BISHOP, J., concurring in part and dissenting in part. I agree with my colleagues in the majority that because the trial court failed to instruct the jury regarding specific intent, the judgment of conviction must be reversed. To that extent, I concur with the majority. Because, however, I am not persuaded by the defendant's sufficiency arguments, I would remand this matter for a new trial on all counts.

The majority concludes that the evidence was insufficient to prove that the defendant possessed narcotics with the intent to sell within 1500 feet of a public elementary or secondary school in violation of General Statutes § 21a-278a (b) and that he possessed drug paraphernalia with the intent to use within 1500 feet of such a school in violation of General Statutes § 21a-267 (c). For the majority, the evidence was insufficient in two ways: (1) there was no evidence from which the jury could have concluded that the Timothy Dwight School in New Haven is a "public or private elementary or secondary school" within the meaning of the applicable statutes and (2) although the evidence may have been sufficient that the defendant possessed drugs with the intent to sell, it was wanting in regard to the charge that he intended to sell at a particular place that was within 1500 feet of a public school. Because I believe that the evidence adduced at trial provided a sufficient basis on which the jury could have concluded that the defendant possessed narcotics with the intent to sell and possessed drug paraphernalia with the intent to use within 1500 feet of a public school, I respectfully dissent.

Well established decisional law guides our analysis. As our Supreme Court has noted: "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. . . . In evaluating evidence, the trier of fact is not required to accept as dispositive those inferences that are consistent with the defendant's innocence. . . . The trier 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 . . . because this court has held that a jury's factual inferences that support a guilty verdict need only be reasonable. . . .

"[A]s we have 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. . . . 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. . . . 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." (Internal quotation marks omitted.) *State* v. *Aloi*, 280 Conn. 824, 842, 911 A.2d 1086 (2007).

"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. . . . It has been repeatedly stated that there is no legal distinction between direct and circumstantial evidence so far as probative force is concerned. . . . It is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence." (Internal quotation marks omitted.) *State* v. *Smith*, 110 Conn. App. 70, 75, 954 A.2d 202, cert. denied, 289 Conn. 954, 961 A.2d 422 (2008). The question on appeal, therefore, is not what inferences and conclusions we would have drawn from the direct and circumstantial evidence but, rather, whether the jury could reasonably have concluded as it did. Id. With those principles in mind, and an eye toward sustaining the verdict of the jury, I turn to the facts of the case at hand.

The majority concludes that there was insufficient evidence from which the jury could reasonably have concluded that the Timothy Dwight School is a public or private elementary or secondary school so as to invoke the provisions of General Statutes §§ 21a-267 (c) and 21a-278a (b).[1] The district supervisor of the New Haven board of education testified that the Timothy Dwight School is "one of my schools in my district" and that it is a public school. The jury also heard testimony that the Timothy Dwight is a school with grades.[2] Given this testimony, it was not unreasonable for the jury to have concluded that the Timothy Dwight School is a public elementary or secondary school.

The majority, however, concludes that the evidence

that the Timothy Dwight School is either a public elementary or secondary school is wanting because school boards have statutory responsibilities over preschool, special education, vocational education and adult education. In making this assessment, I believe, respectfully, that the majority has conflated purpose with buildings. The issue is not what takes place within an elementary or secondary school but, rather, what sort of a building it is. The majority also too narrowly defines elementary and secondary schools as though buildings that house them do not serve, as well, to perform other functions of the board of education. For example, General Statutes § 10-282 (1) provides in relevant part: " 'Elementary school building' means any public school building designed to house any combination of grades below grade seven or children requiring special education." Section 10-282 (2) provides in relevant part: " 'Secondary school building' means any public school building designed to house any combination of grades seven through twelve or any regional agriculture and technology education center . . . and may also include any separate combination of grades five and six or grade six with grades seven and eight in a program approved by the State Board of Education when the use of special facilities generally associated with secondary schools is an essential part of the program for all grades included in such school . . . ." In short, the buildings that comprise elementary and secondary schools provide a myriad of educational opportunities. It would require speculation or conjecture to fathom an educational opportunity provided by a board of education that does not take place in a building that is either an elementary or secondary school.

Nor do I believe that the majority's construction comports with the purpose of §§ 21a-267 (c) and 21a-278a (b) to create a safe no drug zone within 1500 feet of elementary and secondary school buildings. These statutes relate to geographic distance from a place of drug activity to the location of a school building, and they pertain no matter whether school is in session or what activities happen to take place in the school. Thus, whether adult education classes or preschool may be conducted in either an elementary or secondary school building is irrelevant.

As the majority notes, in *State* v. *King*, 289 Conn. 496, 958 A.2d 731 (2008), jurors may rely on "their common knowledge about the familiar topic of school" in determining whether the school in question fits within the 1500 foot prohibition contained in the applicable statutes. Id., 522. As a practical matter, I think that it is well within the common knowledge of the average juror that boards of education maintain elementary and secondary schools in which a variety of educational programs take place. Hearing that the Timothy Dwight School is a graded school within the supervision of the New Haven board of education, the jury did not have

to speculate that the building comprising the Timothy Dwight School served some other purpose for which there may be grades. Rather, the jury was entitled to infer, from the evidence, that the Timothy Dwight School is a public elementary or secondary school. On this record, I believe that there was sufficient evidence that the Timothy Dwight School fits within the statutory definition of a public elementary or secondary school.

The majority also concludes that the evidence was insufficient to prove that the defendant intended to sell drugs in a particular place within 1500 feet of a school. As the majority notes, to prove one guilty of possession of drugs with the intent to distribute within 1500 feet of a school, the state need not prove that a defendant intended to be within 1500 feet of a school but simply that such a person possessed narcotics with the intent of distributing them at a place that is geographically within 1500 feet of a public school. *State* v. *Denby*, 235 Conn. 477, 483, 668 A.2d 682 (1995). "[D]irect 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. *Aloi*, supra, 280 Conn. 843. "Intent is a question of fact, the determination of which should stand unless the conclusion drawn by the trier is an unreasonable one." (Internal quotation marks omitted.) *State* v. *Silva*, 285 Conn. 447, 460, 939 A.2d 581 (2008), aff'd after remand, 113 Conn. App. 488, A.2d (2009).

In this instance, the state adduced evidence from which the jury reasonably could have concluded that when the defendant was apprehended within 1500 feet of the Timothy Dwight School, he was fully equipped with the goods and in the manner of a street level narcotics dealer. In various pockets of his clothes, the police found $876 in denominations of $1, $5, $10, and $20. In the defendant's pockets, the police also discovered nineteen bags with crack cocaine, various empty bags and a razor wrapped in a plastic bag. That the defendant was geared and ready for business can hardly be disputed.

The majority concludes, however, that evidence that the defendant was equipped and ready to sell some place is insufficient to conclude that he intended to sell at the place where he was detained. But in reaching its conclusion, the majority fails to discuss additional evidence, which, I believe, fills the evidentiary gap and provides an adequate basis for the jury's determination on these charges. The record reveals evidence that as the defendant sat astride a bicycle, he was stopped on the sidewalk in front of 47 Waverly Street in New Haven in the company of another individual, Joshua Williams.[3] Thus, this case is unlike those that wrestle with the notion of a transient defendant who is merely passing

through an area located within 1500 feet of a school when he is detained by the police. Here, in fact, the defendant was in his own neighborhood. Shirley Warren, a defense witness, testified that she was friendly with the defendant's siblings and that when the police detained the defendant, she went to his nearby house at 74 Day Street to inform his mother. Warren indicated that the Lewis home can be seen from Waverly Street.

Additionally, Detective Michael Wuchek of the New Haven police department, an expert in the ways of street level narcotics dealers, testified that the neighborhood in which the defendant lived and had been detained was a high level drug area in which Wuchek had participated in approximately twenty drug arrests. He also testified that the packaging of drugs in several bags suggests $10 purchases and that a seller of street level drugs often carries money in small denominations to make change and in different pockets as a defense to robbery. Wuchek stated that such dealers often confine their sales activities to one neighborhood, often one where they have family or where they are from, one whose alleys and yards are familiar to them so as to facilitate escape and to elude police detection or rival drug dealers. Finally, in this regard, Wuchek testified that such dealers often travel in pairs, with one on foot and another on a bike, one serving as a lookout and protector, while the other engages in transactions. On the basis of Wuchek's testimony, which dovetails with the operative facts presented to the jury regarding the defendant's manner and circumstances, it was not unreasonable for the jury to infer that the defendant was not only geared to sell but open for business when and where he was confronted by the police.

For the foregoing reasons, I believe the evidence was sufficient to convict the defendant of possession of drug paraphernalia with intent to use within 1500 feet of a public school and possession of narcotics with the intent to sell within 1500 feet of a public school. Accordingly, I would reverse the conviction and remand the matter for a new trial on all counts.

[1] General Statutes § 21a-267 (c) provides for additional punishment for one who possesses drug paraphernalia "within one thousand five hundred feet of, the real property comprising a public or private elementary or secondary school and who is not enrolled as a student in such school . . . ."

General Statutes § 21a-278a (b) provides for additional punishment for one who possesses narcotics with the intent to sell "within one thousand five hundred feet of, the real property comprising a public or private public or private elementary or secondary school . . . ."

[2] When the state inquired as to the ages and grades of the children who attended the school, the defendant objected, and the objection was sustained. The state then asked: "What grades?" The witness began answering and stated, "[t]he grades are from," and then the defendant objected. That objection was never sustained by the court, that partial answer was never stricken from the record and the jury was never instructed that it could not consider the answer. Therefore, the jury was informed that the school had "grades," and this testimony is part of the evidentiary record.

[3] The jury heard from defense witness Shirley Warren that more people besides Williams were at the scene with the defendant when the police confronted them. The jury was free to credit police testimony that only the defendant and Williams were together when the police confronted them or

evidence that others were present as well. In either case, the evidence makes it clear that the defendant was not simply passing by, en route to another place.