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STATE OF CONNECTICUT *v.* NICHOLAS A. BRUNETTI
(SC 16788)

Sullivan, C. J., and Katz, Palmer, Vertefeuille and Zarella, Js.

Argued October 20, 2004—officially released November 1, 2005

Richard Emanuel, for the appellant (defendant).

Robert J. Scheinblum, assistant state's attorney, with whom, on the brief, was *Mary M. Galvin*, state's attorney, for the appellee (state).

Opinion

VERTEFEUILLE, J. The defendant, Nicholas A. Brunetti, appeals from the judgment of conviction, rendered after a jury trial, of first degree murder in violation of General Statutes § 53a-54a. On appeal, the defendant claims that the trial court improperly admitted into evidence certain items obtained as a result of a search of the defendant's home, including his bloodstained clothing and evidence that the clothing had been washed.[1] The search was conducted pursuant to a consent given to the police by the defendant's father despite the fact that the defendant's mother had objected to the search. The defendant contends that the search was conducted in violation of our state constitution because his father's consent was permitted to trump his mother's objection to the search. We agree with the defendant and, therefore, we reverse the defendant's conviction and remand the case for a new trial.

The jury reasonably could have found the following facts. On the evening of June 23, 2000, thirty-five year old Doris Crain (victim) left her house and walked to Sonny's Bar on Campbell Avenue in West Haven. After the victim left the bar, she encountered the nineteen year old defendant near the intersection of Campbell Avenue and Main Street. The victim approached the defendant and asked whether he had any marijuana. The defendant replied that he did, and asked the victim to smoke with him behind the Washington Avenue Magnet School. After sharing a marijuana cigarette, the defendant and the victim began kissing and engaging in sexual foreplay. After a short time, the defendant and the victim partially removed their clothing, laid on the ground and began engaging in sexual intercourse. After having intercourse for about fifteen minutes, the victim asked the defendant to stop because the sexual activity was hurting her. The defendant ignored the victim's request and he continued until he reached an orgasm. After the intercourse ended, the victim got up, cursed at the defendant and told him she was going to call the police. In response to the victim's threat, the defendant grabbed the victim in a chokehold, punched her in the head, dragged her by her hair, and then by her feet, across the ground, and repeatedly struck her over the head with an empty glass bottle. The defendant then left the victim's body in the high grass behind the school, throwing her clothing and the bottle nearby. As he left the school area, the defendant walked passed Jerrell Credle, Mike Banores, Jose Rivera and Michael Scott, who were seated at a picnic table on the school grounds. Credle recognized and greeted the defendant. The defendant acknowledged Credle, but did not stop to talk to him or the others, and continued to his home at 208 Center Street, where he lived with his parents.

Following the discovery of the victim's body the next day, the West Haven police department obtained infor-

mation suggesting that the defendant might be involved in the victim's murder. Detectives Anthony Buglione and Joseph Biondi (detectives) went to the defendant's home to question the defendant. The detectives approached the defendant's parents, who were sitting on the front porch of their home, and asked to speak with the defendant. Anthony Brunetti, Sr., the defendant's father, went inside the house to find the defendant while the detectives remained outside with the defendant's mother, Dawn Brunetti. The defendant emerged from the Brunetti home with his father ten to fifteen minutes later. The detectives then told the defendant that they wanted to bring him to the West Haven police department for questioning, and asked him to produce the clothes he had worn the previous evening. The defendant retrieved some clothing from his bedroom, and the detectives then drove the defendant to the police station for questioning. The defendant's parents followed the detectives to the police station in their own car.

At the police station, the detectives questioned the defendant in an interrogation room, while the defendant's parents remained in the station's waiting area. Sometime during the questioning, Detective James Sweetman of the West Haven police department and State Trooper Mark Testoni approached the defendant's parents and asked them to sign consent forms to allow the West Haven police to search the Brunetti residence. The defendant's father signed the form[2] but the defendant's mother refused to sign the form. The defendant's parents then left the police station to let the police into their home to conduct the search while the defendant remained at the station with the detectives. During the search of the home, the police looked inside the washing machine and found several items of recently washed clothing, including a pair of sweatpants, two tank tops and a towel. The sweatpants and towel exhibited ''bleach-like stains'' and one of the tank tops exhibited reddish-brown blood-like stains. When Detective Buglione, who was at the police station questioning the defendant, learned of this discovery, he told the defendant and asked him to elaborate. The defendant then became upset and requested a Bible. The detectives subsequently issued *Miranda*[3] warnings to the defendant, who proceeded to give an inculpatory statement to the detectives, describing in detail the manner in which he had murdered the victim. The defendant subsequently was placed under arrest and charged with murder. After a jury trial that resulted in a guilty verdict, the defendant was sentenced to sixty years in prison. The defendant subsequently filed an appeal from his conviction to this court pursuant to General Statutes § 51-199 (b) (3).

The defendant's dispositive contention on appeal is that because his mother declined to consent to the search of his home, the search was illegal and the evi-

dence found pursuant to the search improperly was admitted into evidence by the trial court. See, e.g., *State* v. *Reynolds*, 264 Conn. 1, 42, 836 A.2d 224 (2003) (''[u]nder the exclusionary rule, evidence must be suppressed if it is found to be the fruit of prior police illegality'' [internal quotation marks omitted]), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004). More specifically, the defendant contends that, under article first, § 7, of the constitution of Connecticut, when joint occupants have equal control over the premises, and both are present when consent to the search is sought, both joint occupants must give their consent in order for the ensuing search to be valid pursuant to the consent exception. We agree with the defendant.[4]

As a preliminary matter, we set forth the applicable standard of review. Because the claims raised by the defendant are claims of law, our standard of review is plenary. *State* v. *Gibson*, 270 Conn. 55, 66, 850 A.2d 1040 (2004).

The following additional facts are relevant to our resolution of this claim. Both of the defendant's parents testified at trial that the defendant's mother had been asked to sign a consent to search form, and that she had declined to sign the form. Specifically, when asked whether his wife signed the consent to search form, the defendant's father stated that ''they asked if we would sign [the form] and my wife declined. She did not want to sign it.'' The defendant's mother also testified that she did not sign the form. Furthermore, the trial court, in an oral ruling on the defendant's motion to suppress evidence, distinguished the facts of the present case from those in *State* v. *Jones*, 193 Conn. 70, 475 A.2d 1087 (1984), wherein both parents of the defendant signed a consent to search form, noting that ''[i]t is clear to the court that this is not an issue as decided in [*Jones*], one of acquiescence to . . . a claim of lawful authority. . . . It is clear that at least one of the parties [in the present case], *one of the parents declined to consent to [the] search*.''[5] (Emphasis added.) We construe this as a factual finding by the trial court that the defendant's mother refused to give consent to the search.

Because the defendant did not preserve this claim properly at trial, he seeks review under *State* v. *Golding*, 213 Conn. 233, 567 A.2d 823 (1989), and the plain error doctrine. In *Golding*, we set forth the conditions under which a defendant can prevail on an unpreserved constitutional claim. Id., 239–40. A defendant can prevail only if all of the following conditions are met: ''(1) the record is adequate to review the alleged claim of error; (2) the claim is of constitutional magnitude alleging the violation of a fundamental right; (3) the alleged constitutional violation clearly exists and clearly deprived the defendant of a fair trial; and (4) if subject to harmless

error analysis, the state has failed to demonstrate harmlessness of the alleged constitutional violation beyond a reasonable doubt.'' Id. ''The first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail.'' *State* v. *George B.*, 258 Conn. 779, 784, 785 A.2d 573 (2001).

We first conclude that the record in the present case is adequate for review of the defendant's claim that the search of his home was illegal, and that he therefore has satisfied the first prong of *Golding*. The dissent criticizes this conclusion as an ''egregious misapplication of the first prong of [*Golding*] . . . .'' Application of the standards set forth in *Golding* itself, however, clearly indicates that the record is adequate for review of the defendant's claim. In *Golding*, we stated that ''[t]he defendant bears the responsibility for providing a record that is adequate for review of his claim of constitutional error. If the facts revealed by the record are *insufficient, unclear or ambiguous* as to whether a constitutional violation has occurred, we will not attempt to supplement or reconstruct the record, or to make factual determinations, in order to decide the defendant's claim.'' (Emphasis added.) *State* v. *Golding*, supra, 213 Conn. 240.

In the present case, the record is sufficiently clear and unambiguous and contains the factual background necessary for review of the defendant's claim. Specifically, the trial court's finding that ''*[i]t is clear that* at least one of the parties, one of the parents, declined to consent to the search'' indicates that the defendant's mother refused to agree to a search of her home, which she owned jointly with her husband. (Emphasis added.) It is precisely this finding which perfects the record for review. The trial court made this finding after hearing testimony from both of the defendant's parents concerning the mother's failure to consent to the search and observing the demeanor of both witnesses as they testified. The trial court emphasized that the failure of the defendant's mother to consent to the search was ''clear.''

The state argues, and the dissent agrees, that the record is not adequate for review because the defendant's mother did not expressly ''object'' to the search. Specifically, the dissent contends that the testimony of the defendant's parents established only that the defendant's mother did not sign the consent to search form, and that this testimony therefore cannot support the trial court's finding that she declined to consent to the search. We disagree with the dissent's strained analysis of this testimony. The adequacy of the record cannot turn, without more, on the mere choice of words used by witnesses or the trial court. This court consistently has declined to attach talismanic significance to the presence or absence of particular words or phrases.

See, e.g., *State* v. *Robinson*, 227 Conn. 711, 731, 631 A.2d 288 (1993) (trial court's ''failure to utter the talismanic words that the evidence was 'more probative than prejudicial' does not indicate that it did not make such a determination''); *State* v. *Onforio*, 179 Conn. 23, 45, 425 A.2d 560 (1979) (''[t]here is no talismanic ritual of words that must be spoken by a dying declarant'' to render statements admissible); *State* v. *Peters*, 40 Conn. App. 805, 823, 673 A.2d 1158 (jury charge not improper for failure to recite talismanic words), cert. denied, 237 Conn. 925, 677 A.2d 949 (1996). In the present case, the dissent attaches talismanic significance to the absence of a particular word, i.e., the failure of the witnesses to say that the mother ''objected,'' despite the fact that the testimony clearly indicated the unwillingness of the defendant's mother to consent to the search. The defendant's father, when asked whether his wife had signed the consent to search form, testified that ''[she] declined. *She did not want to sign it*.'' (Emphasis added.) The defendant's mother testified that she did not sign the consent to search form. We decline to usurp the trial court's role as the fact finder by ascribing undue significance to the precise formulation of this testimony. The trial court observed firsthand the demeanor of the defendant's parents when they testified and was best situated to evaluate the overall tenor of their testimony. On the basis of its observations, the trial court found that the defendant's mother ''declined to consent to the search.'' On appeal, we are called upon to determine only whether this record is unclear or ambiguous, and three members of this court find that it is not.

The dissent also contends that our conclusion that the record is adequate for review is ''unfair to the state'' because the state lacked notice that the issue of the defendant's mother's consent would be raised on appeal. We note that this view fails to account for the unique nature of a *Golding* review. Ordinarily, an objection to a particular statement at trial alerts the state to the possibility of the claim being raised on appeal. Because a *Golding* claim by definition is a claim that has not been raised explicitly at trial, the unavailability of explicit notice to the state is inherent in the exercise of a *Golding* review.[6] Review of unpreserved constitutional claims has been a part of the criminal jurisprudence of this state since at least 1973. See *State* v. *Evans*, 165 Conn. 61, 69–70, 327 A.2d 576 (1973). The state therefore must be mindful at trial of the potential that the defendant will raise unpreserved constitutional claims on appeal. Thus, we determine that the record in the present case is adequate for review of the defendant's unpreserved claim.

We turn next to the second prong of *Golding*, a determination of whether the unpreserved claim is of constitutional magnitude alleging the violation of a fundamental right. We conclude that the defendant's

claim is of constitutional magnitude. Article first, § 7, of our state constitution provides in relevant part: "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures . . . ." Because the search of the defendant's home conducted in the face of an objection by the defendant's mother clearly implicates the defendant's right to be free from unreasonable searches as set forth in article first, § 7, we find that the defendant has satisfied the second prong of *Golding*.

The third prong of *Golding* requires us to determine if the alleged constitutional violation exists and clearly deprived the defendant of a fair trial. Because the defendant's claimed constitutional violation rests on our state constitution, we must employ the analytic framework that this court established in *State* v. *Geisler*, 222 Conn. 672, 610 A.2d 1225 (1992).[7] In *Geisler*, this court set forth six factors to be used in analyzing an independent claim under this state's constitution. Id., 685. Those factors are: (1) the text of the operative constitutional provisions; (2) related Connecticut precedents; (3) persuasive relevant federal precedents; (4) persuasive precedents of other state courts; (5) historical insights into the intent of our constitutional forebearers; and (6) contemporary understandings of applicable economic and sociological norms, or as otherwise described, relevant public policies. Id.; *State* v. *Griffin*, 251 Conn. 671, 684, 741 A.2d 913 (1999). After analyzing the defendant's claim through the use of these factors, we conclude that the search of the defendant's home in the present case violated article first, § 7, of our state constitution and, further, that this constitutional violation clearly deprived the defendant of a fair trial. We determine that article first, § 7, of the Connecticut constitution requires that the police must obtain the consent of all joint occupants who are present when consent is sought in order for a search by consent to be valid. Because, in the present case, both of the defendant's parents, co-owners and co-occupants of the home, were present when the police sought consent to search the home, and because the defendant's mother refused to give her consent, the search was conducted in violation of article first, § 7, of our state constitution.

The first *Geisler* factor we consider is the text of article first, § 7, of the constitution of Connecticut, which provides: "The people shall be secure in their persons, houses, papers and possessions from unreasonable searches or seizures; and no warrant to search any place, or to seize any person or things, shall issue without describing them as nearly as may be, nor without probable cause supported by oath or affirmation." This court consistently has concluded that the text of article first, § 7, is similar to the language of the fourth amendment to the United States constitution.[8] The court previously has acknowledged that fourth amendment jurisprudence may inform our understanding of

article first, § 7. See, e.g., *State* v. *Miller*, 227 Conn. 363, 381, 630 A.2d 1315 (1993); *State* v. *Marsala*, 216 Conn. 150, 159, 579 A.2d 58 (1990). Textual analysis of the fourth amendment has emphasized that that amendment ''did not guarantee some generalized right of privacy and leave it to this Court to determine which particular manifestations of the value of privacy society is prepared to recognize as reasonable. . . . Rather, it enumerated (persons, houses, papers, and effects) the objects of privacy protection to which the *Constitution* would extend . . . .'' (Citation omitted; emphasis in original; internal quotation marks omitted.) *Minnesota* v. *Carter*, 525 U.S. 83, 97, 119 S. Ct. 469, 142 L. Ed. 2d 373 (1998) (Scalia, J., concurring). The text of article first, § 7, therefore establishes specific protection for an individual's right to privacy in the home. The fundamental importance of this constitutional right is reinforced by an examination of the historical evidence surrounding the adoption of article first, § 7, which is the second *Geisler* factor.

''Because the fourth amendment to the United States constitution and article first, § 7, of the Connecticut constitution were enacted in response to the same historical experience and protect the same fundamental values, the early history of the provisions may be analyzed together.'' *State* v. *Miller*, 29 Conn. App. 207, 217, 614 A.2d 1229 (1992), aff'd, 227 Conn. 363, 630 A.2d 1315 (1993); see *State* v. *Marsala*, supra, 216 Conn. 167–68 n.12. ''The language of article first, § 7, which was based upon the fourth amendment, was adopted with little debate.'' *State* v. *Mikolinski*, 256 Conn. 543, 548, 775 A.2d 274 (2001); see *Moore* v. *Ganim*, 233 Conn. 557, 600, 660 A.2d 742 (1995). ''It is axiomatic that the right to be secure in one's home is central to the prohibition of article first, § 7, of the state constitution, against unreasonable intrusions by the state.'' *State* v. *Bernier*, 246 Conn. 63, 75, 717 A.2d 652 (1998). ''This robust protection finds its roots in the fundamental importance of the home as the locus of privacy. The sanctity of the home has a well established place in our jurisprudence. The English common law, upon which much of this country's constitutional and common law is based, recognized that intrusion into the home constituted especially egregious conduct. From earliest days, the common law drastically limited the authority of law officers to break the door of a house to effect an arrest. Such action invades the precious interest of privacy summed up in the ancient adage that a man's house is his castle.'' (Internal quotation marks omitted.) *State* v. *Eady*, 249 Conn. 431, 455, 733 A.2d 112, cert. denied, 528 U.S. 1030, 120 S. Ct. 551, 145 L. Ed. 2d 428 (1999).

Both the text of article first, § 7, and its historical context ordain the fundamental significance of the constitutional right to privacy in the home. An examination of the third *Geisler* factor—relevant state precedent—reveals a long-standing recognition of the privacy rights

of all occupants of the home, as well as a preference for obtaining warrants in order to conduct searches. Both this court and the United States Supreme Court consistently have stated that 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.'' (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). Relevant to the discussion in the present case is the exception for a search conducted pursuant to valid consent. It is well recognized that valid consent to enter and search a home is an exception to the warrant requirement. *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 222, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); *State* v. *Jones*, supra, 193 Conn. 78–79; *State* v. *Harris*, 10 Conn. App. 217, 224, 522 A.2d 323 (1987). ''[W]hen the prosecution seeks to justify a warrantless search by proof of voluntary consent, it is not limited to proof that consent was given by the defendant, but may show that permission to search was obtained from a third party . . . . '' *United States* v. *Matlock*, 415 U.S. 164, 171, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974). ''In order for a third party's consent to a search to be valid, the consenting party must have common authority over the premises to be entered or searched.'' *State* v. *Reagan*, 11 Conn. App. 540, 544, 528 A.2d 846 (1987).

The common authority principle highlights a critical point in our analysis of the defendant's claim. It is well established that ''[t]he authority which justifies . . . third-party consent does not rest upon the law of property . . . but rests rather on mutual use of the property by persons generally having joint access or control for most purposes, so that it is reasonable to recognize that *any of the co-inhabitants has the right to permit the inspection in his own right* . . . .'' (Citations omitted; emphasis added; internal quotation marks omitted.) *State* v. *Zindros*, 189 Conn. 228, 246–47, 456 A.2d 288 (1983), cert. denied, 465 U.S. 1012, 104 S. Ct. 1014, 79 L. Ed. 2d 244 (1984). Implicit in an individual's right to permit inspection of jointly controlled property is the corresponding right to deny such inspection. Therefore, once an individual has demonstrated mutual use of and joint access and control of the property in question, he or she also has the authority to refuse to grant consent to search that property. Framed in the context of the common authority principle, the question in the present case becomes whether the authority of the defendant's father, who consented to the search, or that of the defendant's mother, who refused to consent to the search, should prevail.

While this court previously has not considered this precise question, in balancing an individual's rights against police expediency under article first, § 7, ''[o]ur cases have consistently held that both the state and

federal constitution evince a preference for warrants to protect the individual rights of our citizens.'' *State* v. *Trine*, 37 Conn. App. 561, 567, 657 A.2d 675 (1995), rev'd on other grounds, 236 Conn. 216, 673 A.2d 1098 (1996). This preference flows from this court's conjunctive reading of article first, § 7. In construing the provisions of article first, § 7, this court ''read[s] the two clauses of article first, § 7, in conjunction—a warrantless search is per se unreasonable, justified only by limited exceptions—rather than in disjunction—a search is valid if it is reasonable, and the presence of a warrant is just one factor in the determination of reasonableness.'' (Internal quotation marks omitted.) *State* v. *Joyce*, 229 Conn. 10, 25, 639 A.2d 1007 (1994). Our broad prohibition of warrantless searches ''reflects a goal of protecting citizens from unjustified police intrusions by interposing a neutral decisionmaker between the police and the object of the proposed search.'' *State* v. *Miller*, supra, 227 Conn. 382.

We turn next to the fourth and fifth *Geisler* factors, an examination of relevant precedent from federal courts and the courts of other states. The United States Supreme Court has not considered explicitly the issue of whether the consent to search of one present joint occupant can override the objection of another present joint occupant. It has considered, however, the issue of third party consent in general. *United States* v. *Matlock*, supra, 415 U.S. 164. The Supreme Court in *Matlock* concluded that a third party who had common authority over a home validly could consent to a search without the consent of the other joint occupant. Id., 169–70. The court further stated, however, that ''the consent of one who possesses common authority over premises is valid as against the *absent, nonconsenting person* with whom that authority is shared.'' (Emphasis added.) Id., 170. The Supreme Court has not subsequently elaborated on this statement. As a result, in interpreting *Matlock*, lower courts have reached conflicting conclusions as to whether the third party consent rule applies exclusively in situations where a joint occupant is absent, based on a strict reading of the sentence in *Matlock*; see id.; or whether the consent of one joint occupant is likewise valid against another joint occupant who is present and objects to the search.

While several federal courts of appeals and state courts seemingly have favored the latter position, we note that many of those cases are distinguishable from the present case. Specifically, several cases validating searches conducted in the face of an objection by one present joint occupant involved situations where the objecting occupant was victimizing the consenting occupant. The validity of the searches in those cases were based in part on the exigent circumstances doctrine. For example, in *United States* v. *Hendrix*, 595 F.2d 883, 884 (D.C. Cir. 1979), the police were summoned in connection with a domestic violence incident

in which the defendant was beating and threatening his wife and had fired his shotgun out of a window of the couple's apartment. The defendant continued threatening his wife even in the presence of the police. Id., 885. As a result, the police arrested the defendant for disorderly conduct, and, pursuant to the consent of the defendant's wife, who was inside the home with the couple's child, the police searched the couple's home to find the shotgun. Id. The defendant had objected to the search. The District of Columbia Circuit Court of Appeals held that the search was constitutional not only because the defendant's wife consented to the search but also because the search was justified by exigent circumstances. Id.; see also *United States* v. *Donlin*, 982 F.2d 31, 33–34 (1st Cir. 1992); *People* v. *Sanders*, 904 P.2d 1311, 1313 (Colo. 1995); *Laramie* v. *Hysong*, 808 P.2d 199, 204 (Wyo. 1991). Because these decisions rely in part on the exigent circumstances rationale to validate the searches in question, we cannot conclude that they support an application of the third party consent rule to the facts of the present case, where one party did not consent to the search and no exigent circumstances existed.

In other cases, additional information offered by one joint occupant has affected the nature of the other joint occupant's consent or objection. In *United States* v. *Morning*, 64 F.3d 531, 532 (9th Cir. 1995), the defendant denied the police officers' request to search her home and replied that she preferred that they obtain a warrant. The officers proceeded to ask the defendant if anyone else resided in the house. She responded that her boyfriend also lived there, and she left to summon him. When the defendant's boyfriend presented himself at the door, the officers announced that they were conducting a narcotics investigation. The defendant's boyfriend then stated, '' '[i]t's in the back there, but it's not mine.' '' Id. The police subsequently obtained oral and written consent from the defendant's boyfriend to search the home. Id. In *United States* v. *Sumlin*, 567 F.2d 684, 685–86 (6th Cir. 1977), agents of the Federal Bureau of Investigation arrested the defendant at his apartment for a bank robbery. Following his arrest, the agents asked for the defendant's consent to search the apartment, which he refused to give. The agents then attempted to determine who owned the apartment for purposes of securing consent to search. When the defendant responded that his female companion leased the apartment, the agents sought and obtained the female companion's consent to search the property. The defendant conceded that he had told his companion that she need not withhold her consent as he had nothing to hide. The Sixth Circuit Court of Appeals concluded that *Sumlin* was governed by *Matlock* despite the defendant's argument that he initially had objected to the search. Id., 688. In both *Sumlin* and *Morning*, specific statements made by the occupants of the

searched premises called into question the effectiveness of their stated consent or objection. The determination of valid consent in those cases therefore was tempered by these statements. In the present case, there is nothing in the record to indicate that either of the defendant's parents made such statements.

We find that after distinguishing many of the state and federal cases adverse to the defendant's position, few cases supporting the application of the *Matlock* rule to the present facts remain. To the extent that other courts' decisions do not exhibit any meaningful factual distinctions, we nevertheless disagree with the broader underlying principles employed by these courts which extend the third party consent rule to situations similar to the present case. The uncertainty surrounding the scope of the *Matlock* rule has led several federal courts of appeals and state courts to extend reflexively the third party consent rule to apply in situations involving the consent of third parties without regard for the constitutional significance of extending the rule to these situations. Specifically, several courts purportedly extending the *Matlock* analysis to cases involving present objecting and consenting joint occupants simply apply the rule without any evident consideration of the propriety or constitutional implications of its applicability. See *Lenz* v. *Winburn*, 51 F.3d 1540, 1548 (11th Cir. 1995); *United States* v. *Donlin*, supra, 982 F.2d 33. The *Lenz* and *Donlin* courts both based the validity of the search in question on a single statement that "*Matlock*'s third-party consent rule applies even when a present subject of the search objects." *Lenz* v. *Winburn*, supra, 1548; see *United States* v. *Donlin*, supra, 33.

Some courts have based their application of the third party consent rule on the reasoning in *Matlock* that joint occupants "[assume] the risk that one of their number might permit the common area to be searched." *United States* v. *Matlock*, supra, 415 U.S. 171 n.7. In *People* v. *Cosme*, 48 N.Y.2d 286, 292, 397 N.E.2d 1319, 422 N.Y.S.2d 652 (1979), the New York Court of Appeals noted that "an individual who possesses the requisite degree of control over specific premises is vested in his own right with the authority to permit an official inspection of such premises and . . . this authority is not circumscribed by any 'reasonable expectation of privacy' belonging to co-occupants. Whether the principle is characterized as an 'assumption of risk' or a relinquishment of the 'expectation of privacy' guaranteed by the Fourth Amendment, the fact remains that where an individual shares with others common authority over premises or property, he has no right to prevent a search in the face of the knowing and voluntary consent of a co-occupant with equal authority."

Several state courts, however, have rejected this broad application of the assumption of risk analysis.

In addressing the applicability of *Matlock*'s assumption of risk analysis to circumstances similar to those in the present case, the Washington Supreme Court noted that ''since the rule enunciated in *Matlock* only refers to 'absent, nonconsenting' persons, we must determine whether the rationale upon which *Matlock* rests is equally applicable where the defendant is present at the time of the search. Arguably, one's ability to control the premises is not subordinated to a joint occupant when one remains on the premises and is able to object to access by others.'' *State* v. *Leach*, 113 Wash. 2d 735, 740, 782 P.2d 1035 (1989). In *In the Matter of the Welfare of D.A.G.*, 484 N.W.2d 787, 790 (Minn. 1992), the Minnesota Supreme Court noted that ''the risk that one co-inhabitant might permit the common area of a jointly occupied premises to be searched in the absence of another is qualitatively different from the risk that a warrantless search will be conducted over the objection of a present joint occupant . . . .''[9] In that case, the court noted with approval the reasoning used by Professor LaFave in his treatise that ''the risk assumed by joint occupancy is merely an inability to control access to the premises during one's *absence*.'' (Emphasis added; internal quotation marks omitted.) Id., quoting 3 W. LaFave, Search and Seizure (2d Ed. 1987) § 8.3 (d), p. 252. Other states also have recognized that the assumption of risk analysis cannot, in principle, apply to present objecting joint occupants. See, e.g., *Saavedra* v. *State*, 576 So. 2d 953, 958 (Fla. App. 1991) (''[j]oint dominion or control provides valid consent [by one person] only when the other person is absent''); *State* v. *Randolph*, 278 Ga. 614, 615, 604 S.E.2d 835 (2004) (''[w]hile one co-inhabitant may have assumed the risk that a second co-inhabitant will consent to a search of common areas in the absence of the first co-inhabitant . . . the risk assumed by joint occupancy goes no further'' [citation omitted]).

Professor LaFave acknowledges the division of authority on the proper interpretation of *Matlock* when one co-occupant objects and the other consents, noting that ''commentators have reached conflicting conclusions on the question of whether the consent or the objection must prevail.'' 4 W. LaFave, Search and Seizure (4th Ed. 2004) § 8.3 (d), p. 159. He favors giving priority to the objection, noting ''the point is that a person's authority to consent in his 'own right' does not go so far as to outweigh an equal claim to privacy by a co-occupant on the scene, and that the risk assumed by joint occupancy is merely an inability to control access to the premises during one's absence.'' Id.

We find most persuasive the reasoning in several cases that focuses on the constitutional right of the present, objecting co-occupant. See, e.g., *Silva* v. *State*, 344 So. 2d 559, 562 (Fla. 1977) (''a present, objecting party should not have his constitutional rights ignored

. . . [due to a] property interest shared with another''); *State* v. *Leach*, supra, 113 Wash. 2d 744 (''[S]hould the cohabitant be present and able to object, the police must also obtain the cohabitant's consent. Any other rule exalts expediency over an individual's Fourth Amendment guarant[e]es.''). Such reasoning is consistent with our strong constitutional and historical preference for search warrants and our narrowly circumscribed exceptions to the warrant requirement, which are rooted in our history of protecting an individual's constitutional right to privacy under article first, § 7, especially with regard to privacy in the home. We therefore conclude that the fourth and fifth *Geisler* factors clearly favor the defendant's claim.

Finally, we consider the sixth *Geisler* factor, the public policy implications of adopting the defendant's position.[10] We conclude that the rule requiring the consent of both present joint occupants strikes the appropriate balance between individual liberties and police expediency. Specifically, requiring the consent of both present joint occupants for a valid consent search is consistent with our manifest preference for warrants and our well established regard for the sanctity of the home. We agree that, under *Matlock*, an *absent* joint occupant assumes the risk that a present joint occupant may permit access to shared space for a search. To extend this assumption of risk analysis to the present circumstances, however, would relegate the objecting joint occupant's constitutional rights to inferior status. Our long-standing public policy of protecting the sanctity of the home and favoring searches conducted pursuant to a warrant weighs heavily against such a result.

As is evident from our analysis of the defendant's claim under the *Geisler* factors, our own constitution, case law, constitutional history, and public policy clearly favor searches conducted pursuant to a warrant where, as in the present case, the applicability of an exception to the warrant requirement, such as consent, is ambiguous or unclear. We find most persuasive the state court decisions that limit the application of the assumption of risk analysis to situations where one joint occupant is absent or unavailable when the consent to search is sought. Consequently, we determine that the *Geisler* factors, viewed together, favor the rule requiring the consent of both co-occupants when both are present to consent to a search. We therefore conclude that the search of the defendant's home violated article first, § 7, of the constitution of Connecticut and deprived the defendant of a fair trial.[11] See *State* v. *Lamme*, 216 Conn. 172, 182, 579 A.2d 484 (1990) (use of evidence obtained in violation of constitution compromises right to fair trial). The defendant therefore has satisfied the third prong of *Golding*.

We turn, finally, to the fourth prong of *Golding*. We conclude that the defendant's claim satisfies the fourth

prong of *Golding* because the state has failed to demonstrate the harmlessness of the constitutional violation beyond a reasonable doubt. *State* v. *Golding*, supra, 213 Conn. 240. Having conducted a thorough review of the record, we cannot say that the illegal search in the present case was a harmless violation. The defendant's bloodstained clothing, which was discovered during the illegal search of the defendant's home, was key evidence at trial. Some of the clothing was found to contain traces of the victim's blood as determined by DNA testing.[12] A police forensic lab criminalist testified that the DNA profile obtained from the defendant's bloodstained tank top matched exactly the DNA profile of the victim. The criminalist further stated that the probability of finding the DNA profile obtained from the bloodstained clothing in a member of the population other than the victim was less than one in three hundred million. Moreover, the defendant offered his inculpatory statement to West Haven police immediately upon being confronted with the discovery of the bloodstained clothing. Given that the bloodstained tank top, the fruit of the illegal search, connected the defendant to the victim and led to the defendant's inculpatory statement, we cannot say that the state has demonstrated the harmlessness of the illegal search beyond a reasonable doubt.

Because we determine that the search of the defendant's home was unlawful, the state's claim that the search purged the taint of the initial unlawful seizure of the defendant must fail. Specifically, the state claims in its brief that ''the police acquired probable cause to arrest the defendant through independent means when they lawfully searched his parents' house and discovered his bloody clothing in their washing machine, a significant intervening circumstance which cut off any causal connection between the [initial unlawful] seizure and the confession.'' Our determination that the search of the defendant's home was unlawful prevents the state from relying on the search as the source of probable cause to arrest the defendant. Because the search cannot serve to purge the taint of the defendant's initial unlawful seizure, all evidence obtained as fruit of that seizure must be suppressed.

The judgment is reversed and the case is remanded for a new trial.

In this opinion SULLIVAN, C. J., concurred.

[1] The defendant also claims that the trial court: (1) abused its discretion by denying the defendant's request for a one day continuance to locate a witness; and (2) improperly denied his motion to suppress his second statement to the police. Because our conclusion that the trial court improperly admitted into evidence the defendant's bloodstained clothing results in this case being remanded for a new trial, we need not consider the first claim, which may not arise again at the new trial. We do not directly address the second claim because the defendant's second statement to the police resulted from the discovery of the bloodstained clothing and therefore was inadmissible as fruit of the illegal search.

[2] In this appeal, the defendant first contends that the search of his home was illegal because his father's consent to the search was coerced. Because

we conclude that under article first, § 7, of our state constitution, *both* present joint occupants must consent to the search of jointly controlled property to render the search valid, we need not address this claim.

[3] *Miranda* v. *Arizona*, 384 U.S. 436, 478–79, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966).

[4] The state claims that the defendant does not have standing to invoke his mother's privacy rights. We disagree. The touchstone to determining whether a person has ''a legitimate expectation of privacy in the invaded area. . . . The determination of whether such an expectation exists is to be made on a case by case basis . . . and requires a two-part inquiry: first, whether the individual has exhibited an actual subjective expectation of privacy, and second, whether that expectation is one society recognizes as reasonable. . . . Whether a defendant's actual expectation of privacy . . . is one that society is prepared to recognize as reasonable involves a fact-specific inquiry into all the relevant circumstances.'' (Citations omitted; internal quotation marks omitted.) *State* v. *Mooney*, 218 Conn. 85, 94, 588 A.2d 145, cert. denied, 502 U.S. 919, 112 S. Ct. 330, 116 L. Ed. 2d 270 (1991). ''[T]he fact that a person does not have the exclusive use of an area does not bar his having a reasonable expectation of privacy that furnishes standing to object to a government search.'' *State* v. *Reddick*, 207 Conn. 323, 330–31, 541 A.2d 1209 (1988). In the present case, the defendant has established that he resided in the house, the object of the search in question, with his parents. The defendant's parents testified that the defendant had his own room in the house, and that they had access to his room but that ''he had his own privacy.'' Moreover, this court consistently has stated that ''[t]he sanctity of the home has a well established place in our jurisprudence.'' *State* v. *Geisler*, 222 Conn. 672, 687, 610 A.2d 1225 (1992). ''The Fourth Amendment protects the individual's privacy in a variety of settings. In none is the zone of privacy more clearly defined than when bounded by the unambiguous physical dimensions of an individual's home . . . .'' (Internal quotation marks omitted.) *State* v. *Brosnan*, 221 Conn. 788, 806, 608 A.2d 49 (1992). Based on the foregoing standard, it is clear that the defendant has standing to contest the search of his home.

Indeed, the defendant faced two obstacles to challenging the search of his home: (1) that the warrant exception on which the police relied—consent—was not satisfied; and (2) that the search violated *his* rights under article first, § 7, of the state constitution. Our conclusion that consent is rendered invalid if any party with authority to object is present and does so addresses the first issue, and the dissent necessarily concedes the second by virtue of its statement that the defendant had a legitimate expectation of privacy in the house. See *Rakas* v. *Illinois*, 439 U.S. 128, 148, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978) (concluding that, in determining whether defendant was vicariously asserting another's fourth amendment right, dispositive question is whether defendant had ''legitimate expectation of privacy in the particular areas of the [place] searched''). In other words, by demonstrating his own legitimate expectation of privacy and challenging the search based on his mother's refusal to consent, the defendant is not vicariously asserting his mother's constitutional rights, but, rather, is vindicating his own.

[5] At issue in *Jones* was the defendant's claim that, although his parents had both signed the consent to search forms, they had merely acquiesced by signing the forms ''because they believed that they had no choice.'' *State* v. *Jones*, supra, 193 Conn. 78.

[6] The dissent also contends that our conclusion that the record is adequate for review is ''especially unfair because . . . the state never had any reason to address the issue of the mother's consent.'' An examination of the record, however, reveals that the state had reason to address the issue of the defendant's mother's consent at the suppression hearing. It is well established that the state bears the burden of proving lawful consent to a search. *State* v. *Reynolds*, supra, 264 Conn. 44. Though the defendant only explicitly challenged the validity of his father's consent at the suppression hearing, it is clear that the issue of the defendant's mother's consent was also implicated in that claim. In the present case, it is undisputed that both the defendant's mother and father were together when consent to search their home was sought. Because the state could not have foreseen whether it would prevail in establishing the voluntariness of the defendant's father's consent, it is clear that it had sufficient opportunity and incentive to address the issue of the defendant's mother's consent at the suppression hearing.

[7] We do not conduct an analysis under the federal constitution for two reasons. First, the defendant has briefed his constitutional claim primarily

and most substantially under the state constitution, employing the framework set forth in *State* v. *Geisler*, supra, 222 Conn. 672. Second, fourth amendment jurisprudence is not instructive with regard to the defendant's claim in the present case. The issue of whether the consent of both present joint occupants is required when authorities seek consent to search the occupants' jointly controlled property has not been addressed directly by the United States Supreme Court. The concurring opinion suggests that we are ''deviating from our normal course'' in resolving this appeal solely under our state constitution. See footnote 4 of the concurring opinion. We disagree. This court has employed various approaches in deciding whether to analyze a constitutional claim under the federal or our state constitution. See, e.g., *State* v. *Spencer*, 268 Conn. 575, 578 n.5, 848 A.2d 1183 (2004) (declining to reach claim under state constitution when federal constitution was dispositive of issue); *State* v. *Santos*, 267 Conn. 495, 497 n.4, 838 A.2d 981 (2004) (deciding claim under state constitution where standard for warrantless patdown searches was same under federal and state constitutions); *Leydon* v. *Greenwich*, 257 Conn. 318, 333, 777 A.2d 552 (2001) (deciding claim under both state and federal constitutions); *State* v. *Joyce*, 229 Conn. 10, 15–16, 639 A.2d 1007 (1994) (declining to reach claim under federal constitution when state constitution was dispositive of issue). While a canvass of recent decisions reveals that this court often has analyzed a federal constitutional claim to the exclusion of a parallel state constitutional claim, these cases frequently cite the appellant's failure to brief adequately and independently his state constitutional claim as grounds for employing only a federal constitutional analysis. See, e.g., *State* v. *Vakilzaden*, 272 Conn. 762, 768 n.11, 865 A.2d 1155 (2005) (declining to review defendant's state constitutional claim where no independent analysis under state constitution was presented); *State* v. *Sinvil*, 270 Conn. 516, 518 n.1, 853 A.2d 105 (2004) (same); *State* v. *Romero*, 269 Conn. 481, 486 n.7, 849 A.2d 760 (2004) (same); *State* v. *Moran*, 264 Conn. 593, 605, 825 A.2d 111 (2003) (same). In the present case, the defendant's analysis focuses almost exclusively on our state constitution. We therefore determine that the claim appropriately is resolved under the state constitution.

[8] The fourth amendment to the United States constitution provides: ''The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.''

[9] While the central issue in *In the Matter of the Welfare of D.A.G.*, supra, 484 N.W.2d 787, was the enforceability of the consent of an absent joint occupant against a present objecting joint occupant, the Minnesota Supreme Court addressed in dicta issues relevant to the present case. See id., 789–90.

[10] We note that the defendant's claim is neutral with respect to the other elements of the sixth *Geisler* factor: economic and sociological considerations. See *State* v. *Geisler*, supra, 222 Conn. 685.

[11] We emphasize that our conclusion leaves the applicability of the third party consent rule unchanged in most cases. As stated in *Leach*, ''the point at which the difficult choice between consent and objection must be made is only where the occupants have equal use and control of the premises and where both are present . . . .'' *State* v. *Leach*, supra, 113 Wash. 2d 741–42. Our conclusion in the present case only governs cases in which identically situated joint occupants, who are both present when consent is sought, offer conflicting responses when asked to consent to a search of their property.

[12] Specifically, three items of clothing and a towel were removed from the defendant's home during the search in question. Two items of clothing and the towel tested negative for blood. The third item of clothing, a tank top, tested positive for human blood.