CASES ARGUED AND DETERMINED

IN THE

SUPREME COURT

OF THE

STATE OF CONNECTICUT

STATE OF CONNECTICUT *v.* DANIEL B.*
(SC 19788)

Robinson, C. J., and Palmer, D'Auria, Mullins,
Kahn, Ecker and Vertefeuille, Js.

Syllabus

Convicted of the crime of attempt to commit murder, the defendant appealed to the Appellate Court, claiming, inter alia, that there was insufficient evidence to support his conviction under the statute (§ 53a-49) governing attempt crimes because the state had failed to prove that his conduct constituted a substantial step in a course of conduct that was intended to culminate in the murder of T, from whom the defendant was in the process of seeking a divorce. The defendant's conviction arose from his efforts to hire a hit man to kill T. During the defendant's trial, the jury viewed a video recording in which the defendant is shown meeting with an individual he believed to be a hit man, agreeing to a price to have T killed, providing necessary information to effectuate her murder, and planning the murder. The Appellate Court concluded that a reasonable jury could have found, in light of that video recording, that the defendant took a substantial step in a course of conduct intended to culminate in T's murder, and that the defendant's failure to pay the individual posing as a hit man did not render his conduct merely preparatory. Accordingly, the Appellate Court affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. On appeal, the defendant claimed that the Appellate Court,

* In furtherance of our policy of protecting the privacy interests of the subject of a criminal protective order, we refer to the protected person only by the subject's first initial and decline to identify the defendant or others through whom the subject's identity may be ascertained.

in concluding that there was sufficient evidence to sustain his conviction, improperly construed § 53a-49 (a) (2) by focusing on what already had been done rather than on what remained to be done to carry out T's murder. *Held* that the Appellate Court properly concluded that the state presented sufficient evidence to permit a jury reasonably to find the defendant guilty of attempt to commit murder: a review of the relevant language and history of § 53a-49 (a) (2), as well as prior case law interpreting the statute, led this court to conclude that the Appellate Court properly construed § 53a-49 (a) (2) in determining that the defendant's actions constituted a substantial step in a course of conduct planned to culminate in the commission of T's murder by focusing on what the defendant had already done rather than on what remained to be done to carry out the murder; moreover, construing the evidence in the light most favorable to sustaining the verdict, this court concluded that there was ample evidence from which the jury reliably could have determined the defendant's intent, including evidence that he had contemplated murdering T for two years beforehand and had begun planning well in advance of his meeting with the hit man, that he contacted a third party in order to obtain contact information for an individual, E, to whom he had not spoken in years, to inquire about procuring a hit man only four days before the dissolution of his marriage to T was to be finalized, that he engaged in a series of texts and phone calls to E over a twenty-four hour period, and that he then met with the individual he believed was a hit man, provided him with T's name, the name of T's employer, her home and work addresses, work schedule, physical description, and a photograph, discussed the manner and method to best effectuate the killing, established an alibi, and agreed to a structured payment schedule, with the first payment to be made approximately ten hours after the meeting.

(*One justice dissenting*)

Argued September 11, 2018—officially released March 5, 2019

Procedural History

Substitute information charging the defendant with the crimes of attempt to commit murder and criminal violation of a protective order, brought to the Superior Court in the judicial district of Stamford-Norwalk and tried to the jury before *Hudock, J.*; verdict and judgment of guilty of attempt to commit murder, from which the defendant appealed to the Appellate Court, *DiPentima, C. J.*, and *Beach* and *Bishop, Js.*, which affirmed the trial court's judgment, and the defendant, on the granting of certification, appealed to this court. *Affirmed.*

Philip D. Russell, with whom were *A. Paul Spinella* and, on the brief, *Peter C. White* and *Michael Thomason*, for the appellant (defendant).

Ronald G. Weller, senior assistant state's attorney, with whom, on the brief, were *Richard J. Colangelo*, state's attorney, and *Maureen Ornousky*, senior assistant state's attorney, for the appellee (state).

Opinion

KAHN, J. The present appeal requires us to consider whether, in determining the sufficiency of the evidence to support a conviction for attempt to commit murder under the substantial step provision of General Statutes § 53a-49 (a) (2), the proper inquiry should focus on what the actor had already done or on what the actor had left to do to complete the crime of murder. In the present case, the jury found the defendant, Daniel B., guilty of attempt to commit murder in violation of General Statutes §§ 53a-54a and 53a-49 (a) (2). Following our grant of certification,[1] the defendant appeals from the judgment of the Appellate Court affirming the judgment of conviction. See *State* v. *Daniel B.*, 164 Conn. App. 318, 354, 137 A.3d 837 (2016). The defendant claims that, in concluding that the evidence was sufficient, the Appellate Court improperly construed § 53a-49 (a) (2) to require the substantial step inquiry to focus on "what [the actor] has already done," rather than what "remains to be done . . . ." Id., 332. The state responds that the Appellate Court properly held that the focus is on what the actor has already done and that, when considering

[1] This court granted the defendant's petition for certification to appeal, limited to the following issue: "In concluding that there was sufficient evidence to sustain the defendant's conviction of attempted murder in violation of . . . §§ 53a-54a and 53a-49 (a) (2), did the Appellate Court properly construe § 53a-49 (a) (2) in determining that the defendant's conduct constituted a 'substantial step in a course of conduct planned to culminate in his commission' of murder?" *State* v. *Daniel B.*, 323 Conn. 910, 149 A.3d 495 (2016).

the defendant's conduct in the present case, the Appellate Court properly concluded that there was sufficient evidence to sustain the defendant's conviction of attempted murder. See id., 333. We conclude that the determination of what conduct constitutes a substantial step under § 53a-49 (a) (2) focuses on what the actor has already done rather than on what the actor has left to do to complete the substantive crime. We therefore affirm the judgment of the Appellate Court.

The jury reasonably could have found the following relevant facts. In December, 2010, the defendant brought an action seeking the dissolution of his marriage to the victim, T. The couple's relationship subsequently began to further deteriorate, leading T to call the police regarding the defendant four times in two months. T's first call to the police occurred in February, 2011, after T returned home to discover that the defendant had installed a coded padlock on their bedroom door, apparently in an attempt to keep her out of the bedroom.

T called 911 on three additional occasions in March, 2011. On March 6, 2011, while T was watching a movie at her sister's house, she received several phone calls from the defendant, who appeared upset, asking her where she was. When she answered her cell phone near a kitchen window, she "could hear him talking outside before [she] heard his voice coming through the cell phone," and realized he was standing outside her sister's home. On that occasion, an officer with the Stamford Police Department arrested the defendant, and T obtained a partial protective order against him the following day. The next day, on March 7, 2011, after T returned home from her sister's house and she discovered that the defendant had packed away her belongings and left them by the front door, the police were again called. Two days later, on March 9, 2011, T came home to find the defendant moving bedroom furniture and

taking her belongings off the bed and other furniture in their bedroom. When T confronted the defendant, an argument ensued during which he shoved her multiple times through the upstairs hallway, eventually attempting to push her down the stairs, causing both her and their three year old son to fall at the top of the staircase. Stamford police arrested the defendant for the second time, and T obtained a full protective order against him. By June, the defendant and T had reached an agreement regarding the dissolution of their marriage.

On June 9, 2011, four days before the dissolution was scheduled to be finalized, the defendant called an old friend, John Evans, to whom he had not spoken in a "couple of years." To obtain Evans' contact information, the defendant requested Evans' phone number from a mutual friend, who called Evans and obtained permission to give his number to the defendant. The record is unclear as to when the defendant made this request and how much time passed before he received Evans' phone number. The record does reveal, however, that between the hours of 12 and 2 a.m. on June 9, the defendant called Evans and requested to meet with him that day at approximately 3 p.m. at a donut shop in Stamford. When they met fifteen hours later, the defendant explained that he was getting divorced from T and she was "getting the house, the kids . . . and she was trying to get some money from him, too." The defendant asked Evans if he "knew anybody that could murder [T]" for him. When Evans tried to dissuade him, the defendant told him that "[he had] been thinking about it for two years, and he made up his mind . . . . He needs it done."

Evans responded that he would "see what [he] could do." Shortly after leaving the defendant, Evans called Mike Malia, a mutual friend who knew the defendant better than Evans did, for advice on how to proceed. Malia told Evans that "when [the defendant] gets some-

thing in his head, he's gonna do it. So, you know, make a call, call somebody." Evans called John Evensen, a retired Stamford police officer for whom Evans had acted as a confidential informant in the past, to tell him about the defendant's request. Evensen encouraged Evans to "do the right thing," because "somebody's life" was endangered, and told Evans that he would connect him with someone. Evensen then called James Matheny, then commander of the Bureau of Criminal Investigations for the Stamford Police Department, and arranged for Matheny to contact Evans.

After speaking to Evans himself, Matheny's team formulated a plan that called for Evans to introduce the defendant to an undercover police officer who would pose as a hit man. As part of the plan, Evans called and texted the defendant, relaying to him that he "found a guy" that would "take care of it ASAP." Through a series of texts and calls beginning at 3:27 p.m. and ending at 12:22 a.m.,[2] the defendant agreed to meet Evans and the hit man at the McDonald's restaurant located at the southbound rest area off Interstate 95 in Darien. The defendant met Evans at approximately 1 a.m., and Evans introduced him to Michael Paleski, Jr., an officer with the Branford Police Department assigned to the New Haven Drug Task Force. Paleski had been engaged by the Stamford police to pose as the hit man. The defendant entered Paleski's vehicle, which was equipped with a hidden video camera that recorded their entire encounter.

[2] At trial, the parties stipulated that the defendant called Evans four times, at 3:27 p.m., 9:16 p.m., and 11:45 p.m. on June 9, 2011, and at 12:57 a.m. on June 10, 2011, and that Evans called the defendant two times, at 11:56 p.m. on June 9, 2011, and at 12:41 a.m. on June 10, 2011. The defendant also introduced into evidence a text log indicating eight text messages exchanged between the defendant and Evans from 11:25 p.m. on June 9, 2011, to 12:22 a.m. on June 10, 2011. At 11:40 p.m., Evans texted the defendant to tell him that he had found someone that would kill T. One minute later, at 11:41 p.m., the defendant responded and asked Evans when and where they were going to meet.

While in the vehicle, the defendant and Paleski discussed the manner, method and price to best effectuate T's murder. The first issue the defendant and Paleski discussed was the price Paleski would require to perform the hit. The defendant agreed to pay Paleski $10,000 in the following manner: an $800 payment due the following morning in order for Paleski to obtain a firearm, along with a down payment of $3000, and the remainder due approximately one month after the murder. Next, the defendant told Paleski the information necessary for him to murder T, including her full name, home address, place of employment, and work schedule. The defendant also showed Paleski a photograph of T to help him identify her. When the defendant showed Paleski the photograph of T, the defendant noted that it was an older photograph and that T's hair color had changed.[3] He explained that it was the only photograph of her he had because "she's not fucking big on pictures." The record does not reveal when and how the defendant had obtained the photograph of T. T testified, however, that, one month prior to the meeting between the defendant and Paleski, the defendant had asked T to provide him with a photograph of herself, but she refused.

At the defendant's suggestion, the two agreed to stage T's murder as a carjacking, as demonstrated by the following exchange[4] captured by the video camera:

"[Paleski]: How do you want it done? . . .

"[The Defendant]: I don't know. The only thing I was thinking about was because she drives through—you from Stamford or no?

[3] T testified that state's exhibit 4 was a photograph of her, the defendant, and their newborn daughter at the hospital following their daughter's birth.

[4] Although we cite only to portions of the conversation between the defendant and Paleski, the entire transcript, state's exhibit 11, is jointly appended to the majority and dissenting opinions. We note that the best evidence was the video recording itself, which the jurors viewed, and, therefore, they were able to observe the defendant's conduct, demeanor, and tone and to make credibility findings.

"[Paleski]: No.

"[The Defendant]: Okay, well she—the hospital is in a rough section and she's got a nice car . . . so I'm like, I don't know if it makes sense, if that would be the best way to go about it.

"[Paleski]: Or you might want to make it look like a carjacking or something?

"[The Defendant]: Something like that . . . take the car, the car is going to get found and it kind of like explains it.

"[Paleski]: Yup.

"[The Defendant]: You know, I'm not sure what's the best thing to do . . . I didn't put that thought into the detail of how.

"[Paleski]: You want her completely out of the picture right? Morte?

"[The Defendant]: [The defendant is nodding.] That's where it's getting to . . . .

"[Paleski]: That's what you want? . . .

"[The Defendant]: I wish we didn't need to be there but . . . you know."

Later in the conversation, Paleski again asked for confirmation that the defendant wanted him to kill T. Paleski told the defendant: "Just so [you] know, I'm going to put two in that bitch's head and take that car and be gone, and I'll fucking burn it somewhere." The defendant responded, "[t]hat's the only way that I can come up with that . . . makes sense . . . ."

Concerned that he would be "the first person . . . [the police] looked at," the defendant believed that the carjacking scenario near T's work would also provide him with an alibi because the defendant would typically

have the children with him at one of his aunt's houses. When Paleski confirmed by saying, "I can take the bitch off when you're with [your aunts]," the defendant responded, "[e]xactly." Aware that the police would look at the defendant's actions when investigating T's murder, Paleski and the defendant discussed how quickly the defendant could get the money:

"[Paleski]: I'll do it but I need . . . some of that wood.

"[The Defendant]: Yea.

"[Paleski]: Can you get me the $800 tonight?

"[The Defendant]: I can work it out, yea, I could.

"[Paleski]: Alright.

"[The Defendant]: I just don't want to—for me to get it I got to like disturb people tonight . . . I don't want anything out of place tonight.

"[Paleski]: Okay, but I ain't doing shit without some money.

"[The Defendant]: Understood.

"[Paleski]: Feel me?

"[The Defendant]: Clear. I'm saying to you I'm not asking you for the urgency of tonight, I'd rather do it so it's not—I don't want anything out of character.

"[Paleski]: Right, right.

"[The Defendant]: You know . . . that's my pause for tonight, because it's going to be out of character for me to go get it tonight . . . .

"[Paleski]: How soon do you think you can get that money?

"[The Defendant]: I can get it tomorrow without doing anything . . . out of character."

Paleski told the defendant that, in order to effectuate the carjacking, he needed the defendant to write down

T's full name, the make and model of her car, T's place of employment, and her home address. The defendant exited Paleski's vehicle and went to Evans' vehicle to retrieve a piece of paper on which to write down the information. In an apparent effort to distance himself from the crime, the defendant asked Evans to write down the information as the defendant dictated it to him. The piece of paper was admitted into evidence, and Evans testified that he wrote the note.

When the defendant returned to Paleski's vehicle with the note, he handed it to him, and they once again discussed the plan to have T killed near her place of employment at a time when the children were with the defendant. They discussed T's typical work schedule and the defendant's concerns that sometimes her work shifts change. They also discussed whether it was best to have it done before the divorce settlement was signed the following Monday. The defendant expressed a desire to communicate with Paleski only through Evans because he did not want to use his own phone to call anyone or to coordinate a meeting with Paleski. The defendant indicated that he would get a prepaid phone and then get rid of it. The defendant told Paleski that he would get the money and meet Paleski at the same location at 10 a.m. that same day. The defendant agreed to bring the money to that meeting. The defendant thanked Paleski and exited the vehicle, at which point he was apprehended by Stamford police officers and arrested.

Following a six day trial, a jury found the defendant guilty of attempt to commit murder in violation of §§ 53a-54a and 53a-49 (a) (2), and the court sentenced the defendant to twenty years imprisonment, execution suspended after fifteen years, followed by five years of probation. The defendant appealed, claiming, among other things, that there was insufficient evidence to support his conviction of attempted murder, because

the state failed to prove that his conduct constituted a substantial step insofar as he had not yet paid Paleski. *State* v. *Daniel B.*, supra, 164 Conn. App. 322–23, 332. In addressing the defendant's claim, the Appellate Court reviewed our case law and concluded that this court has "frame[d] our criminal attempt formulation in conformance with [§ 5.01 of] the Model Penal Code," upon which § 53a-49 (a) (2) was based, which focuses on "what the defendant has already done and not what remains to be done." Id., 329. Consequently, that court upheld the defendant's conviction, concluding that a reasonable jury, after watching video footage of the defendant's agreeing to a price to have his wife killed, providing "key information" to effectuate her murder, and planning the manner of the killing, including his own alibi, could have found that the defendant took a substantial step and, therefore, that the defendant's failure to pay Paleski did not render his conduct merely preparatory. See id., 332–34. This certified appeal followed.

The defendant claims that, in concluding there was sufficient evidence to sustain his conviction of attempt to commit murder, the Appellate Court improperly construed § 53a-49 (a) (2). Specifically, the defendant claims that the determination of what constitutes a substantial step in a course of conduct intended to culminate in murder depends on "what remains to be done" as opposed to what "has already been done." The state argues that the Appellate Court properly looked to our case law, which articulates the proper framework under § 53a-49 (a) (2) for determining a substantial step and focuses on what the defendant has already done. We conclude that, in determining whether a defendant's actions constitute a substantial step in a course of conduct planned to culminate in his commission of murder, the proper focus is on what the defendant has already done. Applying that standard in the present case, the

Appellate Court properly concluded that the state presented sufficient evidence to permit a jury reasonably to find the defendant guilty of attempt to commit murder under the substantial step subdivision.

We begin with the general principles that guide our review. "In reviewing a sufficiency of the evidence claim, 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 jury reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt. . . . 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."[5] (Internal quotation marks omitted.) *State* v. *Moreno-Hernandez*, 317 Conn. 292, 298–99, 118 A.3d 26 (2015).

In the present case, the determination of whether there was sufficient evidence to support the defendant's conviction of attempt to commit murder is inextricably linked to a question of statutory interpretation. That is, prior to determining whether there was sufficient evidence, we must resolve whether the Appellate Court properly construed § 53a-49 (a) (2) to focus on what already has been done rather than what remains to be done. We exercise plenary review over questions of statutory interpretation, guided by well established principles regarding legislative intent. See, e.g., *Kasica*

[5] The dissent agrees that the jury was properly instructed on the elements required to find a defendant guilty under the substantial step provision of § 53a-49 (a) (2), and the defendant has not challenged the trial court's charge to the jury. Our inquiry, therefore, is limited to whether, in the light most favorable to sustaining the verdict, there was sufficient evidence for a jury reasonably to find the defendant guilty under the substantial step provision.

v. *Columbia*, 309 Conn. 85, 93, 70 A.3d 1 (2013) (explaining plain meaning rule under General Statutes § 1-2z and setting forth process for ascertaining legislative intent).

We begin with the statutory language. Our criminal attempt statute proscribes two distinct ways in which a person is guilty of an attempt to commit a crime: through the attendant circumstances subdivision, § 53a-49 (a) (1), or the substantial step subdivision, § 53a-49 (a) (2). This appeal involves the interpretation of the substantial step subdivision, which defines criminal attempt in relevant part as follows: "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 . . . 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." General Statutes § 53a-49 (a) (2). Included in the threshold inquiry are our prior interpretations of the statutory language, which we have stated are encompassed in the term "text" as used in § 1-2z. See *Hummel* v. *Marten Transport, Ltd.*, 282 Conn. 477, 497–99, 923 A.2d 657 (2007).

We have held that the substantial step inquiry "focuses on what the actor has *already done* and not on what remains to be done." (Emphasis in original.) *State* v. *Lapia*, 202 Conn. 509, 515, 522 A.2d 272 (1987).[6] For example, in *Lapia*, the defendant, Louis Lapia, kid-

[6] In addition to claiming that the Appellate Court misread this court's precedent in concluding that the focus of the substantial step inquiry is on what has been done, the defendant claims that the Appellate Court misread its own case law. We disagree and observe that the Appellate Court properly followed this court's precedent in focusing its inquiry on what has been done. See, e.g., *State* v. *Hanks*, 39 Conn. App. 333, 341, 665 A.2d 102 ("[the substantial step] standard focuses on what the actor has already done and not what remains to be done" [internal quotation marks omitted]), cert. denied, 235 Conn. 926, 666 A.2d 1187 (1995).

napped a victim who was mentally disabled and held him for three days. The victim testified that, while captive, he was "bound and blindfolded . . . beaten on three different occasions, and . . . threatened [that Lapia was going] to kill his parents." Id., 513. In addition, the victim testified that Lapia asked him to perform oral sex. Id., 514. When the victim refused, Lapia "tightened the ropes which bound [him] and threatened to beat him again." Id. On appeal, Lapia claimed that the evidence was insufficient to sustain his conviction of attempt to commit sexual assault in the first degree under the substantial step subdivision because his actions did not exceed "mere preparation" when he only requested that the victim perform oral sex. Id., 512, 515. In holding that there was sufficient evidence to find that Lapia attempted to commit sexual assault in the first degree, this court reasoned that "[Lapia's] argument that his conduct 'remained in the zone of preparation' because no sexual assault occurred is without merit. . . . [T]o constitute a substantial step, the conduct must be 'strongly corroborative of the actor's criminal purpose.' . . . This standard differs from other approaches to the law of criminal attempt in that it focuses on what the actor has *already done* and not on what remains to be done. . . . What constitutes a substantial step in a given case is a question of fact. . . . Under the facts of this case, it was not unreasonable for the jury to conclude that [Lapia] had progressed so far in the perpetration . . . [when he] request[ed] that the [victim] perform oral sex and tighten[ed] the ropes upon his refusal . . . ." (Citations omitted; emphasis in original.) Id., 515–16.

Likewise, in *State* v. *Carter*, 317 Conn. 845, 120 A.3d 1229 (2015), this court addressed a sufficiency of the evidence claim under the substantial step subdivision. The defendant in that case, Kenneth R. Carter, was at a cafe in Groton when two police officers—who had

received a tip that Carter intended to shoot someone there—entered the cafe. Id., 848–49. When the officers moved in his direction, Carter raised and pointed a gun at one of them, Brigitte Nordstrom. Id. Carter refused to drop the gun when ordered to do so and eventually " 'turned away toward the bar, with his gun and both of his hands in front of him and his back to Nordstrom . . . .' " Id., 849–50. After apprehending Carter, the officers discovered that Carter was holding a " '.22 caliber Jennings semiautomatic pistol with five rounds in the magazine but none in the chamber.' " Id., 850. Because the gun was not " 'racked' "; id., 851; Carter argued that there was insufficient evidence " 'to prove that [he] intended to cause serious physical injury [under the substantial step subdivision] as required to sustain a conviction [of attempt to commit] assault in the first degree . . . .' " Id., 852.

In rejecting Carter's argument, this court reasoned that it was not necessary for the gun to be racked in order to find Carter guilty of attempt under the substantial step provision. This court stated that "[t]he defendant's claim that he did not rack the gun, even if true, would only support the proposition that he did not take the *next* step to complete the crime which, of course, is irrelevant to the inquiry whether he took a *prior* substantial step to commit the offense. . . . [I]t was only necessary for him to take a substantial step under the circumstances as he believe[d] them to be . . . ." (Emphasis in original; internal quotation marks omitted.) Id., 861; see also *State* v. *Wilcox*, 254 Conn. 441, 468–69, 758 A.2d 824 (2000) (focusing on what defendant had done and not on what he had left to do); *State* v. *Milardo*, 224 Conn. 397, 404, 618 A.2d 1347 (1993) (same); *State* v. *Anderson*, 211 Conn. 18, 28–29, 557 A.2d 917 (1989) (same).

Our prior interpretation of § 53a-49 (a) (2) finds support in the history of the statute. When the legislature

codified the crime of attempt and incorporated the substantial step as one of the means by which a defendant could be held liable, it adopted the substantial step provision from the Model Penal Code. See *State* v. *Moreno-Hernandez*, supra, 317 Conn. 303–304. The Model Penal Code's substantial step provision did not require "a 'last proximate act' or one of its various analogues" in order to "permit the apprehension of dangerous persons at an earlier stage than . . . other approaches without immunizing them from attempt liability." *United States* v. *Jackson*, 560 F.2d 112, 120 (2d Cir. 1977) (citing Model Penal Code § 5.01, comment, pp. 47–48 [Tentative Draft No. 10, 1960]), cert. denied sub nom. *Allen* v. *United States*, 434 U.S. 1017, 98 S. Ct. 736, 54 L. Ed. 2d 726 (1978), and cert. denied, 434 U.S. 941, 98 S. Ct. 434, 54 L. Ed. 2d 301 (1977). The drafters of the Model Penal Code explained that just because "further major steps must be taken before the crime can be completed does not preclude a finding that the steps already undertaken are substantial." 1 A.L.I., Model Penal Code and Commentaries (1985) § 5.01, comment 6 (a), p. 329.

Although not the focus of the substantial step provision, the consideration of what the actor has left to do is not completely irrelevant to the inquiry of whether he has taken a substantial step. Because "[a] substantial step must be something more than mere preparation, yet may be less than the last act necessary before the actual commission of the substantive crime . . . the finder of fact may give weight to that which has already been done *as well as* that which remains to be accomplished before commission of the substantive crime." (Emphasis added; internal quotation marks omitted.) *State* v. *Sorabella*, 277 Conn. 155, 180, 891 A.2d 897, cert. denied, 549 U.S. 821, 127 S. Ct. 131, 166 L. Ed. 2d 36 (2006). Accordingly, the defendant is free to emphasize to the jury what he had left to do to commit the

crime. The main focus, however, will be on what the defendant "has already done." Model Penal Code and Commentaries, supra, § 5.01, comment 6 (a), p. 329; id., p. 331. We conclude, therefore, that, in holding that there was sufficient evidence to sustain the defendant's conviction of attempt to commit murder under the substantial step provision of § 53a-49 (a) (2), the Appellate Court properly construed § 53a-49 (a) (2) by focusing on what the defendant had already done in determining that his conduct constituted a "substantial step in a course of conduct planned to culminate in his commission" of murder. See *State* v. *Daniel B.*, supra, 164 Conn. App. 334–35.

For two reasons, we find unpersuasive the defendant's reliance on this court's language in *State* v. *Green*, 194 Conn. 258, 277, 480 A.2d 526 (1984), cert. denied, 469 U.S. 1191, 105 S. Ct. 964, 83 L. Ed. 2d 969 (1985), that "[the] substantial step . . . standard properly directs attention to overt acts of the defendant which convincingly demonstrate a firm purpose to commit a crime. . . . This standard shifts the focus from what has been done to what remains to be done." (Citation omitted; internal quotation marks omitted.) First, *Green* is distinguishable from the present case because the issue presented required us to construe both the attendant circumstances provision and the substantial step provision. That is, in *Green*, this court held that there was sufficient evidence for a jury reasonably to find that the defendant's actions satisfied both the attendant circumstances and substantial step subdivisions of § 53a-49 (a). Id., 276–77. We have emphasized the distinctions between the two provisions, explaining that they "are not coextensive. The substantial step subdivision criminalizes certain conduct that would fall short of violating the attendant circumstances subdivision. . . . For instance, a pickpocket who reaches into an empty pocket would be guilty of attempt to commit larceny

under both subdivisions . . . but a pickpocket who is apprehended immediately before reaching into the empty pocket could be found guilty under only the substantial step subdivision and not the attendant circumstances subdivision. Thus, the distinction between the two subdivisions is the degree of completeness each requires in the course of an actor's conduct." (Citations omitted.) *State* v. *Moreno-Hernandez*, supra, 317 Conn. 311.

Second, in *Green*, this court relied on common-law attempt doctrine that predated our legislature's adoption of the substantial step provision.[7] For example, the court in *Green* cited to *State* v. *Mazzadra*, 141 Conn. 731, 736, 109 A.2d 873 (1954), to support its statement that the "acts must be . . . at least the start of a line of conduct . . . ." *State* v. *Green*, supra, 194 Conn. 272. The Commission to Revise the Criminal Statutes rejected that language in its comments to § 53a-49. The commission explained that the substantial step theory of attempt was a "new [concept] . . . used to distinguish acts of preparation from acts of perpetration and is contrasted with criteria specified in . . . *Mazzadra* . . . . This section requires more than a mere start of a line of conduct leading to the attempt." (Citation omitted.) Commission to Revise the Criminal Statutes, Penal Code Comments, Conn. Gen. Stat. Ann. (West 2012) § 53a-49, comment, p. 76. Therefore, in outlining what conduct constitutes an attempt, the court in *Green* cited language from prior case law that our legislature rejected in adopting the substantial step provision. Subsequent to *Green*, this court has held that the substantial step inquiry focuses on what the actor has already done

[7] We agree that our law in this area has been less than clear, and we take this opportunity to clarify. We do not cast any doubts, however, on whether *Green* was correctly decided. As we have explained, the statement in *Green* was not central to the holding.

and not what remains to be done.[8] See, e.g., *State* v. *Carter*, supra, 317 Conn. 861; *State* v. *Lapia*, supra, 202 Conn. 515–16.

Relying on this court's prior precedent, the Appellate Court properly held that the focus is on what the defendant had already done rather than what remained to be done. Applying the proper focus to the present case, and construing the evidence in the light most favorable to sustaining the guilty verdict, we conclude that the Appellate Court properly determined that the state presented sufficient evidence for a jury reasonably to find the defendant guilty beyond a reasonable doubt of attempt to commit murder in violation of § 53a-49 (a) (2).[9] The evidence, which is strongly corroborative of

[8] For similar reasons, the defendant's reliance on *Small* v. *Commissioner of Correction*, 286 Conn. 707, 946 A.2d 1203 (2008), is misplaced. *Small* concerned a habeas appeal in which the defendant claimed ineffective assistance of counsel after neither his trial nor appellate counsel challenged the lack of a jury instruction on criminal attempt with respect to the predicate felony attempted robbery for which he was ultimately convicted and upon which one of his convictions of felony murder was based. Id., 709. In concluding that the failure to instruct was harmless, the court made a reference to the statement in *Green* without any analysis of that case or of the cases subsequent to *Green* that have stated that the focus is on what the actor has already done. Id., 730. Like *Green*, therefore, the decision in *Small* did not address the controlling precedent of this court.

Because our decision in the present case clarifies that, contrary to the defendant's contention, this court's precedent that the determination of what constitutes a substantial step depends on what the actor has already done, we reject the defendant's claim, based on *Small*, that the Appellate Court's decision in the present case constitutes a retroactive application of the law that violates his due process rights.

[9] A review of case law from other jurisdictions that have addressed the murder for hire scenario under the Model Penal Code's framework supports our conclusion. See, e.g., *State* v. *Manchester*, 213 Neb. 670, 676, 331 N.W.2d 776 (1983) (holding that evidence was sufficient to constitute substantial step where defendant "made plans for the murder, solicited a killer, discussed the contract price and set the money aside . . . arranged for the weapon and a scope, and showed the killer the victim, his residence, and place of work"); *State* v. *Urcinoli*, 321 N.J. Super. 519, 537, 729 A.2d 507 (App. Div.) (there was sufficient evidence for jury to determine that defendant took substantial step where defendant "showed [hit man] his bank statement to prove that he could pay him [after the fact] . . . provided [hit man] with details concerning the intended victims, including . . . address[es], phone

numbers, cars and license plate numbers, physical descriptions . . . [and] daily routine[s]"), cert. denied, 162 N.J. 132, 741 A.2d 99 (1999).

We agree with the dissent that those states—unlike Connecticut—that have *not* adopted the Model Penal Code require the defendant to have taken steps closer to the final act and, in some instances, require a dangerous proximity to success. See *State* v. *Moreno-Hernandez*, supra, 317 Conn. 303–304 (noting that Connecticut adopted substantial step provision from Model Penal Code § 5.01). The Model Penal Code, however, by drawing the line further away from the final act, created "relaxed standards"; *State* v. *Disanto*, 688 N.W.2d 201, 211 (S.D. 2004); that include "in criminal attempt much that was held to be preparation under former decisions." Id., 210. In fact, this court has observed that "[t]he drafters of the Model Penal Code considered and rejected all previous formulations [including the dangerous proximity test] in favor of [the substantial step]." (Internal quotation marks omitted.) *State* v. *Sorabella*, 277 Conn. 155, 181 n.29, 891 A.2d 897 (citing Model Penal Code § 5.01 [1] [c] [Proposed Official Draft 1962]), cert. denied, 549 U.S. 821, 127 S. Ct. 131, 166 L. Ed. 2d 36 (2006).

We also agree with the dissent that the payment of money is *not* "a necessary prerequisite" for a jury to reasonably determine that a defendant committed a substantial step in a murder for hire scenario. Our disagreement with the dissent lies in the application of that principle to the facts of this case. Specifically, the dissent states that, notwithstanding the general rule that the payment of money is not a necessary prerequisite for a jury to find that a defendant took a substantial step in a murder for hire scenario, "the act of making payment in *this* case, on *this* record, became the only reliable indicator of the defendant's actual intentions during the crucial time period at issue." (Emphasis in original.) That conclusion, however, is not reconcilable with the applicable standard of review, which requires this court to view the evidence in the light most favorable to sustaining the verdict. *State* v. *Moreno-Hernandez*, supra, 317 Conn. 298–99. For example, although the dissent claims that "[n]o one can fairly read the full transcript of the conversation without detecting a degree of hesitation and equivocation on the part of the defendant," the jurors who observed the video of the defendant's conversation with the hit man and reviewed the transcript, along with all of the other evidence of the defendant's conduct prior to the video recorded meeting with the hit man, determined that the defendant's conduct indicated his intent to murder T, as they found him guilty of attempt under the substantial step provision. In addition to all of the actions the defendant took to hire a hit man to kill his soon to be ex-wife, the jury easily could have credited the defendant's own words prior to and during the video recorded meeting to find beyond a reasonable doubt that he intended to murder T. For example, the defendant told Evans he had contemplated murdering his wife for two years, and he described to the hit man that he thought the best way to accomplish T's murder was to stage a carjacking that would provide him with an alibi and divert suspicion away from him. The jurors also heard the defendant discuss the timing of T's murder and whether it would be better for the defendant if T was killed prior to the execution of their divorce settlement. Throughout the more than twenty-

the defendant's intent, amounts to more than a "mere conversation standing alone." *State* v. *Molasky*, 765 S.W.2d 597, 602 (Mo. 1989). The defendant's course of conduct, beginning prior to June 9 and ending with his arrest, provided ample evidence from which the jury could have reliably determined his intent. The state presented evidence of the defendant's motive through testimony about the defendant's pending divorce proceedings and the deteriorating relationship between the defendant and T.[10] Moreover, the state presented evi-

four hours that took place between his first call to Evans and his arrest, the defendant had numerous communications with Evans and could have cancelled his request or changed his mind. His words and his conduct over that more than twenty-four hour period, however, established his clear intent to murder T.

Additionally, we disagree that, viewed in the light most favorable to sustaining the verdict, the failure of the defendant to provide money instantly is significant. The time of day was relevant. The jury reasonably could have inferred that the defendant's decision not to withdraw money from a bank at 1:30 a.m. to pay the hit man who had just agreed to murder his wife was born of a desire to avoid being implicated in the murder, rather than an affirmative refusal "to take the one action that . . . would have demonstrated his firm intention to commit the crime . . . ." In fact, he reassured the hit man that he had the money but did not want to get it until the morning because it would look suspicious. The defendant repeatedly states that that the purpose of finding a hit man was to prevent the police from tying him to the killing.

[10] The defendant claims that the Appellate Court improperly focused on only one aspect of the substantial step analysis—namely, whether the focus is on what has been done—and that, had the Appellate Court properly addressed the intent requirement of the attempt statute, it would not have upheld the defendant's conviction. This argument lacks merit, as the Appellate Court analyzed all of the evidence to prove the offense, including the evidence that established intent, and so concluded that the defendant "had been contemplating this course of action for 'two years,' " and, when he met with Paleski, he "agreed to a price (to include a down payment and money for the murder weapon), provided Paleski with key information, namely, his wife's name, home and work address[es], her work schedule, a description of her vehicle, and suggested a day, location, and manner for the murder to ensure that the defendant would have an alibi. [In addition] the jury also saw the defendant twice confirm to Paleski that he wanted his wife murdered." *State* v. *Daniel B.*, supra, 164 Conn. App. 332.

The defendant separately claims that the Appellate Court failed to address how the defendant "act[ed] 'with the kind of mental state required for commission of' " murder, when considering the " 'circumstances as he

dence that the defendant had begun his planning well in advance of June 9, through testimony that the defendant had told Evans that he had contemplated murdering T for "two years, and he made up his mind" that he was going to do it, and through evidence demonstrating that the defendant had attempted to procure a more recent photograph of her, and had contacted a third party to obtain Evan's telephone number.[11] The fact that the defendant voluntarily contacted Evans, someone he had not spoken to in years, to inquire if Evans knew some-

believed them to be' " at the time, as required under § 53a-49 (a). The jury heard testimony from Evans, however, that the defendant believed he was meeting a hit man at the rest stop. Believing Paleski was a hit man, the defendant provided him with the information necessary to murder his wife and took steps to distance himself from being suspected of participating in the murder. Therefore, looking at the circumstances as the defendant believed them to be, T stood in life threatening danger.

Finally, the defendant claims that the Appellate Court failed to address how the defendant's actions were "strongly corroborative of [his] criminal purpose" under § 53a-49 (b). The Appellate Court concluded, however, that "it was reasonable for the jury to have concluded that a person, with the intent to commit murder who hires a hit man has demonstrated his dangerousness to society." *State* v. *Daniel B.*, supra, 164 Conn. App. 333 n.10. As the defendant himself concedes, the Appellate Court did not need to incorporate a discussion of the statutory examples from § 53a-49 (b) in order to properly construe the substantial step subdivision. See *State* v. *Green*, supra, 194 Conn. 277 ("[t]hese examples are not all-inclusive").

[11] The dissent points out that "[t]here is no evidence that the defendant conducted any surveillance [supposedly of T], obtained or furnished a weapon, [or] 'cased' the potential crime scene [which was T's place of employment]," and cites *State* v. *Damato*, 105 Conn. App. 335, 343–45, 937 A.2d 1232, cert. denied, 286 Conn. 920, 949 A.2d 481 (2008), to make the same point. However, unlike the victim in *Damato*, T was not a stranger to the defendant, and he did not need to conduct surveillance to know where she resided and worked. Rather, like the defendant in *Damato*, it is relevant that the defendant came prepared to the meeting with all the information the hit man would need to locate and murder T. As we have explained, our analysis properly focuses on the evidence that *was* presented, viewed in the light most favorable to sustaining the verdict. The defendant's meeting with the hit man, a complete stranger, in the middle of the night at a rest area off the highway was more than a mere conversation to vent about his frustration of not seeing his children earlier that day. It was, as the jury concluded, an attempt to murder T.

one who could murder T,[12] only four days before the

[12] The defendant also claims that, by focusing on what the actor has already done to commit the crime, we will extend attempt liability beyond what was intended by the legislature because the approach will blur the line between attempt and solicitation. We disagree. We have observed that "the inciting or urging, whether it be by a letter or word of mouth, is a mere solicitation . . . ." *State* v. *Schleifer*, 99 Conn. 432, 438, 121 A. 805 (1923). "An attempt [on the other hand] necessarily includes the intent, and also an act of endeavor adapted and intended to effectuate the purpose. . . . The act [or] endeavor must be some act done in part execution of a design to commit the crime." (Citation omitted; internal quotation marks omitted.) Id.; see also Model Penal Code and Commentaries, supra, § 5.02, comment 3, p. 373 ("this section provides for separate definition of criminal solicitation on the ground that each of the two inchoate offenses presents problems not pertinent to the other").

The present case provides a clear example of the distinction between solicitation and attempt as articulated in *Schleifer*. The defendant first solicited Evans to find a hit man. Had Evans refused, there would necessarily be no act or endeavor that followed to constitute attempt. The state presented sufficient evidence, however, that the defendant had taken steps before contacting Evans, believed Evans found a hit man, and took steps to create a plan under which he would not be targeted as the killer. Unlike the dissent's contention that this was "mere conversation" amounting to "two solicitations," a jury reasonably could have found that the defendant's conduct that followed his initial contact with Evans constituted an attempt, as the defendant's outward acts—which included driving to the rest area, getting in Paleski's car, giving Paleski a piece of paper with information on it, and showing Paleski a photograph of his wife—evinced an intent to have his wife murdered.

Furthermore, we reject the defendant's argument that the police should have waited until the defendant gave Paleski some money the next morning before arresting him. Payment is not necessary for a jury to determine that a defendant's conduct constituted a substantial step in a murder for hire scenario. See, e.g., *State* v. *Urcinoli*, 321 N.J. Super. 519, 537, 729 A.2d 507 (App. Div.), cert. denied, 162 N.J. 132, 741 A.2d 99 (1999). In addition, knowing the defendant's intent to follow through with the plan, the police would have put T's life in jeopardy, because the defendant, whose prior conduct against T led her to call the police multiple times and to obtain multiple protective orders against him, could have decided that he did not want to pay Paleski and could have killed her himself. Research in the field of domestic violence has identified certain factors that create a greater risk of violence or lethality. A well recognized factor that can increase risk to victims is the finalization of a divorce or separation. See, e.g., J. Campbell et al., "Intimate Partner Homicide: Review and Implications of Research and Policy", 8 Trauma, Violence & Abuse 246, 254 (2007) (noting that divorce and separation increase woman's risk of experiencing lethal violence); L.

dissolution of his marriage to T was set to be finalized, also corroborates the defendant's intent. The evidence also revealed that, after his initial contact with Evans, the defendant continued to exchange a series of texts and made phone calls to Evans over a twenty-four hour period, culminating in the defendant's driving to a rest area to meet a complete stranger who he believed was a "hit man" willing to kill his wife. The jury had sufficient evidence to find that the resulting meeting was more than a mere conversation; rather, it was the culmination of a series of acts all aimed at the same end, procuring a hit man to kill T.

The jury watched the video recording of the defendant entering Paleski's vehicle and providing Paleski with the information necessary to murder T. Specifi-

Dugan et al., "Exposure Reduction or Retaliation? The Effects of Domestic Violence Resources on Intimate-Partner Homicide," 37 L. & Society Rev. 169, 193 (2003) (noting that "increases in divorce are also related to more killings of spouses . . . [which] is not entirely surprising in light of prior research showing that the most dangerous time in a relationship is as it is ending," and citing to various scholars on the subject, including Jacquelyn C. Campbell). In the present case, the defendant called Evans four days before his dissolution from T was to be finalized. Coupled with the history of domestic violence known to law enforcement at the time of the arrest, the risk in this case was real. Many courts have opined that "failing to attach criminal responsibility to the actor—and therefore prohibiting law enforcement officers from taking action—until the actor is on the brink of consummating the crime endangers the public and undermines the preventative goal of attempt law." *State* v. *Reeves*, 916 S.W.2d 909, 913–14 (Tenn. 1996), citing *United States* v. *Stallworth*, 543 F.2d 1038, 1040 (2d Cir. 1976).

The defendant's additional claim that the Appellate Court's construction of § 53a-49 (a) (2) will result "in a lower threshold of conduct constituting a substantial step," because the defendant's conduct was "closer in nature to the acts necessary [for] conspiracy," which requires " 'a [less] demanding showing' " than proof of a substantial step merits little discussion. Our legislature set forth the crimes of conspiracy and attempt in different sections of our Penal Code, and the two sections remedy different conduct. Compare General Statutes § 53a-48 with General Statutes § 53a-49. In the present case, regardless of whether the defendant's conduct would satisfy the elements required for conspiracy under § 53a-48, a jury reasonably could have found that his conduct amounted to a substantial step under § 53a-49 (a) (2).

cally, when the defendant entered Paleski's car, he provided Paleski with his wife's name, home address, employer, work address, work schedule, and physical description. The defendant offered Paleski his plan for murdering T, namely, that the killing take place "in a rough section" of Stamford and involve her "nice car" to make it look like an impersonal attack and to ensure that neither the defendant nor his children would be near the scene. The jury watched the defendant leave Paleski's car to retrieve a piece of paper that ultimately provided Paleski with, among other things, the make and model of T's car to effectuate the carjacking scenario that he had concocted. After hearing T's testimony that she refused the defendant's request for a photograph of her one month before, the jury watched the defendant show Paleski an old photograph of T and describe how her hair color had changed since the photo was taken to ensure that Paleski would recognize her. In addition to providing critical information, the defendant planned both the manner of killing and how to secure his alibi. To effectuate the murder, the defendant and Paleski created a structured payment scheme, whereby they agreed on a total price, a down payment amount, and upfront payment amount to be paid by the defendant to Paleski approximately ten hours later. After clarifying the logistics of making the first payment, the jury reasonably could have determined that the defendant made one final indication of his intent when he thanked Paleski before exiting the vehicle. There was more than ample evidence from which the jury could have determined beyond a reasonable doubt that the defendant intended to murder T and, by hiring a hit man, took a substantial step to achieve that goal.

The judgment of the Appellate Court is affirmed.

In this opinion ROBINSON, C. J., and PALMER, D'AURIA, MULLINS and VERTEFEUILLE, Js., concurred.

ECKER, J., dissenting. The majority concludes that the defendant's conversations with John Evans and the undercover "hitman," Michael Paleski, Jr., provided sufficient evidence for the jury to find beyond a reasonable doubt that the defendant committed the crime of attempted murder. I disagree that those preliminary discussions, without more, constitute a substantial step under General Statutes § 53a-49 and, therefore, I respectfully dissent.

I

Before getting to the heart of the case, I pause to express a minor concern with the methodological framework developed by the majority as a prelude to its finding that the evidence was sufficient to support the defendant's conviction of attempted murder. The majority describes the issue on appeal as whether the proper inquiry under the "substantial step" provision of our criminal attempt statute "should focus on what the [defendant] had already done or on what the [defendant] had left to do to complete the crime . . . ." The bulk of the court's opinion is devoted to examining that question and, after a lengthy discussion, the majority concludes that the "main focus" of the substantial step inquiry will be on what the defendant already has done. The majority then hastens to add that "the consideration of what the [defendant] has left to do is not completely irrelevant to the inquiry of whether he has taken a substantial step" and "the defendant is free to emphasize to the jury what he had left to do to commit the crime."

I intend no criticism of the majority's choice to address the "already-done versus remains-to-be-done" issue. The Appellate Court's decision in this case uses that dichotomous framework to reach its conclusion and the parties present their respective arguments to this court using that same approach. Under these cir-

cumstances, there is an obvious need for this court to clarify what the Appellate Court described as the "conflicting" case law invoking the "already-done versus remains-to-be done" approach. *State* v. *Daniel B.*, 164 Conn. App. 318, 327 and n.7, 137 A.3d 837 (2016) (citing cases from this court and Appellate Court reflecting inconsistent treatment). Nor do I disagree with the majority's basic conclusion on the issue: whether a criminal attempt has occurred will depend on what the defendant already has done, although what still remains to be done is not irrelevant to the analysis. My concern relates solely to the suggestion, implicit but unmistakable, that the "already-done versus remains-to-be-done" framework provides any meaningful guidance on the question of when preparation ends and attempt begins.

In the criminal law, the idea of an "attempt"—like the idea of a "substantial step"—is fundamentally and intrinsically a *relative* concept.[1] More particularly, these terms derive their content and meaning in significant part from a *terminal* reference point. An attempt to do what? A substantial step toward what end? These questions only can be answered by reference to the intended end point, regardless of whether it ultimately is achieved. I fully agree with the proposition that a criminal attempt under our law can (and usually will) occur before the defendant or his agent has taken the

[1] See, e.g., *U.S. Industries/Federal Sheet Metal, Inc.* v. *Director, Office of Workers' Compensation Programs*, 455 U.S. 608, 619 n.3, 102 S. Ct. 1312, 71 L. Ed. 2d 495 (1982) (recognizing that "[t]he term 'substantial' is relative"); *Bausch & Lomb, Inc.* v. *Alcon Laboratories, Inc.*, 79 F. Supp. 2d 243, 249 (W.D.N.Y. 1999) ("[t]he word 'significant,' like 'substantial,' is a relative term that does not inherently convey any particular quantifiable standard"); *Fisette* v. *DiPietro*, 28 Conn. App. 379, 384, 611 A.2d 417 (1992) (holding that "the term 'substantial circulation' is relative"); *Saugus Auto Theatre Corp.* v. *Munroe Realty Corp.*, 366 Mass. 310, 311, 318 N.E.2d 615 (1974) (noting that "the word substantial . . . is a relative term and must be examined in its context to gauge its meaning" [internal quotation marks omitted]).

last step, or even the penultimate or antepenultimate step, necessary to complete the crime. The Model Penal Code, which has been adopted in Connecticut and many other jurisdictions, makes this point crystal clear. See 1 A.L.I., Model Penal Code and Commentaries (1985) § 5.01, comment 6 (a), p. 329. But it also is true, as the majority seems to acknowledge, that the ultimate objective cannot be ignored entirely when the critical question is whether the defendant's "step" toward that objective is a "substantial" one.

I believe that the "already-done versus remains-to-be-done" framework is ineffectual as a legal standard, at least in hard cases like this one, because it does little to resolve the central difficulty of locating the point at which planning ends and perpetration begins. I do not offer a better legal standard with brighter lines for easier application—nor do I believe that one exists.[2] I simply caution lawyers and trial judges that they should not expect the framework set forth in the majority opinion to provide particularly helpful guidance in resolving these difficult issues in cases where such guidance is most needed.

[2] Judges and legal scholars have long struggled to identify and articulate a coherent, workable theory of criminal attempt and, to this day, remain dissatisfied with the results. See J. Hall, "Criminal Attempt—A Study of Foundations of Criminal Liability," 49 Yale L.J. 789, 789 (1940) ("Whoever has speculated on criminal attempt will agree that the problem is as fascinating as it is intricate. At every least step it intrigues and cajoles; like la belle dame sans merci, when solution seems just within reach, it eludes the zealous pursuer, leaving him to despair ever of enjoying the sweet fruit of discovery."). A recent article sketches the intellectual history of this endeavor since Lord Mansfield's "discovery" of the crime of attempt in the late eighteenth century. See M. Fenster, "The Dramas of Criminal Law: Thurman Arnold's Post-Realist Critique of Law Enforcement," 53 Tulsa L. Rev. 497, 510 (2018) ("[t]he doctrine today remains as muddled and contentious as it was in Arnold's era [in the 1930s]; yet it continues to attract commentators who obsessively offer their own solutions as if only they and their pet theory can finally solve the doctrinal riddle" [footnote omitted]).

II

I begin my analysis with the appropriate standard of review for claims challenging the sufficiency of the evidence. As the majority points out, "we apply a two-part test" to sufficiency of the evidence claims, which requires us first to "construe the evidence in the light most favorable to sustaining the verdict," and second, to "determine whether upon the facts so construed and the inferences reasonably drawn therefrom the jury reasonably could have concluded that the cumulative force of the evidence established guilt beyond a reasonable doubt." *State* v. *Moreno-Hernandez*, 317 Conn. 292, 298, 118 A.3d 26 (2015). This standard of review undeniably requires great deference to the jury's verdict. But it does not negate or dilute the obligation of an appellate court reviewing a criminal conviction to ensure that the evidentiary basis for the conviction meets the constitutional "beyond a reasonable doubt" standard. See J. Newman, "Beyond 'Reasonable Doubt,' " 68 N.Y.U. L. Rev. 979, 980 (1993) (encouraging appellate courts "to take the [reasonable doubt] standard seriously as a rule of law against which the validity of convictions is to be judged"). Our review, in other words, "is not entirely toothless . . . for [w]e do not . . . fulfill our duty through rote incantation of [the principles governing a review of sufficiency of evidence] followed by summary affirmance." (Citation omitted; internal quotation marks omitted.) *United States* v. *Salamanca*, 990 F.2d 629, 638 (D.C. Cir.), cert. denied, 510 U.S. 928, 114 S. Ct. 337, 126 L. Ed. 2d 281 (1993). Although "[a] jury is entitled to draw a vast range of reasonable inferences from evidence, [it] may not base a verdict on mere speculation"; id.; "and caution must be taken that the conviction not be obtained by piling inference on inference." (Internal quotation marks omitted.) *United States* v. *Jones*, 44 F.3d 860, 865 (10th Cir. 1995).

These cautionary precepts take on special relevance under the circumstances of the present case, in which the jury was not presented with the option of convicting the defendant of a lesser crime more closely matching his criminal conduct. "The sufficiency of the evidence warrants particular scrutiny when the evidence strongly indicates that a defendant is guilty of a crime other than that for which he was convicted, but for which he was not charged. Under such circumstances, a trier of fact, particularly a jury, may convict a defendant of a crime for which there is insufficient evidence to vindicate its judgment that the defendant is blameworthy. Compelling evidence that a defendant is guilty of some crime is not, however, a cognizable reason for finding a defendant guilty of another crime." *United States* v. *Salamanca*, supra, 990 F.2d 638; see also *In re Winship*, 397 U.S. 358, 364, 90 S. Ct. 1068, 25 L. Ed. 2d 368 (1970) ("It is critical that the moral force of the criminal law not be diluted by a standard of proof that leaves people in doubt whether innocent men are being condemned. It is also important in our free society that every individual going about his ordinary affairs have confidence that his government cannot adjudge him guilty of a criminal offense without convincing a proper factfinder of his guilt with utmost certainty.").

The defendant was convicted of the crime of attempted murder. Our attempt statute, § 53a-49, provides in relevant part that "[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 . . . 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. . . ." General Statutes § 53a-49 (a) (2). "In general terms . . . [a] substantial step must be something more than mere preparation, yet may be less

than the last act necessary before the actual commission of the substantive crime, and thus the finder of fact may give weight to that which has already been done as well as that which remains to be accomplished before commission of the substantive crime. . . . In order for behavior to be punishable as an attempt, it need not be incompatible with innocence, yet it must be necessary to the consummation of the crime and be of such a nature that a reasonable observer, viewing it in context could conclude beyond a reasonable doubt that it was undertaken in accordance with a design to violate the statute." (Internal quotation marks omitted.) *State* v. *Sorabella*, 277 Conn. 155, 180–81, 891 A.2d 897, cert. denied, 549 U.S. 821, 127 S. Ct. 131, 166 L. Ed. 2d 36 (2006); see also *State* v. *Lapia*, 202 Conn. 509, 514–15, 522 A.2d 272 (1987) ("[t]he mere preparation to do something, absent an act constituting a substantial step toward the commission of a specific offense, is insufficient to sustain a conviction for criminal attempt").

Pursuant to § 53a-49 (b), "[c]onduct shall not be held to constitute a substantial step . . . unless it is strongly corroborative of the actor's criminal purpose. . . ." General Statutes § 53a-49 (b). "This formulation is used to distinguish acts of preparation from acts of perpetration" and it "requires *more* than a mere start of a line of conduct leading to the attempt." (Emphasis added.) Commission to Revise the Criminal Statutes, Commentary on Title 53a: The Penal Code (1969), pp. 28–29. The acts undertaken must be "substantial" and "unambiguous in supporting a criminal purpose." Id. Although, as a general matter, "[w]hat constitutes a substantial step in any given case is a question of fact"; (internal quotation marks omitted) *State* v. *Osbourne*, 138 Conn. App. 518, 528, 53 A.3d 284, cert. denied, 307 Conn. 937, 56 A.3d 716 (2012); the court must exercise its gatekeeping function to ensure that the defendant's conduct is "strongly corroborative of the actor's criminal

purpose. . . .” General Statutes § 53a-49 (b); see also *United States* v. *Crowley*, 318 F.3d 401, 415 (2d Cir.) (noting that “the ‘strongly corroborative’ language” is used in Model Penal Code to instruct “courts as to what kinds of acts may be ‘held’ to be sufficient to constitute substantial steps”), cert. denied, 540 U.S. 894, 124 S. Ct. 239, 157 L. Ed. 2d 171 (2003); Model Penal Code and Commentaries, supra, § 5.01, comment 6 (c), p. 352 (noting that “the judge can refuse to submit the issue to the jury or refuse to accept the decision of the jury only if there is insufficient evidence of criminal purpose or there is no reasonable basis for holding that the defendant’s conduct was ‘strongly corroborative’ of the criminal purpose attributed to him”). If the defendant’s conduct is not substantial and strongly corroborative of his criminal purpose, then the evidence is insufficient as a matter of law to constitute a substantial step.

Subsection (b) of the statute lists seven examples of conduct that “if strongly corroborative of the actor’s criminal purpose, shall not be held insufficient as a matter of law . . . .” General Statutes § 53a-49 (b). One of the enumerated circumstances is “soliciting an *innocent* agent to engage in conduct constituting an element of the crime. . . .” (Emphasis added.) General Statutes § 53a-49 (b) (7); see generally General Statutes § 53a-179a.[3] Indeed, the rule in Connecticut has long been that a solicitation, even if “accompanied by a bribe” or an “offer of money,” is “never an attempt.” *State* v. *Schleifer*, 99 Conn. 432, 438, 121 A. 805 (1923).

[3] General Statutes § 53a-179a provides in relevant part: “(a) A person is guilty of inciting injury to persons or property when, in public or private, orally, in writing, in printing or in any other manner, he advocates, encourages, justifies, praises, incites or solicits the unlawful burning, injury to or destruction of any public or private property or advocates, encourages, justifies, praises, incites or solicits . . . the killing or injuring of any class or body of persons, or of any individual.

“(b) Inciting injury to persons or property is a class C felony.”

In *State* v. *O'Neil*, 65 Conn. App. 145, 782 A.2d 209 (2001), aff'd, 262 Conn. 295, 811 A.2d 1288 (2003), the Appellate Court expounded upon the distinction between solicitation and attempt. In *O'Neil*, the defendant was convicted of attempt to commit murder because he mailed a letter asking someone to kill a witness. Id., 148. The Appellate Court noted that in addition to the common-law distinction between the crimes of attempt and solicitation, the Model Penal Code, upon which our attempt statute is based, "counseled against classifying solicitations as attempts." Id., 164. Specifically, the commentary to § 5.02 of the Model Penal Code provides that "[w]hile attempts and solicitations have much in common and are closely related in their historical development, this section provides for separate definition of criminal solicitation on the ground that each of the two inchoate offenses [attempt and solicitation] presents problems not pertinent to the other." (Internal quotation marks omitted.) Id., quoting Model Penal Code and Commentaries, supra, § 5.02, comment 3, pp. 372–73. Additionally, "the inclusion of the 'innocent' agent formulation in § 53a-49 (b) (7) is a factor that reinforces the common-law distinction between solicitation and attempt," because by "including one specific solicitation situation in the attempt statute, it is logical to conclude that the legislature implicitly determined that other forms of solicitation, in and of themselves, do not constitute an attempt to commit a crime."[4] *State* v. *O'Neil*, supra, 167. In light

[4] The Appellate Court explained the inclusion of the "innocent agent" exception in § 53a-49 (b) as follows: "The example given in the Model Penal Code and Commentaries of why the language, 'soliciting an innocent agent,' was included as one of the seven examples of conduct or a situation that might be sufficient to satisfy the requisite conduct for attempt is an example attributed to Professor Glanville Williams. That example, as given, is: '(vii) *Solicitation of Innocent Agent.* Professor Glanville Williams suggests the situation where "D unlawfully tells E to set fire to a haystack, and gives him a match to do it with. . . . If, as D knows, E (mistakenly) believes that it is D's stack and that the act is lawful, E is an innocent agent, and D is guilty of attempted arson; D, in instructing E, does the last thing that he

of the distinction between the crimes of solicitation and attempt, which "has persisted for almost eighty years," the Appellate Court reversed the defendant's conviction because "[t]he conduct of the defendant consisted of a mere solicitation or a mere preparation—that is not enough to constitute an attempt." Id., 171; see also *State* v. *Damato*, 105 Conn. App. 335, 343–45, 937 A.2d 1232 (holding that evidence was sufficient to support defendant's conviction of attempted murder because defendant did not just solicit hitman, he also followed victim and surveilled victim's residence), cert. denied, 286 Conn. 920, 949 A.2d 481 (2008).

In the present case, there is no question that the defendant's conversations with Evans and Paleski constituted criminal solicitations in violation of § 53a-179a.

intends in order to effect his criminal purpose. (It would be the same if he only used words and did not give E a match.)'" Model Penal Code and Commentaries, supra, § 5.01, comment [6] (b) (vii), p. 346 [and] n.214, quoting G. Williams, Criminal Law: The General Part (2d Ed. 1961) p. 616.

"As the defendant points out, the commentary on Professor Williams' example explains that '[t]he prohibition against criminal solicitation does not apply in this case because *E* is himself not being incited to commit a crime. For this reason *E* is not in a position, as an independent moral agent, to resist *D's* inducements; unlike the situation in criminal solicitation, *E* is wholly unaware that commission of a crime is involved. Analytically, therefore, *D's* conduct, in *soliciting an innocent agent*, is conduct constituting an element of the crime, which is properly subsumed under the attempt section; and the solicitation, irrespective of whether it happens to be the last act, should be the basis for finding a substantial step toward the commission of a crime.' . . . Model Penal Code and Commentaries, supra, § 5.01, comment [6] (b) (vii), pp. 346–47. So E, being an 'innocent agent,' wholly unaware that a crime is involved, is not in the position to resist or reject D's requests; whereas a noninnocent agent, in that situation, knowing this criminal activity is afoot is free to accept or reject D's requests. The 'innocent agent' can fairly be said to include one who is clear of responsibility because for example, he lacks mens rea; E would fall into that category. Therefore, D's conduct, in soliciting E, an innocent agent, is conduct constituting an element of the crime, which comes within § 53a-49 (b) (7) of the attempt section and the solicitations, 'irrespective of whether it happens to be the last act, should be the basis for finding a substantial step toward the commission of a crime.' Id." (Emphasis in original.) *O'Neil*, supra, 65 Conn. App. 166–67.

The defendant, however, was not charged with the crime of solicitation to commit murder; he was charged with the crime of attempt to commit murder in violation of General Statutes §§ 53a-54a and 53a-49.[5] The question presented in this appeal is whether the defendant crossed the line between solicitation and attempt by taking a substantial step toward the commission of the offense, i.e., whether he went beyond mere planning and preparation by committing acts strongly corroborative of his criminal purpose and of such a nature that a reasonable observer could conclude beyond a reasonable doubt that they were undertaken with the clear intent to commit the crime of murder.

"[T]he question of when preparation ends and attempt begins is exceedingly difficult." (Internal quotation marks omitted.) *United States* v. *Irving*, 665 F.3d 1184, 1195 (10th Cir. 2011), cert. denied, 566 U.S. 928, 132 S. Ct. 1873, 182 L. Ed. 2d 656 (2012); see also *United States* v. *Coplon*, 185 F.2d 629, 633 (2d Cir. 1950) (Hand, C. J.) ("[t]he decisions are too numerous to cite, and would not help much anyway, for there is, and obviously can be, no definite line" between preparation and attempt), cert. denied, 342 U.S. 920, 72 S. Ct. 362, 96 L. Ed. 688 (1952). I agree with the majority that the fact that "further major steps must be taken before the crime can be completed does not preclude a finding that the steps already undertaken are substantial." (Internal

[5] Solicitation to commit murder is a class C felony punishable by "a term not less than one year nor more than ten years"; General Statutes § 53a-35a (1) (A) (7); whereas attempt to commit murder is a class B felony punishable by "a term not less than one year nor more than twenty years . . . ." General Statutes § 53a-35a (1) (A) (6); see also General Statutes § 53a-51 ("[a]ttempt and conspiracy are crimes of the same grade and degree as the most serious offense which is attempted or is an object of the conspiracy, except that an attempt or conspiracy to commit a class A felony is a class B felony"); General Statutes § 53a-179a (b) ("[i]nciting injury to persons or property is a class C felony"). The defendant was sentenced to twenty years of incarceration, execution suspended after fifteen years, and five years of probation with special conditions.

quotation marks omitted.) The majority, however, fails to give sufficient weight to the requirement that the steps already undertaken must be *substantial* and *strongly corroborative* of the actor's criminal intent in order to rise to the level of an attempt.

To determine whether the defendant's conduct in this case constituted a substantial step toward the commission of the crime of murder, sister state precedent is instructive. Although there is not a complete and uniform consensus as to what acts are sufficient to support a conviction of attempted murder in the murder-for-hire context; see *State* v. *Disanto*, 688 N.W.2d 201, 208 (S.D. 2004) (noting that "the courts are divided" in murder-for-hire cases); the general agreement among those states that have adopted the Model Penal Code definition of attempt is that more than mere conversation is required.[6] See *State* v. *Molasky*, 765 S.W.2d 597, 602

[6] Many of the states that have not adopted the Model Penal Code definition of attempt require the defendant to have taken *more* than a substantial step and be dangerously close to the commission of the offense. See, e.g., *Commonwealth* v. *Hamel*, 52 Mass. App. 250, 256, 752 N.E.2d 808 (reversing defendant's attempted murder conviction, even though defendant solicited two undercover officers posing as hitmen, agreed upon price, offered goods and property as "upfront payment," provided "descriptions of [victims] and their habits," and produced sketches of victims' home, because "[t]here were no acts, on the part either of the defendant or of the officers, that came close to or formed part of any physical perpetration of any murders"), cert. denied, 435 Mass. 1104, 759 N.E.2d 328 (2001); *State* v. *Melton*, 821 S.E.2d 424, 431–32 (N.C. 2018) (reversing defendant's attempted murder conviction, even though defendant met "with the supposed hired killer, tender[ed] the [$2500] in cash as an initial payment, provid[ed] the hired killer the details necessary to complete the killing of defendant's former wife, and help[ed] the hired killer plan how to get his former wife alone and how to kill her out of the presence of their daughter," because such acts, "calculating as they are, [do] not amount to proof of overt acts" because they would not, without more, "inexorably result in the commission of the offense" [internal quotation marks omitted]); *State* v. *Disanto*, supra, 688 N.W.2d 207, 213 (reversing defendant's attempted murder conviction, even though defendant gave "the [hitman] a final order to kill," because defendant's actions did not go "beyond preparation into acts of perpetration"). Other states with different formulations of the crime of attempt also require more than the mere solicitation and hiring of a hitman—the defendant must

(Mo. 1989) (noting that, to constitute substantial step, have committed slight or overt acts exhibiting his firm intention to commit the crime of murder. See *Braham* v. *State*, 571 P.2d 631, 637 (Alaska 1977) (holding that solicitation plus commission of overt acts is enough to sustain conviction of attempted murder, and concluding that evidence was sufficient because defendant and hitman "entered into a contract . . . to kill [the intended victim]," settled "on the contract price [of] $600," and defendant committed overt act by having hitman visit victim in hospital to gain victim's trust), cert. denied, 436 U.S. 910, 98 S. Ct. 2246, 56 L. Ed. 2d 410 (1978); *State* v. *Mandel*, 78 Ariz. 226, 229, 278 P.2d 413 (1954) (The court affirmed the defendant's conviction of attempted murder because the defendant "not only solicited, she consummated the contract to that end and partly executed the same by payment of a portion of the consideration; she identified for the intended assassin the home and the car of the intended victim, pointed out a possible site for disposition of the body and advised the place and time when and where contact could be made for the consummation of the murder. She did everything she was supposed to do to accomplish the purpose. Had it not been for the subterfuge, the intended victim would have been murdered."); *People* v. *Superior Court (Decker)*, 41 Cal. 4th 1, 9, 157 P.3d 1017, 58 Cal. Rptr. 3d 421 (2007) (affirming defendant's attempted murder conviction because defendant solicited and hired hitman, agreed on price, provided hitman "with all of the necessary information concerning [the victim], her home and office, and her habits and demeanor," gave the hitman "the agreed-on [down payment] of [$5000]" and expressed that he was " 'absolutely, positively, 100 percent sure' " he wanted murder committed); *Saienni* v. *State*, 346 A.2d 152, 153–54 (Del. 1975) (affirming defendant's attempted murder conviction because defendant procured life insurance on victim, contracted hitman, traveled to Maryland with hitman and "pointed out the entire physical layout and discussed step by step how the murder was to be accomplished," "discussed and rehearsed the murder in great detail" in subsequent meetings with hitman, and "started [the] sequence of events" planned to culminate in murder); *Duke* v. *State*, 340 So.2d 727, 730 (Miss. 1976) (affirming defendant's attempted murder conviction because defendant's acts "went far beyond mere preparation and planning because he solicited [his employee] to kill [the intended victim], arranged a hunting trip for that purpose, and following the failure to kill [the intended victim] during the . . . hunting trip, he again solicited [his employee] to find a [hitman], agreed to pay $15,000 to have [the intended victim] killed, and actually paid $11,500 to a person whom he believed had killed [the intended victim]"); *State* v. *Burd*, 187 W. Va. 415, 419, 419 S.E.2d 676 (1991) (affirming defendant's attempted murder conviction because defendant "not only had several conversations with [the hitman], but gave him $150 to purchase a weapon and $500 as a down payment for the commission of the murders; promised to pay another $550 upon completion of the crimes; gave him a sketch of the crime scene and descriptions of the intended victims; gave him a suicide note and instructed him on how to make the murders look

there must be "something beyond conversation," such as "making a cash payment, delivering a weapon, visiting a crime scene, waiting for a victim, etc., [that] has accompanied the conversation, thus evidencing the seriousness of purpose, and making the planned crime closer to fruition"). To cross the line between criminal solicitation and attempt, the defendant must take some *action*, beyond the solicitation of a surrogate to commit the crime, strongly corroborative of his criminal purpose. Some examples of such action include the payment of money, surveillance of the victim, visiting the crime scene, furnishing the weapon for the commission of the offense, expressing urgency and certainty regarding the murder-for-hire plan, meeting with the hitman multiple times, and repeatedly importuning the hitman to commit the crime. See, e.g., *Martin-Argaw* v. *State*, 343 Ga. App. 864, 866, 806 S.E.2d 247 (2017) (affirming defendant's conviction of attempted murder because "[t]he evidence in this case showed that [the defendant] had expressly asked the undercover officer—whom he believed to be a [hitman]—to kill three people; that he had given the [hitman] specific information about the three people to help him accomplish this purpose; that he had agreed to pay a negotiated price for the hit; that he had discussed the logistics of making the payment; and that he had responded affirmatively when the [hitman] made it clear that [the defendant] did not need to do anything else before the hit occurred"); *State* v. *Manchester*, 213 Neb. 670, 676, 331 N.W.2d 776 (1983) (affirming defendant's conviction of attempted murder because defendant "made plans for the murder, solic-

like murder-suicide; instructed him on where to inflict the gun shots; and finally, took [the hitman] and physically showed him the intended victims' home"); but see *State* v. *Gay*, 4 Wn. App. 834, 840, 486 P.2d 341 (1971) (holding that hiring hitman constitutes overt act that "goes beyond the sphere of mere solicitation and . . . may constitute the crime of attempt" where defendant had hired hitman, agreed on price, and provided down payment, pictures and information about victim).

ited a killer, discussed the contract price and set the money aside in his billfold, arranged for the weapon and a scope, and showed the killer the victim, his residence, and his place of work"); *State* v. *Kilgus*, 128 N.H. 577, 585, 519 A.2d 231 (1986) (holding that defendant's solicitation of another to commit murder, payment of $1000, identification of victim, and instruction to dispose of corpse out-of-state "was more than . . . 'mere' or 'naked' solicitation," rather, "[i]t was a 'substantial step' toward the commission of capital murder"); *State* v. *Fornino*, 223 N.J. Super. 531, 540, 539 A.2d 301 (App. Div.) (holding that "defendant's visits to the scene of the planned crime and his receipt of money for its commission could properly be found by the jury to constitute 'substantial steps in a course of conduct planned to culminate in the commission of the crime' which were 'strongly corroborative of the actor's criminal purpose' "), cert. denied, 111 N.J. 570, 546 A.2d 499 (1988), and cert. denied, 488 U.S. 859, 109 S. Ct. 152, 102 L. Ed. 2d 123 (1988); *State* v. *Group*, 98 Ohio St. 3d 248, 263, 781 N.E.2d 980 (2002) (holding that defendant's acts of "offering [an acquaintance] $150,000 to throw a firebomb through the window of [the intended victim's] house, providing him with her address, repeatedly importuning him to commit the crime, and instructing him how to make the bomb and how to misdirect any subsequent police investigation—strongly corroborate [his] criminal purpose, and therefore constitute a substantial step in a course of conduct planned to culminate in the aggravated murder of [the intended victim]"); but see *State* v. *Kimbrough*, 364 Or. 66, 89–90, 431 P.3d 76 (2018) (reversing defendant's attempted murder conviction even though defendant "intended all the substantive crimes to be committed by the hitman and . . . took steps toward realizing that goal," because "to be guilty of attempt, the defendant must personally engage in conduct that constitutes a substantial step, and that

substantial step must be toward a crime that the defendant intends to participate in himself"). Without some substantial action, there is no way to distinguish between "people who pose real threats from those who are all hot air . . . ." *United States* v. *Gladish*, 536 F.3d 646, 650 (7th Cir. 2008) (noting that "[t]reating speech (even obscene speech) as the 'substantial step' would abolish any requirement of a substantial step"); see also *United States* v. *Resendiz-Ponce*, 549 U.S. 102, 107, 127 S. Ct. 782, 166 L. Ed. 2d 591 (2007) (noting that under Model Penal Code, as well as common law, "mere intent to violate a . . . criminal statute is not punishable as an attempt unless it is also accompanied by significant conduct").[7]

In light of this extensive case law focused on the crime of attempt in the murder-for-hire context, and after a thorough review of the record in the present case, I conclude that the defendant's actions, although morally reprehensible and criminally punishable under our solicitation statute, are insufficient as a matter of law to constitute a substantial step toward the commission of the crime of murder. The events at issue occurred over a very short period of time,[8] during which

[7] The majority cites only a single case, *State* v. *Urcinoli*, 321 N.J. Super. 519, 729 A.2d 507 (App. Div.), cert. denied, 162 N.J. 132, 741 A.2d 99 (1999), that upholds a conviction on facts anywhere close to those in the present case. The vast majority of cases employing the Model Penal Code standard—our legal standard in Connecticut—require some action beyond mere conversation as a "substantial step" toward the commission of the crime of attempted murder.

[8] I disagree with the majority that the evidence was sufficient for the jury reasonably to find that "the defendant had begun his planning well in advance of June 9 . . . ." The defendant may have *thought about* killing his wife prior to June 9, but it is "[o]ne of the basic premises of the criminal law . . . that bad thoughts alone cannot constitute a crime. This is no less true as to an attempt . . . ." (Footnote omitted.) 2 W. LaFave, Substantive Criminal Law (3d Ed. 2018) § 11.4; see also Model Penal Code and Commentaries, supra, § 2.01, comment 1, p. 214 ("[i]t is fundamental that a civilized society does not punish for thoughts alone"). There are important and critical distinctions between *thinking* about the commission of a crime, *planning* the commission of a crime, and *perpetrating* a crime. The defendant did not

the defendant was upset because he "was suppose[d] to have the kids [for visitation]," but his wife "didn't give [him] the kids" in accordance with his expectation. The defendant's conversations with Evans represent an initial attempt to find a hitman. The defendant met later that night to solicit Paleski, the supposed hitman. The defendant's meeting with Paleski, like his earlier meeting with Evans, was a solicitation to commit a crime. Although there were two solicitations (one of Evans and one of Paleski), two solicitations within the same day to commit the same crime do not add up to an attempt. By equating the defendant's efforts to hire a hitman with a substantial step toward the commission of the crime of murder, the majority blurs the important distinction between the crimes of solicitation and attempt—a distinction that has persisted in our case law for more than eighty years. The real issue is whether applicable law would permit a juror to conclude, beyond a reasonable doubt, that the defendant crossed the line between planning a murder and perpetrating a murder on the basis of his conversations with Evans and Paleski. I answer that question "no" for the following reasons.

At no point during his seventeen minute conversation with Paleski did the defendant express a clear and unambiguous intention to implement his murder-for-hire idea. No one can fairly read the full transcript of the conversation without detecting a degree of hesitation and equivocation on the part of the defendant.[9] When Paleski attempted to clarify the defendant's intent by asking him whether he wanted the would-be victim

pursue the notion of putting his bad thoughts into motion until the day he met Evans and Paleski, June 9, 2011, and, even then, he did not *do* anything to take his idea beyond the realm of preliminary planning and preparation.

[9] A complete copy of the transcript of the defendant's conversation with Paleski, which has been redacted to protect the privacy of the would-be victim, is attached as a Joint Appendix to the Majority and Dissenting Opinions.

"out of the picture . . . ? Morte," the defendant responded equivocally: "[T]hat's where it's getting to . . . it's like . . . I wish we didn't need to be there but . . . ." The same ambivalence is repeated at numerous points during the conversation.[10] The defendant clearly stated that he "didn't put that [much] thought into the details" of his murder-for-hire idea because "it all happened fast, I fucking talked to fucking [Evans] tonight. [H]e said he was going to talk to somebody, he went to talk to somebody, and then that was that. . . . [A]nd here I'm sitting with you I was expecting to talk to him." The defendant asked for the meeting with Paleski, but during that meeting he comes across as rushed, not resolute, as Paleski tries to engage him to help formulate more concrete plans. See Commission to Revise the Criminal Statutes, Commentary on Title 53a: The Penal Code (1969), p. 29 (noting that § 53a-49 "requires *more* than a mere start of a line of conduct leading to the attempt" [emphasis added]).

The majority makes much of the fact that the defendant provided Paleski with identifying information about the would-be victim, such as her name, address, appearance, work schedule, and automobile. The trans-

[10] The record reflects the following colloquies between the defendant and Paleski:

"[Paleski]: you want her completely out of the picture right? Morte

"[The Defendant]: that's where it's getting to . . . it's like

"[Paleski]: that's what you want? Alright brother

"[The Defendant]: I wish we didn't need to be there but . . .

"[Paleski]: well I mean

"[The Defendant]: you know

* * *

"[Paleski]: and this is what you want . . just so know I'm going to put 2 in that bitches head and take that car and be gone and I'll fucking burn it somewhere

"[The Defendant]: that's the only way that I [c]an come up . . . that I thought from my like that . . . it makes sense you know what I mean it's gonna hopefully like going to make it not . . ya' know . . . how? What am I? . . . ya' know what I mean? . . . I don't fucking know . . all know is I'm going to be fucking hemmed up in fucking jail again."

mittal of this information was necessary, however, for Paleski to understand what he was being solicited to do; it did not elevate the crime of solicitation to the crime of attempted murder. Identifying information of this nature is part and parcel of the solicitation and preliminary planning of the crime; to treat it as part of the perpetration of the crime erodes the demarcation between solicitation and attempt. Moreover, if we look at this particular portion of the conversation to discern the *defendant's* state of mind, what stands out as significant is the fact that virtually all of the information provided by the defendant regarding the would-be victim was not offered by him until elicited by Paleski's direct, explicit, and extremely persistent questioning.[11]

[11] For example, the record reflects the following colloquy between the defendant and Paleski:

"[Paleski]: who's this the ex-wife?

"[The Defendant]: to be or what you know

"[Paleski]: alright alright what's her name?

"[The Defendant]: [T's full name redacted]

"[Paleski]: [T] you got an address and shit? . . alright

"[The Defendant]: Yes, she works the night shift

"[Paleski]: she got a job?

"[The Defendant]: yea

"[Paleski]: where at?

"[The Defendant]: Stamford Hospital

"[Paleski]: alright . . she works every night or part time?

"[The Defendant]: only like 1 or 2 nights a week

"[Paleski]: alright . . . she lives in Stamford?

"[The Defendant]: yea

"[Paleski]: what's the address?

"[The Defendant]: [T's street address redacted]

"[Paleski]: what's the number?

"[The Defendant]: [T's street address number redacted]

"[Paleski]: . . . ok . . . alright . . you (got) have a picture of her or anything?"

The defendant had not brought a printed photograph of the would-be victim to the meeting, but showed Paleski a photograph that he had on his cell phone in response to Paleski's inquiry. Similarly, the information on the piece of paper the defendant gave to Paleski was information that Paleski specifically requested:

"[Paleski]: I ain't got shit in here but can you get me a piece of paper and write down her name

I return to the fact that the only evidence of a criminal attempt in this case consists of the words spoken by the defendant to Evans and Paleski soliciting them to commit a crime, and the words spoken in the same discussion with Paleski sketching out, for the very first time, an incipient plan to commit that crime. The damning "actions" identified by the majority involve nothing more than the basic acts physically necessary to hold such meetings—the defendant drove his car, provided information to identify the would-be victim, and shared other basic information to begin planning the crime. There is no evidence that the defendant conducted any surveillance, obtained or furnished a weapon, "cased" the potential crime scene to test the viability of a plan, or took any *actions*, beyond mere solicitation, to implement his murder-for-hire idea. Indeed, the record reflects that the defendant affirmatively *declined* to take the one action that, under the particular circumstances of this case, would have demonstrated his firm intention to commit the crime—the payment of money. Paleski repeatedly informed the defendant that he would not "do shit without that money," but despite this knowledge, the defendant still declined to provide a cash down payment to Paleski that night. I do not suggest that the payment of money is a necessary prerequisite in all murder-for-hire cases; see *State* v. *Servello*, 59 Conn. App. 362, 373 and n.4, 757 A.2d 36, cert. denied, 254 Conn. 940, 761 A.2d 764 (2000); but I believe that the act of making payment in *this* case, on *this* record,

"[The Defendant]: yup
"[Paleski]: house address
"[The Defendant]: yup
"[Paleski]: hospital name
"[The Defendant]: yup
"[Paleski]: what kind of car she drives
"[The Defendant]: mm hmmmm

* * *

"[Paleski]: write it all . . . write that shit down for me
"[The Defendant]: alright."

became the only reliable indicator of the defendant's actual intentions during the crucial time period at issue. Under the circumstances of this case—where the conversation has not moved beyond preliminary planning, the time period is short, the defendant's words reflect some uncertainty, and the defendant has been told in explicit terms that payment is an absolute prerequisite to any steps being taken toward commission of the offense—I would hold that the failure to provide payment is strongly indicative that a final decision to commit the crime has not been made. See *State* v. *Molasky*, supra, 765 S.W.2d 602. Because "a substantial step is evidenced by actions, indicative of purpose, not mere conversation standing alone"; (footnote omitted) id.; the record in this case, in my view, does not contain sufficient evidence to sustain the defendant's conviction of attempted murder.

Lastly, I note that there is absolutely no evidence in the record to support the majority's conclusion that the would-be victim was in imminent danger of harm, thus necessitating the defendant's immediate arrest. The defendant's commitment to his murder-for-hire idea was less than certain, but to the extent that the defendant intended to follow through with it, he made abundantly clear to Paleski that there was no "urgency of tonight" and that he "definitely [didn't] want to do anything at the house" or "near the kids," just as Paleski made it clear to the defendant that he would do absolutely nothing without being paid first. The majority's hypothesis that the defendant "could have killed [the victim] himself" before meeting with Paleski in the morning not only is unsupported by any record evidence, it is contradicted by that evidence.[12] If the author-

[12] The majority's conclusion is predicated in part on an episode of alleged domestic violence between the defendant and the would-be victim on March 9, 2011. On that date, the would-be victim accused the defendant of attempting to push her down the stairs, but the defendant denied engaging in the alleged conduct. The defendant subsequently was charged with violation of a criminal protective order under General Statutes §§ 53a-223 and

ities harbored any concerns whatsoever about the would-be victim's safety, moreover, they had ample evidence to arrest and charge the defendant with the crime of solicitation. The fact that the authorities decided to charge the defendant with the crime of attempted murder, rather than solicitation, does not diminish the state's burden to prove, beyond a reasonable doubt, that the defendant took a substantial step toward the commission of the offense.

Because there is insufficient evidence to prove beyond a reasonable doubt that the defendant committed any substantial acts strongly corroborative of his criminal intent, I would reverse the judgment of the Appellate Court. Accordingly, I respectfully dissent.

JOINT APPENDIX to the MAJORITY and DISSENTING OPINIONS

(State's Exhibit No. 11)
Murder for Hire Transcript: Daniel B.

Today's Date is Friday June 10, 2011, Time: Approx 12:53 am

12:11[1] [Paleski]: target is walking over to the car now.
12:38 [Paleski] what's up brother, what's going on? Why don't you hop in brother so we can talk. What's good?
12:55 [The Defendant]: shit . . . right about now.. you know.. fucking life and living . . . and trying to deal and get through it all
13:06 [Paleski]: what you need some work put in?
[The Defendant]: yes sir
[Paleski]: what's going on?
[The Defendant]: uhhh divorce
13:13 [Paleski]: yea . . . you got some wood?
[The Defendant]: not right this second cause I didn't (pause inaudible) we're . . . I think he told you already.. I didn't know what was going on/ /I didn't know I was meeting anyone someone tonight..
13:24 [Paleski]: I need to know that you are for real about this.. you know what I'm saying

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46b-38c (e) based on the March 9 allegations, and the jury in the present case *acquitted* the defendant of the charged crime. Outside of those allegations, there was no claim of any history of physical violence perpetrated on the would-be victim by the defendant. Indeed, the would-be victim testified at trial that the defendant never had struck her or threatened her physically.

[1] Times shown indictate the time stamp on the video recording.

[The Defendant]: that's fine I understand that
[Paleski]: I need some wood to get my, to get a burner . . . so I can take care of this shit
13:32 [The Defendant]: alright
[Paleski]: you know.. he said it's 10 large
[The Defendant]: alright
13:41 [Paleski]: alright.. I need like $800 up front to get a burner tonight
[The Defendant]: alright
[Paleski]: alright . . . I want to meet you tomorrow morning I need at least 3 grand before it's done
[The Defendant]: alright
[Paleski]: alright
[The Defendant]: not a problem
13:52 [Paleski]: who's this the ex-wife?
[The Defendant]: to be or what you know
[Paleski]: alright alright what's her name?
14:03 [The Defendant]: [T's full name redacted]
[Paleski]: [T] you got an address and shit? .. alright
[The Defendant]: Yes, she works the night shift
[Paleski]: she got a job?
[The Defendant]: yea
[Paleski]: where at?
14:41 [The Defendant]: Stamford Hospital
[Paleski]: alright.. she works every night or part time?
[The Defendant]: only like 1 or 2 nights a week
14:22 [Paleski]: alright . . . she lives in Stamford?
[The Defendant]: yea
[Paleski]: what's the address?
[The Defendant]: [T's street address redacted]
[Paleski]: what's the number?
[The Defendant]: [T's street address number redacted]
[Paleski]: . . . ok . . . alright.. you (got) have a picture of her or anything?
14:37 [The Defendant]: I do have a little bit older..she's not fucking big on pictures
[Paleski]: she works nights at the hospital?
[The Defendant]: yea
[Paleski]: every night she works?
[The Defendant]: no
[Paleski]: just part time?
[The Defendant]: just a couple days a week . . . one or two nights a week
[Paleski]: she got a steady schedule though?
14:56 [The Defendant]: usually Tuesdays and Thursdays...7pm to 7am, but a lot of times she'll get cancelled from like 7-11 and she'll work like from 11-7...11pm to 7am
[Paleski]: yup
[The Defendant]: so I don't know . . . ya' know we don't talk anymore
[Paleski]: well how soon do you want this done.. I mean
15:20 [The Defendant]: probably.. whatever you do you
[Paleski]: can you get me some money tonight?
[The Defendant]: I can yes

[Paleski]: I need $800 man so I can get a burner . . . alright I already got a dude lined up.. numbers are off it I'm good to go.. that's a picture of her . . . that's how she looks now?
15:43 [The Defendant]: uh her hair is more mixed in colors
[Paleski]: what color?
[The Defendant]: she got all fucking crazy highlights.. like brown and blond and a little bit of black
[Paleski]: alright
15:53 [The Defendant]: I don't think that's the that's the best picture I don't think I have another picture . . . that's with her in it
[Paleski]: is she working tonight?
[The Defendant]: she was supposed to work tonight but I don't know for sure.. because like she was supposed to work Tuesday night
[Paleski]: yup
16:13 [The Defendant]: and she ends up not working at all...so I don't fucking know what, I don't know when (unable to translate)...I don't know for a fact because they cancelled her and shit . . . it's like you know hard to say...I can't answer
[Paleski]: I mean you want this done like quick.. like soon or...
[The Defendant]: that's what I..
[Paleski]: is there some place you don't want it done: I mean I can do it at the house
[The Defendant]: that's what I was trying to figure out from fucking not doing it for you know what I mean a job that's what I was saying to him...I didn't know which way . . . obviously the first person their is going to be looked at is me
[Paleski]: right
[The Defendant]: so I'm trying to obviously to put a little bit of thought into it, talking to Johnny about it he was saying ya' know just talk, he'll talk to you guys and whatever.. figure out
[Paleski]: I'll do however you want.. but if you want it done quick you know I need the $800 I got to get a burner.. and like I said I already got one lined up I can grab that tonight . . . but you have to get me the $800
[The Defendant]: right
[Paleski]: and then I got to hook up with you I want 3 grand in advance
[The Defendant]: right
[Paleski]: before I do it and then after it's done I'll will wait a month or so I'll get in touch with you and then I'll collect the rest
17:14 [The Defendant]: yes or well however...whatever
[Paleski]: or we can go do somebody nab someone else (inaudible) you know
[The Defendant]: Yeah, that's fine...that's why I was telling... I was telling Johnny like . . .
[Paleski]: how you want it done?
[The Defendant]: my relationship with Johnny I don't I didn't care how it worked I just give it to him and let you guys work you know...do however it works
[Paleski]: right
[The Defendant]: I don't know the only thing I was thinking about was because she drives through . . . you from Stamford or no
[Paleski]: No
[The Defendant]: ok well she the hospital is in a rough section and she's got a nice car

[Paleski]: alright
[The Defendant]: so I'm like I don't know if it makes sense, if that would be the best way to go about it
[Paleski]: or you might want to make it look like a car jacking or something
[The Defendant]: something like that...take the car the car is going to get fund and it kind of like explains it
[Paleski]: yup
[The Defendant]: I'm not sure what the best thing to do...I didn't put that thought into the details of how
[Paleski]: you want her completely out of the picture right? Morte 18:10 [The Defendant]: that's where it's getting to...it's like
[Paleski]: that's what you want? Alright brother
[The Defendant]: I wish we didn't need to be there but . . .
[Paleski]: well I mean
[The Defendant]: you know
[Paleski]: I'll do it but I need, I need, I need some of that wood
[The Defendant]: yea
[Paleski]: can you get me the 800 tonight?
[The Defendant]: I can work it out yea...l could
[Paleski]: alright
[The Defendant]: I just don't want to . . . for me to get it I got to like disturb people tonight.. so I'm only saying it only because I don't want to anything out of place tonight
[Paleski]: ok...but I ain't doing shit without some money
[The Defendant]: understood
[Paleski]: feel me
[The Defendant]: clear.. I'm saying to you I'm not asking you for the urgency of tonight I rather do it so it's not, I don't want to do anything out of character
[Paleski]: Right . . . right
[The Defendant]: you know that's that's my pause for tonight.. because it's going to be out of character for me to go get it tonight
[Paleski]: I ain't got shit in here but can you get me a piece of paper and write down her name
[The Defendant]: yup
[Paleski]: house address
[The Defendant]: yup
[Paleski]: hospital name
[The Defendant]: yup
19:15 [Paleski]: what kind of car she drives
[The Defendant]: mm hmmmm
[Paleski]: do you know the plate on it or anything like that
[The Defendant]: I don't have it memorized
[Paleski]: ok fuck it
[The Defendant]: I can get it
[Paleski]: just write down the type of car she drives just get that for me now just write that shit down
9:28. [The Defendant]: alright
[Paleski]: get that over to me...and then well talk about when were going to do it and
[The Defendant]: alright
[Paleski]: you know
[The Defendant]: works for me I'll get you the info I'll get the money to you through John

[Paleski]: what about at the house you got any fucking Rottweiler's or pit bulls or anything at the house like that?
[The Defendant]: no...at the house I definitely, I definitely don't want to do anything at the house
[Paleski]: you don't want me to do it at the house
[The Defendant]: no
[Paleski]: alright I'm going to have to put some work in then...fucking sitting out there and shit.. what kind of neighborhood is it?
[The Defendant]: the neighborhood is not cool anything is suspicious in the neighborhood . . . so that's why I'm saying I think the job is the safest thing but I just I can't I don't know she doesn't work guaranteed every.. you know this time that time...that's...ya' know I'm trying
[Paleski] write done her name for me, her address, and what kind of car she drives
[The Defendant]: alright
[Paleski]: and come back here we got to get some money going
[The Defendant]: yea...thats fine I'll definitely do that
[Paleski]: you have a piece of paper or something in your car
[The Defendant]: yea I'm sure (inaudible) that I got somethin'
[Paleski]: write it all...write that shit down for me
[The Defendant]: alright
20:39 ***[The Defendant] exits car***
22:54 ***[The Defendant] returns to vehicle***
[Paleski]: how soon do you think you can get that money?
[The Defendant]: I can get it to tomorrow without doing anything . . . you know
[Paleski]: right
[The Defendant]: out of character
[Paleski]: and this is what you want.. just so know I'm going to put 2 in that bitches head and take that car and be gone and I'll fucking burn it some where
[The Defendant]: that's the only way that I an come up . . . that I thought from my like that . . . it makes sense you know what I mean it's gonna hopefully like going to make it not.. ya' know . . . how? What am I? ...ya' know what I mean? (not able to translate).. I don't fucking know.. all know is I'm going to be fucking hemmed up in fucking jail again
23:15 [Paleski]: you'll be straight man.. just make sure your ain't around
[The Defendant]: well exactly
[Paleski]: make sure your with someone so you got you got a story
[The Defendant]: that's exactly what I'm wondering too
[Paleski]: as long as your with someone your straight
[The Defendant]: and if it's a night that she's...this is where she's fucking being fucked up because what's happening what I can tell you is that were supposed to be working off of an alternating week.
[Paleski]: right
[The Defendant]: where on Thursday to Sunday I have the kids but on the alternating week I have them from Friday to Sunday.. so when I have them Thursday to Sunday and if she's working on Thursday night got the kids I'm with the kids
[Paleski]: your fucking golden bro

[The Defendant]: I'm at my aunts house I got the kids I'm all set . . . like I'm good...
[Paleski]: Yea
[The Defendant:] Yea . . . that's why I'm saying that why I think the best circumstances be that.. you know
[Paleski]: Yea
[The Defendant]: 'cause then I'm with my two elderly aunts I'm in the house.. I'm with the kids
[Paleski]: and I can take the bitch off when your with them
[The Defendant]: exactly.. and then it doesn't you know obviously I don't want nothing to be nowhere near the kids and so then I have them
[Paleski]: and she don't pick the kids up after work: Ain't no chance the kids are going to be with her no shit like that?
[The Defendant]: no not when she is going to work or getting out of work.. no.. because I will have the kids Thursday to Sunday
[Paleski]: the best thing to do is one of the nights that you have the kids and your with you parents or something
[The Defendant]: but she's been, the problem is that she is fucking me around right now with the kids.. like I should've have had the kids today, yesterday I don't even know what fucking day it is today.. whatever today is Thursday right.. l was supposed to have the kids today but she didn't give me the kids today.. we're supposed to sign a settlement for divorce probably Monday.. so then if I get it.. lf l know then
[Paleski]: you want to do this shit before the settlement is done
[The Defendant]: that's what I'm trying to fucking think about it because I don't know if there any legally better to do it before or after you know what I mean.. it all happened fast I fucking talked to fucking Johnny tonight.. he said he was going to go talk to somebody he went to talk to somebody and then that was that..
[Paleski]: right
[The Defendant]: and here I'm sitting with you I was expecting to talk to him
***[Evans] knocks at window"""
[The Defendant]: umm were good.. give me a call when you have time tomorrow so we'll can get together
[Paleski]: I need that money bro I can't do shit without that money
[The Defendant]: clear
[Paleski]: alright
[The Defendant]: as soon as he gets.. your going to be with Bam tomorrow right.. and then as soon as your free give me a call.. yea.. the second he gets out we'll meet up
[Paleski]: alright man I'll talk to you...so you're going to be able to get the money tomorrow morning?
[The Defendant]: yea that's not a problem
[Paleski]: ok about what time.. do you want to meet up at?
[The Defendant]: anytime I can meet up with him afterwards when he gets out, I'm meet up with Johnny and then...I'm like trying to be cautious you know what I mean
[Paleski]: right
[The Defendant]: I don't fucking know.. l just, all I know is being that I'm getting divorced I know I'm going straight they're coming straight for me

[Paleski]: yea but if your home with the kids and shit your straight
[The Defendant]: right but I when they look into shit that's why I'm not calling nobody anybody from my phone and I was telling him.. you know I don't want to do nothing on my phone I don't want to nothing.. I don't want there to.. l'm trying to you know
[Paleski]: did you...did you...you got a phone I can call you on tomorrow to meet up where do you want to meet up...you want to set a date, you want to set a time right now that we can meet tomorrow . . . a location and a time
[The Defendant]: that's what I'm trying to figure out...if l talk to Johnny and Johnny's cool with like you guys can talk and meet it has nothing to do with me
[Paleski]: I don't need to talk to that motherfucker it's all about you
[The Defendant]: yea...but he's the perfect like has nothing to do like we're friends at where Johnny's like one of the only dudes that I like trusted to talk about it . . .
[Paleski]: right
[The Defendant]: so with that me and Johnny have a great relationship when we see each other sporadically...so I could see him tomorrow again and he could meet up with you so that when anyone...someone's worrying about where I am there's no..
[Paleski]: well I need....I need to get the money from you.. l ain't fucking meeting with him.. l rather not be dealing with him anymore
[The Defendant]: ok
[Paleski]: you feel me.. you know
[The Defendant]: it's fine whatever you're the boss.. i'm just trying to let you know what I'm thinking..
[Paleski]: right . . . I want to meet with you get the money well figure out a fucking schedule and well get this shit done.. you know I can do what I got to do and get the fuck out of here and go south
[The Defendant]: alright.. do you want to meet back here tomorrow morning?
[Paleski]: what time?
[The Defendant]: what works for you around 9?
[Paleski]: 9 o'clock.. what time is it now?...10 o'clock well meet down here at 10?
28:09 [The Defendant]: yea that's fine;;yea I got 1:20 now
[Paleski]: alright.. well meet here at 10 o'clock you bring the money
[The Defendant]: yup
[Paleski]: and well work out a fucking schedule.. you figure out when you're going to have the kids and then I'll take care of the rest..
[The Defendant]: alright
[Paleski]: alright
[The Defendant]: then how do you want to talk from there?
[Paleski]: talk about it tomorrow bro.. once it's done we ain't talking
[The Defendant]: right
[Paleski]: I'll get in touch with you through Johnny
[The Defendant]: alright
[Paleski]: alright
[The Defendant]: that's why I'm just trying to be clear because you just said you know what I mean
[Paleski]; alright
[The Defendant]: which way you want to go about it . . . then I'll just pick up a phone.. l can get a prepaid phone or something for.. then get rid of it

[Paleski]: yup.. bring me the money tomorrow morning then well get the shit squared away
[The Defendant]: alright
[Paleski]: alright
[The Defendant]: you got it
[Paleski]: I'll see you tomorrow morning here at 10
[The Defendant]: yes sir
[Paleski]: alright
[The Defendant]: thank you
[Paleski]: yup
28:55 [The Defendant] leaves vehicle
29:09 [Paleski]: All right...he's away . . . I don't know if you guys want to wait, probably be better off but, I'm heading out.
29:40 Incoming phone call Hello, What's up
29:52 Hang up