SCHALLER, J., dissenting. The majority concludes that the defendant, Christopher Jenkins, was detained unlawfully and that the improper detention tainted his subsequent consent to search his vehicle. I respectfully disagree with this conclusion. In my view, the defendant has failed to provide an adequate record to review this claim. Moreover, the defendant has not briefed adequately the issue of whether the purpose of the traffic stop had been effectuated. I am unable to reach the issue of whether the defendant's consent was tainted by an illegal seizure. Because I am not persuaded by the defendant's remaining claims, I would affirm the judgment of the trial court.

I

At the outset, I note my agreement with the factual and procedural history as set forth in the majority opinion. In order to explain my disagreement, however, it is useful to expand briefly on some of these details. On July 13, 2004, the defendant moved to suppress, as the fruits of an illegal search, all evidence seized from the traffic stop that occurred on May 7, 2004. Specifically, the motion stated: "Once the traffic citation was issued, the officer illegally detained the defendant for an extended period without probable cause or a reasonable and articulable suspicion that the defendant was engaged in illegal activity which resulted in an illegal seizure."

At the suppression hearing, Michael Morgan, a Newington police detective, testified as to the events of May 7, 2004. After filling out the infraction for the motor vehicle violation that he had witnessed, he asked the defendant to step outside of his vehicle. During their interaction, Morgan asked the defendant if there was anything illegal in the vehicle. The defendant stated that there was nothing illegal in the vehicle, just some beer on the floor, and then granted Morgan permission to search the vehicle.[1]

During cross-examination, the following colloquy occurred between defense counsel and Morgan:

"Q. Incidentally, after you explained the ticket to [the defendant], did you go over it with him and show him and what he had to do, how he had to deal with it or no?

"A. I told him what it was for and the fact that he had to mail it in by whatever the answer date was. I don't recall it.

"Q. 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?

"A. That's before."

On January 10, 2005, the defendant filed a memorandum of law in support of his motion. Specifically, he argued that "(1) the detention of the defendant exceeded the scope of the justification for the initial stop, (2) the defendant did not freely and voluntarily consent to the search of his vehicle, and, alternatively, (3) even if the defendant's alleged 'consent' was free and voluntary and could be interpreted as permission, it was limited in scope and cannot justify a wholesale search as occurred here."

On January 14, 2005, the court heard argument with respect to the defendant's motion. During this proceeding, the court stated: "My understanding of the facts are that once he stepped out of the car, *but before the ticket was issued to him*, he was asked to give consent. Is that correct? Is that your reading of the facts of the case?" (Emphasis added.) The prosecutor responded that he believed that the court was correct.[2]

On the basis of this minimal record, the majority determines that "[t]he initial purpose of the stop had been achieved." I cannot conclude, on the basis of this record, that the trial court made such a finding. It is not our province to do so. "No citation is needed for the fundamental principle that as an appellate tribunal, this court cannot find facts." (Internal quotation marks omitted.) *Gibson* v. *Commissioner of Correction*, 98 Conn. App. 311, 318 n.5, 908 A.2d 1110 (2006), cert. denied, 281 Conn. 908, 916 A.2d 49 (2007).[3]

Moreover, I do not believe that the record is adequate for us to review the issue of whether the purpose of the traffic stop had been completed. The vague and ambiguous record before us invites speculation. For reasons that I will point out, making this determination without either a proper record or clear standards will produce uncertainty in the trial courts. "It is well settled that it is the duty of the appellant to provide this court with an adequate record to review his claims. See Practice Book §§ 60-5 and 61-10. Accordingly, [a] lack of pertinent factual findings and legal conclusions will render a record inadequate. . . . *State* v. *Gasser*, 74 Conn. App. 527, 535, 812 A.2d 188, cert. denied, 262 Conn. 954, 818 A.2d 781, cert. denied, 540 U.S. 823, 124 S. Ct. 153, 157 L. Ed. 2d 43 (2003)." (Internal quotation marks omitted.) *State* v. *Sargent*, 87 Conn. App. 24, 30, 864 A.2d 20, cert. denied, 273 Conn. 912, 870 A.2d 1082 (2005); see also *State* v. *Lugo*, 266 Conn. App. 674, 685, 835 A.2d 451 (2003).

Our decision in *State* v. *Thompson*, 46 Conn. App. 791, 700 A.2d 1198 (1997), is particularly instructive. In that case, two Hartford police officers observed the defendant and another individual selling drugs. Id., 792–93. The defendant moved to suppress the seized crack cocaine and currency on the ground that he had been arrested without probable cause. Id., 794. The trial court

denied the motion. Id., 795. On appeal, the defendant again claimed that he had been arrested without probable cause and that crack cocaine and currency were seized in violation of his constitutional rights. Id. We declined to review this claim on appeal. Id., 796. "[W]e cannot address the issues the defendant raises on appeal because we do not have any findings or conclusions of law by the trial court on a number of important factors. Specifically, we do not have before us a finding by the trial court of when the valid arrest of the defendant occurred, at the point when he was initially detained or after the crack cocaine was found. We also do not have a finding of whether the defendant had a reasonable expectation of privacy in the planter in which the crack cocaine was found. Finally, we do not have a finding of whether the seizure of the currency occurred before or after the valid arrest. Because the record is inadequate, we decline to review this claim." Id., 795–96.

The record in the present case is similarly devoid of certain important factors. It is not clear whether Morgan had finished explaining the ticket to the defendant. It is uncertain whether Morgan had returned the defendant's license or registration. It is uncertain whether the defendant had any questions regarding the traffic citation. As I explain more fully in part II, these are critical matters that courts use to determine whether the purpose of a traffic stop has been completed. Simply put, I believe that making a determination without this information is speculation, and I would decline to review this claim.

II

In addition to the problems of the lack of a finding by the trial court and an inadequate record, I also conclude that the defendant failed to brief adequately the issue of whether Morgan unconstitutionally extended the traffic stop. In my view, the defendant merely assumes, without citation or analysis, that the purpose of the traffic stop had been effectuated. Because this issue was not briefed properly, I would conclude that it was abandoned by the defendant and cannot serve as the basis for reversing the judgment of the trial court.

In his brief, the defendant argues that "[t]he traffic stop . . . should have ended after . . . 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. . . . Extending the traffic stop and withholding the traffic ticket from the defendant signaled in no uncertain terms that the defendant was being held for more than a traffic stop—despite the inability of the police to justify any intrusion outside the scope of the traffic stop."[4] Other than a passing reference to Justice Stevens' dissent in *Ohio* v. *Robinette*, 519 U.S. 33, 117 S. Ct. 417, 136 L. Ed. 2d 347 (1996), the defendant's brief does not address

the issue of whether the purpose of the traffic stop had been effectuated.

"This court is not required to review issues that have been improperly presented to this court through an inadequate brief. . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failure to brief the issue properly. . . . *State* v. *Colon*, 272 Conn. 106, 153 n.19, 864 A.2d 666 (2004)." (Internal quotation marks omitted.) *State* v. *Bermudez*, 95 Conn. App. 577, 580 n.2, 897 A.2d 661 (2006); see also *State* v. *Carpenter*, 275 Conn. 785, 826, 882 A.2d 604 (2005), cert. denied, 547 U.S. 1025, 126 S. Ct. 1578, 164 L. Ed. 2d 309 (2006); *State* v. *Pink*, 274 Conn. 241, 256, 875 A.2d 447 (2005). "[F]or this court judiciously and efficiently to consider claims of error raised on appeal . . . the parties must clearly and fully set forth their arguments in their briefs. We do not reverse the judgment of a trial court on the basis of challenges to its rulings that have not been adequately briefed. . . . The parties may not merely cite a legal principle without analyzing the relationship between the facts of the case and the law cited. . . . [A]ssignments of error which are merely mentioned but not briefed beyond a statement of the claim will be deemed abandoned and will not be reviewed by this court." (Internal quotation marks omitted.) *State* v. *John G.*, 100 Conn. App. 354, 356 n.2, 918 A.2d 986, cert. denied, 283 Conn. 902, 926 A.2d 670 (2007); see also *State* v. *Johnson*, 82 Conn. App. 777, 790, 848 A.2d 526 (2004); *State* v. *Thompson*, 71 Conn. App. 8, 15 n.5, 799 A.2d 1126 (2002).

The crux of the majority's reasoning appears to be that, although Morgan's initial stop for a traffic violation was constitutional, once the purpose of that stop was completed, any further detention constituted an illegal seizure and, therefore, was impermissible. It then concludes that this improper seizure tainted the defendant's subsequent consent. In my view, it cannot be determined whether the purpose of the traffic stop was completed, and, therefore, there is no "second" impermissible seizure. Accordingly, there is no tainted consent that warrants a reversal of the trial court's conclusion.

I am mindful 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." *Florida* v. *Royer*, 460 U.S. 491, 500, 103 S. Ct. 1319, 75 L. Ed. 2d 229 (1983). Nevertheless, neither this court nor our Supreme Court has considered the question of when the purpose of a traffic stop has been achieved. Simply put, no appellate decision in this state has established, as a matter of law, when a traffic stop is completed.[5] Indeed, the defendant acknowledged as much in his brief. Despite this obser-

vation, the defendant simply concludes that the traffic stop ended after Morgan explained the ticket to him. Absent a thorough and complete presentation of this issue by the parties in their briefs, I am unwilling to accept the conclusion urged by the defendant. I believe that before we enter an uncharted area of search and seizure jurisprudence and establish a rule that, subject to review by our Supreme Court, will bind all of our trial courts, we should have the benefit of both a proper record and thorough analysis by the parties.

Moreover, it does not follow, a fortiori, that merely explaining the ticket to a driver signals the end of the traffic stop. My research reveals that various approaches to this issue exist in both our sibling jurisdictions and the federal courts. For example, in *Ferris* v. *State*, 355 Md. 356, 362, 735 A.2d 491 (1999), the defendant was stopped by a Maryland state police trooper for speeding. The defendant complied with the trooper's request to see his driver's license and registration. The trooper completed the citation form and provided it to the defendant, who signed it. Id., 363. The trooper then returned the signed copy of the citation, the driver's license and registration to the defendant. Id. At that point, the trooper began to ask the defendant questions, which led to his admission that he was in possession of marijuana. Id., 363–64.

After his motion to suppress had been denied, the defendant appealed. Id., 366. The Maryland Court of Appeals stated that it had not "had occasion to consider the question of the extent to which a law enforcement officer who has properly stopped a motor vehicle based on probable cause may detain and question the driver after the officer has concluded the purpose for the initial stop." Id., 370. It noted the decisions of Maryland's intermediate appellate court that held that once the purpose of the initial stop had been concluded, by issuing a warning or citation to the driver, further detention was not permitted. The Court of Appeals concluded, "after considering all of the circumstances of the initial encounter between [the trooper] and [the defendant], that *the traffic stop essentially came to an end upon the trooper's delivery of the citation, and return of the driver's license and registration*. Once [the defendant] signed and returned the citation [to the officer] in compliance with Maryland traffic laws . . . he had completed all his duties pertaining to the traffic stop itself. Because the traffic stop had ended there, [the defendant] was lawfully free to drive away . . . ." (Citation omitted; emphasis added.) Id., 373. The end point of the traffic stop, therefore, was the delivery of the citation and the return of the driver's documents. The Court of Appeals ultimately concluded that, under the totality of the circumstances, a reasonable person in the position of the defendant would not have felt free to leave and therefore was seized for purposes of the fourth amendment. Id., 378–79. In other words, there were two

seizures, one for the traffic violation, which was proper, and a second, after the purpose of the traffic stop had been completed, which was improper. Id., 384; cf. *Commonwealth* v. *Strickler*, 563 Pa. 47, 757 A.2d 884 (2000) (although no express endpoint to first lawful detention, such endpoint existed and officer confined subsequent interaction with defendant in manner consistent with consensual encounter).

As a matter of state constitutional law, the Minnesota Supreme Court held that evidence obtained as a result of a search based on consent obtained during an impermissibly expanded traffic stop is subject to suppression. In *State* v. *Fort*, 660 N.W.2d 415, 416 (Minn. 2003), the defendant was a passenger in a motor vehicle that was stopped for speeding and having a cracked windshield. After the police officers determined that neither the defendant nor the driver had a valid driver's license, they elected to have the vehicle towed. Id., 417. As the defendant exited the vehicle, he was questioned about drugs and weapons, and he eventually stated that he would not mind if the officers searched the vehicle. Id. In concluding that the motion to suppress filed by the defendant should have been granted, the court stated: "While there is nothing improper in the record to suggest that the initial stop was improper, *the scope and duration of a traffic stop must be limited to the justification for the stop*. . . . The purpose of this traffic stop was simply to process violations for speeding and a cracked windshield and there was no reasonable articulable suspicion of any other crime. Investigation of the presence of narcotics and weapons had no connection to the purpose for the stop. We therefore conclude that the investigative questioning, consent inquiry, and subsequent search went beyond the scope of the traffic stop and was unsupported by any reasonable articulable suspicion." (Citation omitted; emphasis added.) Id., 418–19; see also *State* v. *Hight*, 146 N.H. 746, 781 A.2d 11 (2001).[6]

In the *Ferris* case, the Maryland Court of Appeals concluded that the initial seizure, based on the traffic violation, was completed when the defendant received the citation and the police officer returned his license and registration. The court concluded that following the return of the license and registration, an unconstitutional seizure occurred when the officer began questioning the defendant because, at that point, the officer lacked either probable cause or a reasonable articulable suspicion. It was this improper seizure that tainted the defendant's consent. In contrast, in *Fort*, the Minnesota Supreme Court concluded that it was the questioning of the defendant about a matter unrelated to the purpose of the traffic stop that was improper.

Additionally, I note that the United States Court of Appeals for the Tenth Circuit has stated that "[t]his Circuit follows the brightline rule that an encounter

initiated by a traffic stop may not be deemed consensual unless the driver's documents have been returned to him." *United States* v. *Gonzalez-Lerma*, 14 F.3d 1479, 1483 (10th Cir.), cert. denied, 511 U.S. 1095, 114 S. Ct. 1862, 128 L. Ed. 2d 484 (1994), overruled in part on other grounds by *United States* v. *Flowers*, 441 F.3d 900, 903 n.1 (10th Cir. 2006); *United States* v. *Hernandez*, 93 F.3d 1493, 1498 (10th Cir. 1996); see also *Daniel* v. *State*, 277 Ga. 840, 843, 597 S.E.2d 116 (2004). In *United States* v. *Beck*, 140 F.3d 1129, 1135 (8th Cir. 1998), the court indicated that the defendant was not seized for the purposes of the constitution after his paperwork had been returned and the officer told him that he was "free to go." See also *United States* v. *Flores*, 474 F.3d 1100, 1103–1104 (8th Cir. 2007); *United States* v. *Richardson*, 385 F.3d 625, 630 (6th Cir. 2004) (traffic stop concluded when officer handed driver citation and shook his hand); *United States* v. *Meikle*, 407 F.3d 670, 673 (4th Cir. 2005) (after papers had been returned to defendant and he was told he was free to go, further interaction between officer and defendant was consensual); *United States* v. *Rusher*, 966 F.2d 868, 877 (4th Cir.) (same), cert. denied, 506 U.S. 926, 113 S. Ct. 351, 121 L. Ed. 2d 266 (1992). In *United States* v. *Dortch*, 199 F.3d 193, 199 (5th Cir. 1999), and *United States* v. *Jones*, 234 F.3d 234, 241 (5th Cir. 2000), the United States Court of Appeals for the Fifth Circuit focused its analysis on whether the computer check of the defendant and documents had been completed. The United States Court of Appeals for the Eleventh Circuit, in *United States* v. *Purcell*, 236 F.3d 1274, 1282 (11th Cir.), cert. denied, 534 U.S. 830, 122 S. Ct. 73, 151 L. Ed. 2d 38 (2001), stated that the issue of whether the officer had returned the license to a motorist was a factor in the totality of circumstances with respect to the issue of consent, but was not a "litmus test . . . ."

These cases demonstrate that no clear and well established fourth amendment jurisprudence as to when the purpose of a traffic stop has been effectuated exists. Various jurisdictions have adopted different tests and factors to consider when making this determination. It is unclear from the majority's decision how it determined at what point the purpose of the stop was effectuated.[7] My colleagues note that Morgan had completed the check on the defendant's license, examined the rental agreement and explained the ticket. The majority then concludes that "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." As previously noted, the record is not clear that Morgan had finished explaining the ticket to the defendant, although he was in the *process* of explaining the ticket at the time of his request for consent to search the vehicle. If we assume, arguendo, that Morgan had explained the ticket fully, the defendant failed to analyze why we should adopt explanation of

the ticket as completing the purpose of a traffic stop rather than other events, such as the return of the driver's license, registration and insurance information or whether the officer had indicated that the driver was free to leave. As noted, several of the Circuit Courts of Appeals have used the return of the driver's paperwork as a crucial factor in determining whether the traffic stop has been completed. See, e.g., *United States* v. *Gonzalez-Lerma*, supra, 14 F.3d 1479. It is not clear what standards and type of rule are adopted by the majority; that is, whether a bright line test rather than a consideration of the totality of the circumstances test is endorsed.

By simply concluding, without analysis, that "[t]he initial purpose of the stop had been achieved" and that Morgan's inquiry "came after [his] purpose for effectuating the stop had been achieved," I believe that the conclusion lacks certainty and will not provide the trial courts with proper guidance for future cases. See, e.g., *State* v. *King*, 249 Conn. 645, 690, 735 A.2d 267 (1999) (*Berdon*, *J.*, dissenting); *State* v. *Morales*, 232 Conn. 707, 739, 657 A.2d 585 (1995) (*Borden*, *J.*, concurring); *Mulligan* v. *Rioux*, 229 Conn. 716, 757, 643 A.2d 1226 (1994) (*Berdon*, *J.*, concurring and dissenting) (important to give clear guidance to trial courts), on appeal after remand, 38 Conn. App. 546, 662 A.2d 153 (1996); *State* v. *Nguyen*, 52 Conn. App. 85, 97, 726 A.2d 119 (1999) (*Lavery*, *J.*, dissenting), aff'd, 253 Conn. 639, 756 A.2d 833 (2000). I am unable to ascertain from the majority opinion what factors should be considered or what test a trial court should employ when faced with a motion to suppress claiming that a police officer exceeded the scope of a valid traffic stop. I consider these questions, as well as the rationale for the resolution of the issue, to be of critical importance.

Additionally, because the issue was not analyzed or discussed adequately in the defendant's brief, the state did not have a proper opportunity to present its counterarguments. The inadequacy is such that, essentially, the issue of the completion of a traffic stop was not "raised" in the brief.

Our Supreme Court has recently stated: "We long have held that, in the absence of a question relating to subject matter jurisdiction, the Appellate Court may not reach out and decide [an appeal] before it on a basis that the parties never have raised or briefed. . . . To do otherwise would deprive the parties of an opportunity to present arguments regarding those issues. . . . If the Appellate Court decides to address an issue not previously raised or briefed, it may do so only after requesting supplemental briefs from the parties and allowing argument regarding that issue." (Citations omitted; internal quotation marks omitted.) *State* v. *Dalzell*, 282 Conn. 709, 715, 924 A.2d 809 (2007); see also *Sheff* v. *O'Neil*, 238 Conn. 1, 87–88, 678 A.2d 1267 (1996)

(*Borden*, *J.*, dissenting) (fairness to parties and fact that appellate court more likely to reach proper result if it follows adequate briefing). Accordingly, I believe it improper for us to reach that issue. Because the issue of when the purpose of a traffic stop has been effectuated in Connecticut was not analyzed properly in the briefs and was not supported by the record, I believe it is inappropriate for us to decide this important issue, in effect, sua sponte. See *State* v. *Dalzell*, supra, 717.

III

I now turn to the other claims raised by the defendant with respect to the trial court's denial of his motion to suppress. Specifically, the defendant argues that (1) even if his consent 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. I am not persuaded by the defendant's claims.

A

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. The state contends that this claim was not raised before the trial court. 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).[8]

After carefully reviewing the entire record, I conclude that the issue of whether Morgan improperly conducted a patdown search of the defendant's person was not raised before the trial court. Our Supreme Court has stated: "[B]ecause our review is limited to matters in the record, we will not address issues not decided by the trial court. Practice Book § 4185, [now § 60-5] . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Nunes*, 260 Conn. 649, 658, 800 A.2d 1160 (2002). I conclude, therefore, that this issue has not been preserved for appellate review.

In the alternative, the defendant requests review pursuant to *State* v. *Golding*, supra, 213 Conn. 239–40. I also would conclude that the record is inadequate to review the defendant's claim with respect to the issue of Morgan's patdown search of the defendant's person. Consequently, the defendant's claim that the illegal search of his person tainted the subsequent consent to search the vehicle fails to satisfy the first prong of the *Golding* analysis. I would therefore decline to review this claim.

B

The defendant next argues that the state failed to establish that he actually consented to the search of the vehicle. Specifically, he maintains that "the trial court's determination that the defendant actually consented to . . . Morgan's search of his automobile is unsupported by the facts and is clearly erroneous." He further maintains that there was not an "actual communicative exchange" between himself and Morgan. I am not persuaded.[9]

"A warrantless search is not unreasonable under the fourth amendment to the United States constitution when a person with authority to do so has freely consented. . . . The question of whether a defendant has given voluntary consent to . . . search . . . is a question of fact to be determined by the trial court by considering the totality of the circumstances surrounding the . . . search . . . " (Citations omitted; internal quotation marks omitted.) *State* v. *Carcare*, 75 Conn. App. 756, 770–72, 818 A.2d 53 (2003).

The trial court expressly found that "there was no untoward conduct on either the part of . . . Morgan or . . . Sutton. The court finds that there was no threatening, coercive or overpowering behavior exhibited at any time during this incident. . . . The court finds that the defendant voluntarily and knowingly gave permission to have his vehicle searched."[10]

When asked if there was anything illegal in the vehicle, the defendant indicated that there was some beer on the floor and invited Morgan to search the vehicle to check the veracity of his response. This invitation was made in response to Morgan's inquiry and not a demand for access to search the interior of the vehicle. Although Morgan did not inform the defendant that he was free to refuse to respond to this inquiry, that warning is not mandatory or a prerequisite to a voluntary consent. See *State* v. *Van Der Werff*, 8 Conn. App. 330, 341, 513 A.2d 154, cert. denied, 201 Conn. 808, 515 A.2d 380 (1986).[11] In short, the record reveals nothing coercive about the manner in which Morgan interacted with the defendant.

Additionally, the court found that Morgan inquired whether there was any illegal substance inside the vehicle and that the defendant responded to that inquiry by granting Morgan permission to search the interior for contraband. In other words, I reject the defendant's assertion that there was no communicative exchange between him and Morgan.

C

The defendant next argues that any consent to search was not given voluntarily. He specifically contends that the court failed to consider the totality of the circumstances to ascertain whether his consent was voluntary

or coerced and that under the totality of the circumstances, his consent was not free and voluntary. I am not persuaded.

I would decline to reach the merits of the claim that the court failed to consider the totality of the circumstances. The basis for this contention is that, in its memorandum of decision, the court did not address the search of the defendant's person that occurred prior to the search of the vehicle. As I concluded in part III A, this matter was not presented to the trial court, and the record is inadequate to review pursuant to *Golding*.

With respect to the contention that under the totality of the circumstances, the defendant's consent was not free and voluntary, I previously concluded, in part III B, that the court's finding of valid consent, i.e., consent that is free and voluntary, was not clearly erroneous.

D

The defendant next claims that any consent obtained resulted from violation by the police of his rights under the Connecticut constitution. The defendant proposes four "rules" that offer greater levels of protection for the privacy of motorists detained during a traffic stop. Such "rules," the defendant argues, would afford citizens of Connecticut greater protection, pursuant to article first, § 7, and § 9, of the Connecticut constitution, than the fourth amendment to the federal constitution. I am not persuaded.

The defendant requests that this court adopt, as part of our state constitutional jurisprudence, one of the following "rules" in order to protect adequately the privacy of motorists detained during a traffic stop. "First, the defendant proposes a rule under which an officer may not ask for consent to search a car unless the officer has a reasonable and articulable suspicion of illegal activity. A citizen would be free to leave as soon as the officer has achieved the traffic enforcement purpose of the initial stop and detention—unless the police had reasonable and articulable suspicion of criminal activity to justify extending the stop to investigate further. Second, the defendant proposes a rule under which an officer performing traffic duty must inform a motorist that he is free to leave and free to refuse consent to search as a prerequisite to obtaining consent to search a car detained for a mere motor vehicle infraction. Third, the defendant proposes a rule that the state must show any 'exchange' between a police officer clearly and unambiguously supports the conclusion that the motorist actually agreed to a car search and to its purpose. Fourth, the defendant proposes a rule holding the state to an enhanced burden of proof in establishing voluntary consent where it is obtained during a traffic stop."[12]

At the outset, I conclude that the defendant failed to preserve the state constitutional claims that he raises

on appeal. The defendant also requests *Golding* review of his state constitutional claims. See *State* v. *Golding*, supra, 213 Conn. 239–40. I conclude that he has failed to satisfy all four prongs of that test.

1

The defendant's first proposed rule is that a police officer be prohibited from asking for consent to search once the initial purposes of the stop have been achieved. He directs our attention to other states that have adopted such a rule.[13] The fatal flaw with this argument, however, is that the record in the present case is unclear as to whether the initial purposes of the stop were achieved. See part II of this opinion. Given the uncertain status in the record of whether the purpose of the stop had been achieved, I conclude that the defendant has failed to satisfy the first prong of *Golding*, and, therefore, this claim must fail.

2

The defendant's second proposed rule is that the defendant's consent "must be knowledgeable." Specifically, he asks this court to "mandate that police conducting mere traffic stops follow set procedures to avoid confusion and possible abuse of authority."[14] I decline the defendant's invitation to require such a rule.

At the outset, I reiterate that it is unclear, legally and factually, as to whether the traffic stop actually was completed at the time of Morgan's inquiry. Second, Morgan did not ask to search the vehicle; he merely inquired as to whether there was anything illegal in the vehicle. It was the defendant who offered Morgan the opportunity to search the interior of the vehicle. The facts and circumstances of this case, therefore, do not provide an adequate record for the creation of the state constitutional rule proposed by the defendant.

Additionally, our Supreme Court expressly has stated on several occasions that the validity of a consent to search is to be determined by the *totality of the circumstances* and that *no one factor is controlling*. See, e.g., *State* v. *Brunetti*, 279 Conn. 39, 57, 901 A.2d 1 (2006) (no one factor controlling on issue of voluntariness), cert. denied, U.S. , 127 S. Ct. 1328, 167 L. Ed. 2d 85 (2007). If we were to accept the defendant's second proposed rule, we would, in effect, be disregarding that precedent because we would focus solely on the fact that Morgan did not apprise the defendant of his right to refuse to allow the search. In other words, we would abandon our Supreme Court's instruction to consider the totality of the circumstances with respect to the issue of consent. I would conclude, therefore, that this claim must fail.

I respectfully dissent.

[1] "While most citizens will respond to a police request, the fact that people do so, and do so without being told they are free not to respond, hardly eliminates the consensual nature of the response." (Internal quotation marks

omitted.) *United States* v. *Weaver*, 282 F.3d 302, 309–10 (4th Cir.), cert. denied, 537 U.S. 847, 123 S. Ct. 186, 154 L. Ed. 2d 75 (2002); see also *Immigration & Naturalization Service* v. *Delgado*, 466 U.S. 210, 104 S. Ct. 1758, 80 L. Ed. 2d 247 (1984).

[2] I further note that in his appellate brief, the defendant states that "[h]e was never handed an infractions ticket."

[3] I note that in *People* v. *Cervantes-Arredondo*, 17 P.3d 141, 148 (Colo. 2001), the Colorado Supreme Court noted that the trial court had failed to make findings about whether the officer had returned the defendant's license and registration to him and remanded the case with instruction for the court to make such findings. In others words, the presence of these facts is of critical importance.

[4] The defendant argues that Morgan impermissibly expanded the *scope* of the traffic stop. It does not appear, however, that the defendant claims that Morgan's inquiry improperly extended the *duration* of the stop. See, e.g., *United States* v. *Rivera*, 906 F.2d 319, 322 (7th Cir. 1990) (determination of propriety of investigative detention after traffic stop involves inquiry as to duration and scope). I further note that the majority's analysis appears to focus on the issue of the scope rather than duration.

[5] I note that in his dissenting opinion in *State* v. *Story*, 53 Conn. App. 733, 744, 732 A.2d 785 (*Hennessy*, *J.*, dissenting), cert. denied, 251 Conn. 901, 738 A.2d 1093 (1999), Judge Hennessy indicated that a traffic stop was complete when the officer returned the driver's paperwork and issued him a citation. The majority opinion in *Story*, however, did not address the issue of when a traffic stop has been completed.

[6] I note that the United States Court of Appeals for the Seventh Circuit has stated: "If the police may ask (without suspicion) questions of persons who are in no custody (e.g., walking down the street), people who are in practical but not legal custody (e.g., passengers on busses and airplanes), and people who are in formal custody pending trial or following conviction . . . then why would the police need probable cause or reasonable suspicion to direct questions to persons . . . who are in legal custody but likely to be released soon? To say that questions asked of free persons and questions asked of prisoners are not seizures but that questions asked of suspects under arrest *are* seizures would have neither the text of the Constitution behind it nor any logical basis under it." (Emphasis in original; internal quotation marks omitted.) *United States* v. *Childs*, 277 F.3d 947, 951 (7th Cir.) (en banc), cert. denied, 537 U.S. 829, 123 S. Ct. 126, 154 L. Ed. 2d 43 (2002). The court indicated that "[i]t is difficult to see why custody should turn an inquiry into a 'seizure.' " Id., 950. In the view of the majority of the Seventh Circuit, a question asked during a traffic stop that is unrelated to the purpose of the traffic stop is not absolutely forbidden by the constitution. Id., 954.

[7] Moreover, we are not presented with a fact pattern in which under *any test* Morgan's actions would be unconstitutional.

[8] I note that the majority, in footnote 11, concludes that this issue was not raised in the trial court and that the record is not adequate for appellate review.

[9] The defendant also asserted in his brief that "[i]f any 'consent' were established, at most it authorized Morgan only to check for some beer on the passenger seat floor." He also stated in his brief that "Morgan chose to interpret the defendant's cryptic reply to mean that Morgan could search the entire car for anything illegal."

To the extent the defendant claims on appeal that Morgan exceeded the scope of the consent given by the defendant, I would decline to review such a claim on the basis of an inadequate brief. See, e.g., *State* v. *John G.*, supra, 100 Conn. App. 355 n.2.

[10] During cross-examination, Morgan acknowledged that he did not record the defendant's response verbatim in his report. Specifically, he testified: "I did not quote him. It just says that he just had some beer on the floor near the passenger's seat, but that I could check if I want to." Nevertheless, Morgan's testimony regarding his inquiry and the defendant's response remained consistent. The defendant's citation to *United States* v. *Caicedo*, 85 F.3d 1184 (6th Cir. 1996), therefore, is misplaced. In *Caicedo*, the arresting officer could not recall at the suppression hearing whether he performed a patdown search before or after he had received consent to search the defendant's backpack. Id., 1189. The United States Court of Appeals for the Sixth Circuit concluded that the District Court's finding that the patdown occurred after the defendant's consent was clearly erroneous. Id.

Caicedo is distinguishable from the present case. Although Morgan could

not recall the exact words used, his testimony regarding his request as to the defendant's vehicle remained constant. Further, the court, as the trier of fact, was free to credit his testimony.

[11] See footnote 1 of this opinion.

[12] With respect to his third and fourth proposed rules, the defendant has not adequately briefed these issues. Other than mentioning them at the outset of his briefing, the defendant has failed to provide any discussion of why we should adopt these proposed rules. As stated by our Supreme Court: "We repeatedly have emphasized that we expect counsel to employ [the analysis required by *State* v. *Geisler*, 222 Conn. 672, 684–85, 610 A.2d 1225 (1992)] [i]n order to [allow us to] construe the contours of our state constitution and [to] reach reasoned and principled results. . . . When a party fails to analyze these factors separately and distinctly, [w]e have made clear that . . . we are not bound to review the state constitutional claim." (Internal quotation marks omitted.) *State* v. *Dalzell*, supra, 282 Conn. 722; see also *State* v. *Vega*, 259 Conn. 374, 384 n.15, 788 A.2d 1221 (Supreme Court declined to reach merits of state constitutional claim because it was inadequately briefed pursuant to *Geisler* standard), cert. denied, 537 U.S. 836, 123 S. Ct. 152, 154 L. Ed. 2d 56 (2002).

[13] The defendant cites to the following cases in support of his argument: *State* v. *Quino*, 74 Haw. 161, 840 P.2d 358 (1992), cert. denied, 507 U.S. 1031, 113 S. Ct. 1849, 123 L. Ed. 2d 472 (1993); *Commonwealth* v. *Torres*, 424 Mass. 153, 674 N.E.2d 638 (1997); *State* v. *Fort*, supra, 660 N.W.2d 415; *State* v. *Carty*, 170 N.J. 632, 790 A.2d 903 (2002); and *O'Boyle* v. *State*, 117 P.3d 401 (Wyo. 2005).

[14] The defendant further argues that we set forth a rule requiring an officer to provide prophylactic warnings, similar to those established in *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). Specifically, he suggests the following language: "The traffic stop is now over. You are free to go. However, I would like to have your permission to search your car for [specify object of search]. You do not have to consent to a search." If the motorist in fact consents, the officer would then confirm by stating, "[w]ith your consent, I will now search your car for [specify object of search]."