of acquittal. The jury found the defendant guilty of both charges. The court sentenced the defendant to consecutive terms of ten years imprisonment, two years being a mandatory minimum, on the conviction of criminal possession of a pistol or revolver, and three months imprisonment on the conviction of criminal trespass in the third degree, for a total effective sentence of ten years and three months to serve. Thereafter, the defendant appealed.[10]

I

The defendant claims that there was insufficient evidence to convict him of criminal possession of a pistol or revolver because there was insufficient evidence of his knowledge of the gun and no evidence to prove his dominion or control over it.[11] We disagree.

[10] Following the publication of the original opinion in the present case, the state filed a late motion for reconsideration, requesting that we remove certain references to the defendant's status as a convicted felon from our analysis in part I of the opinion. Our original opinion made reference to the defendant's conviction as a fact from which the jury could infer a motive for the defendant to discard or "stash" the gun when he knew the police were approaching. At trial, the parties had entered into a stipulation that the jury could consider the defendant's status as a convicted felon only to meet the element set forth in § 53a-217c (a) (1). Consequently, the state argued that contrary to what we set forth in our original opinion, the jury was prohibited by the parties' stipulation from drawing an inference as to motive from the defendant's prior felony conviction.

We ordered the parties to appear for additional argument to address whether the opinion should be changed to remove the language referenced in the late motion for reconsideration and if the referenced language is removed, does it affect the outcome of the defendant's appeal. After considering the arguments of the parties, we conclude that the language regarding the defendant's motive to discard or "stash" the gun due to his status as a convicted felon should be removed. We further conclude, however, that the removal of such language does not affect the outcome of the defendant's appeal. The evidence submitted by the state was sufficient to convict the defendant of violating § 53a-217c (a) (1), even without evidence that the defendant had a motive to discard or "stash" the gun before any encounter with the police. See, e.g., *State* v. *Hansen*, 39 Conn. App. 384, 393 n.5, 666 A.2d 421 (state does not have to prove motive, as evidence of motive does not establish any element of charged offense), cert. denied, 235 Conn. 928, 667 A.2d 554 (1995).

[11] Throughout his briefs on appeal, the defendant has used the term "exercised dominion *and* control." (Emphasis added.) The language of General Statutes § 53a-3 (2) is "exercise dominion *or* control . . . ." (Emphasis added.)

The defendant was charged, in part, with violation of § 53a-217c, which provides in relevant part: "(a) A person is guilty of criminal possession of a pistol or revolver when such person possesses a pistol or revolver . . . and (1) has been convicted of a felony . . . ."[12] General Statutes § 53a-3 (2) defines "possess" as "to have physical possession or otherwise to exercise dominion or control over tangible property . . . ." Because the gun was not found on the defendant's person, the state prosecuted the subject charge under the theory of constructive possession.

"There are two types of possession, actual possession and constructive possession. . . . Actual possession requires the defendant to have had direct physical contact with the [gun]." (Citation omitted; internal quotation marks omitted.) *State* v. *Johnson*, 137 Conn. App. 733, 740, 49 A.3d 1046 (2012), rev'd in part on other grounds, 316 Conn. 34, 111 A.3d 447, and aff'd, 316 Conn. 45, 111 A.3d 436 (2015). "Where . . . the [gun is] not found on the defendant's person, the state must proceed on the theory of constructive possession, that is, possession without direct physical contact. . . . Where the defendant is not in exclusive possession of the premises where the [gun is] found, it may not be inferred that [the defendant] knew of the presence of the [gun] and had control of [it], unless there are other incriminating statements or circumstances tending to buttress such an inference." (Internal quotation marks omitted.) *State* v. *Winfrey*, 302 Conn. 195, 210–11, 24 A.3d 1218 (2011). "The essence of exercising control is not the manifestation of an act of control but instead it is the act of being in a position of control coupled with the requisite mental intent. In our criminal statutes involving possession, this control must be exercised intentionally and with knowledge of the character of

[12] The parties stipulated that the defendant had a prior felony conviction.

the controlled object." *State* v. *Hill*, 201 Conn. 505, 516, 523 A.2d 1252 (1986).

"[T]o mitigate the possibility that innocent persons might be prosecuted for . . . possessory offenses . . . it is essential that the state's evidence include more than just a temporal and spatial nexus between the defendant and the contraband." (Internal quotation marks omitted.) *State* v. *Bowens*, 118 Conn. App. 112, 121, 982 A.2d 1089 (2009), cert. denied, 295 Conn. 902, 988 A.2d 878 (2010). "[M]ere proximity to a gun is not alone sufficient to establish constructive possession, evidence of some other factor—including connection with a gun, proof of motive, a gesture implying control, evasive conduct, or a statement indicating involvement in an enterprise—coupled with proximity may suffice." (Internal quotation marks omitted.) Id., 125.

The standard of review for sufficiency of the evidence claims is well known. "A defendant who asserts an insufficiency of the evidence claim bears an arduous burden." *State* v. *Hopkins*, 62 Conn. App. 665, 669–70, 772 A.2d 657 (2001). "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." (Internal quotation marks omitted.) *State* v. *Abraham*, 64 Conn. App. 384, 400, 780 A.2d 223, cert. denied, 258 Conn. 917, 782 A.2d 1246 (2001).

"It is within the province of the jury to draw reasonable and logical inferences from the facts proven. . . . The jury may draw reasonable inferences based on other inferences drawn from the evidence presented. . . . Our review is a fact based inquiry limited to

determining whether the inferences drawn by the jury are so unreasonable as to be unjustifiable." (Internal quotation marks omitted.) *State* v. *Bradley*, 60 Conn. App. 534, 540, 760 A.2d 520, cert. denied, 255 Conn. 921, 763 A.2d 1042 (2000). "The trier [of fact] may draw whatever inferences from the evidence or facts established by the evidence it deems to be reasonable and logical. . . . This does not require that each subordinate conclusion established by or inferred from the evidence, or even from other inferences, be proved beyond a reasonable doubt . . . ." (Internal quotation marks omitted.) *State* v. *Fagan*, 280 Conn. 69, 80, 905 A.2d 1101 (2006), cert. denied, 549 U.S. 1269, 127 S. Ct. 1491, 167 L. Ed. 2d 236 (2007). "[T]his court has held that a jury's factual inferences that support a guilty verdict need only be reasonable." (Internal quotation marks omitted.) *State* v. *Hector M.*, 148 Conn. App. 378, 384, 85 A.3d 1188, cert. denied, 311 Conn. 936, 88 A.3d 550 (2014).

As our Supreme Court has often noted, "proof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . nor does proof beyond a reasonable doubt require acceptance of every hypothesis of innocence posed by the defendant that, had it been found credible by the trier, would have resulted in an acquittal. . . . Furthermore, [i]n [our] process of review, it does not diminish the probative force of the evidence that it consists, in whole or in part, of evidence that is circumstantial rather than direct. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence. . . . Indeed, direct evidence of the accused's state of mind is rarely available. . . . Therefore, intent is often inferred from conduct . . . and from the cumulative effect of the circumstantial evidence and the rational inferences drawn therefrom." (Internal quotation marks omitted.) *State* v.

Robert S., 179 Conn. App. 831, 835–36, 181 A.3d 568, cert. denied, 328 Conn. 933, 183 A.3d 1174 (2018), citing *State* v. *Fagan*, supra, 280 Conn. 79–81.

In the present case, there is no dispute that the defendant did not have the gun on his person at the time Lipeika discovered it in the courtyard of Washington Village on August 10, 2014, and that he was not in exclusive possession of the courtyard where Lipeika found the gun. The state, therefore, was required to establish that the defendant was in constructive possession of the gun. To prove constructive possession under § 53a-217c (a) (1), the state had to present evidence beyond a reasonable doubt that the defendant had knowledge of the gun and intended to exercise dominion or control over it. See *State* v. *Hernandez*, 254 Conn. 659, 669, 759 A.2d 79 (2000); *State* v. *Davis*, 84 Conn. App. 505, 510, 854 A.2d 67, cert. denied, 271 Conn. 922, 859 A.2d 581 (2004). The defendant argues on appeal that although the gun was found near him and his DNA was found on it, his proximity to it and the presence of his DNA on the gun and ammunition are not sufficient evidence to prove that he had knowledge of the gun, knew of its presence or exercised dominion or control over it. In particular, the defendant argues that the presence of his DNA on the gun merely means that at some unknown time and under unknown circumstances his DNA was transferred to the gun, but that is insufficient to support a finding that he knew of the gun's presence.

The state acknowledges that because the defendant was not in exclusive control of the courtyard, the jury could not infer properly from that circumstance that the defendant knew of the gun's presence without incriminating statements or other circumstances to buttress the inference. See *State* v. *Butler*, 296 Conn. 62, 78, 993 A.2d 970 (2010). The state, however, contends that there were four circumstances that established a

nexus between the defendant and the gun and permitted the jury reasonably to infer that the defendant knew of the gun's presence, that he was in a position to exercise dominion or control over it, and that he intended to do so. See *State* v. *Hill*, supra, 201 Conn. 516. We agree with the state.

First, the state notes that the gun was found in plain view and appeared to have been placed near the bushes recently. The jury, therefore, reasonably could have inferred that the person who put the gun near the bushes did not abandon it and leave the courtyard but, instead, was one of the six individuals in the courtyard when the officers arrived. In response, the defendant argues that the gun was not in plain view because Lipeika needed a flashlight to see it.[13] The defendant's argument lacks merit. The police were patrolling the courtyard pursuant to the department's agreement with the housing authority. The officers needed artificial light both to be seen as they approached the courtyard and to see what was in the courtyard. The gun was lying on a wall in a public space, and it was dark. The gun was in the open and uncovered, and, therefore, it was in plain view. It clearly would have been visible in daylight. Under the circumstances, there is no difference between Lipeika's using a flashlight and turning on a light in a dark room. Furthermore, the state's argument is not that the location of the gun is evidence that the defendant saw it there. Instead, the state's argument is

[13] Most often, plain view, or the plain view doctrine, arises in the context of a fourth amendment illegal search and seizure claim, which is not present in this case. The defendant has not claimed that he had a reasonable expectation of privacy in the courtyard. "The plain view doctrine is based upon the premise that the police need not ignore incriminating evidence in plain view while they are . . . entitled to be in a position to view the items seized." (Internal quotation marks omitted.) *State* v. *Arokium*, 143 Conn. App. 419, 433, 71 A.3d 569, cert. denied, 310 Conn. 904, 75 A.3d 31 (2013); see also *Coolidge* v. *New Hampshire*, 403 U.S. 443, 464–73, 91 S. Ct. 2022, 29 L. Ed. 2d 564 (1971); *State* v. *Ruth*, 181 Conn. 187, 193, 435 A.2d 3 (1980).

that the location of the uncovered gun near the bushes close to the defendant supports the inference that the defendant had placed the gun there. Thus, the lighting conditions at the time were immaterial.

Second, the state points out that Lipeika was shining his flashlight when the officers walked through the alley into the courtyard. In his statement to the police, Jackson stated that someone saw the light and called out "police," causing individuals in the courtyard to look up. According to Lipeika, when individuals who have a gun in their possession become aware of a police presence, they try to "discard . . . or stash" the gun so that they will not be detected with it. The state, therefore, argues that it was reasonable for the jury to infer that the defendant quickly put the gun on the wall near the bushes to avoid being found with it.

Third, the state cites Lipeika's testimony that, when individuals with a gun seek to "discard . . . or stash" it, they put the gun in a place close enough to be "accessible" to them. In this instance, the gun was four to five feet from the defendant, who was sitting at a picnic table near the bushes.

Fourth, the defendant was the only person at the picnic table who could not be eliminated as a contributor to the DNA profile found on the gun and ammunition. The chance that a random individual, someone other than the defendant, could have contributed to the DNA was one in 1.5 million in the African-American population. On the basis of these four circumstances, the state argues that the jury reasonably could have inferred that the defendant knew of the gun's presence and could have exercised dominion or control over it, and intended to do so. Although none of the factors alone is direct evidence of the defendant's knowledge of the gun's presence or his intent to possess it, the cumulative force of the circumstantial evidence was

sufficient for the jury reasonably to infer that the defendant knew of the gun and was in constructive possession of it. "Where a group of facts [is] relied upon for proof of an element of the crime it is [the] cumulative impact [of those facts] that is to be weighed in deciding whether the standard of proof beyond a reasonable doubt has been met and each individual fact need not be proved in accordance with that standard." (Internal quotation marks omitted.) *State* v. *McDonough*, 205 Conn. 352, 355, 533 A.2d 857 (1987), cert. denied, 485 U.S. 906, 108 S. Ct. 1079, 99 L. Ed. 2d 238 (1988). Evidence of the defendant's DNA on the gun and ammunition, plus his proximity to the gun, leads to a reasonable inference that the defendant once had the gun on his person and intended to do so again when the police left the courtyard.

The defendant argues, citing *State* v. *Payne*, 186 Conn. 179, 440 A.2d 280 (1982), that the state cannot rely on the DNA evidence alone to prove that he knew of the gun's presence on the wall near the bushes. He compares the presence of DNA on the gun to fingerprints found on a vehicle in *Payne*. "[A] conviction may not stand on fingerprint evidence alone unless the prints were found under such circumstances that they could have only been impressed at the time the crime was perpetrated." Id., 182. In *Payne*, the defendant's fingerprints were found on the driver's door of a motor vehicle in which the victim had been restrained. Id., 181. The victim was unable to identify the defendant in a photographic array or at trial. Id. Our Supreme Court reversed the defendant's conviction because "[t]he evidence in the present case does not reasonably exclude the hypothesis that the defendant's fingerprints were placed on the car at a time other than during the perpetration of the crime." Id., 184; see also *State* v. *Mayell*, 163 Conn. 419, 426, 311 A.2d 60 (1972) (where defendant was regularly employed to drive vehicle and rightfully

in it six hours before crime defendant's fingerprints on rearview mirror of abandoned vehicle were of no moment unless circumstances were such that fingerprints only could have been impressed at time of crime).

The facts of the present case, however, are distinguishable from both *Payne* and *Mayell*. Here, the defendant not only was at the scene at the time the gun was found, but he also was in close proximity to it. Others were in close proximity to the gun too, but the defendant was the only one of them who was a contributor to the DNA obtained from the surface of the gun or the ammunition, or both.

The defendant also argues that the DNA evidence is insufficient due to "the questionable reliability of a sample containing only 70 picograms of DNA, when the ideal amount is 1000 picograms of DNA." The defendant did not object to the admission of the DNA evidence at trial, but cites Russell's testimony regarding problems that are inherent in testing small samples of DNA. Despite the small sampling, however, Russell testified that she was able to analyze the DNA from the gun, and that she obtained scientifically viable and accurate results that revealed a high likelihood that the defendant was a contributor to the sample. Her findings were reviewed by a forensic science examiner in the laboratory and no problems were identified. Defense counsel vigorously cross-examined Russell. Although the burden was on the state to prove its case, the defendant presented no evidence to contradict Russell's testimony regarding the accuracy of her analysis.[14]

[14] Following oral argument in this court, defense counsel submitted a letter pursuant to Practice Book § 67-10, in which she brought the case of *State* v. *Skipper*, 228 Conn. 610, 613–24, 637 A.2d 1101 (1994), to our attention, claiming that the case was pertinent to the state's argument regarding the manner in which the defendant's DNA came in contact with the gun. *Skipper* concerned the determination of paternity. The statistical probability of paternity at issue is distinguishable from the present case in that the probability of paternity was calculated from DNA evidence on the fifty-fifty assumption that intercourse had occurred.

The defendant's claim is not that Russell's testimony regarding the results of her DNA analysis was improperly admitted. The evidence, therefore, properly was before the jury to be considered along with the other evidence. The size of the sample went to the weight of the evidence, not its admissibility. "It is axiomatic that it is the jury's role as the sole trier of the facts to weigh the conflicting evidence and to determine the credibility of witnesses. . . . It is the right and duty of the jury to determine whether to accept or to reject the testimony of a witness . . . and what weight, if any, to lend to the testimony of a witness and the evidence presented at trial." (Internal quotation marks omitted.) *State* v. *Osbourne*, 138 Conn. App. 518, 533–34, 53 A.3d 284, cert. denied, 307 Conn. 937, 56 A.3d 716 (2012). The essence of the defendant's argument is that this court should override the inferences drawn by the jury. This we may not, and will not, do. See *State* v. *Davis*, 160 Conn. App. 251, 265–66, 124 A.3d 966 (court on appeal does not sit as seventh juror), cert. denied, 320 Conn. 901, 127 A.3d 185 (2015).

The defendant also claims that even if the state produced sufficient evidence that he knew of the gun's presence, it failed to adduce any evidence of his intent to exercise dominion or control of the gun. "The phrase 'to exercise dominion or control' as commonly used contemplates a continuing relationship between the controlling entity and the object being controlled. Webster's Third New International Dictionary defines the noun 'control' as the 'power or authority to guide or manage.' The essence of exercising control is not the manifestation of an act of control but instead *it is the act of being in a position of control coupled with the requisite mental intent.* In our criminal statutes involving possession, this control must be exercised intentionally and with knowledge of the character of the controlled object." (Emphasis added.) *State* v. *Hill*, supra, 201 Conn. 516.

The defendant relies on the federal case of *United States* v. *Beverly*, 750 F.2d 34 (6th Cir. 1984), to support his claim of insufficient evidence of control. Although *Beverly* also concerned constructive possession of a firearm by a convicted felon, the facts of that case are distinguishable. In the present case, a police officer found the gun in plain sight in a public space in close proximity to the defendant. In *Beverly*, a police officer executed a search warrant at the apartment of a third party. Id., 35. When the officer entered the apartment, he found two men in the kitchen, one of whom was Herbert Collins Beverly, the defendant in that case. Id. The officer instructed the men to place their hands on the wall while he patted them down. Id. As he was conducting the pat down, the officer noticed a waste basket between the two men, and that it contained two guns. Id. The guns later were examined in the state police crime laboratory, where one identifiable, latent fingerprint was discovered on one of the guns. Id. The fingerprint belonged to Beverly. Id. He was charged with violation of 18 U.S.C. § 922 (h) (1) (1982), which prohibits "the receipt by a convicted felon of a weapon that has been shipped in interstate commerce." Id. At the close of the government's case, Beverly moved for a judgment of acquittal, arguing that the evidence demonstrated that he must have touched the gun at some point, but that it did not establish that he had received the gun within the meaning of the statute. Id. The trial court denied the motion. Id.

On appeal, the United States Court of Appeals for the Sixth Circuit reversed the judgment of conviction. Id. At trial, the government had relied on the testimony of the officer who found the gun and the fingerprint expert. Id., 36. It argued that before the search warrant was executed, Beverly had "received the gun within the meaning of [§] 922 because he exercise[d] control over" it. (Emphasis omitted; internal quotation marks omitted.) Id. The government argued that it, therefore,

was entitled to prove Beverly received the gun by inference of his constructive possession. Id. The Court of Appeals disagreed, concluding that the evidence did not prove that Beverly was in constructive possession of the gun because the government had not proven that (1) Beverly had indirect control of the kitchen, waste basket, or gun; (2) Beverly was in direct control of any of them; and (3) he was in constructive possession of the gun. Id., 38. The evidence established only that Beverly was one of two men standing on either side of a waste basket in the kitchen, that the waste basket contained two guns, and that, at some time, he had touched one of the guns. Id. The Court of Appeals, therefore, reversed Beverly's conviction. Id. "Presence alone near a gun . . . does not show the requisite knowledge, power, or intention to exercise control over the gun to prove constructive possession." (Emphasis omitted; internal quotation marks omitted.) *United States* v. *Arnold*, 486 F.3d 177, 183 (6th Cir. 2007), cert. denied, 552 U.S. 1103, 128 S. Ct. 871, 169 L. Ed. 2d 736 (2008).

More than twenty years later, the United States Court of Appeals for the Sixth Circuit, sitting en banc, limited the scope of *Beverly*. See id., 183–84. "As an en banc court, we have subsequently distinguished *Beverly* as a proximity-only case without any evidence connect[ing] the gun to the defendant. [Id., 184]. We filled the evidentiary gap in *Arnold* with statements by the victim connecting the gun to the defendant. [Id., 184–85]." (Internal quotation marks omitted.) *United States* v. *Vichitvongsa*, 819 F.3d 260, 276 (6th Cir.), cert. denied, U.S. , 137 S. Ct. 79, 196 L. Ed. 2d 70 (2016).[15]

[15] In *Arnold*, the victim stated to a 911 operator and responding police that the defendant had a gun. *United States* v. *Arnold*, supra, 486 F.3d 179–80. In *Vichitvongsa*, the defendant made telephone calls from jail in which he stated that he had been pulled over and the police caught him with a gun that he referred to as "[t]he Smitty" and "my burner," which are common references to handguns. (Emphasis omitted; internal quotation marks omitted.) *United States* v. *Vichitvongsa*, supra, 819 F.3d 276.

"While the Government is not required to prove exclusive possession, constructive possession may not be shown merely by introducing evidence of proximity." *United States* v. *Lynch*, 459 Fed. Appx. 147, 151 (3d Cir. 2012). In *Lynch*, the defendant was a convicted felon on parole who was not permitted to possess a firearm. Id., 148. The defendant's parole officer became aware that the defendant had violated the terms of his parole. Id., 148–49. During a permissible warrantless search of the defendant's home; id., 149–50; police found a pistol in the top drawer of a dresser in his bedroom, concealed beneath the defendant's clothing. Id., 149. "A DNA test conducted on a swab from the handle of the firearm revealed a mixture of profiles from which [the defendant's] profile could not be excluded." Id. At trial, the defendant stipulated that he had been convicted of a felony. Id., 150. A jury found the defendant guilty of felony possession of a firearm. Id., 148. On appeal, the defendant argued that there was insufficient evidence that he knowingly possessed the firearm. Id., 151. In support of his position, he cited *Beverly*. The United States Court of Appeals for the Third Circuit distinguished *Beverly* in that the gun was found in a dresser drawer in the defendant's home, not the kitchen of a third person. Id. The court stated that it was not bound to follow *Beverly*, and that although *Beverly* might mitigate the importance of the DNA evidence, there was other evidence tending to show the defendant's constructive possession of the gun. Id.

In the present case, there is evidence of the defendant's proximity to the gun, which provided a DNA profile from which, among those present, only the defendant could not be excluded. There is circumstantial evidence that the gun recently had been placed on the wall near the bushes approximately five feet from the defendant. Lipeika testified that when people in possession of a gun become aware of the presence of

police they discard or "stash" it so the gun is not found on their person. The jury, therefore, reasonably could have inferred that the defendant "stashed" the gun but remained in close proximity to it, so that he could exercise control over it, and that he intended to do so.

We acknowledge that the facts of this case presented some subtle issues for the jury and that the case against the defendant is grounded in circumstantial evidence. The jury, however, was fully entitled to rely on the circumstantial evidence in reaching its verdict. "[T]he jury must find every element proven beyond a reasonable doubt in order to find the defendant guilty of the charged offense, [but] each of the basic and inferred facts underlying those conclusions need not be proved beyond a reasonable doubt. . . . If it is reasonable and logical for the jury to conclude that a basic fact or an inferred fact is true, the jury is permitted to consider the fact proven and may consider it in combination with other proven facts in determining whether the cumulative effect of all the evidence proves the defendant guilty of all the elements of the crime charged beyond a reasonable doubt. . . . Moreover, [w]here a group of facts [is] relied upon for proof of an element of the crime it is [its] *cumulative impact* that is to be weighed in deciding whether the standard of proof beyond a reasonable doubt has been met and each individual fact need not be proved in accordance with that standard. . . .

"Furthermore, [i]t is immaterial to the probative force of the evidence that it consists, in whole or in part, of circumstantial rather than direct evidence." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Otto*, 305 Conn. 51, 65–66, 43 A.3d 629 (2012). In fact, "circumstantial evidence may be more certain, satisfying and persuasive than direct evidence." (Internal quotation marks omitted.) *State* v. *Sienkiewicz*, 162 Conn. App. 407, 410, 131 A.3d 1222,

cert. denied, 320 Conn. 924, 134 A.3d 621 (2016). "If evidence, whether direct or circumstantial, should convince a jury beyond a reasonable doubt that an accused is guilty, that is all that is required for a conviction." (Internal quotation marks omitted.) *State* v. *Jackson*, 257 Conn. 198, 206, 777 A.2d 591 (2001). "[P]roof beyond a reasonable doubt does not mean proof beyond all possible doubt . . . ." (Internal quotation marks omitted.) *State* v. *Brown*, 299 Conn. 640, 647, 11 A.3d 663 (2011).

Although the defendant claims that there was insufficient evidence to convict him of constructive possession of the gun, this is not a case in which the state failed to present evidence regarding an element of the crime. This is a case in which the defendant is looking for a different interpretation of the evidence. This court has stated many times that it does "not sit as the seventh juror when [it] review[s] the sufficiency of the evidence . . . rather, [it] must determine, in the light most favorable to sustaining the verdict, whether the totality of the evidence, including reasonable inferences therefrom, supports the jury's verdict of guilt beyond a reasonable doubt." (Internal quotation marks omitted.) *State* v. *Glasper*, 81 Conn. App. 367, 372, 840 A.2d 48, cert. denied, 268 Conn. 913, 845 A.2d 415 (2004). In the present case, the state presented evidence of the defendant's proximity to the gun, which provided a DNA profile from which the defendant could not be excluded. There is circumstantial evidence that the gun recently had been placed on the wall near the bushes. The jury reasonably could have inferred, based on a totality of the evidence, including the DNA evidence and Lipeika's testimony, that the defendant had "stashed" it and remained in close proximity to it, so that he could exercise dominion or control over it, if he so intended.

On the basis of our review of the record, we conclude that there was sufficient circumstantial evidence by

which the jury reasonably could have inferred that the defendant was in possession of the gun when he entered the courtyard, that he put it near the bushes when the police arrived so that it would not be found on his person, and that he intended to retrieve the gun when the police left. Accordingly, the evidence was sufficient to support the defendant's conviction of criminal possession of a pistol or revolver, and the court, therefore, properly denied the defendant's motion for a judgment of acquittal.

II

The defendant also claims that he was deprived of a fair trial because, during her final argument, the prosecutor (1) misstated the law of constructive possession and (2) mischaracterized the DNA evidence. We disagree that the defendant was denied his constitutional right to a fair trial.

The defendant did not object to the prosecutor's closing argument and did not request a curative instruction from the court. We, therefore, review the law applicable to unpreserved claims of prosecutorial impropriety.

When a defendant has not preserved his claims of prosecutorial impropriety, "it is unnecessary for the defendant to seek to prevail under the specific requirements of . . . [*State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989)] and, similarly, it is unnecessary for a reviewing court to apply the four-pronged *Golding* test. . . . Our Supreme Court has articulated that following a determination that prosecutorial [impropriety] has occurred, regardless of whether it was objected to, an appellate court must apply the [*State* v. *Williams*, 204 Conn. 523, 540, 529 A.2d 653 (1987)] factors to the entire trial. . . . [W]hen a defendant raises on appeal a claim that improper remarks by the prosecutor deprived