STATE OF CONNECTICUT *v.* CHRISTOPHER JENKINS
(AC 26833)

Schaller, McLachlan and Gruendel, Js.

Argued May 21—officially released November 20, 2007

(Appeal from Superior Court, judicial district of New Britain, Alexander, J.; Handy, J.)

Megan Weiss, certified legal intern, with whom were *Timothy H. Everett*, special public defender, *Michael Hitchery*, certified legal intern, and, on the brief, *Matthew Weiner*, certified legal intern, for the appellant (defendant).

James M. Ralls, senior assistant state's attorney, with whom, on the brief, were *Scott J. Murphy*, state's attorney, and *Paul N. Rotiroti*, assistant state's attorney, for the appellee (state).

Opinion

McLACHLAN, J. The defendant, Christopher Jenkins, appeals from the judgment of conviction, rendered following his conditional plea of nolo contendere, of possession of narcotics with intent to sell by a person who is not drug-dependent in violation of General Statutes § 21a-278 (b). On appeal, the defendant claims that the trial court improperly denied his motion to suppress evidence. We agree and reverse the judgment of the trial court.

Our review of the record discloses the following facts relative to the defendant's appeal.[1] On May 7, 2004, Michael Morgan, a Newington police detective, was assigned to traffic detail for the purpose of accident reduction and safety on the Berlin Turnpike. At approximately 11:20 p.m., Morgan observed the driver of a Nissan Altima, subsequently identified as the defendant, make two abrupt lane changes in heavy traffic without using a turn signal. On the basis of this observation,[2] Morgan stopped the vehicle.[3] Following his usual procedure, Morgan reported the license plate number of the Altima to a police dispatcher, alerted the dispatcher that he had commenced a traffic stop and provided his location.[4]

Morgan proceeded to the driver's window and asked the defendant to produce his driver's license, vehicle registration and insurance card. After the defendant complied with this request, Morgan returned to his unmarked police vehicle. Morgan characterized the defendant as appearing "unusually nervous compared to someone who's stopped for such a routine traffic violation." The defendant produced a New Jersey driver's license and a vehicle rental agreement in lieu of a registration. The vehicle was registered in Pennsylvania. Morgan called in the defendant's information to the dispatcher in order to determine if the license was valid and if there were "any wants, warrants or cautions" associated with the defendant. After learning that the license was valid and that there were no outstanding warrants, Morgan nevertheless requested the defendant's consent to search the vehicle and called another officer for backup assistance.

Morgan proceeded to fill out an infraction ticket for the traffic violation that he had observed. By the time he finished filling out the ticket, Derrick Sutton, a Newington police sergeant, had arrived at the scene. At this point, Morgan returned to the defendant and asked him to get out of the vehicle.[5] Morgan inquired whether the defendant "had anything illegal on him." The defendant responded in the negative. Morgan testified that he did not believe that the defendant was armed. Nevertheless, Morgan searched him but did not find anything illegal on the defendant's person.

After he explained the ticket, Morgan asked the

defendant if he had anything illegal in the vehicle. Morgan stated that the basis for this question was the defendant's nervousness, combined with the facts that the rented Altima had a Pennsylvania registration and license plate and that the defendant had a New Jersey driver's license and claimed that he was coming from New York where he had visited his daughter.

The defendant responded to Morgan's inquiry by stating: "[N]ope, just some beer on the passenger seat floor; go ahead and check. You can check if you want." Morgan instructed the defendant to move away from the vehicle and to stand with Sutton, behind the Altima. He then began to search the interior of the Altima. He opened the center console and found a package wrapped in white paper. Morgan unwrapped the paper and found a plastic ziplock bag containing a white powder substance that he believed to be cocaine. After Morgan completed his search of the front area of the Altima, the defendant was placed under arrest for possession of cocaine and handcuffed. Following the defendant's arrest, the back area of the Altima and the trunk were searched. A large quantity of heroin and an additional amount of cocaine were found in the trunk.[6]

On July 13, 2004, the defendant filed a motion to suppress all of the evidence seized in the search. The court held an evidentiary hearing on the defendant's motion on December 16, 2004, at which Morgan was the sole witness. On January 14, 2005, the court heard legal arguments from the state and defense counsel. On February 17, 2005, the court issued a memorandum of decision denying the motion to suppress. The court found that "there was no untoward conduct on either the part of . . . Morgan or . . . Sutton [and] that there was no threatening, coercive or overpowering behavior exhibited at any time during this incident." The court further found that "the defendant voluntarily and knowingly gave permission to have his vehicle searched [and that] the defendant never withdrew this consent. "The court did not accept or credit the defendant's claim that his statement to the police that evening was meant only to have the officer look at the beer in his car."

On March 18, 2005, the defendant entered a conditional plea of nolo contendere pursuant to General Statutes § 54-94a[7] to the charge of possession of narcotics with intent to sell by a person who is not drug-dependent. The court sentenced the defendant to twenty years incarceration, execution suspended after eight years, and five years probation. This appeal followed.[8]

The standard of review in connection with the court's denial of a motion to suppress is well settled. As stated by our Supreme Court: "This involves a two part function: where the legal conclusions of the court are challenged, we must determine whether they are legally and logically correct and whether they find support in the facts set out in the memorandum of decision; where

the factual basis of the court's decision is challenged we must determine whether the facts set out in the memorandum of decision are supported by the evidence or whether, in light of the evidence and the pleadings in the whole record, those facts are clearly erroneous. That is the standard and scope of this court's judicial review of decisions of the trial court. Beyond that, we will not go. . . . In other words, to the extent that the trial court has made findings of fact, our review is limited to deciding whether those findings were clearly erroneous. Where, however, the trial court has drawn conclusions of law, our review is plenary, and we must decide whether those conclusions are legally and logically correct in light of the findings of fact." (Internal quotation marks omitted.) *State* v. *Nowell*, 262 Conn. 686, 694, 817 A.2d 76 (2003); see also *State* v. *Foote*, 85 Conn. App. 356, 360, 857 A.2d 406 (2004), cert. denied, 273 Conn. 937, 875 A.2d 43, 44 (2005); *State* v. *Carcare*, 75 Conn. App. 756, 764, 818 A.2d 53 (2003).

We begin by reviewing the legal principles pertaining to the claims raised on appeal by the defendant. "The Fourth Amendment to the United States constitution protects the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable search and seizures. Ordinarily, police may not conduct a search unless they first obtain a search warrant from a neutral magistrate after establishing probable cause. [A] search conducted without a warrant issued upon probable cause is *per se* unreasonable . . . subject only to a few specifically established and well-delineated exceptions." (Emphasis in original; internal quotation marks omitted.) *State* v. *Badgett*, 200 Conn. 412, 423, 512 A.2d 160, cert. denied, 479 U.S. 940, 107 S. Ct. 423, 93 L. Ed. 2d 373 (1986).

"A warrantless search . . . is not unreasonable, however, under the fourth amendment to the United States constitution . . . when a person with authority to do so has freely consented. . . . It is . . . well settled that one of the specifically established exceptions to the requirements of both a warrant and probable cause is a search [or seizure] that is conducted pursuant to consent. . . . Whether a defendant has voluntarily consented to a search is a question of fact to be determined from the totality of the circumstances. The trial court makes this determination on the basis of the evidence that it deems credible along with the reasonable inferences that can be drawn therefrom." (Citations omitted; internal quotations omitted.) *State* v. *Wragg*, 61 Conn. App. 394, 401, 764 A.2d 216 (2001); see also *State* v. *Azuka*, 278 Conn. 267, 275, 897 A.2d 554 (2006).

The defendant claims that the court improperly denied his motion to suppress evidence. Specifically, he argues that (1) even if his consent to search the vehicle had been voluntary, it was tainted by a prior, unconstitutional search of his person, (2) the state

failed to establish that he actually consented to the search of the vehicle, (3) any consent to search was not given voluntarily and (4) any consent to search was obtained by a violation of the Connecticut constitution by the police improperly converting a traffic stop into a criminal investigation. We conclude that the defendant was unlawfully detained, that his consent to search the vehicle was tainted by that illegal detention and that the state failed to purge the taint of the illegal detention. For those reasons, the evidence procured through the defendant's consent should have been suppressed.

The defendant argues that even if he had voluntarily consented to the search of his vehicle, any evidence found was tainted as a result of the illegal search of his person that occurred prior to the search of the vehicle.[9] The state contends that this claim is being raised for the first time on appeal and is, therefore, unreviewable. The state further argues that the record is inadequate for review pursuant to the doctrine set forth in *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989).

With respect to the defendant's preservation of this issue and its reviewability, this claim formed the heart of the defendant's motion to suppress, filed in the trial court, in which he claimed that the officer "illegally detained the defendant for an extended period without probable cause or a reasonable and articulable suspicion . . . ." On appeal, the defendant first raises this issue within his voluntariness claim by arguing that "[t]he traffic stop . . . should have ended after Detective Morgan explained the traffic infraction to the defendant, at which time [Morgan] should have given him the traffic ticket and returned his documentation to him. Instead, the seizure of the defendant was extended even though the stop at its inception was justifiable only as a traffic stop and that the police had developed neither probable cause nor reasonable and articulable suspicion of criminal activity."

Further, the second assignment of error in the defendant's brief sets forth the issue of "[w]hether the police violated the Connecticut [c]onstitution by converting a traffic stop into a criminal investigation in which the defendant was detained by two officers in two police vehicles and searched without justification before he 'consented' to the search of his car." Within this claim, the defendant cites the dissent in *Ohio* v. *Robinette*, 519 U.S. 33, 51, 117 S. Ct. 417, 136 L. Ed. 2d 347 (1996) (Stevens, J., dissenting), for the proposition that when an officer completes the task of either arresting or reprimanding the driver of a speeding car, the officer's continued detention of that person constitutes an illegal seizure.

Finally, the defendant's reply brief properly sets forth the claim that the search of his car during an extension of a routine, noncriminal traffic stop was unconstitu-

tional. Thus, although the defendant, within the fruit of the poisonous tree analysis in his main appellate brief, argues that his consent to search the car was the product of the illegal search of his person, he neither limited his tainted consent claim to that sole issue nor abandoned his claim that the detention was unreasonably prolonged.[10]

It is axiomatic that "[*t*]*he scope of* [*an investigative*] *detention must be carefully tailored to its underlying justification* [*and the*] *investigative detention must be temporary and last no longer than is necessary to effectuate the purpose of the stop.*" (Emphasis added.) *Florida* v. *Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983). Thus, a stop pursuant to *Terry* v. *Ohio*, 392 U.S. 1, 88 S. Ct. 1868, 20 L. Ed. 2d 889 (1968), "that is justified at its inception can become constitutionally infirm if it lasts longer or becomes more intrusive than necessary to complete the investigation for which that stop was made. . . . Like the determination of the initial justification, this inquiry is fact-bound. . . . The results of the initial stop may arouse further suspicion or may dispel the questions in the officer's mind. . . . If . . . the officer's suspicions are confirmed or are further aroused, the stop may be prolonged and the scope enlarged as required by the circumstances. . . . One function of a constitutionally permissible *Terry* stop is to maintain the status quo for a brief period of time to enable the police to investigate a suspected crime. A police officer who has proper grounds for stopping a suspect has constitutional permission to immobilize the suspect briefly in order to check a description or an identification, so long as his conduct is strictly tied to and justified by the circumstances which rendered its initiation permissible. . . . Determination of the means that are reasonably necessary to maintain the status quo necessarily depends on a fact-bound examination of the particular circumstances of the particular governmental intrusion on the personal security of a suspect." (Citations omitted; internal quotation marks omitted.) *State* v. *Casey*, 45 Conn. App. 32, 40–41, 692 A.2d 1312, cert. denied, 241 Conn. 924, 697 A.2d 360 (1997).

In determining if a seizure has exceeded the scope of a permissible motor vehicle stop, the court must determine whether the officer's action was justified at its inception and whether it was reasonably related in scope to the circumstances that justified the interference in the first place. See *State* v. *Carcare*, 75 Conn. App. 756, 767, 818 A.2d 53 (2003); see also *United States* v. *Jones*, 234 F.3d 234, 240–41 (5th Cir. 2000) (holding that although initial stop of defendants' vehicle for speeding was valid, continued detention, after completing computer check on drivers' licenses and rental papers revealed clean records, was unreasonable and violated fourth amendment). With respect to whether the results of the initial stop aroused further suspicion

warranting a prolonged inquiry, "[t]he police officer's decision . . . must be based on more than a hunch or speculation. . . . In justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion." (Internal quotation marks omitted.) *State* v. *Hammond*, 257 Conn. 610, 617, 778 A.2d 108 (2001).

Here, Morgan stopped the defendant's vehicle because he observed the vehicle making illegal lane changes. The defendant does not contest the validity of the initial stop. Rather, the defendant's relevant claim on appeal relates to whether Morgan improperly expanded the scope of the stop by questioning the defendant about whether he was engaged in unrelated illegal activity and then performing a search of the defendant's person[11] and his car, after the initial purpose for effectuating the stop had been achieved.

The initial purpose of the stop had been achieved.[12] Morgan did not embark on his inquiry into whether the defendant was engaged in other illegal activity until *after* Morgan had (1) completed a check of the defendant's license and determined that it was valid and that there were no outstanding warrants for him, (2) examined the car rental agreement and determined that it appeared in order and that the time frame for the rental was valid and (3) returned to the defendant's vehicle, had him exit the vehicle and explained the traffic ticket to the defendant.[13] Accordingly, the record clearly reveals that Morgan's inquiry into other suspected illegal activity came after Morgan's purpose for effectuating the stop had been achieved.

We reject the state's argument that the record is inadequate on the issue of whether Morgan had returned the defendant's license to him prior to questioning him about other illegal activity and that it would, therefore, be sheer speculation to conclude that the initial purpose of the stop had been achieved. First, the testimony of Morgan and the court's memorandum of decision do not support that position. When asked whether he had handed the defendant the ticket at the time he asked him about other illegal activity, Morgan stated: "I don't think I did." In its memorandum of decision, the court did not discredit the defendant's claim that he remained seized at the time the officer asked him for consent. As the court explained, "[e]ven crediting the defendant's claim that he remained 'seized' because the detective had not handed him his motor vehicle ticket, this court does not find this to be dispositive in determining the voluntariness of the defendant's consent."

Second, even if the record is not absolutely conclusive with regard to whether the license and traffic citation were handed to the defendant prior to the additional unrelated questioning by Morgan, any inadequacy in the record should be charged to the state

because it bore the burden at the suppression hearing to establish that fact.[14] See *United States* v. *Santiago*, 310 F.3d 336, 343 n.4 (5th Cir. 2002) ("It is unclear from the record whether [the officer] handed back the vehicle registration as he testified that he received the registration but also stated that he did not seize the registration. However, there is no evidence in the record that [the officer] handed back the driver's licenses. Additionally, at oral argument, counsel for both sides were asked whether the licenses were returned and what evidence was in the record indicating such. Neither side could recall the presence of any evidence indicating that the licenses were returned. As we have already stated . . . however, the burden was upon the government to show the admissibility of evidence procured by the search, i.e. that the search and seizure were [c]onstitutional and that the consent was voluntary.").

Third, to conclude that the record is inadequate on this issue creates the implication that a police officer, during a routine motor vehicle stop made on the basis of a driving infraction, is authorized to make arbitrary requests for consent searches that are wholly unrelated to the initial purpose of the stop and unsupported by additional suspicion justifying the expansion of the stop, so long as the officer chooses not to conclude the encounter. Such a blanket authorization is contrary to our search and seizure jurisprudence, which generally proscribes such arbitrary conduct on the part of the police. See *State* v. *Nash*, 278 Conn. 620, 631, 899 A.2d 1 (2006) ("[t]he police officer is not entitled to seize and search every person whom he sees on the street or of whom he makes inquiries" [internal quotation marks omitted]).

Moreover, to conclude otherwise also creates an implication that, during a routine motor vehicle stop, a defendant may not contest the validity of a consent to search unless the officer's request for consent occurs *after* the officer has returned the defendant's license and the ticket. In *State* v. *Story*, 53 Conn. App. 733, 741, 732 A.2d 785, cert. denied, 251 Conn. 901, 738 A.2d 1093 (1999), this court concluded that a police officer's request for consent to search on the basis of nothing more than a hunch was not improper because the officer did not request the consent to search until *after* the stop had concluded and the defendant was free to leave at the time of the request. Mindful of *Story*, if we now sanction arbitrary requests for consent searches by the police *prior* to the conclusion of a stop, we effectively close the door on a criminal defendant's ability ever to contest the validity of a consent to search during a motor vehicle stop.

On the basis of the record, we conclude that Morgan's inquiry as to whether the defendant was engaged in illegal activity went beyond the scope of the traffic stop and occurred at a time when the stop *reasonably should*

have ended. Having reached that conclusion, we now must determine whether Morgan had reasonable, articulable suspicion to expand the scope of the stop by questioning the defendant about illegal activity unrelated to the purpose of the underlying stop. See *United States* v. *Santiago*, supra, 341–42 ("Once a computer check is completed and the officer either issues a citation or determines that no citation should be issued, the detention should end and the driver should be free to leave. . . . In order to continue a detention after such a point, the officer must have a reasonable suspicion supported by articulable facts that a crime has been or is being committed." [Citation omitted.]).

Morgan testified that he decided to seek consent to search the defendant's car because the defendant had "appeared to be unusually nervous compared to someone who's stopped for such a routine traffic violation . . . . At that point, based upon the suspicion that I had already gathered during my initial contact, I decided that [I was] probably going to ask for consent to search the vehicle." Morgan also called for backup assistance on the basis of those observations. Further, Morgan testified that he decided to expand his inquiry to investigate other potential illegal activity on the basis of the defendant's nervousness, the car registration and license plates, and because the defendant told him that he was returning from New York.

At the suppression hearing, it was established that many of Morgan's stated concerns were quickly dispelled. For example, on cross-examination, Morgan conceded that it was not unusual that a rental vehicle would be registered in a state other than the home residence of the driver. Morgan further testified that the defendant's license was determined to be valid and that he had no information that the defendant was, or had been, involved in any criminal activity other than the traffic violation.

Moreover, the state did not establish a predicate at the suppression hearing for the court to draw the conclusion that the defendant's unusual nervousness, combined with those other factors, justified an expansion of the scope of the stop. Morgan offered no testimony that he had specific training in narcotics interdiction, that the area on the highway was a high crime area or an area common to drug traffickers, or that the defendant's actions were consistent with criminal activity such as those exhibited by a drug courier. Compare e.g., *State* v. *Van Der Werff*, 8 Conn. App. 330, 332, 513 A.2d 154 ("[the officer testified that he] believed that the defendant's nervous mannerisms matched the so called 'drug courier profile,' a group of characteristics developed by law enforcement agencies and used to identify persons who illegally transport narcotics along the nation's airways"), cert. denied, 201 Conn. 808, 515 A.2d 380 (1986), citing *United States* v. *Mendenhall*, 446 U.S. 544, 547

n.1, 100 S. Ct. 1870, 64 L. Ed. 2d 497 (1980); *State* v. *Nash*, supra, 278 Conn. 634 ("In the matter presently before us, the trial court found that [the officers] had extensive experience and training in narcotics investigation and enforcement. The court credited the officers' testimony that: the stop had taken place in a high crime area at approximately 5 p.m. in March; they had observed the defendant engaged in hand-to-hand exchanges on two separate occasions; this behavior was consistent with narcotics transactions in which the defendant was a dealer; and narcotics dealers often are armed and work with others who are in the immediate vicinity. The court also found that the defendant immediately upon being stopped had engaged in verbal resistance toward the officers."). Thus, other than the bald assertion that the defendant was unusually nervous, the state, which bore the burden of proof at the suppression hearing, offered nothing to substantiate that reasonable suspicion existed to allow Morgan to expand the scope of the stop.

Reviewing the evidence presented by the state, we conclude that it did not establish that Morgan had reasonable suspicion to expand the scope of the stop into an inquiry of whether the defendant was engaged in illegal activity unrelated to the underlying stop or that Morgan was proceeding on anything more than a mere hunch. Therefore, once Morgan began to question the defendant about unrelated illegal activity, the formerly valid motor vehicle stop morphed into an illegally prolonged seizure of the defendant. See *United States* v. *Santiago*, supra, 310 F.3d 338, 342 (unreasonable for officer to detain suspect after records check was completed on basis of "extreme nervousness").

Having concluded that Morgan unlawfully detained the defendant, the next relevant question is what effect, if any, the defendant's continued and unlawful detention had on his subsequent consent to search his vehicle. "Under the exclusionary rule, evidence must be suppressed if it is found to be the fruit of prior police illegality. . . . All evidence is not, however, a fruit of the poisonous tree simply because it would not have been discovered but for the illegal action of law enforcement officials. . . . Rather, the more apt question in such a case is whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint. . . . The initial determination is, therefore, whether the challenged evidence is in some sense the product of illegal government activity." (Citations omitted; internal quotation marks omitted.) *State* v. *Burroughs*, 99 Conn. App. 413, 426–27, 914 A.2d 592, cert. granted on other grounds, 282 Conn. 909, 922 A.2d 1099 (2007).

In determining whether the defendant's consent was

voluntary, we must address the issue of whether his consent was tainted by the illegal detention. "The voluntary consent of [a witness] is only a threshold requirement in determining whether [seized evidence] is a tainted fruit of the alleged prior illegality. In *Brown* v. *Illinois*, 422 U.S. 590, 603, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975), the United States Supreme Court rejected the idea that a confession resulting from an illegal arrest is untainted simply because it is 'voluntarily' given. It follows from *Brown* that the mere fact a consent to a search or seizure is voluntary does not necessarily remove the taint." *State* v. *Cates*, 202 Conn. 615, 621, 522 A.2d 788 (1987); see also *United States* v. *Melendez-Garcia*, 28 F.3d 1046, 1054 (10th Cir. 1994) (noting in addition to proving voluntariness, "[w]e require the government to demonstrate that any taint of an illegal search or seizure has been purged or attenuated not only because we are concerned that the illegal seizure may affect the voluntariness of the defendant's consent, but also to effectuate the purposes of the exclusionary rule").

In determining whether the state has purged the taint of an unlawful detention followed by a consent to search, the factors considered relevant by the United States Supreme Court are (1) the temporal proximity between the police illegality and the consent to search, (2) the presence of intervening circumstances and (3) the purpose and flagrancy of the official misconduct. See *Brown* v. *Illinois*, supra, 422 U.S. 603–604; *State* v. *Cates*, supra, 202 Conn. 621.

Turning to the first factor, "[c]ourts have frequently held that a purportedly voluntary consent given after an illegal arrest or search is nonetheless a tainted fruit when that consent was given very soon after the illegal police action." *State* v. *Cates*, supra, 202 Conn. 621. Here, there is absolute temporal proximity between the unlawful detention and the defendant's consent because he gave his consent *while* he was unlawfully detained.[15] With respect to the second factor, Morgan testified that he did not inform the defendant of his right to refuse consent, which may have purged the taint of the unlawful detention and supported the conclusion that the consent was an act of free will. Compare *United States* v. *McGill*, 125 F.3d 642, 644 (8th Cir. 1997) (concluding that defendant's understanding of his right to refuse consent was intervening circumstance), cert. denied, 522 U.S. 1141, 118 S. Ct. 1108, 140 L. Ed. 2d 161 (1998). Regarding the third factor, Morgan testified that he conducted a patdown search of the defendant although he did not believe that the defendant was armed. While the record is inadequate to determine whether the defendant's person was illegally searched, it is disconcerting that the officer testified that he conducted such a patdown without any justifiable basis. See *State* v. *Nash*, supra, 278 Conn. 632 (police officer may only undertake patdown if, during course of lawful

investigatory detention, officer reasonably believes that detained individual might be armed and dangerous).

Accordingly, given the circumstances of this case, we conclude that the state failed to purge the taint of the defendant's unlawful detention and that the evidence procured through his consent should be suppressed.

The judgment is reversed and the case is remanded with direction to grant the defendant's motion to suppress and for further proceedings in accordance with law.

In this opinion GRUENDEL, J., concurred.

[1] We note that the court did not set forth detailed facts in its written memorandum of decision denying the defendant's motion to suppress. We therefore turn to the evidence adduced at the hearing held with respect to this motion. "We . . . may resort to the evidence produced in support of the court's ruling on a suppression motion when, as here, the court does not make detailed factual findings to support its decision." *State* v. *MacNeil*, 28 Conn. App. 508, 515, 613 A.2d 296, cert. denied, 224 Conn. 901, 615 A.2d 1044 (1992); see also *State* v. *Owens*, 38 Conn. App. 801, 805, 663 A.2d 1094, cert. denied, 235 Conn. 912, 665 A.2d 609 (1995); *State* v. *Zayas*, 3 Conn. App. 289, 298 n.11, 489 A.2d 380, cert. denied, 195 Conn. 803, 491 A.2d 1104 (1985); *State* v. *Martin*, 2 Conn. App. 605, 614, 482 A.2d 70 (1984), cert. denied, 195 Conn. 802, 488 A.2d 457, cert. denied, 472 U.S. 1009, 105 S. Ct. 2706, 86 L. Ed. 2d 721 (1985).

[2] General Statutes § 14-242 (a) provides: "No person shall turn a vehicle at an intersection unless the vehicle is in a proper position on the highway as required by section 14-241, or turn a vehicle to enter a private road or driveway or otherwise turn a vehicle from a direct course or move right or left upon a highway unless such movement can be made with reasonable safety. No person shall so turn any vehicle without giving an appropriate signal in the manner provided in section 14-244."

[3] "A police officer has the right to stop a motor vehicle operating on a Connecticut highway even if the reason for the stop is only an infraction under our traffic laws." *State* v. *Dukes*, 209 Conn. 98, 122, 547 A.2d 10 (1988).

[4] "[S]topping an automobile and detaining its occupants constitute a seizure within the meaning of [the fourth and fourteenth] Amendments, even though the purpose of the stop is limited and the resulting detention quite brief. *Delaware* v. *Prouse*, 440 U.S. 648, 653, 99 S. Ct. 1391, 59 L. Ed. 2d 660 (1979)." (Internal quotation marks omitted.) *State* v. *Sailor*, 33 Conn. App. 409, 416, 635 A.2d 1237, cert. denied, 229 Conn. 911, 642 A.2d 1208 (1994); *State* v. *Anderson*, 24 Conn. App. 438, 441, 589 A.2d 372, cert. denied, 219 Conn. 903, 593 A.2d 130 (1991).

[5] Morgan testified that he asked the defendant to get out of the vehicle so that (1) he could show the defendant the traffic ticket and better explain what exactly had happened and (2) he would have the defendant's full attention. Morgan further indicated that this was his usual procedure during traffic stops made on the Berlin Turnpike.

[6] A total of 3016 packets of heroin and 5.47 ounces of cocaine was seized from the defendant's vehicle.

[7] General Statutes § 54-94a provides in relevant part: "When a defendant, prior to the commencement of trial, enters a plea of nolo contendere conditional on the right to take an appeal from the court's denial of the defendant's motion to suppress . . . the defendant after the imposition of sentence may file an appeal within the time prescribed by law provided a trial court has determined that a ruling on such motion to suppress . . . would be dispositive of the case. The issue to be considered in such an appeal shall be limited to whether it was proper for the court to have denied the motion to suppress . . . ." See also Practice Book § 61-6 (a) (2) (i).

[8] The court made the required finding that the denial of the defendant's motion to suppress was the dispositive issue of the case.

[9] "[T]he exclusionary rule bars the government from introducing at trial evidence obtained in violation of the fourth amendment to the United States constitution. See *Wong Sun* v. *United States*, 371 U.S. 471, 485, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). [T]he rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures. *United States* v.

Calandra, 414 U.S. 338, 347, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974). To carry out this purpose adequately, the rule does not distinguish between physical and verbal evidence; see *Wong Sun* v. *United States*, supra, 485–86; nor does it apply only to evidence obtained as a direct result of the unlawful activity. See *Nardone* v. *United States*, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 307 (1939). Rather, the rule extends to evidence that is merely derivative of the unlawful conduct, or what is known as the fruit of the poisonous tree." (Internal quotation marks omitted.) *State* v. *Luurtsema*, 262 Conn. 179, 189, 811 A.2d 223 (2002); see also *State* v. *Hammond*, 257 Conn. 610, 626–27, 778 A.2d 108 (2001).

[10] For the foregoing reasons, we disagree with the dissent's conclusion that the defendant did not brief adequately the issue of whether the purpose of the traffic stop had been effectuated.

We also note that the defendant briefed his state constitutional claim in some detail, asking this court to adopt a four-pronged rule that he claims naturally follows from the holding in *State* v. *Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992). Although we decline his invitation to do so, we mention this argument to demonstrate that the defendant did provide analysis and case law in his appellate brief in support of this claim.

Although the claim may not have been briefed as clearly and explicitly as the dissent preferred, we conclude that it has been incorporated in the defendant's claims from the time he argued his motion to suppress through the presentation of his issues on appeal.

[11] The state is correct that the issue of whether the defendant's person was illegally searched was not raised in the trial court and that the record is inadequate to establish whether the defendant consented to the search of his person. Moreover, even if we assume arguendo that an illegal search of the defendant's person occurred, this, in an of itself, does not necessarily invalidate the search of the defendant's car. See 3 W. LaFave, Search and Seizure (3d Ed. 1996) § 8.2 (d), p. 663–64 ("if the police have made a search which did *not* result in the finding of incriminating evidence against the person from whom consent is sought to continue the search on the same occasion, the illegality of the first search will not necessarily invalidate the consent given by one who knows that the police do not claim any authority to continue the search without consent"). Nevertheless, as discussed herein, the fact that the defendant was patted down prior to the search of his car is relevant to whether his consent was tainted.

[12] This is not a factual finding but, rather, is a legal conclusion based on the facts contained in the record. We note that in addressing the issue of when a traffic stop had been completed, the courts in the federal cases and cases from other jurisdictions cited by the dissent reached their conclusions as to whether the purpose had been effectuated only after reviewing the facts and circumstances of each case. That is what we have done in this case.

We agree with the dissent that no appellate case law in Connecticut has considered the question of when the purpose of a traffic stop has been achieved. Nevertheless, we can make that determination, as the courts in other jurisdictions have done, by reviewing the facts and circumstances of this case.

The dissent concludes that the defendant failed to provide an adequate record to review this claim. We disagree. As we have noted in this opinion: (1) the defendant was stopped for a traffic infraction, (2) the officer checked the defendant's license and registration and determined that there were no outstanding warrants for him, (3) the officer reviewed the car rental agreement and found nothing suspicious, and (4) the officer had written the traffic ticket and then asked the defendant to exit the vehicle so the officer could explain the ticket to him. Only after all that had occurred did the officer ask the defendant if he had anything illegal in his vehicle. The officer indicated that he made this inquiry because the defendant had appeared nervous. The record is sufficient to make the conclusion that, under these circumstances, the purpose for which the stop had been made had been effectuated.

We decline to adopt a bright line test for such a determination. A trial court, in making such a determination, would have to consider the totality of the circumstances in each case. Whether the driver's license or ticket had been turned over to the individual would be only one factor. It should not be the determinative factor because, otherwise, an officer could wrongfully detain that person by purposefully withholding those items in order to make impermissible inquiries. For discussion of this issue, see *State* v. *Thompson*, Kan. , 166 P.3d 1015 (2007).

We finally note, in connection with the dissent's conclusion that the record was inadequate for review, that it is the state's burden to prove that the search and seizure of an individual were constitutional. The defendant, however, has raised issues on appeal and has the responsibility to provide an adequate record. A review of the file reveals that he filed a motion for articulation with the trial court, comprised of several questions, requesting

additional articulation of the factual and legal basis for the denial of his motion to suppress. The court denied the motion for articulation. The defendant filed a motion for review of that decision with this court, which motion was granted, but the relief requested was denied. The defendant, therefore, did all that he could to perfect the record.

[13] Specifically, Morgan, during the state's direct examination, testified as follows:

"[The Prosecutor]: [*O*]*nce you had explained the ticket to* [*the defendant*], did you ask him a question?

"[The Witness]: Yes, I did. . . .

"[The Prosecutor]: And what did you ask him?

"[The Witness]: I asked him if he had anything illegal in the vehicle." (Emphasis added.)

Later in the hearing, Morgan made it clear that the question regarding other illegal activity came *after* he had explained the ticket to the defendant. On cross-examination, Morgan testified as follows:

"[Defense Counsel]: All right. So, you were standing there with him, showing him the ticket, going over it. Was that before or after you asked if he had anything illegal in his car?

"[The Witness]: *That's before.*" (Emphasis added.)

[14] See *State* v. *Clark*, 255 Conn. 268, 291, 764 A.2d 1251 (2001) ("[t]he state bears the burden of proving that an exception to the warrant requirement applies when a warrantless search has been conducted").

[15] See e.g., *State* v. *Hight*, 146 N.H. 746, 750, 781 A.2d 11 (N.H. 2001) (finding absolute temporal proximity between unlawful detention and defendant's consent, which was given while defendant was unlawfully detained, in making determination that consent search was tainted by unlawful extension of traffic stop to question defendant about drugs).