****

The "officially released" date that appears near the beginning of an opinion is the date the opinion will be published in the Connecticut Law Journal or the date it is released as a slip opinion. The operative date for the beginning of all time periods for the filing of postopinion motions and petitions for certification is the "officially released" date appearing in the opinion.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports. In the event of discrepancies between the advance release version of an opinion and the version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest version is to be considered authoritative.

The syllabus and procedural history accompanying an opinion that appear in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports are copyrighted by the Secretary of the State, State of Connecticut, and may not be reproduced or distributed without the express written permission of the Commission on Official Legal Publications, Judicial Branch, State of Connecticut.

****

STATE OF CONNECTICUT *v.* HAROLD B.[*]
(AC 47910)

Elgo, Suarez and Seeley, Js.

Syllabus

Convicted of several crimes, including assault in the second degree as a result of a physical altercation with the victim, M, that resulted in a scar on her forehead, the defendant appealed. He claimed, inter alia, that the evidence was insufficient to support the assault conviction because M did not suffer a serious physical injury in the form of a serious disfigurement. *Held*:

The evidence was insufficient to support the defendant's conviction of assault in the second degree, as the jury could not reasonably have determined that the scar that resulted from the altercation with the defendant rose to the level of a serious disfigurement as defined under *State* v. *Petion* (332 Conn. 472) in that the scar was small and barely noticeable, a person's eye would not be naturally drawn to it, and a reasonable person would not find it distressing or objectionable, as the injury was not of a magnitude that could be found to substantially detract from M's appearance; accordingly, the conviction of second degree assault was reversed.

The evidence, viewed cumulatively, provided a sufficient basis from which the jury reasonably could have inferred that the defendant acted with the specific intent to cause serious physical injury to M required for a conviction of assault in the second degree pursuant to statute (§ 53a-60 (a) (1)), as the record showed that he choked her, expressed anger and rage toward her and repeatedly punched her in the forehead, and, contrary to the defendant's assertion that the evidence did not show that he intended to cause serious physical injury, the act of punching M in the head three times was strongly corroborative of an intention to cause serious physical injury.

The evidence was sufficient to support the defendant's conviction of unlawful restraint in the first degree, as the jury reasonably could have inferred from the defendant's words and conduct, in grabbing M from behind, holding her around the neck and making it difficult for her to breathe, that he had restrained M with the conscious objective to restrict her movements in such a manner as to interfere substantially with her liberty.

[*]In accordance with our policy of protecting the privacy interests of the victims of family violence, we decline to use the defendant's full name or to identify the victim or others through whom the victim's identity may be ascertained. See General Statutes § 54-86e.

Moreover, in accordance with federal law; see 18 U.S.C. § 2265 (d) (3) (2024); we decline to identify any person protected or sought to be protected under a protection order, protective order, or a restraining order that was issued or applied for, or others through whom that person's identity may be ascertained.

This court determined that, although the evidence was insufficient with respect to the element of serious physical injury for purposes of the defendant's conviction of assault in the second degree, because the jury's verdict necessarily included a determination that, in the absence of serious physical injury, all the elements of second degree assault had been proven, the appropriate remedy was to remand the case to the trial court with direction to modify the judgment to reflect a conviction of attempt to commit assault in the second degree and to resentence the defendant in accordance with that conviction.

Argued April 21—officially released September 15, 2026

Procedural History

Substitute information charging the defendant with the crimes of assault in the second degree, unlawful restraint in the first degree, strangulation in the third degree, risk of injury to a child and disorderly conduct, brought to the Superior Court in the judicial district of New Haven and tried to the jury before *Weiner, J.*; verdict and judgment of guilty of assault in the second degree, unlawful restraint in the first degree, risk of injury to a child and disorderly conduct, from which the defendant appealed to this court. *Reversed in part*; *judgment directed*; *further proceedings*.

Naomi T. Fetterman, assigned counsel, for the appellant (defendant).

Christopher A. Alexy, senior assistant state's attorney, with whom, on the brief, were *John P. Doyle, Jr.*, state's attorney, and *Kathleen E. Morgan*, assistant state's attorney, for the appellee (state).

Opinion

SEELEY, J. The defendant, Harold B., appeals from the judgment of conviction, rendered following a jury trial, of assault in the second degree in violation of General Statutes § 53a-60 (a) (1),[1] unlawful restraint in the

[1]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, the actor causes such injury to such person or to a third person . . . ."

first degree in violation of General Statutes § 53a-95 (a),[2] risk of injury to a child in violation of General Statutes § 53-21 (a) (1), and disorderly conduct in violation of General Statutes § 53a-182 (a) (1). On appeal, the defendant challenges the sufficiency of the evidence to support his conviction of assault in the second degree and unlawful restraint in the first degree. Specifically, with respect to his conviction of assault in the second degree, the defendant claims that the evidence was insufficient for the jury reasonably to find that (1) the victim, M, suffered a serious physical injury in the form of a serious disfigurement and (2) he acted with the specific intent to inflict serious physical injury on M. With respect to his conviction of unlawful restraint in the first degree, the defendant claims that the evidence was insufficient for the jury reasonably to find that he acted with the specific intent to substantially interfere with M's liberty. We agree with the defendant's claim that the evidence was insufficient on the element of serious physical injury to support his conviction of assault in the second degree and, accordingly, reverse in part the judgment of conviction.

The jury reasonably could have found the following facts. M had been in a relationship with the defendant, who was living with her, for about two months when the incident underlying the charges occurred. During the evening of July 12, 2022, M and the defendant had gotten into an argument, which agitated the defendant. The next morning, July 13, 2022, M and the defendant got into another argument in the kitchen of the apartment after the defendant refused to help make something to eat for M's youngest daughter. The defendant became aggravated with M after she asked him why he would not help make something to eat for her daughter, and he called M "lazy," told her to "shut up," and "doused her with water," after which she told him that he had to leave. At that point, the defendant "blew out into a full

[2]General Statutes § 53a-95 (a) provides: "A person is guilty of unlawful restraint in the first degree when he restrains another person under circumstances which expose such other person to a substantial risk of physical injury."

rage" and grabbed a knife to try to cut a microwave that he bought for M, who asked him not to do that in front of her children. Thereafter, the defendant broke a wok that he had bought, grabbed M from behind and choked her and, in the process, pushed M's oldest daughter, E, away, causing E to fall.

At that point, M went to her bedroom, and the defendant followed M there. Along the way, M and the defendant engaged in a "shoving match" because he was grabbing things, including plants, and throwing them to the floor in an effort to destroy anything he had bought for M. In the bedroom, the defendant asked M to get the clothes that he had bought her for Mother's Day, and, when M "went to open up the closet, [she] ended up getting cornered by [the defendant]." According to M, the defendant cornered her against the closet door and tried to bite her finger as she told him he had to leave. At that point, the defendant punched M in her forehead when her back was against the closet, causing M to fall. When M got back up, the defendant punched her again in the forehead, causing M to fall once more. After M got back up again, the defendant punched her a third time in the forehead, at which point M felt a "warm sensation on [her] forehead" and realized that she was bleeding.[3]

At approximately 1:50 p.m., Sheila Villegas, a 911 dispatcher employed by the city of New Haven, received a telephone call from a distressed fifteen year old, E, in which E reported that her mother, M, was being hit by M's boyfriend, the defendant, and that the defendant had also "put his hands on" E. On the basis of that information, New Haven police officers were dispatched to M's apartment.

Shortly thereafter, Sergeant Christopher Lawrence of the New Haven Police Department arrived at the scene.[4]

[3]Two photographs of the injury to M's forehead at the time of the incident were admitted into evidence. See footnote 6 of this opinion.

[4]A DVD containing Lawrence's body camera footage and still photographs captured from the body camera footage were admitted into evidence at trial.

When Lawrence went upstairs to the third floor of the apartment building, he could hear arguing coming from inside M's apartment. Upon entering M's apartment, Lawrence first encountered the defendant, who stated to Lawrence, "just take me." Next, Lawrence saw M and noticed that she had "apparent injuries" and was "very upset," "quiet," and "very sweaty." With respect to the state of M's apartment, Lawrence saw "potted plants and dirt all over the ground, and there was also blood on the ground." While at the scene, Lawrence spoke with the defendant and received a statement from M.[5] At that time, medical personnel had arrived and were treating M's injuries. Specifically, M had a laceration on her forehead that was bleeding.[6] As a result of her injuries, M was transported to Yale-New Haven Hospital, Saint Raphael campus (hospital), where she received treatment for her injuries, which included a computerized tomography (CT) scan of her head and facial bones.[7] After M was taken to the hospital, the defendant was arrested and charged in connection with the incident.

The defendant was charged by way of a five count information dated October 23, 2023, with assault in the second degree in violation of § 53a-60 (a) (1), unlawful restraint in the first degree in violation of § 53a-95 (a), strangulation in the third degree in violation of General

[5]M's statement to Lawrence was not marked for identification or admitted into evidence.

[6]Still photographs of M's injuries and how she looked when Lawrence first encountered her, which were taken from footage from Lawrence's body camera, were admitted into evidence at trial. The photographs show a small laceration on M's forehead, and blood from the laceration running down her face and chest.

[7]Specifically, M received three sutures to close the laceration on her forehead, which was 2.5 centimeters in length, she was given pain medication for head pain, and the CT scan of M's head and facial bones was performed to ensure that she had not suffered any fractures or bleeding in her brain. Mark Kantrowitz Rollins, the attending physician at the hospital who treated M's injuries, testified at the defendant's trial. When asked what the results of the CT scan showed, if anything, he stated: "I believe that they saw the superficial laceration on the scalp, but nothing else."

Statutes § 53a-64cc (a),[8] risk of injury to a child in violation of § 53-21 (a) (1), and disorderly conduct in violation of § 53a-182 (a) (1).[9] The defendant elected to be tried by a jury, which heard evidence on November 15 and 16, 2023.

At trial, the state presented testimony from Villegas; Lawrence; M; and Mark Kantrowitz Rollins, an attending physician who treated M for her injuries in the hospital's emergency department. The defendant did not testify or present any witnesses in his defense.

The jury found the defendant guilty of assault in the second degree in violation of § 53a-60 (a) (1), unlawful restraint in the first degree in violation of § 53a-95 (a),[10] risk of injury to a child in violation of § 53-21 (a) (1), and disorderly conduct in violation of § 53a-182 (a) (1). The defendant was sentenced on February 5, 2024, to a total effective term of twelve years of incarceration, execution suspended after seven years, with five years of probation. This appeal followed. Additional facts and procedural history will be set forth as necessary.

On appeal, the defendant claims that the state failed to present sufficient evidence to support his conviction of assault in the second degree and unlawful restraint in the first degree.[11] We begin with our well settled standard of review for assessing an insufficiency of the evidence claim.

[8]See footnote 10 of this opinion.

[9]The defendant also was charged in a part B information with being a persistent serious felony offender in violation of General Statutes § 53a-40 (c) and (k), and a persistent assault offender in violation of General Statutes § 53a-40d (a) and (b). The state, however, withdrew the part B information after the jury returned its verdict.

[10]With respect to the charge of strangulation in the third degree, the court instructed the jury as follows: "You will only consider this count if you first unanimously find the defendant not guilty of count two, unlawful restraint in the first degree." Because the jury found the defendant guilty of the unlawful restraint charge, it did not consider the strangulation charge.

[11]We note that the defendant does not challenge his conviction of disorderly conduct and that his appellate counsel acknowledged at oral argument before this court that she was not challenging his conviction of risk of injury to a child.

"In reviewing the sufficiency of the evidence to support a criminal conviction we 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. . . .

"[T]he jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . .

"[P]roof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the [jury], would have resulted in an acquittal. . . . On appeal, we do not ask whether there is a reasonable view of the evidence that would support a reasonable hypothesis of innocence. We ask, instead, whether there is a reasonable view of the evidence that supports the [jury's] verdict of guilty. . . .

"Moreover, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts [that] establishes guilt in a case involving substantial circumstantial evidence. . . . In evaluating evidence, the [finder] of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The [finder of fact] may

draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical." (Citation omitted; internal quotation marks omitted.) *State* v. *Ragalis*, 235 Conn. App. 538, 547–48, 345 A.3d 844, cert. denied, 353 Conn. 934, 347 A.3d 877 (2025); see also *State* v. *Franqui*, 354 Conn. 400, 418–19, 354 A.3d 201 (2026). "When reviewing a sufficiency of the evidence claim, [appellate courts] construe the evidence in the light most favorable to sustaining the verdict." (Internal quotation marks omitted.) *State* v. *Dixon*, 353 Conn. 382, 420, 342 A.3d 161 (2025).

I

The defendant claims on appeal that the state failed to present sufficient evidence to support his conviction of assault in the second degree because the state failed to present evidence demonstrating that (1) M suffered a serious physical injury and (2) he acted with the specific intent to inflict serious physical injury on M. We address each claim in turn.

A

We begin with the defendant's claim that the state failed to present sufficient evidence from which the jury reasonably could have found that M suffered a serious physical injury in the form of a serious disfigurement, as required for a conviction of assault in the second degree. Specifically, the defendant claims that the injury to M's forehead does not rise to the level of serious disfigurement as defined by our Supreme Court in *State* v. *Petion*, 332 Conn. 472, 491–92, 211 A.3d 991 (2019), as the laceration was superficial and the resulting scar does not substantially detract from M's appearance. We agree.

We first briefly summarize the evidence at trial concerning the injury to M's forehead. M testified that she had received treatment for her injuries at the hospital. Specifically, M testified that she had received "one and [one-half] to two sutures" and a CT scan. M stated that, when sutures were removed approximately seven days

later, she experienced pain and discomfort, and that she "had headaches for a while for . . . at least three to four days . . . ." M stated that she has a permanent scar from the incident. Photographs of the scar on M's forehead, which were taken approximately one week prior to her testimony at the trial, were admitted into evidence. The photographs show a small, barely visible scar in the center of M's forehead. M testified that the photographs accurately depicted her scar from one week prior to the trial, and that, when she squints, you can see the "dent still [there] . . . ." The prosecutor did not have M display her scar to the jury directly and presented the contemporaneous photographs instead.[12]

Rollins, the attending physician at the hospital, testified that M presented with complaints of a "ten out of ten headache" and had a 2.5 centimeter[13] laceration to her forehead, which "was thoroughly irrigated to clean it out . . . [a]nd then repaired with [three] sutures." Rollins testified that M received pain medication and a CT scan of her head and facial bones to ensure that she had not suffered any fractures or brain bleeding. Rollins explained that M's CT scan did not indicate that she suffered from brain bleeding, and, when asked what the results of the CT scan showed, if anything, he stated: "I

[12]Although M testified at trial, there is no evidence that M's injury was visible to the jury as she testified. See *State* v. *Leveille*, 232 Conn. App. 687, 698, 337 A.3d 797 (2025) ("[a]t trial, the victim stepped down from the witness stand and showed the jury the 'piece missing' from his ear"). Accordingly, to the extent the state maintains that the jury accurately categorized M's injury as a serious disfigurement because the jury saw M's injury when she testified, we decline to consider this claim, as there is nothing in the record to substantiate it.

[13]We note that 2.5 centimeters is equivalent to just less than one inch. See https://www.nist.gov/pml/owm/metric-si/unit-conversion/approximate-conversions-us-customary-measures-metric (last visited September 10, 2026); see also *State* v. *Jeffrey Z.*, 240 Conn. App. 1, 28, A.3d (2026) (court may take judicial notice of matters of established fact), petition for cert. filed (Conn. July 21, 2026) (No. 260113); see also *Moore* v. *Moore*, 173 Conn. 120, 123 n.1, 376 A.2d 1085 (1977) ("types of facts considered suitable for the taking of judicial notice [are] those which are common knowledge and those which are capable of accurate and ready demonstration" (internal quotation marks omitted)).

believe that they saw the *superficial laceration* on the scalp, but nothing else." (Emphasis added.) Additionally, Rollins testified that M had not experienced any fractures, did not complain of loss of consciousness or breathing trouble, and did not require a blood transfusion as a result of blood loss. When asked whether M would have a permanent scar, Rollins testified that "everybody heals differently. . . . [B]ased on my review of the photo and the chart, I think that most people would probably have a scar permanently. But everybody heals differently, so I can't say for sure." On cross-examination, Rollins stated that his examination findings included "that 2.5 centimeter laceration surrounding swelling. There was a very superficial abrasion above the right eyebrow. There was tenderness around the left orbit, which is the . . . bones around the eye, as well as the left temple." Finally, Rollins testified on cross-examination that, in his training and experience, three sutures is not "a lot to close a wound . . . ."

Next, we set forth the legal principles that guide our resolution of this claim. " 'To convict the defendant of assault in the second degree under § 53a-60 (a) (1), the state was required to prove that (1) the defendant intended to cause serious physical injury to another person, and (2) acting with such intent, the defendant caused serious physical injury to that person.' " *State* v. *Kenneth B.*, 223 Conn. App. 270, 274–75, 308 A.3d 82, cert. denied, 348 Conn. 952, 308 A.3d 1038 (2024); see also General Statutes § 53a-60 (a) (1); *State* v. *Fisher*, 342 Conn. 239, 250, 269 A.3d 104 (2022). "For purposes of [§ 53a-60 (a) (1)], 'serious physical injury' means 'physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ . . . .' General Statutes § 53a-3 (4)." *State* v. *Kenneth B.*, supra, 275. In the present case, the state's theory of the case was that M sustained a serious physical injury in the form of a serious disfigurement.

In *State* v. *Petion*, supra, 332 Conn. 475, our Supreme Court "examine[d] the parameters that should be used by the trier of fact to assess whether a defendant has inflicted serious physical injury in the form of serious disfigurement." In doing so, the court first noted the difference in the definition of " '"[p]hysical injury" [which] means impairment of physical condition or pain' "; id., 481; see General Statutes § 53a-3 (3); and that of " '"[s]erious physical injury" [which] means physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ . . . .' " *State* v. *Petion*, supra, 481. "These definitions plainly reflect a legislative intention to establish a material degree of difference between mere physical injury and *serious* physical injury. This differentiation is reflected in the severity of punishment attendant to each. Assault resulting in physical injury, unless inflicted by discharge of a firearm, carries a maximum term of imprisonment of five years, whereas assault resulting in serious physical injury carries a maximum term of imprisonment of twenty years. See General Statutes §§ 53a-35a (6) and (7), 53a-59 (b) and 53a-60 (b). Thus, [a]lthough it may often be difficult to distinguish between the two, such a distinction *must* be drawn; a person can be found guilty of assault in the first degree under . . . § 53a-59 [a] [1] only if he causes *serious* physical injury to another person."[14] (Emphasis in original; internal quotation marks omitted.) *State* v. *Petion*, supra, 481.

[14] See *State* v. *Stone*, 326 Or. App. 200, 207–208, 532 P.3d 90 ("The difference between 'physical injury' and 'serious physical injury' is substantial, not slight. The 1970 commentary of the commission that drafted the definitions describes 'serious physical injury' as synonymous with 'serious bodily harm' and cites the Restatement of Torts for the proposition that 'serious bodily harm' is harm that '"is so grave that it is regarded as differing in kind, and not merely in degree, from other bodily harm." ' Commentary to Criminal Law Revision Commission Proposed Oregon Criminal Code, Final Draft and Report §§ 3, 4 (July 1970) (quoting Restatement of Torts § 63 (b)) . . . ." (Citation omitted.)), opinion adhered to as modified on reconsideration, 328 Or. App. 203, 536 P.3d 1094 (2023).

Focusing on one type of physical injury in particular—serious disfigurement—the court in *Petion* distinguished between disfigurement and serious disfigurement, and established "a multifactor test to consider in determining whether a jury reasonably could decide that a victim has suffered a serious physical disfigurement." *State* v. *Stepherson*, 237 Conn. App. 65, 74, 350 A.3d 1174 (2026). Specifically, the court in *Petion* stated: " 'Disfigurement' means impairment of or injury to the beauty, symmetry or appearance of a person that renders the person unsightly, misshapen or imperfect, or deforms the person in some manner, or otherwise causes a detrimental change in the external form of the person. 'Serious disfigurement' is an impairment of or injury to the beauty, symmetry or appearance of a person of a magnitude that substantially detracts from the person's appearance from the perspective of an objective observer. In assessing whether an impairment or injury constitutes serious disfigurement, factors that may be considered include the duration of the disfigurement, as well as its location, size, and overall appearance. Serious disfigurement does not necessarily have to be permanent or in a location that is readily visible to others. The jury is not bound by any strict formula in weighing these factors, as a highly prominent scar in a less visible location may constitute serious disfigurement, just as a less prominent scar in a more visible location, especially one's face, may constitute serious disfigurement." (Footnote omitted.) *State* v. *Petion*, supra, 332 Conn. 491.

In reaching that conclusion, the court in *Petion* explained that the permanence of an injury is not a necessary condition for serious disfigurement, nor is it, by itself, sufficient to establish serious disfigurement. See id., 489. It then stated: "We are mindful that some of our Appellate Court's decisions appear to suggest that, whenever a defendant inflicts an injury that leaves a permanent scar, the evidence would be sufficient to permit the trier of fact to determine that serious disfigurement exists. See, e.g., *State* v. *Griffin*, 78 Conn. App. 646, 655 n.3, 828 A.2d 651 (2003) ('[a] permanent scar constitutes

serious and permanent disfigurement'). But see *State* v. *Huckabee*, 41 Conn. App. 565, 570–71, 677 A.2d 452 ('[a] bullet wound is not per se serious physical injury'), cert. denied, 239 Conn. 903, 682 A.2d 1009 (1996). We agree with those jurisdictions that have recognized that, because any visible scar would mar the victim's appearance and thus constitute disfigurement, the legislative choice of 'serious' disfigurement evidences an intent to require the presence of some other factor(s) in addition to permanence to render a scar a 'serious' disfigurement. See, e.g., *Saelee* v. *State*, Docket No. A-10004, 2011 WL 807391, *9 (Alaska App. March 2, 2011) ('Even in the photographic exhibit, it is difficult to see this scar if one is not looking closely. If we were to declare this evidence sufficient to establish a "serious and protracted disfigurement," we would essentially be saying that any visible scar constitutes a "serious physical injury" for purposes of the assault statutes. We do not believe that the legislature intended this term to be interpreted so broadly.'); *State* v. *Silva*, [75 Haw. 419, 433, 864 P.2d 583 (1993)] ('[E]ven a small but noticeable scar on a person's face, for example, is a disfigurement. However, such a scar would certainly not qualify as a "serious bodily injury" under the statutory definition nor should it.'); *Hernandez* v. *State*, [946 S.W.2d 108, 113 (Tex. App. 1997)] ('Simply that an injury causes a scar is not sufficient to establish serious permanent disfigurement. . . . There must be evidence of some significant cosmetic deformity caused by the injury.' . . . [S]ee also *State* v. *Hanes*, 790 N.W.2d 545, 554 (Iowa 2010) ('[s]carring may in some circumstances rise to the level of serious permanent disfigurement'); *State* v. *Bledsoe*, [920 S.W.2d 538, 540 (Mo. App. 1996)] ('permanency of disfigurement is relevant . . . on the element of seriousness').

"Factors identified by other jurisdictions as relevant to the seriousness of a disfigurement in the form of a scar include its permanence, but also its location, size, and general appearance. See, e.g., *State* v. *Roper*, 136 S.W.3d 891, 898 (Mo. App. 2004); *State* v. *Demers*, Docket No. CX-03-297, 2003 WL 22952813, *1 (Minn.

App. December 16, 2003), review denied, Minnesota Supreme Court (February 25, 2004); *People* v. *McKinnon*, [15 N.Y.3d 311, 316, 937 N.E.2d 524, 910 N.Y.S.2d 767 (2010)]. If there is more than one disfiguring feature, courts, including our Appellate Court, have considered the cumulative effect of those features to assess seriousness. See, e.g., *State* v. *Anderson*, 16 Conn. App. 346, 357, 547 A.2d 1368, cert. denied, 209 Conn. 828, 552 A.2d 433 (1988); *Levin* v. *State*, 334 Ga. App. 71, 74, 778 S.E.2d 238 (2015), cert. denied, Georgia Supreme Court, Docket No. S16C0249 (January 11, 2016); *Sloan* v. *State*, Docket No. 49A02-1002-CR-195, 2010 WL 4813600, *2 (Ind. App. November 24, 2010) (decision without published opinion, 937 N.E.2d 938 [Ind. App. 2010]); *State* v. *Roper*, supra, 898." *State* v. *Petion*, supra, 332 Conn. 489–91.

Before our Supreme Court in *Petion* applied those factors to the facts of that case, it noted: "Although ordinarily a factual question for the jury; see, e.g., *State* v. *Almeda*, [211 Conn. 441, 450, 560 A.2d 389 (1989)]; *State* v. *Miller*, 202 Conn. 463, 489, 522 A.2d 249 (1987); there is a legal distinction between physical injury and serious physical injury that is not a purely subjective matter, and it is ultimately our responsibility to draw that line. See *State* v. *Rossier*, 175 Conn. 204, 207, 397 A.2d 110 (1978) ('[a]lthough it may often be difficult to distinguish between [physical injury and serious physical injury], such a distinction *must be drawn*' before defendant can be found guilty of assault in first degree under § 53a-59 [a] [1] . . .); *State* v. *Jeustiniano*, 172 Conn. 275, 281, 374 A.2d 209 (1977) ('[t]he degree of the injuries suffered by [the victim] was a proper question for the jury to decide if sufficient evidence were introduced'); *Hernandez* v. *State*, supra, 946 S.W.2d 113 ('Disfigurement, like beauty, is in the eye of the beholder. However, when distinguishing between "bodily injury" and "serious bodily injury" it is, again, a matter of degree. Simply that an injury causes a scar is not sufficient to establish serious permanent disfigurement. .

. . There must be evidence of some significant cosmetic deformity caused by the injury.' . . .).

"'In reviewing the [legal] sufficiency of the evidence concerning this element of assault in the [second] degree, our task is to construe the evidence in the light most favorable to sustaining the jury's verdict, and then to determine whether any rational trier of fact could have found that the harm suffered rose to the level of a serious physical injury under the statute.'" (Emphasis in original.) *State* v. *Petion*, supra, 332 Conn. 492–93.

In *Petion*, the victim suffered "an approximately 1.38 inch (three and one-half centimeters) abrasion and an approximately 0.30 inch (three-quarters of one centimeter) laceration just above her left elbow. Just below her left elbow, on her forearm, [the victim] had an approximately 1.57 inch (four centimeter) laceration. The smaller laceration was closed with a single suture; the larger laceration was closed with ten sutures. The closed lacerations appear quite narrow. By the time of trial, the larger of the two lacerations had left a scar approximately the same length as the laceration, although it appears to be slightly wider in the magnified close-up than when sutured. The scar is a slightly lighter tone than the surrounding skin. No other injury is apparent." (Footnote omitted.) Id., 493–94.

Our Supreme Court in *Petion* determined that a jury could not reasonably have concluded that the injuries sustained by the victim constituted a *serious* disfigurement. See id., 495. In particular, our Supreme Court clarified that the victim had suffered a disfigurement in the form of a permanent scar on her forearm; however, the scar was not in a prominent location, was "relatively small in size, uniform in shape (a straight line), and otherwise unremarkable in its general appearance." Id., 494. The court observed that, "[a]lthough the scar is visible if one looks for it . . . its appearance is not such that one's eye would naturally be drawn to it. Serious disfigurement requires something more than visibility, as it must be visible to mar one's appearance and, hence, meet the

threshold for disfigurement." Id. Accordingly, the court found that the evidence of the victim's injury "compels the conclusion that the disfigurement is not of a magnitude that objectively could be found to *substantially* detract from [the victim's] appearance." (Emphasis in original.) Id., 495.

Applying the factors set forth in *Petion* to the present case, we conclude that the jury could not reasonably have determined that the injury to M's forehead and resulting scar constituted a *serious* disfigurement. The evidence before the jury shows that M sustained a 2.5 centimeter laceration to her forehead that required three sutures to close. The laceration resulted in a permanent scar to M's forehead. The scar is in a prominent location in the center of M's forehead and is visible if one looks for it, but the scar itself is not prominent or otherwise remarkable,[15] nor is it of the appearance that a person's eye would be naturally drawn to it. See id. Indeed, Rollins referred to it as a "*superficial laceration* on the scalp, but nothing else." (Emphasis added.) Superficial means "affecting only the outer part or surface: not deep or serious . . . ." Merriam-Webster's Collegiate Dictionary (12th Ed. 2026) p. 1580. Although the small and barely noticeable scar on M's forehead constitutes a disfigurement, as that term was defined in *Petion*, we conclude that the evidence before the jury was insufficient for it to have determined that it rose to the level of a serious disfigurement, as required for a conviction of assault in the second degree. As in *Petion*, the injury to M's forehead in the present case "is not of a magnitude that objectively could be found to *substantially* detract from [M's] appearance." (Emphasis in original.) *State* v. *Petion*, supra, 332 Conn. 495; see, e.g., *State* v. *Silva*, supra, 75 Haw. 433 ("According to the Random House College Dictionary 380 (1979), a 'disfigurement' is, in relevant part, 'something that disfigures, as a scar,' while to 'disfigure' is 'to mar the effect or excellence of.' . . . Therefore, it follows that *even a small but noticeable scar* on a person's face,

[15]Prominent is defined as "standing out" or "readily noticeable." Merriam-Webster's Collegiate Dictionary (12th Ed. 2026) p. 1269.

for example, is a disfigurement. However, such a scar would certainly not qualify as a 'serious bodily injury' under the statutory definition nor should it. 'Serious' is defined in the dictionary as 'giving cause for apprehension; critical.' . . . Conversely, a large, permanent scar on a person's face from the corner of the eye to the jaw, for example, would clearly be considered 'serious bodily injury' under the statutory definition." (Emphasis added.)). But see *State* v. *Leveille*, 232 Conn. App. 687, 690, 695, 699, 337 A.3d 797 (2025) (there was sufficient evidence from which jury reasonably could have found that victim suffered serious physical injury in form of serious disfigurement from scarring on his jaw, ear, and top of his head, as "victim sustained four lacerations to his head and face that required twenty-eight sutures and six staples to close" after defendant struck victim in face repeatedly with empty beer glass). Accordingly, the evidence of M's injury is not legally sufficient to meet the threshold for serious disfigurement to support the defendant's conviction of assault in the second degree.

Our determination is supported by case law from other jurisdictions with similar definitions of serious physical injury and serious disfigurement, which demonstrates that a small, less noticeable scar to a victim's face, although in a prominent location but which is not otherwise distinguishable or jarring in appearance, is generally not sufficient to constitute a serious disfigurement, and that, for an injury resulting in a facial scar to rise to the level of a serious disfigurement, it must be more significant in nature and of the kind that a reasonable person would find distressing or objectionable. Compare *Anderson* v. *Commonwealth*, 352 S.W.3d 577, 582 (Ky. 2011) (evidence was insufficient to establish that defendant, by cutting victim's face along jawbone with straight razor, inflicted serious physical injury on victim to support conviction of assault in first degree, as evidence showed only that victim sustained cut to jaw, with no proof as to severity of blood loss, laceration was repaired and victim was sent home from hospital on same day, and there was no proof of any additional treatment,

and, even though scar on victim's face constituted disfigurement, it was not of sufficient severity to support finding of serious physical injury), *People* v. *Harris*, 186 App. Div. 3d 907, 911–12, 127 N.Y.S.3d 655 (2020) (evidence was insufficient to demonstrate that two facial scars sustained by victim constituted serious physical injury to support defendant's conviction of assault in first degree; although victim sustained laceration to cheek that was four centimeters long and similarly sized laceration transversing tip of victim's nose to his right nostril, both of which were sutured by plastic surgeon, record was imprecise as to extent and nature of any resulting scars, state did not make contemporaneous record of what jury observed when victim displayed scars to jury, and, "despite their prominent locations, there [was] no indication that the relatively small facial lacerations produced jagged, uneven or 'unusually disturbing' scars"), appeal denied, 36 N.Y.3d 1120, 169 N.E.3d 577, 146 N.Y.S.3d 219 (2021), *People* v. *Trombley*, 97 App. Div. 3d 903, 903–904, 947 N.Y.S.2d 686 (2012) (although victim sustained two scars on his face from assault, with larger one being one inch in length and located under victim's lower lip, "given their relatively small size, location and appearance, [court could not] conclude that they [were] 'objectively "distressing or objectionable"'" and, thus, evidence was legally insufficient to establish that victim sustained serious physical injury to support conviction of assault in second degree), *People* v. *Rosado*, 88 App. Div. 3d 454, 454–55, 930 N.Y.S.2d 10 (2011) (evidence of broken nose that had to be surgically repaired and three chipped teeth did not qualify as serious and protracted disfigurement, and "indentation" in victim's nose following surgery, while qualifying as disfigurement, did not constitute serious disfigurement, which "requires something more, and is established only upon proof that 'a reasonable observer would find [the injured person's] altered appearance distressing or objectionable'"), appeal denied, 18 N.Y.3d 928, 965 N.E.2d 969, 942 N.Y.S.2d 467 (2012), and *McCoy* v. *State*, 932 S.W.2d 720, 724 (Tex. App. 1996) (evidence was insufficient to establish

serious bodily injury when victim had " 'lasting and permanent' " scar on mouth that was barely visible), with *State* v. *Greene*, 182 Ariz. 576, 578, 898 P.2d 954 (1995) (victim suffered "serious and permanent disfigurement" when record indicated that she suffered open nasal fracture, whereby top part of her nose had separated at bridge causing quarter-inch hole, she suffered severe bruising and swelling below her left eye, her bruises and black eyes took three to four months to heal, and appearance of her nose was " 'completely changed,' " as she had " 'lumps all down [her] nose,' including what one physician described as 'a sharp bump,' " along with two scars on her nose), *People* v. *Harwood*, 183 App. Div. 3d 1281, 1281–83, 121 N.Y.S.3d 500 (2020) (in light of evidence showing that victim "sustained 'two significant lacerations to her anterior neck,' which were [three to four] and [five to six] centimeters long, respectively, with soft tissue defects and exposure of underlying subcutaneous fat," which "required at least [ten] sutures to close" and "resulted in permanent scars," grand jury reasonably could have inferred that "scars would 'make the victim's appearance distressing or objectionable to a reasonable person observing her,' " and, thus, evidence before grand jury was sufficient to demonstrate that victim suffered serious disfigurement), *People* v. *Reitz*, 125 App. Div. 3d 1425, 1425–26, 3 N.Y.S.3d 228 (evidence showing that victim sustained wound to cheek that was four inches long and left permanent scar in prominent location was sufficient to establish serious physical injury and serious disfigurement), appeal denied, 26 N.Y.3d 934, 38 N.E.3d 843, 17 N.Y.S.3d 97 (2015), *State* v. *Drew*, 302 Or. App. 232, 248, 460 P.3d 1032 (2020) (wound to victim's face and scalp that was "large, highly visible . . . four to six inches in length and half an inch wide, with five staples in it, and . . . readily apparent to others, [was] the type of disfigurement that the legislature intended to qualify as 'serious' under" statute governing assault in second degree, as " 'a reasonable observer would find [the victim's] altered appearance distressing or objectionable' "), review denied, 368 Or. 560, 494 P.3d 933 (2021), *State* v.

Clark, 974 A.2d 558, 573 (R.I. 2009) (evidence showing that victim suffered bleeding head wounds that required eight staples to close and resulted in permanent scars was sufficient to establish that victim sustained serious permanent disfigurement), and *Porter* v. *State*, Docket No. 08-24-00393-CR, 2026 WL 1639229, *14–16 (Tex. App. June 5, 2026) (victim sustained serious bodily injury when evidence showed she had been hit in face, causing her to lose consciousness, awoke with swollen face and in pain and pool of blood, underwent surgery and spent three days in hospital recovering, sustained broken nose and orbital plate in her face had been shattered, requiring its replacement with metal plate, needed twenty-three to twenty-four stitches down bridge of her nose, and sustained scar that ran length of her face), petition for discretionary review filed July 6, 2026.

Our conclusion today is, in no way, meant to minimize the assault and resulting injuries that M endured. To sustain a conviction of assault in the second degree, however, the law requires more than a physical injury resulting in a small scar that is otherwise unremarkable. See *Porter* v. *State*, supra, 2026 WL 1639229, *15 ("[s]maller, less visible scars are generally considered insufficient to constitute serious bodily injury"). In this case, the state has failed to prove beyond a reasonable doubt that the defendant committed assault in the second degree by inflicting serious physical injury on M in the form of a serious disfigurement. Therefore, the defendant's conviction of assault in the second degree cannot stand.[16]

B

The defendant next claims that the state failed to present sufficient evidence to demonstrate that he acted with the specific intent to inflict serious physical injury on M. Specifically, the defendant claims that "the record is bereft of any evidence that [he] specifically intended to cause [M] serious physical injury."[17] He asserts that

[16]We address the appropriate remedy in part III of this opinion.

[17]In support of his claim, the defendant contends that the state presented insufficient evidence of his intent to cause serious physical injury

the evidence, instead, shows only that he and M "were engaged in [a] conflict [that] became physical . . . [and] not that [he] intended to cause [M] serious physical injury." He also contends that, even if the evidence is sufficient to show that he intended to cause M "physical injury," "there was no evidence presented that he intended to cause her *serious* physical injury as required by statute." (Emphasis in original.) We do not agree.

At the outset, we note that, although our conclusion in part I A of this opinion concerning the insufficiency of the evidence to establish the element of serious physical injury is dispositive with respect to the defendant's conviction of assault in the second degree, which ordinarily

to M because the prosecutor, in her closing argument, "urged the jury to find evidence of [the defendant's] intent to cause serious physical injury based on" testimony from Rollins in response to a hypothetical question posed by the prosecutor, which defense counsel argued was not relevant to the case, and that, in the absence of the state's misplaced reliance on Rollins' testimony in response to the irrelevant hypothetical, there was no evidence demonstrating an intent on the defendant's part to cause serious physical injury to M. The prosecutor asked Rollins the following hypothetical on direct examination: "Assuming that there's an individual five foot eight, two hundred pounds, assume there's another individual approximately five foot one and half the weight. Assume that these facts are evidence and, based on your training and experience, assume that the individual who is five foot eight punched the individual who is five foot one in the forehead and she fell to the ground [and] gets back up. Assume that she gets punched again in the forehead, falls back—falls down and gets back up. Assume that there's a third punch to the forehead, [she] falls down and now feels a warm sensation and there's a laceration on her face. Would you have concerns, in your training and experience, regarding significant head injuries?" Defense counsel objected to the hypothetical on the ground that it called for speculation. The court overruled the objection and permitted Rollins to answer, and he answered in the affirmative.

In his appellate brief, the defendant acknowledges that "[t]he impropriety of this expert testimony is not raised as an independent claim of error on appeal due to the lack of preservation." Accordingly, we do not address the propriety of the hypothetical or whether the court erred in admitting Rollins' response to the hypothetical, which appears to relate more to the issue of the nature of M's injuries rather than to any intent on the defendant's part. Regardless, we need not address the hypothetical in our analysis because we conclude that the record contains sufficient other evidence demonstrating the defendant's intent to inflict serious physical injury on M.

would obviate the need to address whether there also was sufficient evidence to demonstrate that the defendant had the requisite intent to inflict serious physical injury on M, we nevertheless address the defendant's sufficiency of the evidence claim concerning the intent element of the assault in the second degree charge, as our resolution of this issue will impact our determination of the appropriate remedy for our reversal of the defendant's conviction of assault in the second degree.[18]

We next set forth the relevant legal principles that guide our resolution of this claim. As we stated previously in this opinion, to convict the defendant of assault in the second degree, the state had to prove beyond a reasonable doubt, inter alia, that the defendant intended to cause serious physical injury to M. See General Statutes § 53a-60 (a). "Assault in the second degree under § 53a-60 (a) (1) is a specific intent, rather than a general intent, crime. *State* v. *Perugini*, 153 Conn. App. 773, 780 n.7, 107 A.3d 435 (2014), cert. denied, 315 Conn. 911, 106 A.3d 305 (2015). Intent is a question of fact, the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one. . . . [T]he [jury is] not bound to accept as true the defendant's claim of lack of intent or his explanation of why he lacked intent. . . . Intent may be, and usually is, inferred from the defendant's verbal or physical conduct. . . . Intent may also be inferred from the surrounding circumstances. . . . The use of inferences based on circumstantial evidence is necessary because direct evidence of the accused's state of mind is rarely available. . . . Intent may be gleaned from circumstantial evidence such as the type of weapon used, the manner in which it was used, the type of wound inflicted and the events leading up to and immediately following the incident. . . . Furthermore, it is a permissible, albeit not a necessary or mandatory, inference that a defendant intended the natural consequences of his voluntary conduct. . . . *State* v. *Andrews*, 114 Conn. App. 738, 744–45, 971 A.2d 63, cert. denied, 293 Conn. 901, 975 A.2d 1277 (2009)." (Internal quotation marks

[18] See part III of this opinion.

omitted.) *State* v. *Pjura*, 200 Conn. App. 802, 808–809, 240 A.3d 772, cert. denied, 335 Conn. 977, 241 A.3d 131 (2020); see also *State* v. *Leveille*, supra, 232 Conn. App. 693.

"Regarding the intent requirement, an individual acts intentionally with respect to a result or to conduct . . . when his conscious objective is to cause such result or to engage in such conduct . . . . Intent may be, and usually is, inferred from [a] defendant's verbal or physical conduct [as well as] the surrounding circumstances. . . . Nonetheless, [t]here is no distinction between circumstantial and direct evidence so far as probative force is concerned. . . . Moreover, [i]t is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . Finally, we underscore that intent [can] be formed instantaneously and [does] not require any specific period of time for thought or premeditation for its formation. . . . Intent is a question of fact, the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one." (Internal quotation marks omitted.) *State* v. *Antwon B.*, 236 Conn. App. 428, 442–43, 348 A.3d 814 (2025), cert. denied, 354 Conn. 910, 349 A.3d 1094 (2026).

Our Supreme Court has stated: "Our courts previously have held that evidence of a defendant's anger or rage toward a victim . . . supported the jury's finding that a defendant intended to inflict serious physical injury on the victim. See, e.g., *State* v. *Perugini*, [supra, 153 Conn. App. 782–83] (evidence of intent was sufficient to support defendant's conviction of assault in second degree when record reflected that defendant '"wasn't happy"' about victim's statements to defendant's fiancée, sped to bar where victim was working, threw beer bottle at wall near victim, slammed victim into table, punched and choked victim, hit victim with mop handle, and left without summoning medical assistance) . . . *State* v. *Aviles*, 107 Conn. App. 209, 218–19, 944 A.2d 994 (evidence of intent was sufficient to support defendant's conviction

of murder when record reflected that defendant was angry at victim for taking his money and refusing to give him marijuana, and for swearing at defendant's girlfriend and slamming door in her face), cert. denied, 287 Conn. 922, 951 A.2d 570 (2008); *State* v. *Corona*, 69 Conn. App. 267, 269, 277–79, 794 A.2d 565 (evidence of intent was sufficient to support defendant's conviction of manslaughter in first degree when record reflected that defendant was angry at victim for telling defendant's girlfriend to 'shut up,' was initial aggressor, approached victim in threatening manner with his hands in fists, knocked victim to ground, kicked and punched victim, and subsequently renewed attack while victim was unsteady on his feet and not making any effort to struggle or resist attack), cert. denied, 260 Conn. 935, 802 A.2d 88 (2002).

"In every such case, it is the role of the jury to determine whether the state has proven beyond a reasonable doubt that the defendant . . . intended to . . . cause serious or deadly physical injury to the victim. Our only task on appeal is to determine whether, on the basis of the record before us, the jury reasonably could have found as it did." *State* v. *Fisher*, supra, 342 Conn. 252–53.

We conclude, on the basis of the evidence presented and the reasonable inferences that could be drawn therefrom; see *State* v. *Antwon B.*, supra, 236 Conn. App. 446 ("'[i]t is within the province of the jury to draw reasonable and logical inferences from the facts proven'"); that the jury reasonably could have found that the defendant intended to cause M serious physical injury when he punched her three times in the forehead. The record shows that the defendant expressed anger and rage toward M. According to M's testimony, which the jury was free to credit; see id. (jury was free to credit victim's testimony); see also *State* v. *Fisher*, supra, 342 Conn. 251 (it is exclusive province of jury to make determinations of credibility and to credit all, some or none of witness' testimony); she had gotten into an argument with the defendant the night before the incident at issue, which caused the

defendant to be agitated, and he became even further aggravated the next morning when he and M got into another argument concerning his failure to help make something to eat for M's youngest daughter, as evidenced by his telling M that she was lazy and to "shut up," and then dousing M with water. When M told the defendant to leave, he "blew out into a full rage," after which he grabbed a knife to try to cut a microwave that he had bought for M and, thereafter, proceeded to break a wok that he had bought and throw plants and other things to the floor in an effort to destroy anything he had bought for M. He also grabbed M from behind and choked her while in the kitchen. After the two went to the bedroom, the defendant cornered M against her closet door, tried to bite her finger when she told him that he had to leave, and then punched her in the forehead three times, causing M to fall to the ground multiple times. See *State* v. *Pjura*, supra, 200 Conn. App. 809–10 ("the jury reasonably could have found that the act of punching the victim directly and with great force in the head is strongly corroborative of an intention to cause serious physical injury"). This evidence, when viewed cumulatively and in the light most favorable to sustaining the verdict, provided a sufficient basis from which the jury reasonably could have inferred that the defendant had acted with the specific intent to cause serious physical injury to M. See *State* v. *Miller*, 229 Conn. App. 435, 456–57, 327 A.3d 448 (2024), cert. denied, 351 Conn. 909, 330 A.3d 880 (2025); see also *State* v. *Leveille*, supra, 232 Conn. App. 694.

Nor are we persuaded by the defendant's argument that the evidence, at best, shows only an intent to cause physical injury, not *serious* physical injury. As we stated in part I A of this opinion, for purposes of § 53a-60 (a) (1), "'[s]erious physical injury'" means "physical injury which creates a substantial risk of death, or which causes serious disfigurement, serious impairment of health or serious loss or impairment of the function of any bodily organ . . . ." General Statutes § 53a-3 (4). In *State* v. *Pjura*, supra, 200 Conn. App. 809–10, this court held

that "the jury reasonably could have found that the act of punching the victim directly and with great force in the head is strongly corroborative of an intention to cause serious physical injury." In the present case, such a finding was even more compelling given that the defendant had punched M in the forehead three times. Moreover, the defendant has not directed this court to any authority that would support a contrary finding. His claim, therefore, is unavailing.

For these reasons, the defendant's claim that the evidence was insufficient for the jury reasonably to find that he intended to cause M serious physical injury fails.

II

Next, the defendant claims that the evidence was insufficient to support his conviction of unlawful restraint in the first degree because the state failed to prove that he intended to restrain M. We disagree.

The following additional facts are relevant to the unlawful restraint charge. At trial, M testified that the defendant "grabb[ed] me from behind and chok[ed] me from behind . . . ." M elaborated, stating that, "[i]t turned physical almost right away because, after I specifically told him to leave, that's when he tried to grab the knife. He grabbed a knife, and I was telling him don't do this in front of my daughter, and then that's when he started . . . shoving me. And, when [E] came out to tell him to stop, he grabbed me from behind to show her . . . she was basically helpless, she couldn't help." When asked to describe how the defendant grabbed her from behind, M testified that, "[h]e basically—I could recall just like a quick swift, like this, and I was trying to . . . hold his arm up, like, away from . . . my neck so there won't be so much pressure on my neck." At that time, the defendant was yelling at E, "saying, what you gonna do . . . trying to antagonize her . . . ." M testified that it was "difficult" to breathe while the defendant held her in what the prosecutor referred to as a "chokehold." She testified that she was able to get away from the defendant's

hold on her only after he let go to push E. M also stated that the defendant "was trying to prove to [E] that she couldn't do anything [to help M]."

We next set forth the relevant legal principles governing our resolution of this claim. Under § 53a-95 (a), "[a] person is guilty of unlawful restraint in the first degree when he restrains another person under circumstances which expose such other person to a substantial risk of physical injury." General Statutes § 53a-95 (a). "'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."[19] General Statutes § 53a-91 (1).

"Unlawful restraint in the first degree is a specific intent crime. . . . A jury cannot find a defendant guilty

[19]In the present case, the trial court charged the jury that, to find the defendant guilty of unlawful restraint in the first degree, "the state [had to] prove the following elements beyond a reasonable doubt: Element number one, intent to restrain. The first element is that the defendant specifically intended to restrain [M]. A person acts intentionally with respect to a result when his conscious objective is to cause such result. Please refer to my prior instructions regarding specific intent and evidence of intent.

"Element two, restrained another person. The second element is that the defendant restrained [M] by confining her in some place in such a manner as to interfere substantially with her liberty. There is no requirement that the confinement last any specific period of time. There need not be any movement at all. The person could be confined by preventing her from leaving a place where she was. The state alleges that the defendant restrained [M] by allegedly holding her with his arm around her neck.

"Element three, without consent. The third element is that [M] did not consent to the restraint. Consent must have been actual and not simply acquiescence brought about by force, fear, shock, or deception. The act must have been truly voluntary. Consent may be express or you may find that it is implied from the circumstances that you find existed. Whether there was consent is a question of fact for you to determine. The defendant has no burden to prove consent. The state must prove the lack of consent.

"Element four, substantial risk of physical injury. The fourth element is that the restraint exposed the person to a substantial risk of physical

of unlawful restraint unless it first [finds] that he . . . restricted the victim's movements with the intent to interfere substantially with her liberty. . . . [A] restraint is unlawful if, and only if, a defendant's conscious objective in . . . confining the victim is to achieve that prohibited result, namely, to restrict the victim's movements in such a manner as to interfere substantially with his or her liberty. . . . To convict a defendant of unlawful restraint in the first degree, no actual physical harm must be demonstrated; the state need only prove that the defendant exposed the victim to a substantial risk of physical injury." (Citation omitted; internal quotation marks omitted.) *State* v. *Morlo M.*, 206 Conn. App. 660, 678, 261 A.3d 68, cert. denied, 339 Conn. 910, 261 A.3d 745 (2021).

As we have indicated, "[b]ecause direct evidence of an accused's state of mind typically is not available, his intent often must be inferred from his conduct, other circumstantial evidence and rational inferences that may be drawn therefrom. . . . For example, intent may be inferred from the events leading up to, and immediately following, the conduct in question . . . the accused's physical acts and the general surrounding circumstances. . . . [W]hen a jury evaluates evidence of a defendant's intent, it properly rel[ies] on its common sense, experience and knowledge of human nature in drawing inferences and reaching conclusions of fact." (Internal quotation marks omitted.) *State* v. *Williams*, 172 Conn. App. 820, 828, 162 A.3d 84, cert. denied, 326 Conn. 913, 173 A.3d 389

injury. Physical injury is defined as impairment of physical condition or pain. A substantial risk of physical injury means considerable risk of physical injury. Actual injury need not be proved.

"In summary, the state must prove beyond a reasonable doubt that [the defendant], one, specifically intended to restrain [M], two, restrained [M] by placing his arm around her neck, three, without her consent, and four, under circumstances that exposed her to a substantial risk of physical injury. If you unanimously find that the state has proved beyond a reasonable doubt each of the elements of the crime of unlawful restraint in the first degree, then you shall find [the defendant] guilty. On the other hand, if you unanimously find that the state has failed to prove beyond a reasonable doubt any of the elements, you shall then find [the defendant] not guilty."

(2017); see also *State* v. *Rice*, 167 Conn. App. 615, 621, 142 A.3d 1267 ("[a]n accused's own words . . . constitute particularly compelling, direct evidence of his intent" (internal quotation marks omitted)), cert. denied, 323 Conn. 932, 150 A.3d 232 (2016).

On appeal, the defendant challenges only the intent element of the unlawful restraint charge.[20] He contends that, assuming he "placed [M] in a 'chokehold,' the state . . . failed to establish that his specific intent in doing so was . . . 'to interfere substantially with her liberty . . . .'" (Emphasis omitted.) The defendant further asserts that, because he "exercised his constitutional right not to testify, [M] was the only witness who presented the jury with her recitation of events" and that "[t]he dispositive question before this court is whether [M's] testimony provided the jury with a reasonable basis on which it could conclude" that he acted with the requisite intent for purposes of the unlawful restraint charge.[21] We conclude that M's testimony, when construed in a light most favorable to sustaining the jury's verdict, provided a sufficient basis from which the jury reasonably could have found beyond a reasonable doubt that the defendant had restricted M's movements with the intent to interfere substantially with her liberty. See *State* v. *Williams*, supra, 172 Conn. App. 830.

[20]We note that the defendant's briefing on this claim is confusing, as it vacillates between focusing on the intent element only and asserting that the evidence was insufficient to establish all of the "essential elements," plural, of the crime beyond a reasonable doubt. Because the defendant's briefing on the claim is bereft of legal analysis or argument, beyond those bare assertions, concerning other elements of the crime such as restraint and exposure to a substantial risk of physical injury, and because the defendant makes multiple assertions that the intent element has not been satisfied, we construe his claim as challenging the intent element only. To the extent the defendant challenges any of the other elements of unlawful restraint in the first degree; see footnote 19 of this opinion; we deem any such challenge abandoned due to inadequate briefing. See, e.g., *State* v. *Antwon B.*, supra, 236 Conn. App. 449 n.14 (claims not briefed are deemed abandoned).

[21]We note that the defendant's briefing on this claim is scant and primarily includes conclusory assertions that the state failed to prove the element of intent to support his conviction of unlawful restraint in the first degree.

M's testimony, which the jury was free to credit, establishes that the defendant "grabbed [her] from behind" and held his arm tightly around her neck, making it difficult for her to breathe. While doing so, the defendant taunted E about the fact that she could not do anything to help M while he had his arm about M's neck, which prevented M from being able to move freely. M testified that it was "difficult" to breathe as the defendant held her in that position and that she was not able to move freely until "he let go to push [her] daughter." On the basis of this testimony, the jury reasonably could have inferred from the defendant's conduct and words that he had restrained M with the conscious objective to restrict her movements in such a manner as to interfere substantially with her liberty. See, e.g., *State* v. *Morlo M.*, supra, 206 Conn. App. 679 ("the jury reasonably could have found that the defendant evinced an intent to restrict the victim's liberty, namely, her liberty to move freely within the house," when he "seized [the victim] by her hair and dragged her down into the basement, where he proceeded to beat her"); *State* v. *Fredrik H.*, 197 Conn. App. 213, 220, 231 A.3d 371 (2020) (jury reasonably could have found that defendant specifically intended to substantially interfere with victim's liberty when he held victim down on bed by her neck as she "was 'flailing' to try to free herself"), cert. denied, 338 Conn. 906, 258 A.3d 1279 (2021); *State* v. *Rice*, supra, 167 Conn. App. 621–22 (jury could have inferred from defendant's conduct in blocking victim's egress from public restroom that he intended to cause confinement of victim, who he believed had stolen his bag).

Accordingly, construing the evidence in the light most favorable to sustaining the verdict, we conclude that the jury reasonably could have found beyond a reasonable doubt that the defendant specifically intended to restrain M. Accordingly, the defendant's claim challenging the sufficiency of the evidence relating to his conviction of unlawful restraint in the first degree fails.

III

Finally, in light of our determination that the evidence was legally insufficient to establish that the defendant had caused M to suffer a serious physical injury in the form of a serious disfigurement, we must address the appropriate remedy for our reversal of the defendant's conviction of assault in the second degree. The state argues that, in the event this court finds insufficient evidence on the element of serious physical injury for the charge of assault in the second degree, this court should reverse the judgment in part and remand the case with direction to render a judgment of conviction of attempt to commit assault in the second degree. We agree with the state.[22]

At the outset, we note that the court instructed the jury that, if it "unanimously found the defendant not guilty of the crime of assault in the second degree, [it should] consider the offense of attempted assault in the second degree,"[23] and it provided instructions concerning the elements of attempt to commit assault in the second degree,[24] namely, that, for the defendant to be found guilty of that crime, the jury had to find beyond a

[22]The defendant did not file a reply brief addressing the state's argument regarding the offense of attempt to commit assault in the second degree, and his principal appellate brief lacks any discussion of this issue and merely asserts summarily that this court should vacate his conviction of assault in the second degree and order "such other relief as this court deems equitable and just."

[23]See General Statutes § 54-60 ("[w]henever any indictment, information or complaint is pending before any court, a conviction may be had for any offense sufficiently alleged therein or for an attempt to commit such offense, and the accused may be convicted or such court may accept a plea of guilty for any of such offenses"); Practice Book § 42-29 ("[t]he defendant, if found not guilty of the offense charged, may be found guilty of an offense necessarily included in the offense charged or of an attempt to commit either the offense charged or an offense necessarily included therein, if the attempt is an offense").

[24]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."

reasonable doubt that he had the intent to cause serious physical injury as required for the crime of assault in the second degree and that he intentionally engaged in conduct "constituting a substantial step in a course of conduct planned to culminate in his commission of the crime of assault in the second degree."[25]

In this case, the jury found the defendant guilty of assault in the second degree. Even though we have found insufficient evidence with respect to the element of serious physical injury to sustain that conviction, the verdict necessarily includes a determination that, in the absence of serious physical injury, all of the elements of attempt to commit assault in the second degree had been proven.[26] See *State* v. *Haywood*, 109 Conn. App. 460, 466, 952 A.2d 84 ("because the jury unanimously found the defendant guilty of a completed robbery, it necessarily found him guilty of attempt to commit robbery"), cert. denied, 289 Conn. 928, 958 A.2d 161 (2008). Under these circumstances, the appropriate remedy is to remand the case to the trial court with direction to

[25]The trial court also instructed the jury with respect to the lesser offense of assault in the third degree, stating: "If you have unanimously found the defendant not guilty of the crime of assault in the second degree and not guilty of attempted assault in the second degree, you shall then consider the lesser offense of assault in the third degree. Do not consider the lesser offense unless and until you have unanimously acquitted the defendant of the greater offense of assault in the second degree."

[26]We note that, in part I B of this opinion, we determined that the evidence was sufficient to demonstrate that the defendant had intended to cause serious physical injury to M. Moreover, "[t]he standard for the substantial step element of criminal attempt focuse[s] on what the actor has already done and not what remains to be done. . . . The substantial step must be at least the start of a line of conduct which will lead naturally to the commission of a crime." (Internal quotation marks omitted.) *State* v. *Juarez*, 179 Conn. App. 588, 600, 180 A.3d 1015 (2018), cert. denied, 331 Conn. 910, 203 A.3d 1245 (2019). "An attempt is complete and punishable . . . when an act is done with intent to commit the crime . . . whether the purpose fails by reason of interruption . . . or for other extrinsic cause." (Internal quotation marks omitted.) *State* v. *Andrews*, supra, 114 Conn. App. 747. When the jury found that the defendant had committed assault in the second degree, it necessarily determined that he had completed a substantial step in the commission of the crime.

modify the judgment to reflect a conviction of attempt to commit assault in the second degree and to resentence the defendant in accordance with that conviction. See id. (because jury, which unanimously found defendant guilty of completed robbery, necessarily found him guilty of attempt to commit robbery, "[w]e . . . conclude that the defendant's conviction of robbery in the first degree as an accessory should be reversed and the case remanded to the trial court with direction to modify the judgment to reflect a conviction of attempt to commit robbery in the first degree as an accessory, and to resentence the defendant in accordance with that conviction"); see also *State* v. *Carpenter*, 214 Conn. 77, 85, 570 A.2d 203 (1990) (although evidence was insufficient to prove that defendant had specific intent to cause victim's death to support murder conviction, remand for new trial was not necessary, as trial court had instructed jury regarding elements of manslaughter in first degree and, "[b]ecause the jury's verdict necessarily include[d] a determination that, absent a specific intent, all the elements of [manslaughter in the first degree] ha[d] been proven beyond a reasonable doubt, the defendant would not be prejudiced by a modification of the judgment to reflect a conviction of that charge"); see generally *State* v. *Greene*, 274 Conn. 134, 162, 174, 874 A.2d 750 (2005), cert. denied, 548 U.S. 926, 126 S. Ct. 2981, 165 L. Ed. 2d 988 (2006).

The judgment is reversed as to the conviction of assault in the second degree and the case is remanded with direction to modify the judgment to reflect a conviction of attempt to commit assault in the second degree and to resentence the defendant in accordance with that conviction; the judgment is affirmed in all other respects.

In this opinion the other judges concurred.