ROBINSON, J., concurring. I agree with my colleagues that the conviction of the defendant, Frederick Payne, should be affirmed. I also agree with the analysis of the majority contained in part II of its opinion. I respectfully disagree, however, with the analysis in part I of the majority's opinion, which concludes that the record is insufficient for us to review the defendant's claim that the trial court improperly denied his motion to suppress the evidence seized from his car on the basis of its determination that he abandoned any expectation of privacy in his automobile that society would deem reasonable. Because I conclude that the record contains a sufficiently detailed statement of the trial court's findings and undisputed facts to consider the defendant's abandonment claim, I also address the defendant's substantive constitutional claim and conclude that the defendant's right to be free from unreasonable searches and seizures, as enshrined in the fourth amendment to the United States constitution,[1] was not violated by the court's denial of his motion to suppress. Accordingly, I concur in the judgment of the majority.

As a preliminary matter, I am unable to reconcile our fourth amendment jurisprudence with the majority's contention that the record is inadequate for our review because the trial court's legal analysis of the abandonment issue is unclear. Our case law teaches that "when we determine that any of the issues raised on appeal present purely questions of law warranting plenary review, the issues may be reviewed despite the absence of a memorandum of decision or signed transcript because the legal analysis undertaken by the trial court is not essential to this court's consideration of the issues on appeal." *State* v. *James*, 93 Conn. App. 51, 57 n.6, 887 A.2d 923 (2006). It, therefore, bears emphasis that a "trial court's ultimate constitutional conclusions [are subject] to plenary oversight." *United States* v. *Zapata*, 18 F.3d 971, 975 (1st Cir. 1994); accord *United States* v. *Fernandez*, 559 F.3d 303, 330 (5th Cir.) ("we review . . . constitutional conclusions de novo"), cert. denied, U.S. , 130 S. Ct. 139, 175 L. Ed. 2d 36 (2009); see also *State* v. *Wilson*, 111 Conn. App. 614, 622, 960 A.2d 1056 (2008) (we "engage in a plenary review of the court's denial of the defendant's motion to suppress"), cert. denied, 290 Conn. 917, 966 A.2d 234 (2009); cf. *State* v. *Torres*, 230 Conn. 372, 378–79, 645 A.2d 529 (1994) ("[a] record is not inadequate . . . because the trial court has not reached a conclusion of law if the record contains the factual predicates for making such a determination"). Accordingly, because we review de novo the defendant's claim that the court improperly concluded that the defendant abandoned any objectively reasonable expectation of privacy in his car, I

disagree with the majority that we need a more precise articulation of the trial court's legal reasoning to review this claim.[2]

I

Having concluded that a determination of whether the record in this case is sufficient for review does not hinge on the trial court's having articulated fully the legal reasoning underlying its abandonment analysis, I next consider whether the record is sufficient to review the defendant's claim that whatever subjective expectation of privacy he had in his car was one that society would find reasonable as a matter of law. I conclude that the record is sufficient for our review.[3]

Courts evaluating whether a person abandoned his or her expectation of privacy in an invaded area inquire (1) whether the presence of the police was lawful and (2) whether a person's continued expectation of privacy was reasonable. See *State* v. *Oquendo*, 223 Conn. 635, 658, 613 A.2d 1300 (1992).[4] In connection with the second prong of this analysis, courts have used various factors to consider whether an objective expectation of privacy exists. "Such factors include [1] ownership of or other conventional property interests in the premises or its contents; [2] use of the location as a residence; [3] use of the premises on a regular basis for professional, religious, or business purposes; [4] presence at the time of the search, or at other times; [5] security measures undertaken by the defendant to ensure the privacy of the particular area searched; [6] a defendant's authority over the premises; [7] a defendant's ability or right to exclude others from the area; [8] use of the particular location as a repository for the defendant's personal belongings; [9] a defendant's subjective expectation that the premises would remain free from Government intrusion; and [10] whether any of the defendant's interests or efforts taken to ensure privacy were in existence or were undertaken at the time of the search or seizure. . . . Factors such as these are, of course, relevant as helpful guides, but should not be undertaken mechanistically. They are not ends in themselves; they merely aid in evaluating the ultimate question in all fourth amendment cases—whether the defendant had a legitimate expectation of privacy, in the eyes of our society, in the area searched." (Citations omitted; internal quotation marks omitted.) *State* v. *Boyd*, 57 Conn. App. 176, 188, 749 A.2d 637, cert. denied, 253 Conn. 912, 754 A.2d 162 (2000). With these guideposts in mind, I review both the transcript of the court's oral decision denying the motion to suppress and the undisputed facts in the record to ascertain whether there is a sufficient basis to determine whether the presence of the police was lawful and whether the defendant's continued expectation of privacy was reasonable.

In the present case, the court stated both (1) that the

police had a lawful reason to be where they were when they searched the defendant's car because "based upon the evidence . . . [the defendant], identified as the person operating the vehicle, did not heed to the police warning to stop . . . [and] the car ran into the house" and (2) that "[g]iven the fact that the testimony reveals that upon attempting to elude the police and not responding to their call—to their stop, either in the automobile as well as on foot, that he, in fact, abandoned the property and therefore relinquished the knowing right to that property by his abandonment." Thus, by concluding that the presence of the police was lawful, the court made a finding as to the first prong of the abandonment analysis. Moreover, by stating that the defendant abandoned his property by running from the police and then holding that its decision to deny the defendant's motion to suppress was, in part, predicated on the abandonment doctrine, the court drew a legal conclusion that the defendant abandoned his car for purposes of the fourth amendment. I also note that both parties conceded during oral argument that the defendant fled on foot from police after crashing his car and that the undisputed evidence confirms that the car was unlocked when the police conducted their search. Thus, the record addresses several of the factors enumerated in *Boyd* that are relevant to ascertaining whether the defendant abandoned any reasonable expectation of privacy he had in his automobile, such as: the defendant's presence at the time of the search, or at other times; security measures undertaken by the defendant to ensure the privacy of the particular area searched; the defendant's ability or right to exclude others from the area; and whether the defendant's interests or efforts taken to ensure privacy were in existence or were undertaken at the time of the search or seizure. In light of these findings and undisputed facts, I conclude that there is a sufficient record for us to review the defendant's claim that the court improperly denied his motion to suppress on the ground that he abandoned any reasonable expectation of privacy in his car.

Moreover, I believe this approach is further buttressed by our Supreme Court's holding in *State* v. *Torres*, supra, 230 Conn. 372. In that case, the defendant appealed from his conviction on the ground that the trial court improperly denied his motion to suppress evidence seized in a warrantless search of his automobile. Id., 374. On appeal to this court,[5] the defendant in that case argued for the first time that a canine sniff constituted a search under our state and federal constitutions, which this court declined to review because the record was inadequate to address that issue under the first prong of *State* v. *Golding*, 213 Conn. 233, 239, 567 A.2d 823 (1989). *State* v. *Torres*, supra, 376–77. Specifically, this court found the record to be insufficient because the trial court had not made any findings of fact or drawn any legal conclusions as to whether

the sniff was a search under the state or federal constitution, or, if it was a search, whether the search was supported by reasonable and articulable suspicion. Id., 377.

Reversing this court's decision, our Supreme Court held that "a conclusion of law can properly be made by an appellate court, even if the trial court was never asked to make, and never made, such a determination, so long as the factual record is adequate to provide the basis for such a conclusion." Id., 379. Noting that "[r]easonable and articulable suspicion is an objective standard" and that "the question of whether reasonable and articulable suspicion arises from an underlying set of facts is a legal conclusion that, if made by a trial court, is subject to plenary review by an appellate court"; id.; our Supreme Court held that there was "an adequate record for review" because "the record contain[ed] undisputed facts sufficient to determine that a canine sniff had occurred and the circumstances under which it had occurred." Id., 380.

Like the defendant in *Torres*, the defendant in the present case also appeals from his conviction on the ground that the trial court improperly applied the fourth amendment in denying his motion to suppress. Moreover, the respective fourth amendment questions at issue in both cases involved objective standards that are decided as a matter of law,[6] and the underlying factual predicates in both cases provided sufficient records for this court to decide, as a matter of law, the objective inquiries necessary to resolve those fourth amendment claims. Indeed, if, under *Golding*, we are required to review a claim on appeal that the parties neither briefed nor argued and which the trial court neither considered nor decided because that claim involved a fourth amendment issue that was to be decided as a matter of law under an objective reasonableness standard, and there were sufficient underlying facts to decide that question, then, a fortiori, we should reach the abandonment issue in this case. Here, the parties actually briefed and argued, and the trial court considered and decided, the abandonment issue, which also involves a fourth amendment question that ultimately should be decided as a matter of law under an objective reasonableness standard, and there are sufficient underlying facts in this record to decide that question.

Although the majority cites *State* v. *Canales*, 281 Conn. 572, 583–84, 916 A.2d 767 (2007), for the proposition that this court will not review a claim unless it is based on a complete factual record developed by the trial court, I am not convinced that *Canales* is a useful analog to the present case. In *Canales*, the defendant sought review of a constitutional question for which evidence had never been adduced. Id., 582 (record inadequate because "the court was not provided with evi-

dence upon which it could make a probable cause determination''). That is not the current situation, as the majority concedes that both the defendant and the state in the present case adduced evidence of abandonment during the suppression hearing, which was reflected by the transcript of that hearing. See majority opinion, 311 (''[t]he transcript reflects the court's findings with regard to the circumstances surrounding the search and seizure generally, as well as the court's conclusion that four independent bases supported the legality of the search and seizure''). Accordingly, because this is not a case where no evidence was introduced on which the court could consider the legal theory advanced by the defendant, I believe that *Torres*, and not *Canales*, provides the more persuasive guide for our resolution of the issues presented in this appeal.

In light of my conclusions (1) that an appellate court does not require for its plenary review of a constitutional claim an articulation of the trial court's legal reasoning, (2) that the record in the present case contains a sufficient factual basis to allow for meaningful review of the defendant's objective expectation of privacy, as guided by the factors enumerated in *State* v. *Boyd*, supra, 57 Conn. App. 188, and (3) that our Supreme Court has held in an analogous case that, notwithstanding a trial court's failure to make specific factual findings or conclusions of law, this court should nevertheless reach the merits of a defendant's constitutional claim if the record is sufficient for us to do so as a matter of law, I conclude that this case should be resolved on its merits. Accordingly, I next consider the defendant's substantive argument that the court improperly denied his motion to suppress because he had abandoned his reasonable expectation of privacy in his automobile.

II

Invoking the fourth amendment, the defendant argues that the evidence recovered from the passenger compartment of his car should have been suppressed because the seizure of that evidence took place without a warrant.[7] To this end, the defendant contends both that he did not abandon his car and that the abandonment doctrine does not apply to automobiles. More specifically, the defendant avers that running away from a car is not the same as discarding property and that he did not discard his car. He further posits that the abandonment doctrine should not apply to cars because doing so ''would mean that any time a car is in a car accident and the driver gets out, regardless of the circumstances, the doctrine of abandonment [would apply].'' I am not persuaded.

In light of the tension in our jurisprudence regarding abandonment claims made under the fourth amendment,[8] I pause briefly to set forth what I believe to be the standard of review. In the fourth amendment

context, "[w]hether property has been abandoned . . . does not depend on where legal title rests, or whether one asserting a Fourth Amendment right has a legally enforceable possessory interest in the property; the question, rather, is whether the person claiming the protection of the Fourth Amendment has a legitimate expectation of privacy in the invaded place. . . . In essence, what is abandoned is not necessarily the defendant's property, but his reasonable expectation of privacy therein. . . . Furthermore, although the fourth amendment notion of abandonment is not congruent with its common law counterpart, it is relevant although not necessary to the fourth amendment abandonment inquiry whether the defendant manifested by his conduct an intent to shed, albeit temporarily, his expectation of privacy in the item or container involved." (Citations omitted; internal quotation marks omitted.) *State* v. *Mooney*, 218 Conn. 85, 107, 588 A.2d 145, cert., denied, 502 U.S. 919, 112 S. Ct. 330, 116 L. Ed. 2d 270 (1991).[9] Consequently, courts evaluating whether a person abandoned his or her expectation of privacy in an invaded area usefully are guided by inquiring (1) whether the presence of the police was lawful and (2) whether a person's continued expectation of privacy was reasonable. See *State* v. *Oquendo*, supra, 223 Conn. 658.

In evaluating the second prong of this analysis, courts employ the seminal, two part subjective-objective test articulated in *Katz* v. *United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967) (Harlan, J., concurring) (*Katz* test).[10] Thus, courts should consider: "(1) whether the [person contesting the search] manifested a subjective expectation of privacy with respect to [the invaded premises]; and (2) whether that expectation [is] one that society would consider reasonable." (Internal quotation marks omitted.) *State* v. *Boyd*, supra, 57 Conn. App. 184.[11] This analysis involves a "fact-specific inquiry into all the relevant circumstances," and the "defendant bears the burden of establishing the [necessary] facts . . . ." (Citations omitted; internal quotation marks omitted.) Id. "Findings of subjective intent are findings of fact, which we review only under a clearly erroneous standard. However, a determination of whether the defendant retained an objectively reasonable expectation of privacy in the property that society will recognize is a question of law that we review de novo." *United States* v. *Garzon*, 119 F.3d 1446, 1449 (10th Cir. 1997). Finally, because a defendant must satisfy both prongs of this analysis, failure to meet either prong is fatal to a defendant's standing to assert a fourth amendment violation. See *State* v. *DeFusco*, 224 Conn. 627, 633 n.9, 620 A.2d 746 (1993) ("whether the defendant possessed a subjective expectation of privacy . . . is unnecessary to the resolution of this case in light of our conclusion that the defendant has not satisfied the second part of the *Katz* test");[12] see also *State* v. *Ramirez*, 79 Conn.

App. 572, 579, 830 A.2d 1165 ("[t]he second element of the 'reasonable expectation of privacy' test is dispositive of the issue in [*Ramirez*] because the facts found by the court establish as a matter of law that the defendant's subjective expectation of privacy, if any, was not reasonable"), cert. denied, 267 Conn. 902, 838 A.2d 211, 212 (2003).[13]

Because the defendant does not challenge the lawfulness of the police being present on the night in question, my inquiry is limited to whether, as a matter of law, the defendant had a reasonable expectation of privacy in the car from which he ran after crashing it into the house on Peck Street in New Haven. Although the defendant argues—without citing any supporting case law—that he did not abandon a reasonable expectation of privacy in his car by leaving it unattended, the overwhelming weight of precedent teaches that a suspect leaving behind a vehicle while fleeing from lawful police pursuit does not maintain an expectation of privacy in the vehicle that society would deem reasonable. See, e.g., *United States* v. *Soto-Beniquez*, 356 F.3d 1, 36 (1st Cir. 2003) (when "a defendant abandons property while he is being pursued by police officers, he forfeits any reasonable expectation of privacy he may have had in that property"), cert. denied, 541 U.S. 1074, 124 S. Ct. 2432, 158 L. Ed. 2d 985 (2004); *United States* v. *Washington*, 12 F.3d 1128, 1132 (D.C. Cir.), cert. denied, 513 U.S. 828, 115 S. Ct. 98, 130 L. Ed. 2d 47 (1994); *United States* v. *Walton*, 538 F.2d 1348, 1354 (8th Cir.), cert. denied, 429 U.S. 1025, 97 S. Ct. 647, 50 L. Ed. 2d 628 (1976); *United States* v. *D'Avanzo*, 443 F.2d 1224, 1226 (2d Cir.), cert. denied, 404 U.S. 850, 92 S. Ct. 86, 30 L. Ed. 2d 89 (1971); *United States* v. *Edwards*, 441 F.2d 749, 752–54 (5th Cir. 1971). As was true in those cases, the record in the present case is clear that the defendant likewise was fleeing from the police when he left his car unattended. Moreover, the undisputed facts in the record demonstrate that the defendant's car was unregistered and that he left it unlocked and inoperable, with the rear portion of his car resting on a public sidewalk.[14] Under these circumstances, the trial court correctly concluded as a matter of law[15] that the defendant had abandoned his expectation of privacy in the car for purposes of the fourth amendment.[16]

The defendant next argues that even if he did abandon his car for some short period of time, the abandonment doctrine should not apply to cars because doing so "would mean that any time a car is in a car accident and the driver gets out, regardless of the circumstances, the doctrine of abandonment [would apply]." In this regard, the defendant additionally cautions that applying the abandonment doctrine to the facts presented in this case "would establish a movable and fluid line for determining when a constitutional right was abandoned." I disagree.

As with any assessment of how reasonable a person's expectation of privacy is in an invaded place, the evaluation of how reasonable a person's expectation of privacy is in their vehicle at any given time necessarily requires "all the surrounding circumstances" to be considered. 1 W. LaFave, Search and Seizure (4th Ed. 2004) § 2.5 (a), p. 646; see also *State* v. *Mooney*, supra, 218 Conn. 108 ("[t]he test is whether, *under all the facts*, the owner or possessor may fairly be deemed as a matter of law to have relinquished his expectation of privacy in the object in question" [emphasis added]). Consequently, quite to the contrary of the defendant's concerns, our fourth amendment jurisprudence forbids any bright line rule that would allow for a vehicle to be deemed abandoned simply because the driver gets out of their car and leaves it unattended and instead requires the consideration of all circumstances to determine the reasonableness of any ongoing expectation of privacy.

For the foregoing reasons, I respectfully concur.

[1] The fourth amendment to the United States constitution provides in relevant part: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated . . . ." The fourth amendment's exclusionary rule is applicable to the states through the fourteenth amendment to the United States constitution. See *Mapp* v. *Ohio*, 367 U.S. 643, 655, 81 S. Ct. 1684, 6 L. Ed. 2d 1081 (1961).

[2] The majority suggests that the trial court's abandonment analysis is overly ambiguous because "it is unclear whether the court was referring to the defendant's *privacy* interest in the property or his *possessory* interest in the property." (Emphasis in original.) Majority opinion, 314. I am not persuaded. Although property law notions of abandonment are not dispositive in the fourth amendment context; see *State* v. *Mooney*, 218 Conn. 85, 107, 588 A.2d 145 ("[w]hether property has been abandoned, in this sense, does not depend on where legal title rests, or whether one asserting a Fourth Amendment right has a legally enforceable possessory interest in the property" [internal quotation marks omitted]), cert., denied, 502 U.S. 919, 112 S. Ct. 330, 116 L. Ed. 2d 270 (1991), citing *Rakas* v. *Illinois*, 439 U.S. 128, 143, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978); I disagree with the majority's suggestion that consideration of such concepts supports a conclusion that the trial court's legal analysis was on the wrong track.

The court in *Rakas* v. *Illinois*, 439 U.S. 128, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978), explained that, because it would "be merely tautological to fall back on the notion that those expectations of privacy which are legitimate depend primarily on cases deciding exclusionary-rule issues in criminal cases"; id., 144 n.12; reference to concepts of real or personal property law properly are considered to help legitimate expectations of privacy by providing a source outside of the fourth amendment. See id.; see also *State* v. *Boyd*, 57 Conn. App. 176, 188, 749 A.2d 637 (considering, inter alia, property interests to determine whether expectation of privacy is one society would deem reasonable), cert. denied, 253 Conn. 912, 754 A.2d 162 (2000). Consequently, while I do not believe it to be necessary for our plenary review of the constitutional question presently at issue to have a full articulation of the trial court's legal analysis, I nevertheless note that the trial court's consideration of property interests may have been proper in the fourth amendment abandonment context if it was done to assess whether society would deem reasonable the defendant's asserted privacy interest.

[3] Although the defendant's failure to request a memorandum of decision or a signed transcript of the trial court's oral decision normally would result in an inadequate record for our review; see *Bayer* v. *Showmotion, Inc.*, 292 Conn. 381, 405 n.10, 973 A.2d 1229 (2009); we previously have determined that a record may be adequate when an unsigned transcript contains a sufficiently detailed and concise statement of trial court's findings. See *Watrous* v. *Watrous*, 108 Conn. App. 813, 831 n.8, 949 A.2d 557 (2008).

In this respect, our case law is also clear that, while "[t]his court will not attempt to supplement or reconstruct the record, or to make factual determinations, in order to decide the defendant's claim"; (internal quotation marks omitted) *State* v. *Beliveau*, 52 Conn. App. 475, 482 n.4, 727 A.2d 737, cert. denied, 249 Conn. 920, 733 A.2d 235 (1999); conclusions of fact may nevertheless be drawn on appeal in two circumstances: (1) where "the subordinate facts found [by the trial court] make such a conclusion inevitable as a matter of law"; *Papcun* v. *Papcun*, 181 Conn. 618, 621, 436 A.2d 282 (1980); or (2) where the undisputed facts or uncontroverted evidence and testimony in the record make the factual conclusion so obvious as to be inherent in the trial court's decision. See *State* v. *Wilson*, supra, 111 Conn. App. 622 (inferring fact necessary to review denial of motion to suppress on merits as "so obvious as to be inherent in . . . court's decision" [internal quotation marks omitted]). Accordingly, my reliance on the unsigned transcript of the court's oral decision for findings of fact that the court clearly made and on the undisputed facts in the record that obviously inhered in the court's decision is fully coterminous with the teaching of our relevant case law.

[4] As I will more fully explain, our case law teaches that whether a person's continued expectation of privacy was reasonable is ultimately an objective test that is decided as a matter of law. See part II of this concurrence. Moreover, while this test includes consideration of a defendant's subjective expectation of privacy, that line of inquiry need not be addressed if any such expectation held by the defendant is objectively unreasonable. See id. Accordingly, in evaluating which facts must be included in the record of the present case for us to review the defendant's abandonment claim, I focus on the requisite objective considerations because I determine in part II of my concurrence that any subjective expectation of privacy held by the defendant was objectively unreasonable.

[5] See *State* v. *Torres*, 31 Conn. App. 443, 625 A.2d 239 (1993), aff'd, 230 Conn. 372, 645 A.2d 529 (1994).

[6] I am aware that in *Torres*, our Supreme Court emphasized that the reasonable and articulable suspicion test does not focus on the actual state of mind of the police officer; *State* v. *Torres*, supra, 230 Conn. 379; which differs slightly from the test used to determine whether a person has abandoned his or her expectation of privacy in an invaded area. See *Katz* v. *United States*, 389 U.S. 347, 361, 88 S. Ct. 507, 19 L. Ed. 2d 576 (1967) (Harlan, J., concurring) (whether defendant had [1] subjective expectation of privacy and [2] it was one society would deem objectively reasonable) (*Katz* test). Nevertheless, *Torres* remains persuasive because the subjective prong of *Katz* need not be reached here; see *State* v. *DeFusco*, 224 Conn. 627, 633 n.9, 620 A.2d 746 (1993) ("whether the defendant possessed a subjective expectation of privacy . . . is unnecessary to the resolution of [*DeFusco*] in light of our conclusion that the defendant has not satisfied the second part of the *Katz* test"); and because the underlying facts in this case provide a sufficient record for our review of the dispositive objective prong in *Katz*.

[7] On appeal, the defendant does not assert a violation of our state constitution and has provided no independent state constitutional analysis. I thus limit my review to the defendant's federal constitutional claims. See *State* v. *Merriam*, 264 Conn. 617, 631 n.17, 835 A.2d 895 (2003).

[8] Our precedent concerning the application of the *Katz* test in the abandonment context appears to be inconsistent; some cases suggest that it is a factual determination that is subject to our clearly erroneous standard of review, while other cases state that it is ultimately an objective test that is to be decided as a matter of law. Compare *State* v. *Oquendo*, supra, 223 Conn. 660 ("The trial court concluded that the defendant had no reasonable expectation of privacy in the duffel bag that he discarded during [a police officer's] pursuit of him. This conclusion of the trial court was *clearly erroneous*." [Emphasis added.]) with *State* v. *Mooney*, 218 Conn. 85, 108, 588 A.2d 145 ("[t]he test is whether, under all the facts, the owner or possessor may fairly be deemed *as a matter of law* to have relinquished his expectation of privacy in the object in question" [emphasis added]), cert. denied, 502 U.S. 919, 112 S. Ct. 330, 116 L. Ed. 2d 270 (1991). As I will explain further, in light of the jurisprudential kinship that our fourth amendment abandonment and standing doctrines share, I harmonize this tension by concluding that the subjective inquiry is a factual determination, while the objective inquiry is a question of law.

[9] As explained in footnote 2 of this opinion, while property law notions of abandonment are not dispositive in the fourth amendment context, they

may nevertheless be considered properly in evaluating whether a defendant's putative expectation of privacy is one society would deem reasonable.

[10] As an initial matter, I note that our Supreme Court likewise has turned to the *Katz* test that it employs in the standing context to evaluate difficult questions of abandonment. See *State* v. *Mooney*, supra, 218 Conn. 110–13 (returning to "first principles" of standing jurisprudence to use *Katz* test in abandonment analysis). Moreover, reliance on the *Katz* test seems particularly appropriate in light of its foundational significance to our fourth amendment jurisprudence. See, e.g., *Rakas* v. *Illinois*, 439 U.S. 128, 143, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978) ("*Katz* [test] . . . provides guidance in defining the scope of the interest protected by the Fourth Amendment"); see also *Kyllo* v. *United States*, 533 U.S. 27, 34, 121 S. Ct. 2038, 150 L. Ed. 2d 94 (2001) (*Katz* test used to determine whether use of thermal imaging scanner is "search" for fourth amendment purposes); *State* v. *Gonzalez*, 278 Conn. 341, 349–54, 898 A.2d 149 (2006) (*Katz* test used to determine standing); *State* v. *DeFusco*, 224 Conn. 627, 633, 620 A.2d 746 (1993) (*Katz* test used to determine whether Connecticut's constitution affords greater protection than federal law for specific type of warrantless search); see also 1 W. LaFave, Search and Seizure (4th Ed. 2004) § 2.1 (b), p. 435 ("*Katz* [test] has rapidly become the basis of a new formula of fourth amendment coverage" [internal quotation marks omitted]). Finally, I am persuaded that the *Katz* test utilized in the standing context is the proper analytical tool to turn to for guidance in this case because abandonment and standing are flip sides of the same coin. See id., § 2.5 (a), p. 645 ("by abandoning the vehicle, [a defendant] ha[s] no standing to object").

[11] Where appropriate, courts grappling with a defendant's putative subjective or objective expectation of privacy may find helpful to their analyses the factors enumerated in *Boyd*. See *State* v. *Boyd*, supra, 57 Conn. App. 185 (considerations for determining subjective expectation of privacy include whether "[1] [defendant's] relationship with the location was personal in nature, [2] his relationship with the location was more than sporadic, irregular or inconsequential, and [3] he maintained the location and the items within it in a private manner at the time of the search"); id., 188 (enumerating considerations for determining objective expectation of privacy).

[12] I am aware that the court in *DeFusco* considered whether Connecticut's constitution affords greater protection than federal law for a specific type of warrantless search and did not resolve a question of standing or abandonment. *State* v. *DeFusco*, supra, 224 Conn. 633. Nevertheless, in deciding that question, the court employed the same subjective-objective test articulated in *Katz* that guides our standing and abandonment analysis. See id., 633 n.10 ("[t]he reasonable expectation of privacy inquiry is essentially identical to the constitutional abandonment inquiry"). Accordingly, the application of the *Katz* test in *DeFusco* is instructive to my application of the same test in this case.

[13] In footnote 3 of its opinion, the majority cites several cases to support its understanding that a court is required to make a finding of fact as to a defendant's subjective expectation of privacy before it can consider whether that expectation was objectively reasonable. The approach adopted in *DeFusco* and *Ramirez*, however, suggests that the *Katz* test need not be applied so rigidly. Indeed, both *DeFusco* and *Ramirez*, as well as federal precedent, suggest that the record need only contain those findings of fact or undisputed facts necessary to resolve the objective prong of the *Katz* test if that analysis is dispositive. Thus, because I do not believe it is necessary to consider the subjective prong of the *Katz* test in every case, I believe that the record before us is adequate because it contains sufficient findings of fact and undisputed facts to resolve the objective *Katz* prong, which I believe to be dispositive.

As an initial observation, I note that the United States Court of Appeals for the Second Circuit has applied the *Katz* test by inquiring into the objective prong first, which suggests that the test need not be applied so rigidly. See, e.g., *United States* v. *Perea*, 986 F.2d 633, 639 (2d Cir. 1993) ("a defendant may establish that he had a right protected by the Fourth Amendment by showing [a] that he had an expectation of privacy that society is prepared to recognize as reasonable, and [b] that he had conducted himself and dealt with the property in a way that indicated a subjective expectation of privacy").

Additionally, I find persuasive our federal case law that either states explicitly that it is not necessary to consider the subjective prong of *Katz* if a defendant cannot meet the objective prong or simply concludes that there is not a reasonable expectation of privacy without even considering the subjective prong. See, e.g., *California* v. *Greenwood*, 486 U.S. 35, 39–41, 108 S. Ct. 1625, 100 L. Ed. 2d 30 (1988) (court assumed defendants had

subjective expectation of privacy but concluded it was not one society would deem reasonable); *California* v. *Ciraolo*, 476 U.S. 207, 211–12, 214, 106 S. Ct. 1809, 90 L. Ed. 2d 210 (1986) (court noted that "[w]hether respondent therefore manifested a subjective expectation of privacy . . . is not entirely clear in these circumstances" but concluded that "we need not address that issue" and held there was no objectively reasonable expectation of privacy); *United States* v. *Hinton*, 222 F.3d 664, 676 (9th Cir. 2000) ("[b]ecause there is no reasonable expectation of privacy in a parcel locker at a post office, we need not determine if [the defendant] had a subjective expectation of privacy therein"), cert. denied, 531 U.S. 1200, 121 S. Ct. 1209, 149 L. Ed. 2d 122 (2001); *Vega-Rodriguez* v. *Puerto Rico Telephone Co.*, 110 F.3d 174, 178 (1st Cir. 1997) ("[F]or purposes of this appeal, we are willing to assume arguendo that the appellants, as they profess, had some subjective expectation of privacy while at work. We turn, then, to the objective reasonableness of the asserted expectation of privacy."); *United States* v. *Marchant*, 55 F.3d 509, 517 (10th Cir.) ("[e]ven assuming Defendant has demonstrated a subjectively reasonable expectation of privacy, we do not believe that society would find it objectively reasonable that [he had] a legitimate expectation of privacy"), cert. denied, 516 U.S. 901, 116 S. Ct. 260, 133 L. Ed. 2d 184 (1995); *Andree* v. *Ashland County*, 818 F.2d 1306, 1314 (7th Cir. 1987) ("It is doubtful whether plaintiffs have satisfied the first part of that inquiry, i.e., that they had a subjective expectation of privacy. In any event, they failed the second, as any such expectation would have been plainly unreasonable."); *United States* v. *Berrong*, 712 F.2d 1370, 1373 (11th Cir. 1983) ("[t]he question whether appellant Berrong exhibited a subjective expectation of privacy need not detain us because, applying the second prong of the *Katz* test, we conclude that the expectation, if any, was not reasonable"), cert. denied, 467 U.S. 1209, 104 S. Ct. 2397, 81 L. Ed. 2d 354 (1984). Accordingly, while I am mindful of the majority's thoughtful analysis and the precedent cited to support that approach, I am nevertheless compelled to disagree respectfully with its application of the *Katz* test on the basis of these cases.

[14] In addition to the well settled line of cases holding that a vehicle is deemed abandoned when vacated for the purposes of fleeing from the police, I also note those cases holding that a person abandons his car when he vacates it to flee from the scene of an accident. See, e.g., *State* v. *Anderson*, 548 N.W.2d 40, 44 (S.D. 1996) (car deemed abandoned when driver fled accident scene on foot, leaving car disabled on public road with keys in it). Accordingly, because the defendant in the present case left his car unlocked and partially resting on a public sidewalk to flee the scene of an accident, this line of cases further buttresses my conclusion that he abandoned his car.

[15] Although I agree with the court's ultimate legal conclusion that the defendant abandoned his expectation of privacy in his automobile for the reasons set forth in this concurrence, I express no opinion as to the legal analysis that the court utilized to reach that conclusion. See generally *State* v. *James*, supra, 93 Conn. App. 57 n.6 (when issues raised on appeal present purely questions of law, "legal analysis undertaken by the trial court is not essential to this court's consideration of the issues on appeal"); cf. *Favorite* v. *Miller*, 176 Conn. 310, 317, 407 A.2d 974 (1978) (even if correct result reached due to inaccurate legal analysis, this court not required to reverse ruling of trial court that nevertheless reached correct result).

[16] Because I conclude that the defendant abandoned any reasonable expectation of privacy that he had in this automobile, I do not reach his other fourth amendment claims.