or* intervening circumstances could attenuate the taint of an unlawful arrest under the totality of the circumstances. Therefore, finding that the lack of temporal proximity between the defendant's statement and the unlawful arrest was ''sufficient attenuation to purge any possible taint,'' and that the unlawful arrest was causally unconnected to the defendant's voluntary statement, the trial court denied the defendant's motion to suppress.

The defendant contends that the statement he gave Morrissey while in custody at the Manchester police department should have been suppressed by the trial court because it was obtained pursuant to an arrest in the home, in violation of article first, § 7,[9] of the constitution of Connecticut. According to the defendant, the issuance of *Miranda* warnings did not break

the chain of events that began with his unlawful arrest and culminated in his statement. In support of this position, the defendant points to the fact that he remained alone in custody at the Manchester police department and was eventually confronted by, and gave the statement to, the same officer who had performed the unlawful arrest. The defendant contends that, as a result of this unbroken continuum of circumstances, the statement he gave to Morrissey was tainted by the unlawful arrest. The state contends, to the contrary, that, in light of the totality of the circumstances, including the passage of approximately eleven hours between the arrest and the statement, the defendant's having twice received *Miranda* warnings, and the fact that the police misconduct was neither purposeful nor flagrant, the defendant's statement was sufficiently attenuated from the taint of the unlawful arrest and thus properly admitted by the trial court. We agree with the state.

The defendant questions the propriety of the trial court's attenuation analysis as a matter of law. The defendant claims that the trial court attached undue significance to the time interval between the unlawful arrest and the defendant's statement, without recognizing the importance of the defendant's essentially unchanged circumstances during this time period. The defendant contends that the lack of intervening circumstances, as evidenced by his unchanged circumstances, is dispositive of the attenuation issue. Thus, the defendant claims, the trial court should have found that the taint of the unlawful arrest was not sufficiently attenuated at the time the defendant gave his statement.

Before we address the merits of the defendant's claim, we must clarify the proper analysis under article first, § 7, for determining whether a statement obtained following an unlawful warrantless home arrest, supported by probable cause, is sufficiently attenuated from the taint of the unlawful arrest so as to render it admissible. This requires us briefly to trace the history of the attenuation doctrine.

As a general principle, the exclusionary rule bars the government from introducing at trial evidence obtained in violation of the fourth amendment to the United States constitution. See *Wong Sun* v. *United States*, 371 U.S. 471, 485, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). ''[T]he rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures.'' *United States* v. *Calandra*, 414 U.S. 338, 347, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974). To carry out this purpose adequately, the rule does not distinguish between physical and verbal evidence; see *Wong Sun* v. *United States*, supra, 485–86; nor does it apply only to evidence obtained as a direct result of the unlawful activity. See *Nardone* v. *United States*, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 307 (1939). Rather, the rule

extends to evidence that is merely derivative of the unlawful conduct, or what is known as the ''fruit of the poisonous tree.'' See id. The application of the rule, however, is restricted to those situations where its objectives are ''most efficaciously served.'' *United States* v. *Calandra*, supra, 348. Limiting the rule's application recognizes ''that in some circumstances strict adherence to the . . . rule imposes greater cost on the legitimate demands of law enforcement than can be justified by the rule's deterrent purposes.'' *Brown* v. *Illinois*, 422 U.S. 590, 608–609, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975) (Powell, J., concurring). Thus, ''evidence is not to be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is 'so attenuated as to dissipate the taint.' '' *Segura* v. *United States*, 468 U.S. 796, 805, 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984).

The United States Supreme Court in *Wong Sun* v. *United States*, supra, 371 U.S. 487–88, provided an explanation of what is meant by the phrase ''attenuating the taint'' of an unlawful arrest. In *Wong Sun*, the court ruled on the admissibility of statements made by two of the petitioners, James Wah Toy and Wong Sun, following their warrantless home arrests. Id., 474, 475. In that case, neither arrest was supported by probable cause. Id., 479, 491. The court stated that, in the context of the fourth amendment, not all evidence ''is fruit of the poisonous tree simply because it would not have come to light but for the illegal actions of the police. Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'' (Internal quotation marks omitted.) Id., 488.

The statements made in *Wong Sun* were on either end of the temporal spectrum in relation to the unlawful arrest. Toy gave his statement shortly after several police officers chased him into his home, placed him in handcuffs and immediately under arrest. Id., 486. In ruling that his statement was inadmissible, the court held that, under those circumstances, ''it [was] unreasonable to infer that Toy's [statement] was sufficiently an act of free will to purge the primary taint of the unlawful invasion.'' Id. Wong Sun, on the other hand, made his statement upon his voluntary return to the police station several days after being released on his own recognizance. Id., 491. The court concluded that Wong Sun's statement was admissible because ''the connection between the arrest and the statement had become so attenuated as to dissipate the taint.'' (Internal quotation marks omitted.) Id. Therefore, in accordance with *Wong Sun*, the exclusionary rule need only bar that evidence deemed insufficiently attenuated from the taint of the underlying official misconduct in order to protect adequately the rights afforded citizens under

the fourth amendment.

The attenuation doctrine continued to evolve in subsequent cases. In *Brown* v. *Illinois*, supra, 422 U.S. 591, the United States Supreme Court was once again confronted with a situation where the petitioner, Brown, had made inculpatory statements after he was arrested inside his home without a warrant and without probable cause. Of particular importance to that case, was the fact that before Brown made those statements, the police advised him of his *Miranda* rights. Id. The Illinois courts had determined that the issuance of *Miranda* warnings, per se, attenuated the taint of the underlying misconduct, and the courts therefore ruled that Brown's statements were admissible. Id., 597. The United States Supreme Court disagreed and specifically held that when police obtain statements from an individual following a warrantless home arrest that is not supported by probable cause, the issuance of *Miranda* warnings does not automatically attenuate the taint of the unlawful arrest so as to render the statements admissible. Id., 605. The court's rationale was that if such a per se rule existed, ''[a]rrests made without warrant or without probable cause, for questioning or 'investigation,' would be encouraged by the knowledge that evidence derived therefrom could well be made admissible at trial by the simple expedient of giving *Miranda* warnings.'' Id., 602. The court further declined to adopt *any* per se rule as controlling the attenuation issue, but, rather, pronounced a facts and circumstances test to be applied to the facts of each case, with no single fact being dispositive of the outcome. Id., 603. The relevant factors under the United States Supreme Court's test included whether *Miranda* warnings had been issued, the temporal proximity of the arrest and the statement, ''the presence of intervening circumstances . . . and, particularly, the purpose and flagrancy of the official misconduct . . . .'' (Citation omitted.) Id., 603–604. The court concluded that, ''in light of the distinct policies and interests of the Fourth Amendment''; id., 602; such a test was required. Id., 603–604.

In *New York* v. *Harris*, 495 U.S. 14, 110 S. Ct. 1640, 109 L. Ed. 2d 13 (1990), the United States Supreme Court subsequently limited the applicability of the attenuation doctrine in circumstances in which the police have probable cause to make the arrest. The court held that ''where the police have probable cause to arrest a suspect, the exclusionary rule does not bar the State's use of a statement made by the defendant outside of his home, even though the statement is taken after [a warrantless] arrest made in the home . . . .'' Id., 21. The court reasoned ''that attenuation analysis is only appropriate where, as a threshold matter, courts determine that the challenged evidence is in some sense the product of illegal governmental activity.'' (Internal quotation marks omitted.) Id., 19. When police have probable

cause to arrest a suspect, any custody and questioning of the suspect once the suspect is outside of his home is lawful. Therefore, any statements thereby obtained are not the product of unlawful activity, and there is no need to apply an attenuation analysis. Id.

Subsequent to the United States Supreme Court's decision in *Harris*, we decided *State* v. *Geisler*, supra, 222 Conn. 672, wherein we held that the exclusionary rule bars evidence obtained in violation of article first, § 7, of the constitution of Connecticut that otherwise would be admissible under the federal constitution according to the holding in *Harris*. Id., 690. We note that our decision in *Geisler*, was preceded by two Appellate Court decisions, *State* v. *Geisler*, 22 Conn. App. 142, 576 A.2d 1283 (*Geisler I*), cert. denied, 215 Conn. 819, 576 A.2d 547 (1990), vacated, 498 U.S. 1019, 111 S. Ct. 663, 112 L. Ed. 2d 657 (1991), and, on remand, *State* v. *Geisler*, 25 Conn. App. 282, 594 A.2d 985 (1991) (*Geisler II*), which was affirmed by this court in *State* v. *Geisler*, supra, 222 Conn. 672 (*Geisler III*). The decision in *Geisler I*, which was released less than one month after *Harris* was decided, was grounded on federal principles of attenuation law as articulated in *Brown*, and thus the United States Supreme Court's decision in *Harris* necessitated that *Geisler I* be vacated and remanded.[10] See *Geisler II*, supra, 25 Conn. App. 283–84. On remand, the Appellate Court in *Geisler II* held that, despite the narrower application of attenuation analysis under the federal constitution in *Harris*, the constitution of Connecticut mandated application of the broader rule as articulated in *Brown*. Id., 292. We affirmed the Appellate Court's decision in *Geisler III*, supra, 222 Conn. 690.

In the incident from which the *Geisler* opinions arose, police had entered the defendant's home without a warrant, but with probable cause to arrest him. *Geisler I*, supra, 22 Conn. App. 148. The police questioned the defendant both inside and outside of the home and ultimately placed him under arrest. Id., 147. The police gave the defendant *Miranda* warnings following the arrest and transported the defendant to the station house. Id. While at the station house, the defendant answered continued questioning and, additionally, underwent various sobriety tests. *Geisler III*, supra, 222 Conn. 679.

In *Geisler I*, the Appellate Court, relying on *Brown* v. *Illinois*, supra, 422 U.S. 590, for its attenuation analysis, concluded that the trial court improperly admitted the evidence obtained by the police subsequent to the unlawful arrest. *Geisler I*, supra, 22 Conn. App. 155. Applying the *Brown* facts and circumstances test, the court held that "there was a continuum of police contact with the defendant that was insufficient to eradicate the taint from the derivative evidence." Id., 157. The court noted that Geisler's statements were separated from the unlawful arrest by a minimal period of time.

Id., 156. Additionally, the Appellate Court rejected the trial court's conclusion that the police officer's actions were predicated on '' 'good faith' '' intentions and thus did not constitute the '' 'flagrant police misconduct' that is the subject of the *Brown* analysis.'' Id., 158. Rather, the court found that a good faith determination was unsupported by the facts, as ''there existed a continuum of police action from [the unlawful entry] until the development of the derived evidence . . . .'' Id. Therefore, the evidence ''was the tainted product of an illegal arrest.'' Id., 158–59.

In *Geisler II*, supra, 25 Conn. App. 282, the Appellate Court reconsidered its holding in light of the *Harris* decision. The court concluded that article first, § 7, of the constitution of Connecticut provided greater protections than the fourth amendment to the United States constitution and, accordingly, rejected the *Harri*s analysis for determining the admissibility of evidence obtained pursuant to a warrantless home arrest that is supported by probable cause. Id., 292. The court viewed the admissibility of such statements under *Harris* as depending on '' 'whether the illegality itself was continuing at the time the evidence was secured.' '' Id., 291. The Appellate Court viewed this line of reasoning as flawed in that ''the first two factors of the *Brown* attenuation analysis, namely temporality and intervening circumstances, would be irrelevant because time would never pass and circumstances would never intervene between the time the unlawfulness occurred and the time the evidence was acquired.'' Id. The court determined, therefore, that the appropriate inquiry under the constitution of Connecticut is '' '[w]hether the evidence derived from an unlawful warrantless entry and arrest is attenuated from the initial unlawfulness' based on the facts of each case.'' Id., 292. Accordingly, the court affirmed the decision in *Geisler I*. Id., 293.

In our decision in *Geisler III*, supra, 222 Conn. 690, we affirmed the Appellate Court's rejection of *Harris* under our state constitution. In doing so, we recognized that ''[t]he sanctity of the home has a well established place in our jurisprudence.'' Id., 687. Further, we agreed with the concerns expressed in the dissent to *Harris*, that the majority opinion's holding ''create[d] powerful incentives for police officers to violate the Fourth Amendment.'' (Internal quotation marks omitted.) Id. We concluded that ''the *Harris* rationale [fell] short of the protection required under our state constitution,'' and ''that evidence derived from an unlawful warrantless entry into the home be excluded unless the taint of the illegal entry is attenuated by the passage of time or intervening circumstances.'' Id., 690.

Although *Geisler III* referred to only two of the *Brown* factors, and made no mention of the *Brown* decision itself, *Geisler III* should not be intrepeted as requiring merely the passage of time or intervening

circumstances as a basis for finding attenuation. Under such an interpretation, the simple expedient of placing the defendant in a holding cell for the requisite time period following a warrantless home arrest would automatically attenuate the taint of the arrest. Such a per se rule would substantially dilute the effects of the exclusionary rule and was flatly rejected by the United States Supreme Court in *Brown*. *Brown* v. *Illinois*, supra, 422 U.S. 602. Additionally, a literal reading of *Geisler III* as limiting the attenuation analysis to consideration of temporal proximity or the presence of intervening circumstances neglects consideration of the purpose and flagrancy of the police misconduct. In the past, we have stressed the importance of this factor as it ''effectuates the deterrence policy of the exclusionary rule by providing an incentive for police to engage in lawful conduct.'' *State* v. *Ostroski*, 201 Conn. 534, 549, 518 A.2d 915 (1986). Allowing the taint of an unlawful arrest to be attenuated by the mere passage of time, without consideration of the purpose and flagrancy of the police misconduct, provides no more protection, in reality, than does the rule in *Harris*. In light of the emphasis placed by *Geisler III* on the sanctity of the home as well as the dangers of unfettered police misconduct, any interpretation of *Geisler III* that does not provide greater protection to the citizens of this state than would have been provided under *Harris* must be rejected under our state constitution.

Therefore, we interpret *Geisler III* as properly rejecting the per se rule announced in *Harris* and, instead, requiring an attenuation analysis, based on all of the facts and circumstances, pursuant to our state constitution when the state seeks to introduce evidence that was obtained as a result of a warrantless home arrest that is supported by probable cause. Further, by referring to only two of the *Brown* factors in *Geisler III*, this court was neither limiting what is to be considered under the facts and circumstances test, nor emphasizing the importance of any one factor. Rather, in highlighting these two factors, we recognized their continued relevance based on our rejection of *Harris*.[11] We conclude, therefore, that, in light of the principles announced in *Geisler III*, as well as the history of case law underscoring the purpose of the attenuation doctrine, the *Brown* facts and circumstances test provides the proper analytical framework for determining whether the taint of a warrantless home arrest that is supported by probable cause is sufficiently attenuated. Although we acknowledge that *Brown* is factually distinguishable from the incident underlying the *Geisler* decisions inasmuch as the warrantless home arrest at issue in *Brown* was unsupported by probable cause, the rejection in *Geisler II* and *Geisler III* of the *Harris* rule makes this factual distinction less significant. Accordingly, we apply the *Brown* facts and circumstances test to resolve the issue in the present case.

In the present case, approximately eleven hours elapsed between the time of the unlawful arrest and the defendant's statement. Thus, the defendant's statement lacked temporal proximity to the unlawful arrest. Although there is no bright-line test for determining whether a statement lacks temporal proximity to an unlawful arrest, our conclusion is consistent with our prior case law. See *State* v. *Blackman*, supra, 246 Conn. 557 (statements made fourteen hours after illegal police stop lacked temporal proximity); *State* v. *Daugaard*, 32 Conn. App. 483, 501, 630 A.2d 96 (1993)(statement made eight or nine hours after unlawful arrest lacked temporal proximity), aff'd, 231 Conn. 195, 647 A.2d 342 (1994). Moreover, any argument that the trial court attached undue significance to the lack of temporal proximity between the arrest and the statement is unsupported by the record. The trial court considered all of the factors under the *Brown* test and explicitly referenced each factor in its decision. Although the trial court's concluding statement in denying the motion to suppress was that, ''there was indeed sufficient attenuation to purge any possible taint, that is sufficient time,'' this isolated statement, when viewed in context of the entirety of the court's decision, does not indicate that the trial court failed to consider the totality of the circumstances.

The lack of temporal proximity in this case is significant because there is no evidence that the defendant, from the time he was arrested up until the time he gave the statement, did anything other than sit in jail. See *State* v. *Daugaard*, supra, 32 Conn. App. 501. From case to case, the temporal proximity factor takes on less significance where the police continually harass the defendant once he is taken into custody. See *Taylor* v. *Alabama*, 457 U.S. 687, 691, 102 S. Ct. 2664, 73 L. Ed. 2d 314 (1982). When, however, the police make no attempt to solicit information from a defendant once he is in custody, as in the present case, the temporal proximity factor must favor a finding of attenuation. Otherwise, it becomes nugatory under any attenuation analysis.

In addition to lacking temporal proximity to his arrest, the defendant's statement was voluntary. The defendant received *Miranda* warnings twice prior to making his statement, and, given his criminal history, we can presume he was fully aware of what these rights entailed. See *State* v. *Schroff*, 206 Conn. 182, 201–202, 536 A.2d 952 (1988) (taking defendant's prior contact with law into consideration when determining voluntariness of statement). Although *Miranda* warnings alone are not sufficient to attenuate the taint of an unlawful arrest, they are an important factor in the analysis. See *Brown* v. *Illinois*, supra, 422 U.S. 603.

Finally, the unlawfulness of the arrest was neither flagrant nor purposeful. The facts indicate that the

defendant was arrested solely because of his violent disposition and not as a means of enabling law enforcement personnel to uncover evidence that otherwise would have been unattainable. Compare *Brown* v. *Illinois*, supra, 422 U.S. 605 (admitted purpose of police misconduct was for investigation and questioning). The trial court found that the arresting officer never conducted a search of the defendant's home, and that no evidence was seized from the home. Accordingly, the trial court's conclusion that the unlawfulness of the arrest lacked an investigatory purpose or flagrancy is fully supported by the record. Consideration of the purpose and flagrancy of the official misconduct ''effectuates the deterrence policy of the exclusionary rule . . . .'' *State* v. *Ostroski*, supra, 201 Conn. 549. Considering the lack of either improper purpose or flagrant misconduct in this case, we conclude that the deterrent effect of suppressing the statement would be minimal.

The defendant claims, nonetheless, that the lack of temporal proximity and the advisement of *Miranda* rights in this case were not enough to attenuate the taint of the unlawful arrest. Specifically, the defendant claims that, because he ''remained in custody alone, only to be confronted again by the same officer who invaded his home without a warrant,'' the taint of the unlawful arrest remained at the time he gave his statement. Relying on this argument, the defendant essentially urges us to hold that the lack of intervening circumstances in this case necessitates the conclusion that the taint of the unlawful arrest was not sufficiently attenuated. We recognize that, in the past, the presence of intervening circumstances has been held to be an important factor in assessing whether, under the totality of the circumstances, an unlawful arrest is sufficiently attenuated. See *State* v. *Blackman*, supra, 246 Conn. 558; *State* v. *Daugaard*, supra, 32 Conn. App. 499. We have never held, however, that the *absence* of intervening circumstances is conclusive of a lack of attenuation. To hold so would essentially make the presence of intervening circumstances a threshold requirement to a finding of attenuation and thus be in direct contravention to the guiding principles announced in *Brown*. See *Brown* v. *Illinois*, supra, 422 U.S. 603.

Accordingly, after weighing the above factors, we conclude that the defendant's statement was sufficiently purged from the taint of the unlawful arrest. We therefore reject the defendant's challenge to the trial court's denial of his motion to suppress.[12]

II

We next address the defendant's claim that the evidence presented at trial was insufficient to support the jury's verdict of guilty of kidnapping under General Statutes § 53a-92 (a) (2) (A). The defendant contends that the movement of the victim from the couch to the floor, the removal of the victim's clothes, the forcing

of the victim's legs apart and the manual choking of the victim did not constitute kidnapping. Specifically, the defendant claims that the movement of the victim in this case falls short of what is required for ''abduction'' under the kidnapping statute. Further, the defendant characterizes the movement of the victim as merely ''incidental'' to the sexual assault. Therefore, the defendant contends that the evidence can support the verdict only on the charges of attempted sexual assault in the first degree and assault in the second degree. We are not persuaded by the defendant's arguments.

''The standard of review employed in a sufficiency of the evidence claim is well settled. [W]e apply a two part test. First, we construe the evidence in the light most favorable to sustaining the verdict. Second, we determine whether upon the facts so construed and the inferences reasonably drawn therefrom the [finder of fact] reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . . This court cannot substitute its own judgment for that of the jury if there is sufficient evidence to support the jury's verdict.'' (Internal quotation marks omitted.) *State* v. *Niemeyer*, 258 Conn. 510, 517, 782 A.2d 658 (2001).

''A person is guilty of kidnapping in the first degree, pursuant to General Statutes § 53a-92 (a) (2) (A), if he abducts another person and . . . restrains the person abducted with intent to . . . inflict physical injury upon him or violate or abuse him sexually . . . . General Statutes § 53a-91 (2) defines abduct as restrain[ing] a person with intent to prevent his liberation by . . . (B) using or threatening to use physical force or intimidation. The term restrain is also defined in § 53a-91 (1) as restrict[ing] 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.'' (Internal quotation marks omitted.) *State* v. *Wilcox*, 254 Conn. 441, 464–65, 441 A.2d 758 (2000).

We recognize that common notions regarding the crime of kidnapping envisage the carrying away of a person under coercion and restraint. Although this type of movement undoubtedly can serve as the basis for kidnapping, our kidnapping statute does not require such movement. Rather, all that is required under the statute is that the defendant have abducted the victim and restrained her with the requisite intent. See *State* v. *Niemeyer*, supra, 258 Conn. 520. Under the aforementioned definitions, the abduction requirement is satisfied when the defendant restrains the victim with the intent to prevent her liberation through the use of physical force. Further, the victim is restrained when the defendant, acting with the intent to inflict physical

injury upon her or sexually abuse her, moves her from one place to another *or* restricts her movement by confining her in the place where the restriction commenced. Nowhere in this language is there a requirement of movement on the part of the victim. Rather, we read the language of the statute as allowing the restriction of movement alone to serve as the basis for kidnapping. Therefore, the relevant inquiry under our kidnapping statute is whether any movement, or restriction of movement, was accomplished with the intent to prevent the victim's liberation.

In light of our conclusion that the kidnapping statute does not require movement of the victim, the defendant's arguments are without merit. In rejecting the defendant's arguments, we emphasize that our ''legislature [has] not seen fit to merge the offense of kidnapping with other felonies, nor impose any time requirements for restraint, nor distance requirements for asportation, to the crime of kidnapping.'' (Internal quotation marks omitted.) *State* v. *Wilcox*, supra, 254 Conn. 465; see also *State* v. *Gomez*, 225 Conn. 347, 350–51, 622 A.2d 1014 (1993); *State* v. *Chetcuti*, 173 Conn. 165, 170, 377 A.2d 263 (1977). Thus, any argument imputing a temporal requirement to the restraint element or a distance requirement for abduction under the kidnapping statute must fail. Furthermore, any argument that attempts to reject the propriety of a kidnapping charge on the basis of the fact that the underlying conduct was ''integral or incidental'' to the crime of sexual assault also must fail. *State* v. *Vass*, 191 Conn. 604, 614, 469 A.2d 767 (1983). The defendant's interpretation of the kidnapping statute is simply not the law in this state. Id. ''It is axiomatic that the court itself cannot rewrite a statute to accomplish a particular result. That is the function of the legislature.'' (Internal quotation marks omitted.) *State* v. *Hanson*, 210 Conn. 519, 529, 556 A.2d 1007 (1989).

Accordingly, ''[t]he proper inquiry is not whether the kidnapping was incidental to [other offenses], but whether the restraint was accomplished with the requisite intent to constitute kidnapping, as well as the state of mind required for [the other offenses]. Whether the essential elements of kidnapping are proved beyond a reasonable doubt is a question for the jury. . . . The analysis, therefore, is not simply transactional. A 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.'' (Citation omitted; internal quotation marks omitted.) *State* v. *Wilcox*, supra, 254 Conn. 466; see also *State* v. *Vass*, supra, 191 Conn. 614–15 (''[t]his court has repeatedly held that if the state proves all of the elements of kidnapping, including the specific intent to restrain, beyond a reasonable doubt, the defendant may be convicted of kidnapping in addition to another felony, even though the two offenses arose out of the

same conduct'').

In the present case, the evidence revealed that the defendant pulled the victim from the couch to the floor and removed her pants and underpants. The evidence further revealed that, once the victim was on the floor, the defendant forced her legs apart and choked her to the point where she could not breathe. On the basis of these facts, we conclude that the jury reasonably found that the defendant, through his violent actions, restrained the victim with the intent to prevent her liberation.

Finally, we note that, in the past, this court has considered whether our kidnapping statute is unconstitutionally vague as applied to the facts of any particular case. See *State* v. *Troupe*, 237 Conn. 284, 313, 677 A.2d 917 (1996); *State* v. *Tweedy*, 219 Conn. 489, 502, 594 A.2d 906 (1991); *State* v. *Jones*, 215 Conn. 173, 178, 575 A.2d 216 (1990). Without ever holding the statute unconstitutional, this court has recognized that ''there are conceivable factual situations in which charging a defendant with kidnapping based upon the most minuscule [duration of confinement] would result in an absurd and unconscionable result . . . .'' (Internal quotation marks omitted.) *State* v. *Troupe*, supra, 315. In the present case, however, the defendant has not challenged the statutory provisions as being unconstitutionally vague as applied to him. Thus, we can neither acknowledge nor reject the merits of such a constitutional claim. The defendant has attacked only the sufficiency of the evidence supporting his kidnapping conviction, without reference whatsoever to the constitutionality of the kidnapping statute.

The judgment is affirmed.

In this opinion SULLIVAN, C. J., and BORDEN and VERTEFEUILLE, Js., concurred.

[1] 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.''

[2] General Statutes § 53a-70 (a) provides in relevant part: ''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 . . . .''

[3] General Statutes § 53a-92 (a) provides in relevant part: ''A person is guilty of kidnapping in the first degree when he abducts another person and . . . (2) he restrains the person abducted with intent to (A) inflict physical injury upon him or violate or abuse him sexually . . . .''

[4] General Statutes § 53a-60 (a) provides in relevant part: ''A person is guilty of assault in the second 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 . . . .''

[5] General Statutes (Rev. to 1997) § 53a-40 (a) provides in relevant part: ''A persistent dangerous felony offender is a person who (1) stands convicted of manslaughter, arson, kidnapping, sexual assault in the first or third degree, aggravated sexual assault in the first degree, sexual assault in the third degree with a firearm, robbery in the first or second degree, or assault in

the first degree, and (2) has been, prior to the commission of the present crime, convicted of and imprisoned under a sentence to a term of imprisonment of more than one year or of death, in this state or in any other state or in a federal correctional institution, for any of the following crimes: (A) The crimes enumerated in subdivision (1) of this subsection, murder, or an attempt to commit any of said crimes . . . .''

[6] The Appellate Court transferred this case to this court pursuant to Practice Book § 65-2, which provides in relevant part: ''If, at any time before the final determination of an appeal, the appellate court is of the opinion that the appeal is appropriate for supreme court review, the appellate court may file a brief statement of the reasons why transfer is appropriate. The supreme court shall treat the statement as a motion to transfer and shall promptly decide whether to transfer the case to itself.'' In this instance, the Appellate Court recognized that the outcome of this appeal depended on the proper interpretation of our decision in *State* v. *Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992), which had been the subject of some confusion. Therefore, rather than render a decision potentially in conflict with other Appellate Court decisions, it recommended transfer to this court for a final determination as to the proper interpretation of that case.

[7] The defendant was sentenced to concurrent prison terms of twenty years for attempted sexual assault in the first degree and forty years for kidnapping in the first degree as a persistent dangerous felony offender, with a consecutive prison term of five years for assault in the second degree.

[8] *Miranda* v. *Arizona*, 384 U.S. 436, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[9] Article first, § 7, of the constitution of Connecticut provides: ''The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation.''

[10] Although the defendant challenged the constitutionality of the police action in *Geisler I* under our state constitution, the Appellate Court decided *Geisler I* solely on the basis of the constitution of the United States and then existing case law.

[11] As previously discussed, under *Harris*, both temporal proximity and intervening circumstances are irrelevant in analyzing the admissibility of unlawfully obtained evidence. See *Geisler II*, supra, 25 Conn. App. 291.

[12] In light of our decision that the trial court properly admitted the defendant's statement, we need not address the state's claim that admission of the statement was harmless error. We do note, however, that the defendant's statement contained a complete denial of culpability.