shooting whether the intent was to rob the victim, the defendant responded, "I guess so."

Applying the proper standard of review to the evidence in the present case, we conclude that, although there was no direct evidence that the defendant and Hargrove intended to rob the victim, the circumstantial evidence was sufficient to support the jury's conclusion that the defendant intended to deprive the victim of his marijuana. Specifically, the jury reasonably could have inferred that the defendant knew, at least from the time that Hargrove parked on Berkshire Avenue for the second time, that Hargrove did not intend to pay for the marijuana and that the defendant's role was to participate in the robbery by using the gun to "make sure that nothing happened." The defendant then used that gun to shoot the victim five times in the back. Afterward, the defendant and Hargrove left with the marijuana. Indeed, the defendant himself responded, "I guess so," when asked by the police if the plan had been to rob the victim.[10]

[10] The defendant testified that he asked Hargrove twice, between the time that they first arrived on Berkshire Avenue and the time that they parked there a second time, whether he had any money, and that he never saw any money in Hargrove's car. The jury reasonably could have concluded that, if there was no money visible in Hargrove's car when Hargrove parked a second time on Berkshire Avenue, there was no money. Indeed, it would have made little sense for Hargrove to conceal the money in the car or to carry it with him to the victim's car if he intended to pay the victim for the marijuana. Thus, the evidence supports the inference that the defendant knew, before Hargrove left the car, that there was no money, that the plan all along had been to rob the victim, and that the defendant's role was to participate in the robbery. It is well established that "intent [can] be formed instantaneously and [does] not require any specific period of time for thought or premeditation for its formation." (Internal quotation marks omitted.) *State* v. *Carter*, supra, 317 Conn. 857.

At the very least, the defendant's testimony that he never saw any money in Hargrove's car supports the inference that the victim did not see any money when he got into the car, as there is no apparent reason why the money would have been visible to the victim but not to the defendant. In turn, this supports an inference that Hargrove had no intention of paying for the marijuana. Finally, although the defendant's response of "I guess so" to Fitzgerald's inquiry whether "the intent was to rob" the victim does

NOTE: These pages (345 Conn. 373 and 374) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 6 December 2022.

On the basis of the foregoing evidence, the jury, applying common sense, could have inferred that the defendant had intended to use the gun to ensure that the victim, upon getting into Hargrove's car and discovering that there was no money, would not leave the car to get his marijuana back, and that the defendant had intentionally used or threatened to use the gun to prevent the victim from interfering with the plan to deprive the victim of the marijuana. The jury also reasonably could have concluded that there would have been no reason for the victim to shoot the defendant while Hargrove was retrieving the drugs from the victim's car unless the victim believed that Hargrove and the defendant intended to deprive him of his marijuana without paying for it. Based on all of the foregoing, and construing the evidence in a light most favorable to sustaining the verdict, we conclude that the jury reasonably could have inferred from this evidence that the defendant had the intent to deprive the victim of the marijuana.

Finally, we note that the jury reasonably could have rejected altogether the defendant's testimony that the victim had been "startled" by a noise and, instead, concluded that the victim had shot the defendant because the defendant was attempting to hold him at bay with the gun, was about to shoot him, or already had shot him to prevent him from interfering with Hargrove. Indeed, the jury was entitled to discredit the defendant's exculpatory testimony while crediting his testimony that was corroborated by other evidence; see, e.g., *Barrila* v. *Blake*, 190 Conn. 631, 639, 461 A.2d 1375 (1983)

not necessarily suggest that that was the defendant's intent from the outset, it does support the reasonable inference that the defendant knew, at some point during the events leading up to the shooting, that Hargrove intended to rob the victim, and, therefore, that the defendant's role was to facilitate the robbery. See, e.g., *State* v. *Green*, 261 Conn. 653, 668, 804 A.2d 810 (2002) ("the jury is not barred from drawing those inferences consistent with guilt and is not required to draw only those inferences consistent with innocence" (internal quotation marks omitted)).

("[a] trier of fact is free to reject testimony even if it is uncontradicted . . . and is equally free to reject part of the testimony of a witness even if other parts have been found credible" (citations omitted)); and it would have been reasonable for it to do so. The evidence showed that the defendant knew, after his first interview with the police at the hospital, that the police had a video recording of the scene of the shooting. The defendant also knew that the police suspected that the car shown in that video recording was the same car in which the defendant arrived at the hospital, and they knew that the defendant had been shot. Moreover, the defendant knew that, if the police found Hargrove's car, they would find the defendant's blood in the back seat and the victim's blood in the front seat.

Accordingly, the jury reasonably could have concluded that the defendant must have realized after the initial police interview—during which he gave false information to the police—that his continued insistence that he had not shot the victim and knew nothing about the incident would simply not be believable. There were several hours between that interview and the second interview at the defendant's home during which the defendant, by himself or in consultation with others, had the opportunity to come up with a version of events in which he would admit that he agreed to participate in the drug deal and that he shot the victim—for which the police already had compelling evidence—but would claim that he knew nothing about any plan to rob the victim and that the shooting was in self-defense. Thus, the jury reasonably could have concluded that the statements that the defendant made during his second interview with the police that were consistent with the other evidence that the police had—which generally tended to inculpate the defendant—were true, whereas the statements that tended to exculpate him were not.

The defendant correctly points out that "the jury was not free to infer the opposite of what the defendant asserted in his statements based solely on its disbelief of those assertions." *State* v. *Copas*, 252 Conn. 318, 343 n.31, 746 A.2d 761 (2000). As we previously explained, however, there was affirmative evidence and reasonable inferences the jury could have drawn therefrom that would support the conclusion that the defendant did not intend simply to observe a drug deal between Hargrove and the victim and that he intentionally used or threatened the immediate use of physical force to prevent the victim from interfering with Hargrove's taking of the victim's marijuana.

The defendant also relies on this court's decision in *State* v. *Stovall*, 316 Conn. 514, 115 A.3d 1071 (2015). In *Stovall*, the defendant contended that there was insufficient evidence to support his conviction of possession of narcotics with intent to sell within 1500 feet of a housing project when "the state failed to introduce any evidence to prove beyond a reasonable doubt that he intended to sell narcotics at a particular location in or within 1500 feet of [the housing project at issue]." Id., 522. In support of its claim to the contrary, the state relied on "testimony that the defendant regularly visited [an] apartment in [the housing project] two or three times per week, that [the housing project was] known for drug trafficking, that the defendant made a business arrangement with [an acquaintance] to store items in the hallway closet in her apartment in [the housing project], and that narcotics packaged for sale and other materials suggesting the packaging and sale of narcotics were recovered from the hallway closet during the search of [the] apartment." Id., 522–23.

This court concluded that, although the "evidence provided ample support for the inference that the defendant intended to store and package narcotics in [the acquaintance's] apartment for sale, it did not have any

probative value with respect to the intended location of the sales, that is, whether the defendant intended to sell the narcotics in [the] apartment or in another location within 1500 feet of [the housing project]." Id., 523–24. "The evidence was equally supportive of an inference that the defendant intended to sell the drugs outside of the prohibited zone or anywhere that the opportunity presented itself. This court has concluded that [when] the evidence is in equipoise or equal, the [s]tate has not sustained its burden [of proof] . . . . *State* v. *Moss*, 189 Conn. 364, 369, 456 A.2d 274 (1983); see also *United States* v. *Glenn*, 312 F.3d 58, 70 (2d Cir. 2002) (if the evidence viewed in the light most favorable to the prosecution gives equal or nearly equal circumstantial support to a theory of guilt and a theory of innocence, then a reasonable jury must necessarily entertain a reasonable doubt . . .)." (Internal quotation marks omitted.) *State* v. *Stovall*, supra, 316 Conn. 527.

In the present case, the defendant contends that, under *Stovall*, the evidence was insufficient to establish that he intended to commit larceny because, at best, it would equally support a finding that he participated in the drug deal simply to "make sure that nothing happened" and that he shot the victim in self-defense or a finding that he intended to steal the victim's marijuana and that he used or threatened to use physical force to prevent the victim from interfering with Hargrove. We disagree. For the reasons that we already stated, viewing the evidence in a light most favorable to sustaining the verdict, we conclude that the jury reasonably could have concluded beyond a reasonable doubt, on the basis of all of the evidence, that the victim and the defendant exchanged gunfire because the defendant was using or threatening to use force against the victim to carry out his intent to deprive the victim of his marijuana. The jury also reasonably could have rejected the defendant's claims that he was promised $2000 and

NOTE: These pages (345 Conn. 377 and 378) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 6 December 2022.

given a gun to do nothing more than sit in the car and that he shot the victim during the course of a drug sale only because the victim shot at the defendant after the defendant startled him. Accordingly, we reject this claim.

B

The defendant also claims that there was insufficient evidence to support the conclusion that he committed a larceny because there was no evidence that he himself took the victim's marijuana. Rather, he claims that the evidence compels the conclusion that, if there was a larceny, it was Hargrove who took the marijuana. The defendant further contends that he cannot be found guilty as an accessory because the jury was not instructed on accessorial liability. See, e.g., *State* v. *Williams*, 187 Conn. App. 333, 348–49, 202 A.3d 470 (2019); *State* v. *Holley*, 160 Conn. App. 578, 592, 127 A.3d 221 (2015) (overruled on other grounds by *State* v. *Gore*, 342 Conn. 129, 269 A.3d 1 (2022)), rev'd on other grounds, 327 Conn. 576, 175 A.3d 514 (2018).

As we explained, § 53a-119 provides in relevant part that "[a] person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. . . ." Having concluded that there was sufficient evidence to support a finding that the defendant had the intent to deprive the victim of his marijuana; see part I A of this opinion; we must determine whether there was sufficient evidence to demonstrate that the defendant wrongfully took, obtained or withheld the marijuana from the victim.[11]

[11] After oral argument before this court, we requested supplemental briefs on the following issues: (1) "Given that the jury was instructed on all the statutory elements of felony murder, and the predicate felony of robbery in the third degree, analyze whether the defendant's claim that the evidence was insufficient to support his conviction on the predicate felony of robbery in the third degree is more properly framed as a claim that the trial court

At the outset, we note that § 53a-119 provides three distinct terms that can be used to establish what action the defendant must engage in to satisfy that element of larceny: "takes, obtains or withholds . . . property from an owner." General Statutes § 53a-119. In interpreting the meaning of these terms, we are mindful of the "basic tenet of statutory construction that the legislature [does] not intend to enact meaningless provisions. . . . [I]n construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that no part of a statute is superfluous. . . . Because [e]very word and phrase [of a statute] is presumed to have meaning . . . [a statute] must be construed, if possible, such that no clause, sentence or word shall be superfluous, void or insignificant." (Internal quotation marks omitted.) *Lopa* v. *Brinker International, Inc.*, 296 Conn. 426, 433, 994 A.2d 1265 (2010).

The defendant asserts that the jury could not reasonably have found that he committed larceny because he

improperly failed to instruct the jury on the statutory definitions of 'appropriate,' set forth in General Statutes § 53a-118 (a) (4) (A), and 'obtain,' set forth in § 53a-118 (a) (2). See *State* v. *Russell*, 101 Conn. App. 298, 327 and n.30, 922 A.2d 191 [cert. denied, 284 Conn. 910, 931 A.2d 934] (2007)." And (2) "[i]f the defendant's claim is more properly characterized as a claim of instructional error, was the trial court's failure to instruct the jury on the definitions set forth in § 53a-118 (a) (2) and (4) (A) error and, if so, was the error harmful? See *State* v. *Spillane*, 255 Conn. 746, 757–58, 770 A.2d 898 (2001)."

After reviewing the supplemental briefs, we conclude that it would not be appropriate to construe the defendant's sufficiency claim as an unpreserved claim of instructional error. Although we acknowledge that it may have been preferable for the jury to be instructed on the statutory definitions of these terms; see, e.g., id., 755; neither party requested that the jury be charged on the statutory definitions or objected to the instructions on that basis. Moreover, because we find that there was sufficient evidence for the jury to find that the defendant committed larceny under the term "withholds," which is not statutorily defined, we need not address this issue. We thus address the defendant's sufficiency claim as it was raised on the merits. Nevertheless, we do caution trial judges to ensure that jury instructions include statutory definitions of the terms used in statutes defining criminal offenses.

NOTE: These pages (345 Conn. 379 and 380) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 6 December 2022.

did not physically take the marijuana and the jury was not instructed on accessorial liability. Therefore, the defendant asserts, there is not sufficient evidence to support the jury's finding regarding the commission of the predicate felony of robbery in the third degree under the instruction as given. We disagree.

In the present case, although the state argued that Hargrove physically took the marijuana, the state did not limit its theory of the defendant's guilt of larceny to any one of the three statutory terms—takes, obtains or withholds.[12] Consistent therewith, the jury was not limited to concluding that it could find the defendant guilty of larceny only if it found that he physically took the marijuana, as opposed to either obtaining or withholding the marijuana. Indeed, the jury was instructed: "To prove that the defendant was committing or attempting to commit a larceny, the state must prove beyond a reasonable doubt that [1] the defendant wrongfully took property, or obtained property, or withheld property from an owner, and [2] that, at the time, he intended to deprive the owner of the property or to appropriate such property to himself or a third person." Therefore, in the present case, in determining whether there was sufficient evidence to support the jury's finding regarding the defendant's commission of the predicate felony of robbery in the third degree, we must consider whether there was sufficient evidence of any of these three distinct ways of committing larceny.

We conclude that there was sufficient evidence that the defendant committed larceny under the term "withholds." The term "withholds" is not defined for pur-

[12] On appeal to this court, the state also does not limit its theory of the defendant's guilt to any one of these terms but asserts that the evidence was sufficient to support the defendant's conviction under any of these three terms. Because we conclude that there was sufficient evidence for the jury to find that the defendant committed larceny under "withholds," we need not address the other means of committing larceny under § 53a-119.

poses of § 53a-119. "In the absence of a definition of terms in the statute itself, [w]e may presume . . . that the legislature intended [a word] to have its ordinary meaning in the English language, as gleaned from the context of its use. . . . Under such circumstances, it is appropriate to look to the common understanding of the term as expressed in a dictionary." (Internal quotation marks omitted.) *Meriden* v. *Freedom of Information Commission*, 338 Conn. 310, 322, 258 A.3d 1 (2021); see also General Statutes § 1-1 (a). Webster's Third New International Dictionary defines "withhold" as "to hold back," "keep from action," "check" or "restrain . . . ." Webster's Third New International Dictionary (2002) p. 2627. The American Heritage College Dictionary defines "withhold" as "[t]o refrain from giving, granting, or permitting." American Heritage College Dictionary (4th Ed. 2007) p. 1574.

In the present case, the evidence established that the defendant "was offered some money to go make sure nothing happened during [the drug] deal." The defendant testified that he was promised $2000. The defendant also testified that, when he got into Hargrove's car the first time, he was told that there was a gun in the back seat and that he should "wipe it down . . . ." The defendant further testified that he had been told that Hargrove was going to go to the victim's car to get the marijuana and that the victim expected to get the money from Hargrove's car, in which the defendant was sitting. The evidence further established that the defendant was never instructed to pay the victim for the marijuana; nor did the defendant have any reason to believe that Hargrove intended to pay the victim. Indeed, the defendant had no money of his own and never saw any money in the car, and Hargrove never affirmed that he had money to pay the victim.

Therefore, the evidence established that the defendant sat in the back seat of Hargrove's car, behind the

NOTE: These pages (345 Conn. 381 and 382) are in replacement of the same numbered pages that appear in the Connecticut Law Journal of 6 December 2022.

victim, who sat in the front passenger seat, that the defendant was armed with a gun, and that the purpose of the defendant's being in on the deal was to "make sure nothing happened" while Hargrove got the marijuana from the victim's car. On the basis of the foregoing evidence, the jury reasonably could have inferred that the defendant was in the back seat of Hargrove's car with the gun for the purpose of "refrain[ing] from giving, granting, or permitting" access to the marijuana. American Heritage College Dictionary, supra, p. 1574. The jury reasonably could have also inferred that the defendant shot the victim as part of his effort to refrain from permitting or allowing the victim access to the marijuana once his cohort had effectuated their plan to deprive the victim of the marijuana without paying for it. On the basis of the evidence and the reasonable inferences drawn therefrom, we conclude that there was sufficient evidence for the jury to have found that the defendant committed larceny.

C

The defendant finally claims that the evidence was insufficient to establish that he used or threatened the immediate use of physical force "for the purpose of: (1) Preventing or overcoming resistance to the taking of the property or to the retention thereof immediately after the taking; or (2) compelling the owner of such property or another person to deliver up the property or to engage in other conduct which aids in the commission of the larceny." General Statutes § 53a-133 (defining "robbery").[13] In support of this claim, the defendant

[13] In support of this claim, the defendant points out that the trial court granted defense counsel's motion for a judgment of acquittal on the charge of robbery in the first degree because the court concluded that the state had failed to prove that "there was a prevention or overcoming resistance to the taking of . . . the marijuana out of the car or that [the victim] was compelled to deliver up the property," and, therefore, the state failed to establish that the defendant committed robbery in the third degree. As we already explained, the defendant has raised no claim that the trial court violated his double jeopardy rights by submitting the felony murder charge, with the predicate felony of robbery in the third degree, to the jury, or

relies on this court's holding in *State* v. *Coston*, 182 Conn. 430, 435, 438 A.2d 701 (1980), that "[t]he fact that the defendant committed a larceny while carrying a concealed weapon and later assaulted the victims of the larceny in an attempt to escape does not by itself permit [this court] to sustain his conviction for attempted robbery" because there was no evidence that the defendant used the weapon with the purpose of preventing resistance to the taking or compelling the owner to deliver up the property. We disagree.

We concluded in part I A of this opinion that the jury reasonably could have found that Hargrove would not have gone to retrieve the marijuana from the victim's car unless he and the defendant had come to an understanding that the defendant would prevent the victim from interfering with Hargrove. We also concluded that the victim would have had no apparent reason to shoot the defendant unless the defendant was using or threatening to use force to prevent the victim from interfering with Hargrove. Thus, the evidence was sufficient to establish that the defendant used or threatened the immediate use of physical force for the purpose of overcoming the victim's resistance to the taking of the marijuana or to the retention thereof immediately after the taking.[14]

II

The defendant next claims that he was deprived of his due process right to a fair trial when the prosecutor

that his conviction on the felony murder charge is invalid because it was inconsistent with the trial court's judgment of acquittal on the charge of robbery in the first degree. See footnote 8 of this opinion. We conclude, therefore, that we may consider all of the evidence presented at trial that the jury considered in determining whether the evidence was sufficient to establish that the defendant used or threatened to use physical force for the purposes set forth in § 53a-133.

[14] Because we conclude that the evidence was sufficient to establish that the defendant committed robbery, we need not address the defendant's claim that the evidence was insufficient to establish that he *attempted* to commit robbery.

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engaged in prosecutorial improprieties during closing argument by arguing facts that were not in evidence and making inferences that were unsupported by the evidence. We are not persuaded.

The defendant contends that the prosecutor improperly relied on facts that were not in evidence or made unsupported inferences on four occasions. First, the defendant claims that, during the prosecutor's main closing argument to the jury, the prosecutor improperly argued that "[t]he defendant has agreed that there was a drug deal that was going to go down, that *they showed up with no money*." (Emphasis added.) Second, he claims that the prosecutor improperly argued that the defendant did not know that he was shot, thereby suggesting that he was not acting in self-defense when he shot the victim. Third, he argues that, during rebuttal argument, the prosecutor improperly argued that the victim was startled when he got into Hargrove's car the second time because there was no money in the car.[15] Fourth, he claims that the prosecutor improperly stated, during rebuttal argument, that Depass "assume[d] that [the victim] had a gun because he had it in the past," when Depass testified, instead, that the victim told him that he had a gun.

"[I]n analyzing claims of prosecutorial [impropriety], we engage in a two step analytical process. The two steps are separate and distinct: (1) whether [improper

[15] Specifically, the prosecutor argued that, on the night of the shooting, "the defendant was there as muscle. And, as part of the role of muscle, is it reasonable to believe that a conversation occurred that wasn't testified to by the [defendant]? [The defendant's] story is, and I'd suggest that he wasn't [going to] change that, that [the victim] gets in the car, and he's startled. Remember, [the judge] talked about you can believe some, all or none of what's said; you can believe that [the victim] was startled. Was it reasonable to believe that he was startled when he found out that there was [$9600] worth of drugs in that car behind him, he was told not to get in the car, and, when he gets in there, he finds out there's no money? There's no money. That would startle him."

conduct] occurred in the first instance; and (2) whether that [improper conduct] deprived a defendant of his due process right to a fair trial. Put differently, [improper conduct] is [improper conduct], regardless of its ultimate effect on the fairness of the trial; whether that [improper conduct] caused or contributed to a due process violation is a separate and distinct question . . . . As we have indicated, our determination of whether any improper conduct by the [prosecutor] violated the defendant's fair trial rights is predicated on the factors set forth in *State* v. *Williams*, [204 Conn. 523, 540, 529 A.2d 653 (1987)], with due consideration of whether that [improper conduct] was objected to at trial." (Internal quotation marks omitted.) *State* v. *Warholic*, 278 Conn. 354, 361–62, 897 A.2d 569 (2006). "These factors include the extent to which the [improper conduct] was invited by defense conduct or argument, the severity of the [improper conduct], the frequency of the [improper conduct], the centrality of the [improper conduct] to the critical issues in the case, the strength of the curative measures adopted, and the strength of the state's case." Id., 361.

"As we previously have recognized, prosecutorial [impropriety] of a constitutional magnitude can occur in the course of closing arguments. . . . When making closing arguments to the jury, [however] [c]ounsel must be allowed a generous latitude in argument, as the limits of legitimate argument and fair comment cannot be determined precisely by rule and line, and something must be allowed for the zeal of counsel in the heat of argument. . . . Thus, as the state's advocate, a prosecutor may argue the state's case forcefully, [provided the argument is] fair and based [on] the facts in evidence and the reasonable inferences to be drawn therefrom. . . . Moreover, [i]t does not follow . . . that every use of rhetorical language or device [by the prosecutor] is improper. . . . The occasional use of rhetorical

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devices is simply fair argument." (Internal quotation marks omitted.) *State* v. *Martinez*, 319 Conn. 712, 727, 127 A.3d 164 (2015).

We first address the defendant's claim that the prosecutor's argument that Hargrove had no money with him was improper because it was supported by no evidence. We already concluded that the evidence that the defendant asked Hargrove twice whether he had money, that the defendant never saw any money in Hargrove's car, and that the defendant responded "I guess so" to Fitzgerald's inquiry whether "the intent was to rob" the victim supports the inference that Hargrove did not have any money to pay the victim for the marijuana. See part I A of this opinion. Accordingly, we reject this claim. For the same reason, we reject the defendant's claim that the prosecutor improperly argued that the victim was startled when he entered Hargrove's car the second time because he saw that there was no money.

With respect to the defendant's claim that the prosecutor improperly argued that the defendant did not know that he had been shot when he shot the victim, this claim appears to relate exclusively to the defendant's claim, with respect to his intentional manslaughter in the first degree with a firearm charge, that the state failed to prove beyond a reasonable doubt that he was not acting in self-defense, which we need not address because we rejected his insufficiency claims. See part I of this opinion. In turn, because the self-defense claim is not before us, we need not address this claim of prosecutorial impropriety. We reach a similar conclusion with respect to the defendant's claim that the prosecutor improperly argued that Depass testified that he had "assume[d] that [the victim] had a gun because he had it in the past," when, in fact, Depass testified that the victim told him that he had a gun. Because the defendant contends that the claim relates solely to his claim of self-defense, we need not address it.