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DiPENTIMA, J., concurring. I respectfully concur with the result the majority has reached and write separately only to address the prosecutor's depiction of the defendant, Pedro S., as a liar during closing argument to the jury.[1] The defendant contends that such characterization was improper, and I agree.

As the majority recognizes, we are required to engage in a two step analytical process when reviewing claims of prosecutorial misconduct. ''The two steps are separate and distinct: (1) whether misconduct occurred in the first instance; and (2) whether that misconduct deprived a defendant of his due process right to a fair trial. Put differently, misconduct is misconduct, regardless of its ultimate effect on the fairness of the trial; whether that misconduct caused or contributed to a due process violation is a separate and distinct question that may only be resolved in the context of the entire trial . . . .'' *State* v. *Ceballos*, 266 Conn. 364, 381–82 n.29, 832 A.2d 14 (2003).

The majority notes that our case law currently instructs that ''even though it is unprofessional, a prosecutor can argue that a defendant is a 'liar' if such an argument is supported by the evidence.'' *State* v. *Spyke*, 68 Conn. App. 97, 113, 792 A.2d 93, cert. denied, 261 Conn. 909, 804 A.2d 214 (2002); see also *State* v. *Wickes*, 72 Conn. App. 380, 388, 805 A.2d 142, cert. denied, 262 Conn. 914, 811 A.2d 1294 (2002). The sole support offered in *Spyke* for this proposition of law is a citation to *State* v. *Oehman*, 212 Conn. 325, 334, 562 A.2d 493 (1989).

In *Oehman*, the defendant claimed that statements made by the prosecutor characterizing the defendant as, inter alia, a ''liar'' constituted prosecutorial misconduct. Id., 333. Our Supreme Court stated that ''[a]lthough such invective is wholly unprofessional and has no place in a Connecticut courtroom, we conclude that the [comment] by the prosecutor characterizing the defendant as a liar . . . [was] supported by the evidence presented in this case. The jurors heard the defendant testify concerning numerous lies he had told to various persons both before and after the death of the victim. In this situation, it was certainly permissible for the jurors to infer, and for the prosecutor to argue, that the defendant's *prior lies* were relevant to the credibility of his testimony at trial.'' (Emphasis added.) Id., 334. I read that holding to indicate that a prosecutor may argue that a particular statement made by the defendant is a lie, if supported by the evidence. There is a significant distinction, however, between arguing that a particular statement is a falsehood on one hand and arguing that the defendant ''is a liar'' on the other.[2] When a prosecutor brands a defendant a ''liar,'' the line is

crossed between proper and improper comment.[3] See Rules of Professional Conduct 3.4 (5).

It appears that this court has followed two divergent paths on this issue. Although we have indicated that a prosecutor may argue that a defendant is a ''liar'' if such an argument is supported by the evidence; see *State* v. *Spyke*, supra, 68 Conn. App. 113; *State* v. *Wickes*, supra, 72 Conn. App. 388; we have also held that such argument constitutes misconduct. In *State* v. *Floyd*, 10 Conn. App. 361, 367–68, 523 A.2d 1323, cert. denied, 203 Conn. 809, 525 A.2d 523, cert. denied, 484 U.S. 859, 108 S. Ct. 172, 98 L. Ed. 2d 126 (1987), despite the fact that ''the defendant's statements to the police prior to trial conflicted with the evidence presented at trial by the police and even the defendant's alibi witnesses,'' we stated that the use of the word ''liar'' to refer to the defendant was something we could not condone. Viewing the trial as a whole, however, we concluded that this impropriety ''did not deny the defendant a fair trial.'' Id., 368. As recently as 2003, we concluded that a prosecutor's use of the epithet ''liar'' to describe a defendant was improper. In *State* v. *Hilton*, 79 Conn. App. 155, 169, 829 A.2d 890 (2003), we held that the prosecutor's comments characterizing the defendant as a liar ''certainly were improper and not in any way consistent with the expectation of professionalism of his office.'' Nevertheless, we concluded that because ''the prosecutor coupled his substantially accurate characterization of the evidence with the suggestion that the jury closely examine the evidence for itself, we cannot say that his misconduct in the use of the word 'liar' deprived the defendant of a fair trial.'' Id., 169–70. Thus, in both *Floyd* and *Hilton*, this court concluded that the prosecutor's use of the epithet ''liar'' to describe the defendant was misconduct that did not amount to a deprivation of a fair trial.

In the present case, I would likewise conclude that the prosecutor's depiction of the defendant as a liar constituted misconduct. Particularly noteworthy is the fact that immediately following the prosecutor's rebuttal argument, the court inquired whether the defendant wanted the court to give the jury a curative instruction as to the prosecutor's depiction of him as a liar. Equally telling is the prosecutor's response, in which she indicated that such comments were made ''in the heat of the moment . . . .'' The court thereafter provided a curative instruction to the jury. See footnote 8 of the majority opinion.

Nevertheless, in applying the factors set forth in *State* v. *Williams*, 204 Conn. 523, 540, 529 A.2d 653 (1987),[4] to the entire trial, as required under *State* v. *Stevenson*, 269 Conn. 563, 849 A.2d 626 (2004),[5] I would conclude that this misconduct did not deprive the defendant of a fair trial. Because the defendant's testimony at trial contradicted his written statement to the police on Feb-

ruary 23, 2002, as well as his testimony on cross-examination, the misconduct was, to a degree, invited. The severity of the misconduct was minimized by the supporting evidence presented at trial and was infrequent and limited to closing argument. Furthermore, the defendant did not object to the misconduct. In *Stevenson*, our Supreme Court insisted that ''the fact that defense counsel did not object to one or more incidents of misconduct *must be considered* in determining whether and to what extent the misconduct contributed to depriving the defendant of a fair trial and whether, therefore, reversal is warranted.'' (Emphasis added.) Id., 576. ''Where counsel does not request a curative instruction or seek a mistrial, he presumably does not view the remarks as so prejudicial that his client's right to a fair trial is seriously jeopardized.'' (Internal quotation marks omitted.) *State* v. *Lubesky*, 195 Conn. 475, 484, 488 A.2d 1239 (1985). Finally, the trial court, sua sponte, provided a curative instruction regarding the misconduct, which likely minimized any harm that may have resulted from the prosecutor's misconduct. Our Supreme Court has ''often held that a prompt cautionary instruction to the jury regarding improper prosecutorial remarks obviates any possible harm to the defendant.'' (Internal quotation marks omitted.) *State* v. *Reid*, 193 Conn. 646, 666, 480 A.2d 463 (1984). Accordingly, I would conclude that although the prosecutor's use of the epithet ''liar'' to describe the defendant was unprofessional and constituted misconduct, it did not deprive the defendant of a fair trial.

[1] See part I C of the majority opinion.

[2] Our Supreme Court has noted the ''distinction between using the words wrong or mistaken rather than lying in questions and closing arguments, concluding that the former terms are not improper because they merely [highlight] the objective conflict without requiring [one] to condemn the prior witness as a purveyor of deliberate falsehood, i.e., a liar.'' (Internal quotation marks omitted.) *State* v. *Singh*, 259 Conn. 693, 706–707, 793 A.2d 226 (2002).

[3] Cf. *State* v. *Moran*, 99 Conn. 115, 121, 121 A. 277 (1923), in which the prosecutor, referring to the defendant, declared that '' '[h]e sits there as a perjurer upon that [witness] stand.' '' The court concluded that the statement was prejudicial and inexcusable. Id.

[4] The *Williams* factors are: (1) the extent to which the misconduct was invited by defense conduct or argument; (2) the severity of the misconduct; (3) the frequency of the misconduct; (4) the centrality of the misconduct to the critical issues in the case; (5) the strength of the curative measures adopted; and (6) the strength of the state's case. *State* v. *Williams*, supra, 204 Conn. 540.

[5] I would note that our decisions in *State* v. *Hilton*, supra, 79 Conn. App. 155, *State* v. *Wickes*, supra, 72 Conn. App. 380, *State* v. *Spyke*, supra, 68 Conn. App. 97, and *State* v. *Floyd*, supra, 10 Conn. App. 361, all preceded *State* v. *Stevenson*, supra, 269 Conn. 563, and *State* v. *Ceballos*, supra, 266 Conn. 364.