STATE OF CONNECTICUT *v.* OREMA TAFT
(SC 18163)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Harper, Js.*

*Argued May 16—officially released September 20, 2012***

Conrad Ost Seifert, special public defender, for the appellant (defendant).

Linda F. Currie-Zeffiro, assistant state's attorney, with whom, on the brief, were *John C. Smriga*, state's

attorney, and *C. Robert Satti, Jr.*, supervisory assistant state's attorney, for the appellee (state).

Opinion

NORCOTT, J. The defendant, Orema Taft, appeals from the judgment of conviction, rendered after a jury trial, of murder in violation of General Statutes § 53a-54a (a)[1] and conspiracy to commit murder in violation of General Statutes §§ 53a-48 (a)[2] and 53a-54a (a). On appeal,[3] the defendant claims that: (1) there is insufficient evidence to sustain his conviction of conspiracy to commit murder; (2) if this court determines that there is insufficient evidence to support his conspiracy conviction, there also is insufficient evidence to support his murder conviction because the jury's guilty verdict on that count was predicated on the *Pinkerton*[4] theory of conspiratorial liability; (3) the prosecutor engaged in impropriety by eliciting from a key state witness a statement that she would never lie, and by arguing outside the evidence during his closing argument; and (4) his trial counsel's failure to cross-examine some of the state's witnesses regarding whether they expected to receive a monetary reward for testifying, and another of the state's witnesses about whether he had recanted, under oath, some of his prior statements, amounted to ineffective assistance of counsel and entitles him to a new trial. We disagree and, accordingly, affirm the judgment of the trial court.

The record reveals the following facts, which the jury reasonably could have found, and procedural history. On September 28, 2001, shortly before 3 a.m., the victim, Zoltan Kiss, was shot and killed in his car in the area of 1185 Pembroke Street in Bridgeport. Just prior to the shooting, the victim parked his car across from 1185 Pembroke Street, exited the vehicle, approached some individuals on the street to seek change for a $100 bill and, thereafter, approached a gate leading to an alley next to 1185 Pembroke Street (gate). Shortly thereafter, a group of people, including the defendant, exited from behind the gate and followed the victim as he returned to his car. When the victim reached his car, at least one of the pursuers, Miguel Zapata,[5] began firing a handgun at the victim. Additionally, before the gunfire, one witness heard someone in the group say, "Let's get this mother fucker."

During the autopsy, the medical examiner determined that Kiss' death was caused by multiple gunshot wounds, and that, of the twenty-five bullet wounds in Kiss' body, seventeen were entry wounds. The examiner from the state police forensic laboratory firearms unit analyzed a total of eighteen shell casings recovered from the ground in the area of the victim's car; nine were nine millimeter casings and nine were .40 caliber casings. He determined that all of the nine millimeter casings were fired from one gun, and all of the .40 caliber casings were fired from another single gun.

After an investigation, the state charged the defen-

dant with murder with a firearm in violation of General Statutes §§ 53a-54a (a) and 53-202k, conspiracy to commit murder with a firearm in violation of §§ 53a-48, 53a-54a (a) and 53-202k, criminal possession of a firearm in violation of General Statutes § 53a-217 (a), and carrying a pistol without a permit in violation of General Statutes § 29-35 (a). The jury found the defendant guilty of murder and conspiracy to commit murder, but found, in relation to the conspiracy count, that the state had not proven beyond a reasonable doubt that the defendant had used a firearm in the commission of that crime, and further found the defendant not guilty on the criminal possession of a firearm and carrying a pistol without a permit counts. The trial court rendered judgment of conviction in accordance with the jury's verdict, and sentenced the defendant to forty-five years imprisonment on the murder count and twenty years imprisonment on the conspiracy count to run concurrently with each other and consecutively to a sentence that the defendant already was serving on an unrelated conviction. This appeal followed. Additional facts will be set forth as necessary.

I

We begin with the defendant's claim that there was insufficient evidence of conspiracy to commit murder to sustain his conviction under §§ 53a-48 and 53a-54a (a).[6] Specifically, the defendant claims that all of the evidence presented at trial points to a simultaneous violent reaction by two allegedly armed people with no planning or agreement to do anything with regard to the victim. The state, in response, argues that the evidence and the reasonable inferences drawn therefrom support the jury's finding that the defendant was among the individuals who agreed to " 'get' " the victim and, therefore, conspired with them to murder the victim. We agree with the state, and conclude that there was sufficient evidence to support the jury's verdict.

The following additional facts are relevant to the disposition of the defendant's claim. In the early hours of the morning of September 28, 2001, prior to the shooting, two witnesses, A and B,[7] testified that they had seen the defendant in the area behind the gate with a number of other individuals.[8] A and B also testified that they had seen guns behind the gate where the defendant and his companions were located. Both A and B recounted that they had seen the victim park his car across the street from the gate and approach the gate. A testified that she had seen the victim interact with someone behind the gate and then begin to return to his car. Shortly thereafter, A saw the group behind the gate chase after the victim, and A further recounted that she had seen both Zapata and the defendant carrying guns as they pursued the victim to his car. B also testified that she had heard someone say, "Let's get this mother fucker" before gunfire erupted. Both A and B

then testified that they had heard shouting and gunfire, and had seen the muzzle flashes as the guns were fired at the victim.

The state then presented the testimony of another witness, C, who, at the time of the shooting lived in a third floor apartment of a nearby building. C stated that, at approximately 2 or 3 a.m., on September 28, 2001, she had heard gunfire coming from the street located in front of her apartment. When she went to investigate the noise, C saw four people—the defendant, Zapata, Luisa Bermudez and A—standing in front of the door of a car on the street. C further recounted that she had seen the muzzle flashes as the guns were fired at the victim, and she had heard the victim screaming. She also stated that, from her perspective, she could only see Zapata holding a gun and that, after the shooting stopped, the group ran from the scene.

The state also presented the testimony of the police officers who had investigated the victim's murder. They testified that, shortly after police arrived at the scene of the shooting, they discovered a jacket containing a driver's license for an individual who they knew had associated with Bermudez. On the basis of that discovery, the police began attempting to locate Bermudez to discuss her potential involvement in the shooting. Their investigation led the police to an attic room of a building a few blocks from where the shooting took place, where they discovered Bermudez with the defendant, Zapata and A.

Finally, the state presented testimony from several individuals who had had contact with the defendant while the charges in the present case were pending. First, D testified that he was incarcerated in the same prison as the defendant, and that the defendant had told him that he and Zapata had shot a "dude" in a Honda seven times with a .45 caliber gun. D then recounted that the defendant had told him that he and Zapata had chased after the victim because they wanted to take the victim's jewelry. Then, the state presented the testimony of E who testified that, during one of his court appearances in connection with a felony charge, he was in the "bullpen lockup" of the courthouse with the defendant and Zapata. E recounted that Zapata had told him that he was in court because he and the defendant had shot a person in his car. E further testified that the defendant had confirmed or "vouched for" Zapata's statements and had nodded in agreement while Zapata was talking to E. E also testified that, in 2001, he lived on Pembroke Street and had sometimes seen handguns in the area behind the gate.

With this testimony in mind, we turn now to the defendant's sufficiency of the evidence claim. "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." (Internal quotation marks omitted.) *State* v. *Garner*, 270 Conn. 458, 472, 853 A.2d 478 (2004). Furthermore, "[i]t is not one fact, but the cumulative impact of a multitude of facts which establishes guilt in a case involving substantial circumstantial evidence." *State* v. *Brown*, 235 Conn. 502, 510, 668 A.2d 1288 (1995). "[T]he relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original; internal quotation marks omitted.) Id.

"To establish the crime of conspiracy under [§ 53a-48], the state must show that there was an agreement between two or more persons to engage in conduct constituting a crime and that the agreement was followed by an overt act in furtherance of the conspiracy . . . . The state must also show intent on the part of the accused that conduct constituting a crime be performed. . . . The existence of a formal agreement between the parties need not be proved; it is sufficient to show that they are knowingly engaged in a mutual plan to do a forbidden act." (Internal quotation marks omitted.) *State* v. *Garner*, supra, 270 Conn. 476.

"Because of the secret nature of conspiracies, a conviction usually is based on circumstantial evidence. . . . Consequently, it is not necessary to establish that the defendant and his coconspirators signed papers, shook hands, or uttered the words we have an agreement." (Internal quotation marks omitted.) Id. "[T]he requisite agreement or confederation may be inferred from proof of the separate acts of the individuals accused as coconspirators and from the circumstances surrounding the commission of these acts." (Internal quotation marks omitted.) *State* v. *Patterson*, 276 Conn. 452, 462, 886 A.2d 777 (2005).

Viewing the evidence in the light most favorable to sustaining the verdict, we conclude that there was sufficient evidence to establish that the defendant had engaged in a conspiracy to kill the victim. Although the jury found that the state had not proven, beyond a reasonable doubt, that the defendant had used a gun in the commission of the conspiracy crime, it nevertheless reasonably could have inferred from the defendant's conduct, and the conduct of his cohorts, that the defendant agreed with the group to attack the victim with

the intent to kill him. One of the group members shouted, "Let's get this mother fucker,"[9] and that is precisely what the group, inclusive of the defendant, did. As a group, they pursued the victim to his car carrying weapons[10] where they fired eighteen bullets at the victim, riddling him with seventeen entry wounds. Even if the defendant, himself, was not armed while pursuing the victim with the rest of the group, there was testimony that guns were plainly visible in the area behind the gate, and the jury reasonably could have inferred that he was aware that other members of the group would be armed during the pursuit—and would use those guns to "get" the victim. The defendant's active participation in the armed pursuit of the victim is strong circumstantial evidence of his agreement with the illicit venture to "get" the victim.

Nevertheless, the defendant argues that if the jury believed the testimony indicating that A saw the defendant carrying a gun as he and his cohorts pursued the victim to his car, the evidence is only sufficient to support an inference that the defendant and Zapata simultaneously drew their guns and started shooting with no planning or agreement. The defendant further argues that, even if someone shouted, "Let's get this mother fucker" before gunfire erupted, that statement is insufficient to support an inference of an agreement, however swiftly made, to kill the victim.[11] The defendant relies on *State* v. *Green*, 261 Conn. 653, 804 A.2d 810 (2002), for the proposition that the evidence presented in the present case reflects merely a "simultaneous violent reaction by two allegedly armed people with *no* planning or agreement between them." (Emphasis in original.) We disagree.

In *Green*, the evidence established that several members of a gang, carrying handguns, approached a group of four individuals, including the defendant, near a housing complex. Id., 657–59. In response to the approaching gang members, Duane Clark exclaimed "shoot the motherfucker," and a gunfight ensued, during which Tyrese Jenkins was fatally wounded. (Internal quotation marks omitted.) Id., 658. The defendant and Clark were tried together for, inter alia, murder and conspiracy to commit murder, and although the jury found Clark not guilty of murder and conspiracy to commit murder, it found the defendant guilty of both of those counts. Id., 659. Because Clark had been found not guilty on the conspiracy charge, and because the evidence regarding the defendant's concerted action with the other two individuals present at the scene indicated only that all three had simultaneously responded to Clark's direction to shoot the approaching gang members, however, we concluded that the evidence was insufficient to prove that the defendant had conspired with anyone to murder Jenkins. Id., 661. We concluded that the evidence only established that: (1) the defendant was friends with Clark and the other two individu-

als who shot at Jenkins, not that they were all members of a gang; (2) although there was evidence that Jenkins' gang approached the defendant's group with the intent to settle a dispute with Clark, there was no evidence that the defendant and his companions knew that Jenkins was approaching with that intent; and (3) the defendant and the other two individuals simultaneously drew their guns and started shooting apparently in response to Clark's instruction. Id., 672–73.

We conclude that *Green* is both procedurally and factually distinguishable from the present case and, therefore, does not support the defendant's claim. In *Green*, the alleged coconspirator was acquitted of the charges of both murder and conspiracy to commit murder in the *same* trial as the defendant. Id., 659. Thus, we concluded that the *same* jury could not reasonably have found the defendant guilty of conspiracy to commit murder when it simultaneously found his alleged coconspirator not guilty. Id., 670 n.20. In the present case, not only were the defendant and Zapata tried in separate trials, before different juries, but, prior to the defendant's trial, Zapata was also convicted of both murder and conspiracy to commit murder in his own trial. See *State* v. *Zapata*, 119 Conn. App. 660, 663, 989 A.2d 626, cert. denied, 296 Conn. 906, 992 A.2d 1136 (2010). Moreover, in *Green*, the three shooters simply responded to the direction of Clark to shoot the approaching armed gang members, whereas, in the present case, the defendant and his cohorts were the armed aggressors, who acted in concert to pursue the victim. Finally, and most importantly, in *Green*, we noted that "[a] conspiracy can be formed in a very short time period and, consequently, the evidence arguably supported a finding that the defendant had agreed with *Clark* to shoot Jenkins and his fellow gang members." (Emphasis in original.) *State* v. *Green*, supra, 261 Conn. 671. Accordingly, we conclude that, in the present case, the jury reasonably could have found that one of the group members shouted "Let's get this mother fucker" and the group, including the defendant, did, in fact, agree to "get" him.

In considering whether the evidence fairly supports a jury's finding of guilt, "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." *State* v. *Sivri*, 231 Conn. 115, 134, 646 A.2d 169 (1994). From the testimony of the defendant's actions at the time of the murder, the jury reasonably could have found that an agreement existed between the defendant and the rest of the group to "get" the victim and, thereafter, at least one of the conspirators shot the victim to death. Accordingly, we conclude that there was sufficient evidence to support the defendant's conviction for conspiracy to commit murder.[12]

II

The defendant next claims that he is entitled to a new trial because of prosecutorial impropriety. Specifically, the defendant contends that the prosecutor improperly invited a key state's witness, A, to vouch for her own credibility and argued outside of the evidence regarding the caliber of the bullets that ultimately struck and killed the victim. In response, the state contends that neither of the challenged acts rises to the level of prosecutorial impropriety and that, even if this court determines that there was prosecutorial impropriety, the defendant has failed to demonstrate that these acts caused him prejudice. We conclude that neither of the challenged acts constitutes prosecutorial impropriety.[13]

Before we address the merits of the defendant's claims, we set forth the standard of review and the law governing claims of prosecutorial impropriety. "[I]n analyzing claims of prosecutorial [impropriety], we engage in a two step analytical process. The two steps are separate and distinct: (1) whether [impropriety] occurred in the first instance; and (2) whether that [impropriety] deprived a defendant of his due process right to a fair trial." (Internal quotation marks omitted.) *State* v. *Angel T.*, 292 Conn. 262, 275, 973 A.2d 1207 (2009). "[W]hen a defendant raises on appeal a claim that improper remarks by the prosecutor deprived the defendant of his constitutional right to a fair trial, the burden is on the defendant to show . . . that the remarks were improper . . . ." *State* v. *Payne*, 303 Conn. 538, 562–63, 34 A.3d 370 (2012).

Finally, we note that "the defendant's failure to object at trial to each of the occurrences that he now raises as instances of prosecutorial impropriety, though relevant to our inquiry, is not fatal to review of his claims. . . . This does not mean, however, that the absence of an objection at trial does not play a significant role in the determination of whether the challenged statements were, in fact, improper. . . . To the contrary, we continue to adhere to the well established maxim that defense counsel's failure to object to the prosecutor's argument when it was made suggests that defense counsel did not believe that it was [improper] in light of the record of the case at the time. . . . With this maxim in mind, we proceed with our review of the defendant's claim[s]." (Citations omitted; internal quotation marks omitted.) *State* v. *Otto*, 305 Conn. 51, 75 n.18, 43 A.3d 629 (2012).

A

The following additional facts are necessary for the resolution of the defendant's first claim of prosecutorial impropriety—that the prosecutor improperly elicited testimony from A that amounted to vouching for her own credibility. During the trial, A testified regarding what she had seen on the night of September 28, 2001.

Specifically, A testified that she had seen Zapata and the defendant carrying guns while pursuing the victim to his car and that, shortly thereafter, she had seen gunfire. A also testified during trial that she had seen Zapata, the defendant and Bermudez fleeing the scene after the gunfire ended. During cross-examination, A admitted that she had given a statement to the police on July 2, 2002, indicating that the defendant had been with her in the attic of a house on Barnum Avenue in Bridgeport throughout the night of September 28, 2001, when the victim was shot and that, therefore, the defendant could not have been involved in the shooting. A also admitted that on December 13, 2005, she provided the police with a second written statement indicating that, as she had testified at trial, she had seen the defendant pursue the victim to his car with a gun on the night of September 28, 2001. A testified that she had ultimately changed her story to provide an accurate description of the events of September 28, 2001, because she had been harassed by the police and because she was having trouble sleeping as a result of the police investigation and repeated dreams regarding the victim's death. On redirect, A testified that she had turned her life around since September, 2001, specifically that she had finished school and had become religious. The prosecutor then asked: "Based on your life right now would you come in and lie and finger that man for [a] killing that didn't occur?" to which A responded: "Never." Defense counsel did not object to this question or A's answer.

The defendant claims that eliciting the statement from A that she would never lie was improper in that it invited the witness to vouch for her own credibility. He argues that by eliciting such testimony, the prosecutor created "the risk that the jury may conclude that, in order to acquit the defendant, it must find that the witness has lied." (Internal quotation marks omitted.) *State* v. *Ceballos*, 266 Conn. 364, 380, 832 A.2d 14 (2003). In response, the state argues that prosecutors are permitted to inquire as to a witness' "potential motivation for lying and their awareness of the ramifications of not telling the truth"; *State* v. *Vazquez*, 79 Conn. App. 219, 231 n.10, 830 A.2d 261, cert. denied, 266 Conn. 918, 833 A.2d 468 (2003); and that, therefore, the question posed to this witness was proper. We agree with the state.

"In [*State* v. *Singh*, 259 Conn. 693, 706, 793 A.2d 226 (2002)], this court adopted the well established evidentiary rule [in other jurisdictions] that it is improper to ask a witness to comment on *another* witness' veracity. . . . The primary reason for this prohibition, we explained, is that determinations of credibility are for the jury, and not for witnesses. . . . Thus, questions that ask a [witness] to comment on *another* witness' veracity [are improper because they] invade the province of the jury. . . . Moreover, [a]s a

general rule, [such] questions have no probative value and are improper and argumentative because they do nothing to assist the jury in assessing witness credibility in its fact-finding mission and in determining the ultimate issue of guilt or innocence." (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *Bell*, 283 Conn. 748, 778–79, 931 A.2d 198 (2007). "A witness' testimony . . . can be unconvincing or wholly or partially incorrect for a number of reasons without any deliberate misrepresentation being involved . . . ." (Internal quotation marks omitted.) *State* v. *Ritrovato*, 280 Conn. 36, 64, 905 A.2d 1079 (2006).

The rationale for precluding witnesses from commenting on the credibility of other witnesses does not apply to the testimony elicited from A in the present case. On direct examination, A testified that she saw a series of events on the night of September 28, 2001, including the defendant carrying a gun and pursuing the victim to his car with a group of other individuals. On cross-examination, presumably to undermine the credibility of A's testimony on direct examination, the defendant's attorney elicited testimony indicating that A had initially provided a different account of the events of that night when she first spoke to the police, but later changed her story to inculpate the defendant. On redirect, by asking if A would lie based on her life at the time of trial, the prosecutor merely explored A's motivation for changing her story and testifying as she did at trial.

In the present case, the prosecutor did not inquire of *other* witnesses about the credibility of A. Rather, in eliciting the statement that, based on her life at the time of the trial, A would never lie and wrongly accuse the defendant of participating in the shooting of the victim, the prosecutor merely provided the jury with information relevant to determining why A may have changed her story and whether it should believe the version of events that she testified to at trial. Such testimony, therefore, did not improperly invade the province of the jury in determining whether A was credible. Indeed, exploring A's motivation for lying and her awareness of the ramifications of not telling the truth is exactly the type of information a jury requires to make an appropriate determination regarding a witness' credibility. Accordingly, we conclude that the prosecutor's inquiry was not improper.

B

The defendant's second claim of prosecutorial impropriety—that the prosecutor improperly argued outside of the evidence during closing argument—also lacks merit. During his rebuttal argument, the prosecutor stated that Zapata and the defendant "fired . . . a nine millimeter and a .40 caliber gun at the victim. A total of [eighteen] shots were fired and recovered by the

police by way of the casings, nine each of each caliber. *Those bullets struck and killed* [*the victim*]." (Emphasis added.) The defendant argues that there was no evidence as to which bullets struck, and particularly killed, the victim. Therefore, the defendant claims that the statement that "[t]hose bullets struck and killed [the victim]" was improper. We disagree.

"This court previously has acknowledged: [P]rosecutorial [impropriety] of constitutional magnitude can occur in the course of closing arguments. . . . In determining whether such [impropriety] has occurred, the reviewing court must give due deference to the fact that [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 upon the facts in evidence and the reasonable inferences to be drawn therefrom. . . . Nevertheless, the prosecutor has a heightened duty to avoid argument that strays from the evidence or diverts the jury's attention from the facts of the case. . . . While the privilege of counsel in addressing the jury should not be too closely narrowed or unduly hampered, it must never be used as a license to state, or to comment upon, or to suggest an inference from, facts not in evidence, or to present matters which the jury [has] no right to consider." (Internal quotation marks omitted.) *State* v. *Camacho*, 282 Conn. 328, 367–68, 924 A.2d 99, cert. denied, 522 U.S. 956, 128 S. Ct. 388, 169 L. Ed. 2d 273 (2007). "A prosecutor, in fulfilling his duties, must confine himself to the evidence in the record. . . . Statements as to facts that have not been proven amount to unsworn testimony, which is not the subject of proper closing argument." (Citations omitted; internal quotation marks omitted.) *State* v. *Alexander*, 254 Conn. 290, 306, 755 A.2d 868 (2000).

We conclude that the statement that "[t]hose bullets struck and killed [the victim]" was, in fact, based on evidence in the record and, therefore, was not improper. At trial, the medical examiner testified that the victim's body contained a total of twenty-five bullet wounds, *seventeen* of which were entry wounds. If a total of eighteen shell casings were recovered from the scene, it is reasonable and logical to infer that nearly all of the bullets fired from both guns struck the victim. Furthermore, because the cause of death was determined to be from multiple gunshot wounds, it is reasonable and logical to infer that at least some of the bullets that struck the victim were those that killed him. Accordingly, we conclude that the prosecutor did not argue outside of the evidence in his rebuttal argument and, therefore, his statement was not improper.

III

Finally, we turn to the defendant's claim that he is entitled to a new trial because he received ineffective assistance of counsel at trial. Specifically, the defendant contends that his trial counsel failed to cross-examine several of the state's witnesses, A, B and C, regarding whether they expected to receive a monetary reward for testifying and also failed to question another one of the state's witnesses, E, regarding his testimony at Zapata's trial. The defendant argues that he was, therefore, deprived of his right to a fair trial. The state contends, in response, that the defendant's assertion that his trial counsel was ineffective as a matter of law is untenable and that the record is inadequate regarding both grounds of alleged ineffectiveness. We agree with the state, and conclude that the record is inadequate for review of this claim on direct appeal.

"This court has emphasized in other cases that a claim of ineffective assistance of counsel is more properly pursued on a petition for new trial or on a petition for a writ of habeas corpus rather than on direct appeal . . . [because] [t]he trial transcript seldom discloses all of the considerations of strategy that may have induced counsel to follow a particular course of action." (Citations omitted; internal quotation marks omitted.) *State* v. *Leecan*, 198 Conn. 517, 541, 504 A.2d 480, cert. denied, 476 U.S. 1184, 106 S. Ct. 2922, 91 L. Ed. 2d 550 (1986). "It is preferable that all of the claims of ineffective assistance, those arguably supported by the record as well as others requiring an evidentiary hearing, be evaluated by the same trier in the same proceeding." Id. Furthermore, "[o]n the rare occasions that [this court has] addressed an ineffective assistance of counsel claim on direct appeal, [it has] limited [its] review to allegations that the defendant's sixth amendment rights had been jeopardized by the actions of the *trial court*, rather than by those of his counsel. . . . [This court has] addressed such claims, moreover, only where the record of the trial court's allegedly improper action was adequate for review or the issue presented was a question of law, not one of fact requiring further evidentiary development." (Citations omitted; emphasis in original.) *State* v. *Crespo*, 246 Conn. 665, 688, 718 A.2d 925 (1998), cert. denied, 525 U.S. 1125, 119 S. Ct. 911, 142 L. Ed. 2d 909 (1999).

The defendant claims that, because the trial court specifically found that the defendant was aware of the reward money available to the witnesses who contributed to the conviction of those involved in the victim's murder, his counsel's failure to cross-examine A, B and C about their expectations regarding that reward money was ineffective as a matter of law. See *Reynoso* v. *Giurbino*, 462 F.3d 1099, 1112 (9th Cir. 2006) ("[C]ounsel's performance was constitutionally ineffective regardless of the extent of her knowledge of [the witnesses']

awareness of the reward, and of their financial motivations . . . . Whether she had direct or specific knowledge of their awareness of the reward, or whether she knew only in the most general sense of such a possibility, her failure to investigate the matter more fully, given the information she possessed, rendered her performance deficient."). Furthermore, the defendant claims that his counsel was ineffective as a matter of law because he failed to cross-examine E, a " 'jailhouse snitch,' " regarding the fact that, under oath during Zapata's trial, E had recanted the statement that he had provided to the police inculpating both the defendant and Zapata.

The record does not, however, reveal the extent to which the defendant's trial counsel was aware of the reward money or the recanted statement or the efforts that he had undertaken to investigate those matters, and whether, and to what extent, he chose not to pursue those questions during cross-examination. We therefore conclude that the record is inadequate for review of both of the defendant's claims of ineffective assistance of counsel. Accordingly, "we shall not review at this time . . . the defendant's ineffective assistance claim[s] that he contends [are] adequately supported by the record. . . . [W]e believe that his ineffective assistance claim[s] should be resolved . . . after an evidentiary hearing in the trial court where the attorney whose conduct is in question may have an opportunity to testify." *State* v. *Leecan*, supra, 198 Conn. 542.

The judgment is affirmed.

In this opinion the other justices concurred.

* The listing of justices reflects their seniority status on this court as of the date of oral argument.

** September 20, 2012, the date that this decision was released as a slip opinion, is the operative date for all substantive and procedural purposes.

[1] General Statutes § 53a-54a (a) provides in relevant part: "A person is guilty of murder when, with intent to cause the death of another person, he causes the death of such person . . . ."

[2] General Statutes § 53a-48 (a) provides: "A person is guilty of conspiracy when, with intent that conduct constituting a crime be performed, he agrees with one or more persons to engage in or cause the performance of such conduct, and any one of them commits an overt act in pursuance of such conspiracy."

[3] The defendant appeals directly to this court pursuant to General Statutes § 51-199 (b) (3).

[4] *Pinkerton* v. *United States*, 328 U.S. 640, 647–48, 66 S. Ct. 1180, 90 L. Ed. 1489 (1946).

[5] For his role in the victim's death, a jury, in a separate trial that preceded the defendant's trial, convicted Zapata of conspiracy to commit murder with a firearm in violation of General Statutes §§ 53a-48, 53a-54a (a) and 53-202k, murder with a firearm in violation of §§ 53a-54a (a) and 53-202k and carrying a pistol without a permit in violation of General Statutes § 29-35 (a). See *State* v. *Zapata*, 119 Conn. App. 660, 663, 989 A.2d 626, cert. denied, 296 Conn. 906, 992 A.2d 1136 (2010).

[6] After the state concluded its presentation of evidence, the defendant moved for a judgment of acquittal relative to the conspiracy to commit murder count, arguing that, "the state [had] not put forth adequate proof of any agreement whatsoever." The motion for judgment of acquittal was denied, preserving this sufficiency claim for review. See, e.g., *State* v. *Calabrese*, 279 Conn. 393, 401, 902 A.2d 1044 (2006) (insufficiency of evidence claim properly preserved by motion for judgment of acquittal).

[7] The record of this case has been filed under seal to protect the identity of the witnesses, some of whom had been threatened with violence prior to and during the trial of Zapata. In order to maintain the safety of the witnesses, we have refrained from referring to them in any manner that might reveal their identities.

[8] A testified that she had seen the defendant with Zapata and Luisa Bermudez, while B testified that she had seen the defendant with Zapata, Bermudez and Michael Cooney.

[9] In the amended information, the state accused the defendant of agreeing with Zapata and "others unknown" to engage in the conspiracy to commit murder. Thus, although there was no evidence regarding the identity of the speaker, it is irrelevant exactly which of the group members shouted, "Let's get this mother fucker" prior to the group attacking the victim.

[10] Although the jury found that the state had not proven, beyond a reasonable doubt, that the defendant had "used" a gun during the conspiracy, there was testimony that A saw the defendant carrying a gun during the pursuit. Furthermore, there was forensic evidence that two different guns were fired during the shooting. Therefore, the jury reasonably could have concluded that at least two of the group members were armed during the pursuit of the victim.

[11] The defendant seeks to buttress his claim of evidentiary insufficiency with the state's failure to adduce evidence that the defendant was part of a gang, a team or even in business with Zapata, and the fact that the state adduced no evidence that the victim was killed because of a drug sale gone awry. The Appellate Court has concluded that when individuals engage in the business of selling drugs, and do so while carrying handguns, a jury reasonably may infer that the drug dealers have "agreed to protect and support each other with the use of those handguns when necessary," that there is an agreement to back each other up and to "kill anyone who [tries] to steal drugs from them . . . ." *State* v. *King*, 116 Conn. App. 372, 380, 976 A.2d 765, cert. denied, 294 Conn. 912, 983 A.2d 274 (2009). The defendant argues, however, that, because there was no evidence that he was engaged in a common enterprise to sell drugs with Zapata, there is nothing from which the jury in the present case reasonably could infer an agreement between him and Zapata to kill the victim. This argument, however, fails to acknowledge the fact that the shooting of the victim occurred after the group behind the gate, including the defendant, pursued the victim to his car while armed with two guns. Thus, despite the fact that there was no evidence that the defendant was engaged in a business of selling drugs with Zapata, or that the victim had attempted to cheat the business during a drug transaction, on the basis of the defendant's conduct on the night of September 28, 2001, the jury nevertheless reasonably could have found that he agreed to participate in the group venture to "get" the victim.

[12] In light of this conclusion, we need not address the defendant's claim that, in the event this court were to determine that there is insufficient evidence to support his conviction of conspiracy to commit murder, his conviction for murder, which is predicated on the *Pinkerton* theory of conspiratorial liability, must also be reversed.

[13] Because we conclude that the challenged conduct in the present case was not improper, we do not reach the question of whether any misconduct rose to the level of denying the defendant of his right to a fair trial. See, e.g., *State* v. *Darryl W.*, 303 Conn. 353, 375 n.19, 33 A.3d 239 (2012).