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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0720**

State of Minnesota,
Respondent,

vs.

Alexander Steven Jonas,
Appellant.

**Filed December 23, 2024
Affirmed in part, reversed in part, and remanded
Cochran, Judge**

Anoka County District Court
File No. 02-CR-22-21

Keith Ellison, Attorney General, St. Paul, Minnesota; and

Brad Johnson, Anoka County Attorney, Carl E. Erickson, Assistant County Attorney,
Anoka, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Greg Scanlan, Assistant Public
Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Ross, Presiding Judge; Cochran, Judge; and
Harris, Judge.

NONPRECEDENTIAL OPINION

COCHRAN, Judge

Appellant Alexander Steven Jonas was convicted of one count of first-degree criminal sexual conduct and one count of kidnapping arising from the sexual assault of a woman. Following his convictions, Jonas filed a petition for postconviction relief with the

postconviction court seeking a new trial based on ineffective assistance of counsel. On appeal, Jonas challenges the postconviction court's summary denial of his petition for postconviction relief. Alternatively, he argues that this court must reverse his kidnapping conviction because the evidence was insufficient to support the conviction.

We first conclude that the postconviction court did not abuse its discretion by summarily denying Jonas's postconviction petition because the files and record do not support his ineffective-assistance-of-counsel claim. We next conclude that the evidence was insufficient to support the kidnapping conviction. We therefore affirm his convictions for criminal sexual conduct, but we reverse the kidnapping conviction and remand to the district court with instructions to vacate that conviction and sentence.

FACTS

In March 2022, respondent State of Minnesota charged Jonas by amended complaint with three counts of first-degree criminal sexual conduct under Minnesota Statutes section 609.342, subdivision 1(a) (fear of imminent great bodily harm), subdivision 1(c)(i) (injury through the use of coercion), and subdivision 1(d) (use of force) (Supp. 2021); and one count of kidnapping under Minnesota Statutes section 609.25, subdivision 1(2) (2020). The charges stemmed from allegations that Jonas accompanied a woman to her home from a bar, bound her hands with a cord when she began to fight off his sexual advances, and then subjected her to multiple, unwanted forms of sexual penetration while she was restrained. The case proceeded to a three-day jury trial in November 2022. The jury heard testimony from the victim, L.S.; a sexual assault nurse examiner; responding police officers; and Jonas.

At trial, L.S. testified that she met Jonas at a bar on December 30, 2021. At the end of the evening, Jonas asked L.S. if he could go home with her. L.S. testified that she agreed because Jonas was “pressing the issue,” and she feared he would follow her home. Jonas then followed L.S. to her home in his own car. L.S. stated that, as soon as they arrived at her home, Jonas took off his shoes and began “tugging at [her] clothes.” She told Jonas that she could not have sex due to a recent surgery. L.S. testified that Jonas continued “tugging” at her clothing and then removed her jacket and her dress. L.S. was “thrashing” while he took off her dress and trying to “crawl away” from him. L.S. further testified that Jonas put his knees on her arms to hold her down. Jonas then pulled a charging cord out of the wall and tied it to one of her wrists. When he grabbed her other arm, L.S. tried to pull it away but Jonas held her down with his knee and bound her wrists together behind her back. Once her hands were bound, Jonas “ripped” off L.S.’s bra, “choked” her, put his fingers inside of her vagina, and “kicked [her] in [her] vagina” with “one hard kick.” She testified that Jonas forced her to perform oral sex on him and tried to put his fingers into her anus.

Jonas temporarily stopped sexually assaulting L.S. when her cats came into the room. L.S. testified that Jonas untied her, and she began to think of ways to distract him and ask him to leave the house. She offered to get Jonas a drink and went upstairs to put her cats away and get him a glass of water. When she returned downstairs, she handed Jonas the glass of water and laid down next to him on the couch. L.S. testified that the sexual assault “start[ed] up again” as Jonas began kissing her and trying to put his finger into her vagina. When she tried to push him away, Jonas pinned her down with his knees,

tied her hands behind her back again with the cord so forcefully that she was afraid he would break her shoulder, dragged her across the carpet to the couch, and “shov[ed]” the handle of a cat toy into her vagina. She stated that he also tried to put the cat toy into her anus. During the assault, L.S. tried to crawl away but was unable to do so because she was bound and had “no ability to move.” When the assault ended, Jonas untied L.S.’s hands and she ran into the bathroom and called the police.

Police Officers B and H arrived at L.S.’s home “almost simultaneously” in response to her emergency call. Officer B testified about his observations when he arrived at L.S.’s home. According to the information he had at the time, “it was unknown if there was a suspect still on scene” and the officers “didn’t have a whole lot of information on what we were going to come across.” Officer B testified that he knocked on the door and “a male came to the door on his cell phone.” While still on his cell phone, the male “made a statement, ‘I’m going to jail,’ and then hung up the phone.” The male then let the officers in the house and Officer B went downstairs to speak to L.S. while Officer H spoke with Jonas. Officer H testified that he noticed that Jonas had dried blood on his hands and his shirt. According to Officer H, when Jonas saw the blood on his hands, Jonas stated, “Oh, my God.”

Anoka County Sheriff’s Deputy V assisted Officers B and H. When Deputy V arrived at the residence, his body-worn camera was turned on and recording. The state entered Deputy V’s body-worn camera video into evidence, which showed his conversation with Jonas. In the video, Jonas acknowledged that he had blood on his hands and stated that he got it from “fornicating” with L.S. Jonas asked if he could wash his

hands, but the deputy responded, “not right now,” and asked him to sit down. The deputy then asked Jonas again how the blood got on him and said, “are you bleeding somewhere?” Jonas repeated that he got blood on his hands from fornicating with L.S. and stated, “[e]very time she said ‘no,’ it was—I would let off. And it was so difficult to—oh my God. I just thought I was being nice.” During the conversation, Jonas told Deputy V, “I called my mom; I’m like, ‘I’m going to jail.’” When the deputy asked why he was going to jail, Jonas replied that he had blood on his hands. After speaking with Jonas and L.S., the officers arrested Jonas.

Officers also called an ambulance to take L.S. to the hospital where she underwent a sexual-assault examination. The sexual assault nurse took photographs of L.S., which were introduced into evidence. The nurse testified that there were red, circular marks on L.S.’s wrists; broken blood vessels and petechia on her lip, which was consistent with ruptured blood vessels that can occur when oxygen is cut off; and scrape marks on the insides of her thighs. Although the nurse did not see any vaginal injuries, she did not consider this uncommon. The nurse collected swabs from L.S.’s vaginal area, cervix, rectum, and perineum and sent them for analysis. The parties stipulated that the swabs taken from L.S.’s perineum and rectum contained DNA that matched Jonas’s DNA. They further stipulated that swabs taken from Jonas’s hands contained DNA that matched L.S.’s DNA.

Jonas testified in his own defense at trial. He testified that L.S. became “aggressive” when they were kissing at her home and that she removed his clothing. Jonas stated that L.S. voluntarily participated in sex and denied that she tried to push him away. He admitted

to putting the cat toy inside of L.S.'s vagina, but claimed that she consented to this act. And he further testified that L.S. consented to having her hands tied with a cord and that she never asked him to stop or indicated that she did not like it. He testified that, after he untied her, she "abruptly" went into the bathroom and spoke to someone on the phone. He denied sexually assaulting L.S.

Following deliberations, the jury found Jonas guilty of all four counts. The district court sentenced Jonas to 172 months in prison on one count of first-degree criminal sexual conduct, and to 57 months in prison on the kidnapping charge, to be served consecutively. The district court did not adjudicate the remaining two criminal-sexual-conduct charges, which were included offenses.

Jonas filed a direct appeal, and this court granted Jonas's motion to stay his appeal to allow Jonas to pursue postconviction relief before the district court. Jonas filed a petition for postconviction relief on the ground that he received ineffective assistance of counsel. Specifically, he argued that (1) defense counsel did not effectively cross-examine the victim, and (2) defense counsel failed to recognize that police officers were required to give Jonas a *Miranda* warning before speaking with him at L.S.'s home. After reviewing the record, the postconviction court summarily dismissed Jonas's petition without an evidentiary hearing. Following the filing of that order, this court reinstated Jonas's direct appeal.

DECISION

Jonas raises two arguments on appeal. First, he contends that the postconviction court abused its discretion by denying his petition for postconviction relief without holding

an evidentiary hearing. Second, Jonas claims that his kidnapping conviction must be overturned because the evidence was insufficient to support his conviction. We address each argument in turn.

I. Postconviction Petition

A person convicted of a crime may seek postconviction relief by filing a petition alleging that the conviction “violated the person’s rights under the Constitution or laws of the United States or of the state.” Minn. Stat. § 590.01, subd. 1(1) (2020). A petition for postconviction relief “shall contain . . . a statement of the facts and the grounds upon which the petition is based and the relief desired.” Minn. Stat. § 590.02, subd. 1(1) (2020). The postconviction court must hold an evidentiary hearing “[u]nless the petition and the files and records of the proceeding conclusively show that the petitioner is entitled to no relief.” Minn. Stat. § 590.04, subd. 1 (2020). “[T]he burden is on a petitioner to show facts entitling the petitioner to relief.” *Allwine v. State*, 994 N.W.2d 528, 541 (Minn. 2023).

An appellate court reviews a summary denial of postconviction relief for an abuse of discretion. *Martin v. State*, 969 N.W.2d 361, 363 (Minn. 2022). “A postconviction court abuses its discretion when its decision is based on an erroneous view of the law or is against logic and the facts in the record.” *State v. Williams*, 862 N.W.2d 701, 703 (Minn. 2015) (quotation omitted). “Although doubts about whether to conduct an evidentiary hearing are resolved in favor of the petitioner, a [postconviction] court need not hold a hearing when the petitioner alleges facts that, if true, are legally insufficient to grant the requested relief.” *State v. Sardina-Padilla*, 7 N.W.3d 585, 602-03 (Minn. 2024) (quotations omitted).

To be entitled to an evidentiary hearing on a postconviction claim of ineffective assistance of trial counsel, the petitioner “must allege facts that, if proven by a fair preponderance of the evidence, would satisfy the two-prong test” articulated by the United States Supreme Court in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). *Chavez-Nelson v. State*, 948 N.W.2d 665, 671 (Minn. 2020) (quotation omitted). Under this two-prong test, a petitioner must show that: (1) counsel’s representation “fell below an objective standard of reasonableness,” and (2) “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* (quotations omitted). If an appellant cannot meet one of the *Strickland* prongs, the claim fails, and we need not address the other prong. *Peltier v. State*, 946 N.W.2d 369, 372 (Minn. 2020). Because claims of ineffective assistance of counsel present mixed questions of law and fact, “we review the postconviction court’s legal conclusions on such questions de novo.” *State v. Nicks*, 831 N.W.2d 493, 503 (Minn. 2013).

Jonas asserts that an evidentiary hearing was required because he alleged sufficient facts to show that he received ineffective assistance of counsel based on: (1) defense counsel failing to effectively cross-examine L.S., and (2) defense counsel not seeking to suppress Jonas’s statements to the police officers in L.S.’s home.

We begin by considering the first prong of the *Strickland* test for each claim of ineffective assistance of counsel. Under the first prong, “there is a strong presumption that counsel’s performance was reasonable.” *Andersen v. State*, 830 N.W.2d 1, 10 (Minn. 2013). An attorney provides reasonable assistance when exercising “the customary

skills and diligence that a reasonably competent attorney would perform under the circumstances.” *Dukes v. State*, 621 N.W.2d 246, 252 (Minn. 2001) (quotation omitted).

A. Cross-Examination of L.S.

Jonas argues that his defense counsel’s conduct fell below an objective standard of reasonableness because counsel did not effectively cross-examine L.S. at trial. He asserts that defense counsel should have asked L.S. more questions about her statements to the police and to the examining nurse. He also contends that defense counsel should have elicited testimony that L.S. initiated or engaged with the sexual acts.

In its order denying postconviction relief, the postconviction court rejected this argument, noting that “courts generally do not review a trial attorney’s strategy or tactics.” It emphasized that cross-examining a victim is a “double-edged sword,” and a decision that “only an attorney and their client can make because doing so could be just as perilous as not doing so.” The postconviction court determined that “[t]here is nothing inherently problematic” with a defense counsel’s choice not to vigorously cross-examine a victim and concluded that the record lacked evidence to suggest that the decision in this case was not reasonable. Accordingly, it concluded that Jonas had failed to allege sufficient facts to demonstrate that defense counsel’s cross-examination of L.S. fell below an objective standard of reasonableness. We agree.

In evaluating the first prong of the *Strickland* test, an appellate court generally “will not review an ineffective-assistance-of-counsel claim when the attorney’s conduct in question is based on trial strategy.” *Chavez-Nelson*, 948 N.W.2d at 671; *see also Opsahl v. State*, 677 N.W.2d 414, 421 (Minn. 2004) (noting that appellate courts are poorly

placed to second-guess decisions of trial counsel). Trial counsel has wide latitude to determine the best strategy for a client. *Nicks*, 831 N.W.2d at 506. Deciding what testimony to elicit from a witness at trial is a matter of trial strategy. *Leake v. State*, 737 N.W.2d 531, 539 (Minn. 2007); *see also King v. State*, 562 N.W.2d 791, 796 (Minn. 1997) (recognizing that it is “a tactical decision not to dispute” witness testimony).

We are guided by the supreme court’s decision in *State v. Vick*, 632 N.W.2d 676 (Minn. 2001). In *Vick*, the defendant asserted that he was denied effective assistance of counsel because his attorney failed to vigorously cross-examine the victim in a criminal-sexual-conduct case. *Id.* at 678. During the closing argument, the attorney explained to the jury his justification for not aggressively questioning the victim, stating that he “did not want to make it any more difficult than it was for her,” and therefore chose not to “ask her ver[y] many questions.” *Id.* at 689. On appeal, the supreme court determined that the defendant failed to show that his attorney’s actions were objectively unreasonable. *Id.* The supreme court noted that counsel’s “decision was reasonable in order to avoid creating sympathy for [the victim] and hostility toward [defendant] or his attorney.” *Id.*; *see also State v. Brocks*, 587 N.W.2d 37, 43 (Minn. 1998) (concluding that defense counsel’s decision not to cross-examine several state witnesses was a reasonable trial tactic).

Based on our review of the petition as well as the files and record in this case, we are satisfied that Jonas has failed to allege facts showing that defense counsel’s cross-examination of L.S. fell below an objective standard of reasonableness. Defense counsel’s cross-examination of L.S. covers about eight transcript pages. The transcript

shows that defense counsel attempted to undermine L.S.'s credibility through a variety of questions. During cross-examination, defense counsel asked L.S. about her alcohol consumption at the bar. Counsel also asked about the break between the sexual assaults, when L.S. went to the kitchen to get a glass of water for Jonas. L.S. acknowledged that she walked by her front door when she went upstairs. She also testified that she went into her bathroom after the first assault and nearly used an "SOS feature" on the side of her phone, but did not actually call 911. Through this questioning, defense counsel attempted to challenge L.S.'s credibility by suggesting that she had opportunities to leave her home between the first and second attacks and could have called the police earlier from her bathroom. Counsel's decision to proceed along this line of questioning constitutes an objectively reasonable trial strategy not to create sympathy for the victim, engender hostility toward Jonas or his counsel, or risk alienating the jury. *See Vick*, 632 N.W.2d at 689.

Given the discretion afforded to trial counsel regarding strategy, we conclude that Jonas's argument regarding defense counsel's cross-examination of L.S. fails to show that his counsel's performance fell below an objective standard of reasonableness. As such, the postconviction court did not abuse its discretion by denying Jonas an evidentiary hearing regarding counsel's cross-examination of L.S.

B. Absence of a Motion to Suppress

Jonas also argues that his defense counsel's representation was also ineffective because counsel failed to seek suppression of pre-arrest statements made by Jonas at L.S.'s home to law enforcement without first receiving a *Miranda* warning. He further contends

that the postconviction court abused its discretion by denying his petition without an evidentiary hearing because the matter was “fact-specific” and a hearing was needed to develop the record. Because the petition and files and records of the proceeding do not support Jonas’s contention that a *Miranda* warning was required, we discern no abuse of discretion by the postconviction court when it denied an evidentiary hearing on this claim.

To protect a defendant’s right against self-incrimination, the police must use “procedural safeguards” when a suspect is subject to a custodial interrogation. *Miranda v. Arizona*, 384 U.S. 436, 444 (1966). This includes warning a suspect of the right to remain silent. *Id.* Statements that a suspect makes during a custodial interrogation without a *Miranda* warning are inadmissible at trial. *State v. Horst*, 880 N.W.2d 24, 30 (Minn. 2016). “An interrogation is custodial if, based on all the surrounding circumstances, a reasonable person under the circumstances would believe that he or she was in police custody of the degree associated with formal arrest.” *State v. Thompson*, 788 N.W.2d 485, 491 (Minn. 2010) (quotation omitted). Factors that suggest that an interrogation is custodial include: (1) interviewing a suspect at a police station; (2) telling a person that he is the prime suspect in a case; (3) the suspect making a significantly incriminating statement; (4) officers restraining the suspect’s freedom; (5) the presence of multiple officers; and (6) officers pointing a gun at the suspect. *Id.* Factors that indicate an interrogation is not custodial include the suspect’s freedom to leave at any time, a nonthreatening environment, and the suspect’s ability to make phone calls. *Id.* at 491-92. “The test is not whether a reasonable person would believe he or she was not free to leave.” *State v. Champion*, 533 N.W.2d 40, 43 (Minn. 1995). Instead, the test is whether a

reasonable person would believe he or she was in police custody to the degree of a formal arrest. *Thompson*, 788 N.W.2d at 491.

Here, the record and facts alleged in the petition support the postconviction court's determination that Jonas was not subject to a custodial interrogation when he spoke to the officers after the assault. First, Jonas was not interviewed at a police station. Rather, officers talked with Jonas at L.S.'s home. Next, officers did not tell Jonas that he was the prime suspect in the case, and officers did not place him in handcuffs or physically restrain him until after determining that a crime occurred. Furthermore, Jonas was free to make phone calls and was on his cell phone with his mother when the police arrived. And he continued to talk on the phone with his mother. While Jonas did make an incriminating statement while on his cell phone with his mother—telling her that he was “going to jail”—he did so freely and then hung up the phone. Finally, at no point did an officer point a gun at Jonas. Taken together, the record and facts alleged in the petition reflect that the officers' discussion with Jonas prior to his arrest did not constitute a custodial interrogation. *See Berkemer v. McCarty*, 468 U.S. 420, 441-42 (1984) (applying a totality-of-the-circumstances analysis to determine whether a custodial interrogation occurred).

Our decision is further bolstered by caselaw providing that “[o]n-the-scene’ questioning, where the officers are simply trying to get a preliminary explanation of a confusing situation, does not require a *Miranda* warning.” *State v. Walsh*, 495 N.W.2d 602, 604-05 (Minn. 1993). The postconviction court determined that officers questioned Jonas when they arrived at L.S.'s home “because they needed to determine whether a crime had in fact been committed.” The record supports this determination.

Officer B testified that when he received the emergency call from dispatch, he knew that the victim was possibly calling from her bathroom and that it was “unknown if there was a suspect still on scene.” He noted that officers “didn’t have a whole lot of information” about what they were “going to come across” at the scene. Similarly, when Deputy V went into L.S.’s home and saw Jonas, officers were still “trying to figure out what [was] going on.” When Jonas asked if he could wash his hands, which had blood on them, Deputy V responded, “not right now.” Deputy V then asked Jonas to sit down. He also asked Jonas again how the blood got on Jonas and if Jonas was “bleeding somewhere.” Viewed in context, the deputy’s questions were aimed at discovering what happened and the extent of any injuries. We have previously recognized that a defendant was not in custody or subject to interrogation when “officers’ questions were primarily an effort to sort out a confusing situation involving multiple occupants encountered in different parts of the house.” *State v. Heinonen*, 889 N.W.2d 817, 821-22 (Minn. App. 2017) (determining that the defendant was not in custody, despite being briefly handcuffed and asked “routine” questions, when officers were executing a search warrant and encountered a dog and multiple occupants in the home), *aff’d*, 909 N.W.2d 584 (Minn. 2018).

Based on the totality of circumstances, we agree with the postconviction court that the interview did not rise to the level associated with a formal arrest. Therefore, the officers’ on-the-scene questioning of Jonas did not require a *Miranda* warning. As such, counsel did not provide ineffective assistance by declining to move to suppress evidence when an objective review shows that Jonas was not in custody when he made statements against his interest and a motion to suppress would not have been successful. *See*

Johnson v. State, 673 N.W.2d 144, 148 (Minn. 2004) (noting that “[a] claim of ineffective assistance of counsel may not rest on the failure of an attorney to make a motion that would have been denied if it had been made”). For these reasons, we conclude that Jonas has not met his burden on the first *Strickland* prong with regard to this claim of ineffective assistance of counsel.

In sum, the petition, files, and records of the proceeding conclusively show that Jonas has not demonstrated that defense counsel’s representation fell below an objective standard of reasonableness with regard to either claim of ineffective assistance of counsel. Because the first *Strickland* prong is determinative, we need not address the second *Strickland* prong. *See Leake v. State*, 767 N.W.2d 5, 10 (Minn. 2009) (noting that an appellate court “need not analyze both prongs if either one is determinative”). Therefore, the postconviction court did not abuse its discretion when it denied Jonas’s petition for postconviction relief based on ineffective assistance of counsel without conducting an evidentiary hearing.

II. Kidnapping Conviction

Jonas next argues that the evidence at trial was insufficient to support his kidnapping conviction because “the conduct underlying the kidnapping conviction was completely incidental to the conduct underlying the criminal-sexual-conduct conviction.” Jonas’s argument is based on the definition of kidnapping set forth in Minnesota Statutes section 609.25, subdivision 1(2), and supreme court precedent interpreting the scope of the offense.

“When a sufficiency-of-the-evidence claim turns on the meaning of the statute under which a defendant has been convicted, [appellate courts] are presented with a question of

statutory interpretation that [they] review de novo.” *State v. Henderson*, 907 N.W.2d 623, 625 (Minn. 2018). “Under the de novo standard, we do not defer to the analysis of the [district court], but instead we exercise independent review.” *Wheeler v. State*, 909 N.W.2d 558, 563 (Minn. 2018). “After deciding the meaning of the statute, [appellate courts] apply that meaning to the facts to determine whether there is sufficient evidence to sustain the conviction.” *State v. Bradley*, 4 N.W.3d 105, 109 (Minn. 2024). Accordingly, we first interpret the language of the kidnapping statute, as set forth in section 609.25, subdivision 1(2), and then apply our interpretation of the statute to the facts of this case.

Under section 609.25 (2020), a defendant is guilty of kidnapping if the defendant “confines or removes from one place to another, any person without the person’s consent . . . to facilitate commission of any felony or flight thereafter.” Minn. Stat. § 609.25, subd. 1(2). But the supreme court has held that if “the confinement or removal of the victim is completely incidental to the perpetration of a separate felony, it does not constitute kidnapping.” *State v. Smith*, 669 N.W.2d 19, 32 (Minn. 2003), *overruled on other grounds by State v. Leake*, 699 N.W.2d 312 (Minn. 2005). Conversely, if the confinement results from “purposeful behavior in its own right,” it is not incidental. *State v. Earl*, 702 N.W.2d 711, 723 (Minn. 2005).

Jonas argues that the evidence is insufficient to support his kidnapping conviction because the conduct underlying the kidnapping conviction was completely incidental to the conduct underlying the criminal-sexual-conduct convictions. He contends that he did not confine or remove L.S. before the sexual conduct began and that any confinement “was

encompassed by the sexual assault.” Thus, he claims that the evidence does not support a separate conviction for kidnapping. We agree.

Our analysis is guided by *Smith*, which instructs that the “confinement or removal must be criminally significant in the sense of being more than merely incidental to the underlying crime, in order to justify a separate criminal sentence.” 669 N.W.2d at 32. In that case, the defendant was convicted of first-degree murder *and* murder in the first degree while committing kidnapping after luring the victim to his home. *Id.* at 22-23. The victim was briefly confined when a doorway was blocked during the attack. *Id.* at 23. The defendant’s kidnapping-related murder conviction was overturned on appeal. The supreme court reasoned that the victim “was confined only momentarily when [the co-defendant] blocked the doorway and that confinement occurred only after the attack that culminated in [the] murder was underway.” *Id.* at 32-33. Because this brief detention was “completely incidental to the murder for which [Smith] was convicted,” the supreme court concluded that there was insufficient evidence of confinement to constitute kidnapping and reversed the kidnapping-related murder conviction. *Id.* at 33.

In *State v. Welch*, the supreme court again considered whether there was sufficient evidence to support a separate kidnapping conviction when the victim was confined during an attempted second-degree criminal-sexual-conduct offense. 675 N.W.2d 615, 620 (Minn. 2004). In that case, the defendant walked up to a woman in the park, threw her to the ground, restrained her hands, slammed her head against the sidewalk, and started to choke her before the crime was interrupted. *Id.* at 617. The defendant was convicted of kidnapping and attempted criminal sexual conduct. *Id.* at 618. The supreme court

determined that there was insufficient evidence of confinement and removal to support the kidnapping conviction, which was reversed. *Id.* at 621. Relying on *Smith*, the supreme court reasoned that “the confinement that forms the basis of the kidnapping is the very force and coercion that supports the attempted second-degree criminal sexual conduct conviction.” *Id.* at 620.

Based on the standard articulated in *Smith* and applied in *Welch*, we conclude that there is insufficient evidence to support Jonas’s kidnapping conviction because the evidence of confinement that formed the basis of the kidnapping offense in this case is the very evidence of force and coercion that supported the criminal-sexual-conduct conviction. The evidence of confinement reflects that it occurred during the sexual assault. According to L.S., Jonas began taking off her clothing when they arrived at her home. When she began struggling to get away from Jonas, he held her arms down with his knees and then bound her wrists together with a cord. Once L.S. was restrained, Jonas sexually penetrated her. L.S. testified that Jonas untied her after this act. Later, Jonas bound L.S.’s wrists together a second time and sexually assaulted her again. Jonas then released L.S. and she ran to the bathroom to call the police. We acknowledge that L.S.’s confinement was not as brief as that presented in *Smith*, in which the victim was only momentarily blocked from leaving a room when the co-defendant stood in the doorway and placed his hands against a wall. 669 N.W.2d at 23. But, as in *Smith*, Jonas’s confinement of L.S. occurred after the offense was already underway.

Further, Jonas did not take additional, purposeful steps to confine or remove L.S. from one place to another. *Cf. State v. Juarez*, 837 N.W.2d 473, 478, 484-85 (Minn. 2013)

(determining that dragging a victim over 200 feet from a bar to an alley to attempt to sexually assault her was not “completely incidental to his criminal sexual conduct” because the defendant’s acts constituted “culpable conduct separate and distinct from [the] criminal sexual conduct”). And L.S. was not confined during the entirety of the evening but, rather, was confined only during the course of conduct immediately leading up and during to the sexual penetration. *See Welch*, 675 N.W.2d at 617 (describing restraint of victim directly leading up to attempted sexual assault).

We therefore conclude that Jonas’s actions of confining L.S. by tying her wrists was of a “subordinate nature” to the criminal sexual assault committed by Jonas. *The American Heritage Dictionary* 888 (5th ed. 2011) (noting that “incidental” is commonly defined as “[o]f a minor, casual, or subordinate nature”); *see also State v. Haywood*, 886 N.W.2d 485, 488 (Minn. 2016) (stating that when a statute does not define terms, a reviewing court may “look to the dictionary definitions of those words and apply them in the context of the statute” to discern their meaning). Because the act of tying L.S.’s wrists was part of the course of conduct that culminated in the criminal sexual conduct of sexual penetration, we necessarily conclude that it was subordinate and incidental to the criminal-sexual-conduct offense itself.

We acknowledge the sensitivity of this issue and the unfortunate use of the term “subordinate” to describe L.S.’s experience of being bound with a cord during the sexual penetration. But the supreme court has explained that in cases such as this, imposing a kidnapping conviction on top of another felony conviction would unfairly exaggerate the criminality of the defendant’s conduct. *Welch*, 675 N.W.2d at 621; *see also*

State v. Swanson, 707 N.W.2d 645, 659-60 (Minn. 2006) (stating that “[i]f a kidnapping is completely incidental to another offense and the imposition of a separate conviction for kidnapping unfairly exaggerates the criminality of a defendant’s conduct, the kidnapping conviction and sentence may be vacated”). To allow the kidnapping conviction to stand under the facts presented here would unduly exaggerate the criminality of the criminal-sexual-conduct conviction. We therefore reverse Jonas’s kidnapping conviction and remand to the district court with instructions to vacate that conviction and sentence.

Affirmed in part, reversed in part, and remanded.