****

The ''officially released'' date that appears near the beginning of each opinion is the date the opinion will be published in the Connecticut Law Journal or the date it was released as a slip opinion. The operative date for the beginning of all time periods for filing postopinion motions and petitions for certification is the ''officially released'' date appearing in the opinion. In no event will any such motions be accepted before the ''officially released'' date.

All opinions are subject to modification and technical correction prior to official publication in the Connecticut Reports and Connecticut Appellate Reports. In the event of discrepancies between the electronic version of an opinion and the print version appearing in the Connecticut Law Journal and subsequently in the Connecticut Reports or Connecticut Appellate Reports, the latest print version is to be considered authoritative.

****

PALMER, J., with whom ZARELLA, J., joins, dissenting. The plurality today reverses the murder conviction of the defendant, Nicholas A. Brunetti, on the basis of an egregious misapplication of the first prong of *State* v. *Golding*, 213 Conn. 233, 239, 567 A.2d 823 (1989),[1] thereby achieving a result that is both wholly unwarranted and grossly unfair to the state.[2] Specifically, the plurality concludes that the record is adequate for review of the defendant's unpreserved constitutional challenge to the consent search of the home in which he resided even though: (1) the state never had the opportunity to contest the finding upon which that claim is predicated, namely, that the defendant's mother objected to the search; and (2) the only fact in the record upon which the plurality relies in making that finding, namely, the defendant's mother's refusal to sign the consent to search form, is patently insufficient to support such a finding. Lacking any logical basis to conclude that the record is sufficient for our consideration of the defendant's claim, the plurality engages in no meaningful analysis of that threshold issue, resorting, instead, to conclusory assertions and makeweight arguments regarding the adequacy of the record. Because it is impossible to determine, due to the insufficiency of the record, whether the defendant's mother objected to the search, the plurality's finding of a constitutional violation—predicated as it is on that undeveloped and altogether inadequate record—is founded entirely on guesswork and speculation. Moreover, the plurality also fails to articulate why the defendant is entitled, under the new constitutional principle that it announces, to invoke his mother's purported objection to the search. For these reasons, and because the defendant's other claims are without merit, his murder conviction should be affirmed. Accordingly, I dissent.

I

Because the plurality's reversal of the defendant's murder conviction hinges on the resolution of the defendant's unpreserved constitutional claim, I address that issue first. Contrary to the conclusion of the plurality, the record is patently inadequate for appellate review of the merits of that claim.[3]

A

The following additional factual and procedural background is necessary to a complete understanding of why the plurality's conclusion regarding the adequacy of the record is so fundamentally flawed. The defendant filed motions to suppress certain bloody clothing belonging to him that the police had discovered during their search of the home in which he resided, as well as the confession that the defendant had given to the

police, after his arrest, detailing his vicious and lethal attack upon the victim.[4] In support of his motions, the defendant claimed, inter alia, that the confession was the product of an illegal search of his home because, he alleged, the police had not obtained valid consent to search the home.[5] His sole argument in support of that claim was that his father's consent was not voluntary even though his father had signed a form indicating that he ''knowingly, willingly and voluntarily'' consented to the search ''after having been informed of [his] [c]onstitutional right not to have a search performed without a search warrant and of [his] [c]onstitutional right to refuse to consent to such a search . . . .'' At no time did the defendant suggest that the state also was required to obtain his mother's consent to search the house.[6] In fact, defense counsel expressly advised the court that, although the defendant's mother had declined to sign the consent to search form, the defendant was not claiming that her refusal to do so rendered the search unlawful.

At the suppression hearing, defense counsel adduced testimony from several witnesses,[7] including the defendant's father and mother.[8] Defense counsel sought to establish, inter alia, that the father's consent to search the family home was invalid, notwithstanding the signed consent to search form, because John Brunetti, a detective with the West Haven police department and the brother of the defendant's father, improperly induced the father to agree to the search. On direct examination, the defendant's father testified about the circumstances surrounding his signing of the consent to search form. During his examination of the defendant's father, defense counsel asked: ''Okay. And when you were asked to sign that [form]—by the way, was your wife asked to sign it also?'' The defendant's father answered: ''Yes, they asked if we would sign it, and my wife declined. She did not want to sign it.'' Following that brief digression regarding the defendant's mother's unwillingness to sign the form, defense counsel resumed his questioning of the defendant's father about what had led *him* to sign the form.[9] Defense counsel did not ask the defendant's father any further questions regarding the defendant's mother's refusal to sign the form. On cross-examination, the state's attorney asked the defendant's father a few questions but none concerning the circumstances surrounding the defendant's mother's refusal to sign the consent to search form.

The defendant's mother also testified briefly at the suppression hearing. In response to defense counsel's question regarding whether she signed the consent to search form, the defendant's mother answered, ''No, I did not.'' Defense counsel elicited no other testimony from the defendant's mother regarding the issue of her refusal to sign the form, and the assistant state's attorney's brief cross-examination of the mother included no questions on that subject.[10]

The next day, immediately before trial commenced, the court issued a ruling from the bench on the defendant's motions to suppress. After finding that the defendant was in police custody when he was questioned by the investigating officers, the court addressed the defendant's claim that the search of his home was illegal. The court rejected the defendant's claim, concluding that the defendant's father's consent to search was knowing and voluntary and, therefore, constitutionally valid. During its brief explanation of its ruling on that issue, the court referred to *State* v. *Jones*, 193 Conn. 70, 475 A.2d 1087 (1984), a case upon which the defendant had relied and in which we had explained that the mere acquiescence to a claim of lawful authority by the police is not enough to establish valid consent.[11] Id., 79. Although stating that the present case did not present such a scenario, the court added: ''It is clear that at least one of the parties, one of the parents, declined to consent to [the] search.''[12]

The case then proceeded to trial. At the conclusion of the trial, the jury found the defendant guilty of murder,[13] and the trial court sentenced him to sixty years in prison. The trial court also sentenced the defendant to six months imprisonment after having held him in contempt for physically attacking his attorney, in the courtroom and in the presence of the court, when the jury returned its verdict of guilty.

During the pendency of his appeal, the defendant filed a motion for articulation with the trial court in which he informed the court that, on appeal, he intended to challenge the propriety of the court's rulings on his suppression motions. In his motion for articulation, the defendant, who then was represented by appellate counsel in lieu of trial counsel, requested that the court ''articulate the factual bases of its decision with respect to'' five specific questions, including the following: ''Did the defendant's mother . . . decline to give her consent for a search of the house?'' ''Did the trial court credit the testimony of the defendant's father . . . with regard to the circumstances surrounding his signing of the consent to search form?''[14] The state opposed the defendant's motion. With respect to the defendant's request for further articulation as to whether the defendant's mother had ''decline[d] to give her consent for a search of the house,'' and as to whether the court had credited the defendant's father's testimony, the state responded that ''[a] trial court's denial of a motion to suppress includes implicit findings that the trial court resolved any factual disputes, including any credibility determinations and any conflicts in testimony, in a manner which supports the trial court's ruling. . . . The defendant will have every opportunity to argue, if he so chooses, that there was *insufficient* evidence of consent presented at the suppression hearing to support the trial court's ruling that the search was

consensual. However, assuming [that] the defendant cannot make such an argument because there *is* sufficient evidence to support such a finding, the defendant has failed to demonstrate that it is necessary for the trial court to articulate the specific portions of testimony which were credited and/or discredited in reaching [its] conclusion.''[15] (Citations omitted; emphasis in original.) The trial court denied the defendant's motion for articulation.

The defendant then filed with this court a motion for review of the trial court's denial of his motion for articulation. For the first time in that motion, the defendant explained that, ''[o]n appeal, [appellate] counsel will seek to raise the claim that when two persons with equal authority to consent to a search of a residence, are *both present* when the police seek consent, the 'consent' given by one party should not prevail over the 'refusal' to consent by the other party.'' (Emphasis in original.) In support of his motion, the defendant candidly conceded not only that the evidence he presented regarding his mother's refusal to consent was ''never rebutted or contradicted'' by the state, but also that the state's failure to challenge this evidence is insufficient to demonstrate that those facts were admitted or otherwise undisputed by the state.

The state opposed the defendant's motion for review. The state argued that, ''although the defendant now explains more precisely the purpose of his claimed need for an articulation as to the mother's willingness to consent . . . he is making improper use of a motion for articulation to obtain an answer to a factual question which simply cannot be answered on the basis of the testimony presented below. It would, in fact, be clear error for the trial court to find that there was sufficient evidence in this record that the defendant's mother refused to consent to the search. The portions of the transcript cited by the defendant do not support this claim. In both instances, the defendant's father and mother merely testified that the mother declined to *sign the consent form* presented to her and that it was the father who signed it. . . . No follow-up questions were asked exploring the reasons for the mother's declination to sign and whether she, in fact, was expressing her lack of consent. Just as a suspect's mere refusal to sign a *Miranda*[16] waiver form is not, by itself, evidence sufficient to undermine a finding that the suspect knowingly and voluntarily agreed to waive his rights and talk to police . . . any finding by the trial court that the mother 'refused to give consent for the search' would be purely speculative in light of the scant record below.'' (Citations omitted; emphasis in original.) The state further argued that the defendant ''should not be permitted to utilize a motion to articulate in a belated attempt to fashion a one-sided record for *Golding* purposes.'' ''Of course, simply obtaining a new finding of fact by way of a motion for articulation does not mean that the

record upon which the trial court is being asked to make that new finding is 'adequate' [for *Golding* purposes] if the state was without notice that it should address a particular issue with the witnesses below.'' This court agreed to entertain the defendant's motion for review but denied the relief requested, namely, the issuance of an order requiring the trial court to articulate the bases for certain aspects of its rulings on the defendant's motions to suppress.

B

With this background in mind, I turn to the applicable legal principles. In *State* v. *Golding*, supra, 213 Conn. 239–40, this court set forth four conditions that a defendant must satisfy before he may prevail, on appeal, on an unpreserved constitutional claim. See footnote 1 of this opinion. Because a defendant cannot prevail under *Golding* unless he meets each of those four conditions, an appellate court is free to reject a defendant's unpreserved claim upon determining that any one of those conditions has not been satisfied. See, e.g., *State* v. *Kirk R.*, 271 Conn. 499, 506 n.12, 857 A.2d 908 (2004). Indeed, unless the defendant has satisfied the first *Golding* prong, that is, unless the defendant has demonstrated that the record is adequate for appellate review, the appellate tribunal will not consider the merits of the defendant's claim. See, e.g., *State* v. *Peeler*, 271 Conn. 338, 360, 857 A.2d 808 (2004) (first and second prongs of *Golding* ''involve a determination of whether the claim is reviewable''). In the present case, I focus on the first *Golding* prong because, contrary to the conclusion of the plurality, the defendant clearly and unequivocally has failed to satisfy that prong.

Before applying that first *Golding* requirement to the facts of this case, it bears noting that *Golding* is a narrow exception to the general rule that an appellate court will not entertain a claim that has not been raised in the trial court. The reason for the rule is obvious: to permit a party to raise a claim on appeal that has not been raised at trial—after it is too late for the trial court or the opposing party to address the claim—would encourage trial by ambuscade, which is unfair to both the trial court and the opposing party. E.g., *State* v. *Sandoval*, 263 Conn. 524, 556, 821 A.2d 247 (2003). Nevertheless, because constitutional claims implicate fundamental rights, it also would be unfair automatically and categorically to bar a defendant from raising a meritorious constitutional claim that warrants a new trial solely because the defendant failed to identify the violation below. *Golding* strikes an appropriate balance between these competing interests: the defendant may raise such a constitutional claim on appeal, and the appellate tribunal will review it, but only if the trial court record is adequate for appellate review.[17] The reason for this requirement demands no great elaboration: in the absence of a sufficient record, there is no

way to know whether a violation of constitutional magnitude in fact has occurred.[18] Thus, as we stated in *Golding*, we will not address an unpreserved constitutional claim ''[i]f the facts revealed by the record are insufficient, unclear or ambiguous as to whether a constitutional violation has occurred.'' *State* v. *Golding*, supra, 213 Conn. 240. For the reasons that I set forth in part I D of this opinion, that is precisely—and inarguably—the state of the record in the present case.

C

Before I explain why the record is inadequate for our review of the defendant's unpreserved claim, it is useful first to summarize why the plurality concludes otherwise. The plurality's conclusion is predicated on its determination that the record demonstrates that the defendant's mother affirmatively refused to consent to the search. This conclusion is based solely on: (1) the testimony of the defendant's father that his wife declined to sign the consent to search form; (2) the testimony of the defendant's mother that she did not sign the form; and (3) the statement made by the trial court in the course of its oral ruling on one of the defendant's motions to suppress that ''one of the parents . . . declined to consent to [the] search.'' On the basis of this record, the plurality concludes that ''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 'it 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. . . . It is precisely this finding which perfects the record for review.'' In rejecting the state's argument that the record is inadequate for review ''because the defendant's mother did not expressly 'object' to the search,'' the plurality states: ''The adequacy of the record cannot turn, without more, on the mere choice of words used by witnesses or the trial court. . . . 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 foregoing passage constitutes the entirety of the plurality's analysis of the preservation issue. I turn now to the reasons why the plurality's conclusion regarding the adequacy of the record is palpably erroneous.

D

It is undisputed that the only evidence adduced at the suppression hearing regarding the position that the defendant's mother had taken with respect to the search was that she declined to *sign* the consent to search form. Defense counsel, who elicited this testimony, presented no other evidence on the issue. Because the mother's actions relating to the consent to search were not at issue at the suppression hearing—the defendant had claimed only that his father had not given valid consent to search and, in fact, expressly had indicated that the mother's consent was *not* necessary—the state had *no reason whatsoever* to present any evidence regarding the mother's consent or lack thereof, and, consequently, it did not do so. As a result, we simply do not know any of the other circumstances surrounding the mother's refusal to sign the consent to search form. In other words, we do not know, because the record does not reveal, whether she (1) declined to sign the form but orally consented to the search, (2) acquiesced in her husband's consent to the search, (3) affirmatively refused to consent to the search, or (4) took some other position regarding the search. All we know is that she did not sign the consent to search form.

The plurality, however, equates the mother's refusal to *sign* the consent form with her refusal to *consent* to the search. This inferential leap is patently unreasonable because it is axiomatic that refusing to sign a consent to search form is *not* tantamount to refusing to consent to the search; rather, it is simply one of several relevant factors that a court considers in determining the validity of a consent to search. See, e.g., *United States* v. *Lattimore*, 87 F.3d 647, 650–51 (4th Cir. 1996). Because the refusal to sign a consent to search form is one of several factors to be considered in determining the validity of consent, such refusal does not vitiate consent otherwise found to be valid in light of all of the circumstances. See, e.g., *United States* v. *Price*, 54 F.3d 342, 346–47 (7th Cir. 1995); *United States* v. *Thompson*, 876 F.2d 1381, 1384 (8th Cir.), cert. denied, 493 U.S. 868, 110 S. Ct. 192, 107 L. Ed. 2d 147 (1989); *United States* v. *Castillo*, 866 F.2d 1071, 1082 (9th Cir. 1989); *United States* v. *Boukater*, 409 F.2d 537, 538–39 (5th Cir. 1969); see also *State* v. *Fields*, 31 Conn. App. 312, 325, 624 A.2d 1165 (''a consent to search does not have to be in writing to be valid''), cert. denied, 226 Conn. 916, 628 A.2d 989 (1993). ''Whether a [person] voluntarily has consented to a search is a question of fact to be determined by the trial court from the totality of the circumstances based on the evidence that it deems credible along with the reasonable inferences that can be drawn therefrom.'' (Internal quotation marks omitted.) *State* v. *Nowell*, 262 Conn. 686, 699, 817 A.2d 76 (2003). Thus, ''no one factor is controlling'' on the issue of voluntariness; (internal quotation marks omitted) *State* v. *Reddick*, 189 Conn. 461, 469, 456 A.2d 1191 (1983); including the fact that the person whose

consent to search was sought refused to sign a consent form.[19] See, e.g., *United States* v. *Price*, supra, 347 (upholding validity of consent search notwithstanding defendant's refusal to sign consent to search form); *United States* v. *Thompson*, supra, 1384 (same); *United States* v. *Castillo*, supra, 1082 (same). Consequently, the refusal of the defendant's mother to sign the consent to search form is but one factor that the court would have been required to consider if the court had been asked to determine whether she had consented to the search, acquiesced in the search or objected to the search. Rather than acknowledge the fact that the defendant's mother's refusal to sign the consent form is not dispositive of the issue of consent—an acknowledgment that would be fatal to its conclusion—the plurality simply chooses to ignore it.[20] Indeed, the plurality does not even mention the fact that consent always is an issue that is decided on the basis of the totality of the circumstances.

The issue of the defendant's mother's consent, moreover, was not before the court, because, as I previously explained, only the consent of the defendant's father was the subject of the defendant's motion to suppress the bloody clothing. The facts relevant to the issue of the defendant's mother's consent, therefore, never were adduced in the trial court. Furthermore, as I also previously explained, because the defendant's motion did not implicate the mother's consent or lack thereof, the state was not on notice that it was required to establish, on the basis of the totality of the circumstances, that the defendant's mother had consented to or acquiesced in the search.[21]

On the basis of the trial court record, therefore, we simply do not know why the defendant's mother declined to sign the consent to search form. To be sure, it is *possible* that she did not sign it because she was unwilling to consent. It also may be, however, that she did not sign it because she thought that her husband's signature on the form was sufficient, or because, although she did not object to the search, she nevertheless was reluctant to sign such a document without further consultation with her husband or an attorney, or otherwise. In other words, on the current state of the record, we are required to speculate as to why the defendant's mother did not sign the consent to search form. Because, however, there are any number of reasons for her refusal to execute the form that are fully consistent with a willingness on her part to allow the police to search the house, and because the state had no obligation or incentive to adduce any evidence regarding the mother's consent or lack thereof, no conclusion—indeed, no inference—reasonably can be drawn from her failure to sign the form.[22] In such circumstances, it is clear that the defendant has failed to satisfy the first prong of *Golding* because the "facts revealed by the record are insufficient, unclear or

ambiguous as to whether a constitutional violation has occurred.'' *State* v. *Golding*, supra, 213 Conn. 240. The plurality's contrary conclusion turns the first prong of *Golding* on its head by relieving the defendant of *his* burden of providing a record that clearly and unambiguously demonstrates that his mother objected or otherwise withheld her consent to the search. Indeed, this court recently has reiterated the fundamental point that ''[i]t is incumbent upon the [defendant] to take the necessary steps to sustain [his] burden of providing an adequate record for appellate review. . . . Our role is not to guess at possibilities, but to review claims based on a complete factual record developed by a trial court. . . . Without the necessary factual and legal conclusions furnished by the trial court . . . any decision made by us respecting [the defendant's claims] would be entirely speculative.'' (Internal quotation marks omitted.) *Gordon* v. *H.N.S. Management Co.*, 272 Conn. 81, 101, 861 A.2d 1160 (2004).

The plurality makes the startling assertion that ''[t]he adequacy of the record cannot turn, without more, on the mere choice of words used by witnesses or the trial court.'' In other words, according to the plurality, insofar as the suppression hearing witnesses are concerned, we are not bound by their ''mere choice of words'' in evaluating the adequacy of the record. On the contrary, it is precisely the words of the witnesses that comprise the record to be evaluated. Moreover, other than the testimony of the suppression hearing witnesses, there is absolutely nothing in the record that bears upon the issue of the defendant's mother's consent to search. The plurality's unprecedented and utterly unsupportable contention that the record cannot ''turn . . . on the mere choice of words used by witnesses'' reflects the flaw in the plurality's analysis, namely, the plurality's refusal to acknowledge the fundamental distinction between refusing to sign a consent to search form and refusing to consent.

Finally, in support of its conclusion regarding the adequacy of the record, the plurality relies on the trial court's statement that, ''[i]t is clear that . . . one of the parents . . . declined to consent to [the] search.'' In particular, the plurality asserts that ''[i]t is precisely this finding which perfects the record for review.'' Building on its conclusion that the court's statement constituted a ''finding,'' the plurality further asserts that this court must accept the finding because the trial court (1) ''observed firsthand the demeanor of the defendant's parents when they testified'' that the mother had not signed the consent form, and (2) ''was best situated to evaluate the overall tenor of their testimony.''

For a myriad of reasons, the plurality utterly fails in its attempt to elevate the trial court's statement into a finding, let alone one entitled to deference on appeal. First, it bears emphasizing that the trial court issued

its brief ruling denying the defendant's motion to suppress the bloody clothing from the bench, immediately prior to the commencement of trial, and, further, that the only claim raised in that motion was the purported invalidity of the defendant's father's consent to search. Consequently, in fairness to the trial court, it is highly likely that the court's passing and fleeting observation that the defendant's mother had ''declined to consent to [the] search'' was intended as nothing more than a shorthand reference to the undisputed fact that the state had not established her consent. To conclude otherwise would be to presume that the trial court had reason to be careful about how it characterized the role of the defendant's mother in the search; the court had no such reason because no issue relating to her involvement in the search was ever before the court.

Second, as the state notes, the court's statement goes well beyond the record: the *only* evidence regarding the mother's consent or lack thereof was her testimony and the testimony of her husband that she declined to sign the consent to search form. There was absolutely no other evidence in the record from which the trial court could have made a determination, one way or the other, regarding the mother's consent. In the absence of any such evidence, the trial court's statement is entirely without a foundation in the facts.[23]

In light of the trial court's statement in that broader context, it is preposterous to attribute significance to that statement for the reason given by the plurality, namely, because 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.'' As I have explained, that testimony consisted of one sentence by the defendant's father that his wife had declined to sign the consent form and one sentence by the defendant's mother confirming that she had declined to sign the consent form. With respect to the mother's failure to the sign the consent form, what more could be gleaned—even by the most observant and acute fact finder—from the ''demeanor'' of those witnesses or the ''overall tenor'' of their testimony? Contrary to the bald assertion of the plurality: absolutely nothing.

Furthermore, even if the trial court's statement were supported by the record, the statement nevertheless could not reasonably be characterized as a ''finding'' of any consequence to our determination of the adequacy of the record. Because the issue of the mother's consent was not before the trial court, the court had no reason to make any finding relative to that issue; similarly, the state had no reason either to adduce any evidence demonstrating the mother's consent or to challenge the court's statement that she had declined to consent. Indeed, the state had no real opportunity to seek to correct the trial court's misstatement, as it was made

during a brief oral ruling, and less reason to do so, because the court denied the defendant's motion to suppress in its ruling and trial proceeded immediately thereafter. Although the court stated that it would issue a written ruling on the defendant's motion to suppress ''at the conclusion of the case,'' the court never did so. In such circumstances, even if the record supported the court's statement—which it does not—the statement would have been, at most, akin to dictum; see *DaCruz* v. *State Farm Fire & Casualty Co.*, 268 Conn. 675, 686, 846 A.2d 849 (2004) (''[f]indings on nonessential issues usually have the characteristics of dicta'' [internal quotation marks omitted]); and, as such, it would not be entitled to weight by this court. Indeed, because there was no meaningful factual inquiry into the mother's conduct relative to the consent to search, the trial court's statement regarding that conduct is of no force or effect.[24]

The plurality's willingness to decide the defendant's unpreserved constitutional claim on the strength of the trial court record is especially unfair because, as I have explained, the state never had any reason to address the issue of the mother's consent. We previously have declined to countenance such an ambush of the state. For example, in *State* v. *Medina*, 228 Conn. 281, 300–302, 636 A.2d 351 (1994), this court declined to review an unpreserved constitutional claim regarding the alleged involuntariness of the confession of the defendant, Angel Medina, because the record was inadequate for review. In the trial court, Medina filed a motion to suppress his confession on the ground that it had not been made knowingly and voluntarily because he had not been given his *Miranda* warnings. See id., 296. For the first time on appeal, Medina raised a different claim under the state constitution, namely, that his confession was involuntary due to his impaired mental state. See id., 293, 295. In explaining why the record was insufficient for appellate review of Medina's unpreserved state constitutional claim, we observed that, ''because [Medina] did not clearly raise [that] . . . claim in the trial court, *the state was not put on notice that it was required to defend against such a claim. Thus, neither the state nor the trial court—nor this court on appeal—had the benefit of a complete factual inquiry into* [*Medina's*] *mental condition at the time his statements were made*.'' (Emphasis added.) Id., 300. We further noted that ''[t]he trial court never ruled on the issue of the voluntariness of [Medina's] statements under the state constitution because . . . that issue was not properly raised. *We do not know, therefore, whether the trial court, after conducting a full evidentiary hearing and applying the state constitutional standard now urged by* [*Medina*], *would have found* [*Medina's*] *statements to have been involuntary*.'' (Emphasis added.) Id. *Precisely* the same can be said of the record in the present case. Because the state had no reason to adduce

any evidence regarding the mother's role in the consent to search, there was no meaningful factual inquiry into that issue and, consequently, we have no idea what such an inquiry would have revealed, and no idea what the trial court would have found, about the mother's consent or lack thereof. Cf. *State* v. *Daniels*, 248 Conn. 64, 78–81, 726 A.2d 520 (1999) (record inadequate to review unpreserved constitutional claim that out-of-court identification violated defendant's due process rights because not all facts relevant to claim were adduced in trial court).

Indeed, in his motion for review of the trial court's denial of his motion for articulation, the defendant expressly acknowledged that, as this court has observed, ''[f]acts are not admitted or undisputed merely because they are not contradicted.'' (Internal quotation marks omitted.) *State* v. *Watson*, 165 Conn. 577, 589–90 n.1, 345 A.2d 532 (1973), cert. denied, 416 U.S. 960, 94 S. Ct. 1947, 40 L. Ed. 2d 311 (1974); see also *State* v. *Madera*, 210 Conn. 22, 38, 554 A.2d 263 (1989) (trial court ''not bound to accept testimony at face value merely because it might have been unrebutted''). This admonition is particularly compelling in the present circumstances because the state had absolutely no opportunity or reason to rebut, to contradict or even to explain any evidence that either was or might have been adduced concerning the role of the defendant's mother in regard to the consent to search.[25]

E

The plurality makes several additional points in response to my assertion that its *Golding* analysis is fundamentally unsound. The first such point is that I improperly have attached ''talismanic significance to the absence of a particular word, i.e., the failure of the witnesses to [testify] that the [defendant's] mother 'objected,' despite the fact that the testimony clearly indicated the unwillingness of the defendant's mother to consent to the search.'' I respectfully submit that the plurality plainly has it backwards: the plurality places talismanic significance on the statement of the trial court that the defendant's mother ''declined'' to consent when it concludes that ''[i]t is precisely this finding which perfects the record for review.'' For all the reasons that I have enumerated—not one of which the plurality addresses, let alone rebuts—no significance at all can be placed on that statement.

A second point made by the plurality relates to my conclusion that it is unfair to the state to reach the merits of the defendant's unpreserved constitutional claim. In particular, the plurality asserts that my ''view fails to account for the unique nature of *Golding* review'' in that, ''[b]ecause 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 *Golding* review,'' and, therefore, ''[t]he

state . . . must be mindful at trial of the potential that the defendant will raise unpreserved constitutional claims on appeal.'' This assertion reveals the plurality's fundamental misunderstanding of *Golding*. It is true, of course, that *Golding* review invariably involves a claim that was not raised in the trial court and, therefore, neither the state nor the court then will have had notice of the claim. It is equally true that this case shares that similarity. What the plurality fails to recognize, however, is the bedrock principle underlying *Golding*, namely, that the record must be adequate *before* an appellate court will review an unpreserved constitutional claim. The record is not adequate when, as in the present case, the facts reasonably can be disputed by the state and the state never had an opportunity to prove those disputed facts in the trial court. It is *that* failure of notice that accounts for the obvious unfairness of the plurality's decision in the present case, not the defendant's failure to notify the state of its claim in the trial court.

Finally, the plurality expressly notes that ''three members of this court'' have found that the record is not ''unclear or ambiguous . . . .'' That is the only argument raised by the plurality that is supported by the record. More importantly, however, a judicial opinion must be judged not on the number of votes that it has garnered but on its reasoning. In my view, the fact that a majority of the members of this panel has agreed that the defendant has satisfied the first prong of *Golding* merely serves to underscore the point that the majority sometimes is wrong. I submit that that is clearly the case here. I trust that my conclusion in that regard will be evaluated not on the basis that it is, at least among the members of the present panel, a minority view but, rather, on its merit or lack thereof.

F

Although I do not reach the merits of the defendant's constitutional claim, I am compelled to address one aspect of the plurality's analysis of that issue, namely, its response to the state's contention that the defendant cannot piggyback on his mother's purported refusal to consent, but, rather, that he is bound by his father's valid consent to search. The plurality purports to answer that contention by asserting, contrary to the claim of the state, that the defendant has ''standing to invoke his mother's privacy rights.'' Footnote 4 of the plurality opinion. The plurality then proceeds to justify this conclusion by explaining that the defendant has a reasonable expectation of privacy in the family house because he lived there. The plurality's response to the state's contention misses the point completely.[26] It is axiomatic that the rights guaranteed by the fourth amendment are personal and may not be asserted vicariously; e.g., *Rakas* v. *Illinois*, 439 U.S. 128, 133, 99 S. Ct. 421, 58 L. Ed. 2d 387 (1978); *State* v. *Morrill*, 197 Conn. 507, 540,

498 A.2d 76 (1985); and no claim has been made that the state constitution provides otherwise. Thus, the plurality's assertion that the defendant has standing to invoke his mother's privacy rights cannot possibly provide the basis for a determination that the defendant is entitled to invoke his mother's purported refusal to consent.[27] Indeed, it is undisputed that the defendant had standing to challenge the legality of the search of the home in which he resided because of *his* reasonable expectation of privacy in those premises. But the defendant's standing to challenge the search of those premises does not answer the entirely different question of whether he may assert his mother's refusal to consent or whether, as the state contends, he is bound by his father's valid consent.

It is readily apparent why the plurality's treatment of this question misses the mark. The defendant's legitimate expectation of privacy in the home in which he resides is the reason why he has standing to challenge the validity of the search of that home. Whether, however, that search violated the *defendant's* constitutional rights—that is, whether the search was constitutionally invalid as against *him*—is an altogether separate question. It is true, under the rule that the plurality adopts, that the search violated the defendant's *mother's* rights because she declined to consent to the search; consequently, if the state sought to use evidence obtained from the search against *her*, she would be entitled to have that evidence suppressed. Certainly, however, if the state had sought to use the fruits of the search against the defendant's *father*, he would *not* be entitled to invoke the defendant's mother's refusal to consent and thereby obtain the suppression of evidence obtained with his consent; in other words, the search did not violate the defendant's father's rights because he consented to it. The present case raises a different issue: does the defendant have the right to assert his mother's refusal to consent to the search and thereby preclude the state from using the fruits of that search *against him* even though his father validly consented to the search? In concluding that the defendant is entitled to invoke his mother's refusal to consent because he has a reasonable expectation of privacy in his home, the plurality begs, rather than answers, that question.

The plurality's failure to address this question meaningfully is a critical one. Only a few states have adopted the constitutional principle that this court adopts today,[28] and, notwithstanding any suggestion to the contrary by the concurring justice, no federal court has done so.[29] In those few state cases, however, the state sought to use the fruits of an otherwise valid consent search against an accused who was present when the police sought to obtain consent to search but whose consent the police had not obtained. Thus, no case has addressed directly the issue raised by the present appeal, namely, whether a defendant can stand in the

shoes of another person who has objected to a search of the defendant's premises or property even though a third co-occupant validly consents to the search. In that key respect, the holding of the plurality is a significant extension of the minority view, and one that the plurality has completely failed to justify. Because privacy rights are personal, and because the rationale underlying the minority rule is predicated on the primacy of that principle, there remains, at the very least, a serious question as to why the defendant should be entitled to invoke his mother's purported refusal to consent to the search in view of the fact that his father did validly consent; indeed, I am aware of no persuasive reason why the defendant should be permitted to invoke his mother's refusal to consent. In any event, the judgment of this court reversing the defendant's murder conviction hinges on a reasoned analysis and resolution of that question. Because the plurality has accomplished neither, the validity of its judgment is highly suspect.[30]

G

In sum, the plurality's conclusion regarding the adequacy of the record is fatally flawed because it is predicated on a similarly flawed premise, namely, that the refusal to sign a consent to search form is the same as the refusal to consent to the search itself. Because the two cannot be equated, and because all we do know is that the defendant's mother refused to sign the form, we do not know whether the defendant's rights were violated under the new constitutional principle that the court today adopts. The plurality and the concurring justice nevertheless conclude that such a violation exists and hold that evidence critical to the state's case must be suppressed.[31] Of course, the suppression of evidence is fully warranted—indeed, it is mandated—when such evidence is the product of a constitutional violation. But a serious public injustice is done when, as in the present case, the state is deprived of the use of vital evidence by a reviewing court that, after trawling for facts in an incomplete and inherently ambiguous record, necessarily resorts to guesswork and conjecture to find a constitutional violation. Because the record clearly is inadequate for review of the defendant's constitutional claim, that claim must be rejected under the first prong of *Golding*.

II

The defendant claims that the trial court improperly denied his motion to suppress his confession and his motion to suppress the clothing seized from his home. With respect to the former, the defendant contends that his confession was the product both of his illegal arrest, which the defendant maintains was unlawful because the state lacked probable cause to detain him, and the illegal search of his home, which the defendant contends was unlawful because his father's consent to search was involuntary and, therefore, invalid. The

defendant further claims that: (1) the state improperly adduced testimony concerning the defendant's request for a Bible in violation of his *Miranda* rights; (2) the trial court improperly denied the defendant's application for a one day continuance of the trial; and (3) the trial court improperly permitted the state to adduce evidence of the defendant's post-*Miranda* silence. These claims are without merit.

A

The defendant first contends that the trial court improperly failed to suppress his confession and the clothing that the police had seized from his home.[32] I disagree.

The following additional facts, which were adduced at the hearing on the defendant's motions to suppress, are necessary to a resolution of these claims. On the morning of Saturday, June 24, 2000, the West Haven police received a report that a dead body had been discovered behind the Washington Avenue Magnet School. Joseph Biondi, a detective with the West Haven police department, and John Brunetti, also a detective with that department and the brother of the defendant's father, found the victim's body lying face down in a wooded area behind the school. Later that day, the police received information that the defendant had been in the vicinity of the crime scene at the time of the victim's murder.[33] Detective Brunetti withdrew from the investigation and was replaced by Anthony Buglione, a detective with the state police.

On the evening of June 24, Biondi and Buglione went to the residence at 208 Center Street in West Haven where the defendant lived with his parents. The defendant's parents were outside when the police arrived. The police informed them that they were investigating a homicide, that the defendant had been identified as a possible suspect in that homicide and that the detectives wanted to know of the defendant's whereabouts on the preceding evening. The defendant's father was cooperative and went inside to get the defendant, who emerged from the house with his father about fifteen minutes later. Biondi told the defendant why he and Buglione were there and asked whether the defendant would be willing to accompany them to the police station to answer some questions. According to Biondi, he told the defendant that he did not have to go with them, but the defendant agreed to do so, and the detectives then transported the defendant to the station. According to the defendant, however, he did not believe that he was free to refuse to go to the station with the detectives.[34] The defendant's parents followed the detectives and the defendant to the station, where they planned to wait until the detectives had completed their questioning of the defendant.

Upon arriving at the police station, Biondi and Bugli-

one took the defendant to a small office in the detective bureau and closed the door. Buglione informed the defendant that they were investigating the murder of a woman whose body had been discovered behind a school. The detectives did not advise the defendant of his *Miranda* rights, but, according to Biondi, he specifically told the defendant that he was free to leave. Biondi further testified that the defendant indicated that he wished to stay and answer the detectives' questions. The defendant, however, testified that he repeatedly had told the detectives that he wanted to leave but that they had informed him that he could not do so.

Buglione asked the defendant where he had been the previous evening. The defendant provided an alibi for the evening, explaining that he had been at a party with a friend. Buglione reduced the defendant's statement to writing but doubted the veracity of the statement in light of the defendant's overall demeanor and his inability to remember certain details regarding the evening's events. The defendant eventually signed the statement.

While the defendant was still at the police station, Detective Mark Testoni of the Connecticut state police approached the defendant's parents, who were at the station waiting for the defendant, and presented them with a consent to search form for their home. Testoni explained the form, told them that they had a right not to sign it and asked them if they nevertheless would be willing to do so. Detective Brunetti, the defendant's father's brother, was sitting with the defendant's parents when Testoni approached them and requested their consent to search their home. The defendant's father asked Detective Brunetti what could happen if he declined to sign the form, and Detective Brunetti stated that ''they could obtain a search warrant and possibly keep you from going back into your home until the search warrant . . . is obtained.'' In addition, Detective Brunetti told the defendant's father that he would be ''better off complying. You know, do the right thing, basically.'' The defendant's father then read the consent to search form and signed it. According to the defendant's father, he was not forced to sign the form but, rather, had done so voluntarily. Upon obtaining the executed consent to search form, Testoni and Detective James Sweetman of the West Haven police department went to the defendant's home and searched it. While searching the laundry area of the basement, they found and seized certain evidence, including what appeared to be bloody clothing belonging to the defendant.

Upon learning that Testoni and Sweetman had found bloody clothing in the laundry area of the defendant's home, Buglione informed the defendant of the discovery and told the defendant that he, Buglione, had a ''problem'' with the veracity of the statement that the defendant had provided. The defendant started to cry and asked for a Bible. Buglione left the room to find a

Bible but, unable to locate one, soon returned to the interview room. Upon his return, Buglione read the defendant his *Miranda* rights from a state police waiver form. The defendant initialed each warning and signed the waiver form indicating that he had been advised of his constitutional rights and that he wished to waive them and to speak to the police. The defendant then admitted that he had killed the victim, explaining in detail why and how he had done so. See footnote 4 of this opinion. Buglione transcribed the defendant's statement, which the defendant signed. The defendant then formally was placed under arrest and charged with the victim's murder.

On the basis of the foregoing evidence, the trial court concluded that the detectives took the defendant into custody when they transported him to the police station and that he remained in their custody at all relevant times thereafter.[35] The trial court also concluded, however, that the defendant had been given *Miranda* warnings before he gave the police his second, inculpatory statement. The court further found that the defendant understood his rights and knowingly and intentionally waived them when he provided the police with that second statement. With respect to the defendant's father's consent to search, the court found that that consent was knowing and voluntary and, therefore, valid. See footnote 12 of this opinion. The court expressly rejected the defendant's claim that the consent was invalid because of what Detective Brunetti had told the defendant's father in response to the father's inquiry of Detective Brunetti about what could happen if he elected not to sign the consent to search form.

I turn now to the merits of the defendant's claims that the trial court improperly denied his motions to suppress his confession and the clothing seized from his home. In view of the fact that both of those claims hinge, more or less, on the defendant's contention that the search of his home was unlawful due to the alleged invalidity of his father's consent to search, I address that issue first.

"Under both the fourth amendment to the federal constitution and article first, § 7, of the state constitution, a warrantless search of a home is presumptively unreasonable. E.g., *Payton* v. *New York*, 445 U.S. 573, 586, 100 S. Ct. 1371, 63 L. Ed. 2d 639 (1980); *State* v. *Gant*, 231 Conn. 43, 63 and n.15, 646 A.2d 835 (1994), cert. denied, 514 U.S. 1038, 115 S. Ct. 1404, 131 L. Ed. 2d 291 (1995). A search is not unreasonable, however, if a person with authority to do so has voluntarily consented to the search. E.g., *Schneckloth* v. *Bustamonte*, 412 U.S. 218, 242–43, 93 S. Ct. 2041, 36 L. Ed. 2d 854 (1973); *State* v. *Cobb*, 251 Conn. 285, 314, 743 A.2d 1 (1999) . . . cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000); *State* v. *Reagan*, 209 Conn. 1, 7, 546 A.2d 839 (1988). The state bears the burden of

proving that the consent was free and voluntary and that the person who purported to consent had the authority to do so. . . . *State* v. *Reagan*, supra, 7. The state must affirmatively establish that the consent was voluntary; mere acquiescence to a claim of lawful authority is not enough to meet the state's burden. *State* v. *Jones*, [supra, 193 Conn. 79]. The question [of] whether consent to a search has . . . been freely and voluntarily given, or was the product of coercion, express or implied, is a question of fact to be determined from the totality of all the circumstances . . . *State* v. *Reagan*, supra, 7–8; and, ultimately, requires a determination regarding the putative consenter's state of mind. *Poulos* v. *Pfizer, Inc.*, 244 Conn. 598, 609, 711 A.2d 688 (1998).'' (Internal quotation marks omitted.) *State* v. *Reynolds*, 264 Conn. 1, 43–44, 824 A.2d 611 (2003), cert. denied, 541 U.S. 908, 124 S. Ct. 1614, 158 L. Ed. 2d 254 (2004).

For purposes of this claim only, the defendant does not dispute that his father had authority to consent to the search of his home. The defendant also acknowledges that the record establishes that the police explained the consent to search form to the defendant's father, that he was advised that he had the right not to sign it, that he understood that right, and that no one forced him to sign it. The defendant claims, rather, that his father's consent was not voluntary ''in the constitutional sense'' because his father was ''led to believe that withholding consent would be a futile act.'' The defendant's claim is predicated on the fact that his father's brother, Detective Brunetti, in response to an inquiry by the defendant's father about the consent to search, stated that the police ''could obtain a search warrant and possibly keep [him] from going back into [his] home until the search warrant . . . is obtained.''

It is true that, if the police had instructed the defendant's father that they *would* obtain a search warrant if the defendant refused to give consent, then such consent would have been involuntary, for constitutional purposes, because ''the intimation that a warrant will automatically issue is as inherently coercive as the announcement of an invalid warrant.'' *Dotson* v. *Warden*, 175 Conn. 614, 621, 402 A.2d 790 (1978). In the present case, however, Detective Brunetti informed the defendant's father not that the police *would* obtain a warrant but, rather, that they ''could,'' or *might*, obtain a warrant. This information was neither misleading nor inherently coercive,[36] and, consequently, the defendant cannot prevail on his claim that his father's consent was the product of improper police coercion. Accordingly, the defendant also cannot prevail on his claim that the trial court improperly denied his motion to suppress the bloody clothes that the police had discovered during their search of the defendant's home.

The defendant next contends that the trial court

improperly denied his motion to suppress his confession. The defendant's claim is predicated on the assertion that his confession was the product both of his illegal arrest and the illegal search of his home. With respect to the former, the defendant contends that he was taken into police custody, without probable cause, when he was transported to the police station by Biondi and Buglione. With respect to the latter, the defendant contends that the police used the poisonous fruit of the illegal search, namely, the bloody clothing that the police discovered, to induce him to confess. With respect to the latter, I already have explained that the search was lawful and, therefore, the seizure of the bloody clothing also was lawful. Thus, the officers' confrontation of the defendant with the fact that they had discovered the bloody clothing was not itself improper. I turn, therefore, to the defendant's claim insofar as it relates to his allegedly illegal arrest.

The trial court concluded, and for purposes of this appeal the state does not dispute, that the defendant was in police custody when he arrived at the police station. Because the police lacked probable cause to arrest the defendant at that time, the state acknowledges that ''the trial court implicitly found that the defendant's initial confinement was illegal.'' For purposes of this appeal, the state also does not challenge that conclusion. Rather, the state contends that the nexus between the defendant's unlawful arrest and the confession that the police obtained from him while he was in their custody was sufficiently attenuated to warrant the state's use of the confession. I agree with the state.[37]

''As a general principle, the exclusionary rule bars the government from introducing at trial evidence obtained in violation of the fourth amendment to the United States constitution. See *Wong Sun* v. *United States*, 371 U.S. 471, 485, 83 S. Ct. 407, 9 L. Ed. 2d 441 (1963). [T]he rule's prime purpose is to deter future unlawful police conduct and thereby effectuate the guarantee of the Fourth Amendment against unreasonable searches and seizures. *United States* v. *Calandra*, 414 U.S. 338, 347, 94 S. Ct. 613, 38 L. Ed. 2d 561 (1974). To carry out this purpose adequately, the rule does not distinguish between physical and verbal evidence; see *Wong Sun* v. *United States*, supra, 485–86; nor does it apply only to evidence obtained as a direct result of the unlawful activity. See *Nardone* v. *United States*, 308 U.S. 338, 341, 60 S. Ct. 266, 84 L. Ed. 307 (1939). Rather, the rule extends to evidence that is merely derivative of the unlawful conduct, or what is known as the fruit of the poisonous tree. See id. The application of the rule, however, is restricted to those situations [in which] its objectives are most efficaciously served. *United States* v. *Calandra*, supra, 348. Limiting the rule's application recognizes that in some circumstances strict adherence to the . . . rule imposes greater cost on the

legitimate demands of law enforcement than can be justified by the rule's deterrent purposes. *Brown* v. *Illinois*, 422 U.S. 590, 608–609, 95 S. Ct. 2254, 45 L. Ed. 2d 416 (1975) (Powell, J., concurring). Thus, evidence is not to be excluded if the connection between the illegal police conduct and the discovery and seizure of the evidence is so attenuated as to dissipate the taint . . . . *Segura* v. *United States*, 468 U.S. 796, 805, 104 S. Ct. 3380, 82 L. Ed. 2d 599 (1984).'' (Internal quotation marks omitted.) *State* v. *Luurtsema*, 262 Conn. 179, 189, 811 A.2d 223 (2002). In other words, ''the question to be resolved concerning the admissibility of derivative evidence is whether, granting establishment of the primary illegality, the evidence to which the objection is made has been come at by exploitation of [the initial] illegality or instead by means sufficiently distinguishable to be purged of the primary taint.'' (Internal quotation marks omitted.) *State* v. *Blackman*, 246 Conn. 547, 556, 716 A.2d 101 (1998). The factors to be considered in determining whether the statement of an accused is sufficiently attenuated from the original illegality to cleanse it of its taint are: (1) whether *Miranda* warnings had been issued; (2) the temporal proximity of the illegal police action and the statement; (3) the presence of intervening circumstances; and (4) the purpose and flagrancy of the official misconduct. *State* v. *Luurtsema*, supra, 191–92; see also *State* v. *Colvin*, 241 Conn. 650, 654, 697 A.2d 1122 (1997).

In the present case, the defendant's confession was sufficiently attenuated from his unlawful arrest to purge any taint that flowed from that arrest. With respect to the threshold consideration of voluntariness, although Buglione confronted the defendant with the discovery of the bloody clothing about one-half hour after the defendant had made his first statement,[38] the defendant was given *Miranda* warnings before he agreed to provide the police with a second statement. It is true, of course, that the state cannot rely on *Miranda* warnings alone to establish that the initial illegality was sufficiently attenuated, but such warnings ''are an important factor . . . in determining whether the confession is obtained by exploitation of an illegal arrest.'' *Brown* v. *Illinois*, supra, 422 U.S. 603. Moreover, the defendant expressly waived his *Miranda* rights in writing prior to giving his second statement, and the trial court found that the defendant gave that statement knowingly and voluntarily.

In addition, the discovery of the bloody clothing at the defendant's home was a significant intervening circumstance. The discovery of that clothing by the police, together with the information that the police already had placing the defendant at or near the scene of the murder at or around the time that it was committed, likely constituted probable cause to implicate the defendant in the victim's death. Although ''[t]he intervening discovery of probable cause to support a suspect's

detention, by itself, 'cannot assure in every case that the Fourth Amendment violation has not been unduly exploited' "; *United States* v. *Cherry*, 759 F.2d 1196, 1212 (5th Cir. 1985), quoting *Brown* v. *Illinois*, supra, 422 U.S. 603; "the intervening acquisition of probable cause is an important attenuating factor in the analysis." *United States* v. *Cherry*, supra, 1212; see also *Oliver* v. *United States*, 656 A.2d 1159, 1172 n.22 (D.C. App. 1995) ("[m]any courts have found that the acquisition of probable cause through independent means is a powerful factor to purge the taint of an earlier arrest").

Irrespective of whether the discovery of the bloody clothing gave rise to probable cause, the discovery itself constituted a significant intervening factor that tended to purge the taint of the underlying illegality. See, e.g., *People* v. *White*, 117 Ill. 2d 194, 224–25, 512 N.E.2d 677 (1987) (confrontation with untainted evidence may be legitimate intervening circumstance that induces voluntary desire to confess), cert. denied, 485 U.S. 1006, 108 S. Ct. 1469, 99 L. Ed. 2d 698 (1988). Although the defendant had given a statement to the police prior to being confronted with the discovery of the clothing, that statement was exculpatory in nature. When informed of the bloody clothing, however, the defendant confessed to the murder and described it in detail. In such circumstances, it is apparent that the incriminating statement was induced primarily by the lawful discovery of the damaging, untainted evidence and not by his initial unlawful detention. See, e.g., *State* v. *Stevens*, 574 So. 2d 197, 204 (Fla. App. 1991); *Thorson* v. *State*, 653 So. 2d 876, 886 (Miss. 1994); *State* v. *Tobias*, 196 Wis. 2d 537, 550–51, 538 N.W.2d 843 (App. 1995).

The final consideration, namely, the purpose and flagrancy of the official misconduct, also militates decisively in favor of a finding of attenuation. Although the conduct of the detectives was purposeful in the sense that they brought the defendant to the police station to question him, their conduct was neither flagrantly in violation of the defendant's rights nor otherwise unduly intimidating or coercive. First, the record indicates that the detectives themselves did not believe that the defendant was under arrest when he accompanied them to the police station. Although the trial court concluded that the defendant reasonably did not believe that he was free to leave the station once he arrived there, the record also would have supported a contrary conclusion regarding the objective reasonableness of the defendant's belief that he was in custody from the time that he accompanied the police to the station. Furthermore, the defendant's father encouraged the defendant to speak with the police, and the defendant's mother and father followed the defendant to the station and remained there while the police interviewed him. In addition, the suppression hearing testimony is devoid of any indication that the detectives threatened or otherwise attempted to intimidate the defendant, by show

of force, or in any other way.[39]

Upon consideration of all of the relevant factors, I would conclude that the defendant's confession was sufficiently attenuated from the initial illegality such that the confession reasonably cannot be characterized as the product of that illegality.[40] The defendant's claim that his confession must be suppressed as the fruit of his illegal detention therefore is without merit.

B

The defendant next contends that it was improper for the state to have adduced Detective Buglione's testimony that the defendant asked for a Bible after being told of the discovery of the bloody clothing at his home.[41] Specifically, the defendant claims that the state used that testimony in violation of his *Miranda* rights because: (1) he was in custody when he asked for the Bible; (2) the remark was made in response to questioning by the police; and (3) he had not been given *Miranda* warnings prior to making the remark. It is not necessary to reach the merits of the defendant's claim because, even if the admission of the challenged testimony was improper, the evidence was harmless beyond a reasonable doubt.

"Two conditions . . . give rise to the requirement of advice of rights under *Miranda*: (1) the suspect must be in the custody of law enforcement officials; and (2) the suspect must be subjected to interrogation." *State* v. *Medina*, supra, 228 Conn. 289. As I explained previously, the state does not challenge on appeal the trial court's finding that the defendant was in custody when he asked for a Bible. With respect to the second requirement, " '[t]he term "interrogation" under *Miranda* is not limited to questioning explicitly designed to elicit an incriminating response but extends to any words or actions on the part of the police that the police should know are reasonably likely to elicit an incriminating response from a suspect. The police, however, cannot be held accountable for the unforeseeable results of their words or actions.' " Id., 290. Even if we assume, arguendo, that Buglione's statement informing the defendant of the discovery of the bloody clothing at his home constituted interrogation within the meaning of the second *Miranda* requirement, the state's use of the defendant's remark was harmless beyond a reasonable doubt. "The improper admission of a confession is harmless error [when] it can be said beyond a reasonable doubt that the confession did not contribute to the conviction." *State* v. *Hafford*, 252 Conn. 274, 297, 746 A.2d 150, cert. denied, 531 U.S. 855, 121 S. Ct. 136, 148 L. Ed. 2d 89 (2000). In the present case, the evidence against the defendant was overwhelming: the defendant was seen in close proximity to the crime scene at the time of the victim's murder, the victim's blood was found on the defendant's clothing, the defendant provided a detailed confession explaining how and why he

murdered the victim, a part of the defendant's necklace was found in the victim's hair and the defendant sought to cover up the crime by lying to his father about the source of the blood on his clothing. Under the circumstances, any impropriety in the state's use of the challenged evidence was harmless beyond a reasonable doubt.

C

The defendant also claims that the trial court improperly denied his request, which he made near the close of the evidentiary portion of the trial, for a one day continuance of the trial. This claim also lacks merit.

The following additional facts are relevant to this claim. At trial, the defendant testified that he did not murder the victim. He explained, rather, that, at approximately 1 a.m. on June 24, 2000, he went to the area of the Washington Avenue Magnet School to meet Jerrell Credle. When the defendant arrived, Credle was there, along with Michael Banores, Jose Rivera and Michael Scott. According to the defendant, Credle and the three other men took him to a wooded area behind the school and showed him the victim's body. At that time, the defendant removed his sweatpants and handed them to Credle, who dipped the pants in the victim's blood. The men then returned to the immediate area of the school and smoked marijuana.

On March 7, 2002, prior to the conclusion of the defendant's trial testimony, defense counsel made an offer of proof outside the presence of the jury. In connection with that offer of proof, the defendant testified that, at the time Credle and the others brought the defendant to the victim's body, Credle bragged about killing the victim and explained how he had done so. The defendant also testified that Credle had ''recited some kind of blessing or prayer in the name of the god 'Mambay,' saying that the blood of the sacrifice is acceptable . . . .'' The trial court sustained the state's objection to the proffered testimony on hearsay grounds, concluding that Credle's statements did not fall within the hearsay exception for statements against penal interest. In explaining its ruling, the court stated, inter alia, that the statements lacked trustworthiness because, although both Scott and Rivera had testified at trial and were present when Credle allegedly had bragged about killing the victim, defense counsel elected not to examine them about Credle's purported incriminating statements. Defense counsel informed the court that he was attempting to locate Credle to subpoena him, and that his inability to introduce Credle's hearsay statements would infringe unduly on the defendant's right to present a defense. At defense counsel's request, the court recessed at 3:30 p.m. that day to give defense counsel time to provide the court with precedent supporting his contention regarding the admissibility of the proffered testimony.

Trial resumed the following day, March 8, 2002, a Friday. Defense counsel did not provide the court with any law concerning the admissibility of the proffered hearsay testimony. Instead, the defendant requested a continuance until Monday, March 11, 2002, so that defense counsel could continue his efforts to locate Credle.[42] Defense counsel further explained that the defendant would complete his testimony that day, that there was a ''good possibility'' that he would have Credle available to testify on Monday, and that Credle would be the last defense witness. Defense counsel also noted that the trial actually had proceeded more quickly than he had expected. The trial court denied both the defendant's request for a continuance and the request to present the proffered evidence. The court again explained that it was denying the request for a continuance on the basis of defense counsel's failure to elicit testimony from either Scott or Rivera regarding Credle's alleged admissions. The court also noted the length of time that the charges had been pending against the defendant and the belated nature of the defendant's request.

''It is well settled that [t]he determination of whether to grant a request for a continuance is within the discretion of the trial court, and will not be disturbed on appeal absent an abuse of discretion. . . . A reviewing court is bound by the principle that [e]very reasonable presumption in favor of the proper exercise of the trial court's discretion will be made. . . . Our role as an appellate court is not to substitute our judgment for that of a trial court that has chosen one of many reasonable alternatives. . . . Therefore, on appeal, we . . . must determine whether the trial court's decision denying the request for a continuance was arbitrary or unreasonabl[e].'' (Citations omitted; internal quotation marks omitted.) *State* v. *Delgado*, 261 Conn. 708, 711, 805 A.2d 705 (2002).

''There are no mechanical tests for deciding when a denial of a continuance is so arbitrary as to [constitute a constitutional violation]. The answer must be found in the circumstances present in every case, particularly in the reasons presented to the trial judge at the time the request is denied. . . . We have identified several factors that a trial court may consider when exercising its discretion in granting or denying a motion for continuance. . . . These factors include the likely length of the delay . . . the impact of delay on the litigants, witnesses, opposing counsel and the court . . . the perceived legitimacy of the reasons proffered in support of the request . . . [and] the likelihood that the denial would substantially impair the defendant's ability to defend himself . . . .'' (Citations omitted; internal quotation marks omitted.) Id., 714.

Under the circumstances, and with due regard for broad leeway possessed by trial courts to grant or to

deny continuances, it cannot be said that the court abused its discretion in denying the defendant's request for a continuance. Although it is true that the length of the continuance that the defendant requested was relatively short and the trial apparently was on or ahead of schedule, the court nevertheless was under no obligation to grant the request. As the trial court noted, defense counsel had known for a long time that Credle was likely to be a defense witness, yet the record is devoid of any indication that he took any action to locate Credle until very near the end of the trial.[43] Furthermore, at defense counsel's request, the court recessed early on Thursday, thereby affording defense counsel at least some additional time to locate Credle. Finally, the defendant's claim of a violation of his right to present a defense is undermined by defense counsel's failure to question either Scott or Rivera in connection with his third-party culpability defense. For all the foregoing reasons, the trial court's denial of the defendant's eleventh hour request for a continuance was not unreasonable.

D

The defendant finally claims that the trial court improperly permitted the state to present evidence of the defendant's post-*Miranda* silence. This claim also is unpersuasive.

As I previously explained, the defendant testified in his own defense and denied that he had anything to do with the victim's murder. With respect to the victim's blood that was found on his clothing, the defendant explained, for the first time at trial, that Credle had led him to the victim's body. At that time, the defendant removed his sweatpants, which Credle dipped in the victim's blood and then returned to the defendant, who put them back on. According to the defendant, the victim's blood had found its way onto the defendant's tank top because the defendant previously had removed the tank top and placed it in a pocket of his sweatpants. The defendant further testified that the tank top was in the pocket of his sweatpants when Credle dipped them in the victim's blood.

At trial, the senior assistant state's attorney (state's attorney) asked the defendant, ''[O]ther than your lawyer, could you please tell . . . the jury when is the first time that you told someone in authority, like a judge, a prosecutor or a police officer, this story about your sweatpants being dipped in blood?'' Defense counsel objected to the state's attorney's question, and the trial court overruled the objection. After the state's attorney repeated the question, the defendant responded that he had provided that version of the events for the first time ''in this courtroom.'' The state's attorney then asked the defendant, ''Now . . . you say the first time that you said this was in this courtroom. When in this courtroom was the first time this was said?'' Defense counsel again

objected, claiming that the question violated the defendant's right to remain silent after having been advised of that right in accordance with *Miranda*. The trial court again overruled defense counsel's objection. The defendant then answered, ''It was yesterday.''

In *Doyle* v. *Ohio*, 426 U.S. 610, 96 S. Ct. 2240, 49 L. Ed. 2d 91 (1976), the United States Supreme Court held that ''the use for impeachment purposes of a [defendant's] silence, at the time of arrest and after receiving *Miranda* warnings, violated the Due Process Clause of the Fourteenth Amendment.'' Id., 619. Under *Miranda*, a suspect who is in custody must be advised, prior to police interrogation, of certain rights, including the right to remain silent and that anything he says may be used against him. *Miranda* v. *Arizona*, 384 U.S. 436, 467–69, 86 S. Ct. 1602, 16 L. Ed. 2d 694 (1966). ''Silence in the wake of these warnings may be nothing more than the arrestee's exercise of these *Miranda* rights. Thus, every post-arrest silence is insolubly ambiguous be-cause of what the State is required to advise the person arrested.'' *Doyle* v. *Ohio*, supra, 617. In other words, '' '[such] silence . . . is ''insolubly ambiguous'' because it may constitute a reliance upon those rights rather than a tacit admission that the accused has an insufficient defense or explanation for his conduct.' '' *State* v. *Canty*, 223 Conn. 703, 710, 613 A.2d 1287 (1992). Moreover, ''while it is true that the *Miranda* warnings contain no express assurance that silence will carry no penalty, such assurance is implicit to any person who receives the warnings. In such circumstances, it would be fundamentally unfair and a deprivation of due process to allow the arrested person's silence to be used to impeach an explanation subsequently offered at trial.'' (Internal quotation marks omitted.) *State* v. *Montgomery*, 254 Conn. 694, 712–13, 759 A.2d 995 (2000). When, however, a defendant who has been given *Miranda* warnings elects to waive his right to remain silent and provides the police with a statement, *Doyle* generally does not apply. See, e.g., id., 716 n.30. ''[I]n such circumstances, it is permissible to cross-examine a defendant about details that he or she may have omitted from responses to police questioning because the defendant, having agreed to speak with police about the subject matter of the crime, cannot later complain that he had failed to mention those details in the exercise of his fifth amendment right to remain silent.'' (Internal quotation marks omitted.) Id., 716–17 n.30.

Like most other constitutional violations, ''*Doyle* violations are . . . subject to harmless error analysis.'' (Internal quotation marks omitted.) Id., 717. ''A *Doyle* violation may, in a particular case, be so insignificant that it is clear beyond a reasonable doubt that the jury would have returned a guilty verdict without the impermissible question or comment upon a defendant's silence following a *Miranda* warning. Under such circumstances, the state's use of a defendant's [post-

arrest] silence does not constitute reversible error. . . . The [error] has similarly been [found to be harmless] where a prosecutor does not focus upon or highlight the defendant's silence in his cross-examination and closing remarks and where the prosecutor's comments do not strike at the jugular of the defendant's story. . . . The cases [in which] the error has been found to be prejudicial disclose repetitive references to the defendant's silence, reemphasis of the fact on closing argument, and extensive, strongly-worded argument suggesting a connection between the defendant's silence and his guilt.'' (Internal quotation marks omitted.) Id., 718.

The state contends that *Doyle* is inapplicable because the defendant did not elect to exercise his right to remain silent after being advised of his *Miranda* rights but, rather, provided the police with a detailed confession. In *State* v. *Silano*, 204 Conn. 769, 778-84, 529 A.2d 1283 (1987), however, this court considered and rejected an argument by the state that *Doyle* is inapplicable in circumstances that were identical in all material respects to those of the present case. We explained: ''The state may impeach a defendant by cross-examination concerning a prior inconsistent statement made after arrest and the giving of *Miranda* warnings, even though such impeachment may call into question a defendant's silence about the truth when he made that prior inconsistent statement. . . . Such an examination is allowed because it is impossible to bifurcate a prosecutor's questions concerning inconsistency into those relating to facts contained in a prior statement and those concerning facts omitted therefrom. . . . A prosecutor may not, however, question a defendant about his silence after the interrogation has ceased, since a defendant may reassert his right to remain silent at any time, and if he ceases to answer questions, or to come forward with additional or correcting information after questions are no longer being asked of him, there is a reasonable possibility that he is relying upon that right. . . . [T]herefore . . . [a prosecutor's] question concerning the defendant's failure *ever again to contact the police* [*to explain that the defendant's story was untrue*], *after he* [*has*] *been arrested and given a Miranda warning,* [*is*] *improper under the strictures of Doyle*.''[44] (Citations omitted; emphasis added; internal quotation marks omitted.) Id., 780–81. Thus, contrary to the state's contention, it was improper for the state's attorney in the present case to question the defendant regarding his failure to have contacted ''a judge, a prosecutor or a police officer,'' after the police interrogation had ceased, for the purpose of correcting his story.

As in *Silano*, however, the *Doyle* violation in the present case was harmless. The improper questioning was relatively brief, and the state's attorney's closing argument contained no reference to the fact that the defendant had not contacted the authorities to correct

his story.[45] Furthermore, as I have explained, the evidence against the defendant was overwhelming, and the defendant's version of the events surrounding the victim's murder was ''transparently frivolous . . . .'' (Internal quotation marks omitted.) Id., 781. Under the circumstances, therefore, there is no reasonable possibility that the state's attorney's improper questions had any bearing on the jury's guilty verdict.

III

To maintain public confidence in our system of justice, judicial opinions must be true to the legal principles that they purport to apply, such that, at a minimum, those opinions must represent a reasoned attempt to decide the issues presented in accordance with those applicable principles. Regrettably, the plurality and concurring justice fail to meet this standard both with respect to their analyses and resolution of the *Golding* issue raised by this case, and with respect to their analyses and resolution of the issue of whether the defendant is entitled to piggyback on his mother's purported refusal to consent.

Nevertheless, there may be some who hail today's decision as a courageous vindication of an important constitutional right. Nothing could be further from the truth. Even if there is merit to the constitutional principle recognized today by the plurality and concurring justice, they have achieved that end at the expense of fair and objective decision making. The result is a serious miscarriage of justice. Because the defendant's murder conviction should be affirmed, I dissent.

[1] In *Golding*, we held that ''a defendant can prevail on a claim of constitutional error not preserved at trial 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.'' (Emphasis in original.) *State* v. *Golding*, supra, 213 Conn. 239–40.

[2] My comments in this dissent also are applicable to the concurring opinion. When necessary, however, I address the concurring opinion separately.

[3] I note, preliminarily, that the plurality's explication of the state constitutional principle that it adopts today—a principle that the defendant himself acknowledges is representative of the distinct minority view—is not clear because the plurality uses different standards in articulating that principle. For example, the plurality states that the ''Connecticut constitution requires that the police . . . obtain the consent of all joint occupants who are present when consent is sought in order for a search by consent to be valid.'' The plurality also states ''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.'' Yet, the plurality states that its ''conclusion . . . 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.'' Footnote 11 of the plurality opinion. Although the cases and commentators upon which the plurality relies take the position that the consent of one occupant who is present does not trump the rights of a second occupant who also is present and *has objected to the search*, the plurality sometimes states its constitutional principle in broader terms, that is, that the state is required to obtain the consent of all joint occupants who are present, regardless of whether they offer conflicting responses to the request to consent. This is not a trivial distinction because, first, law enforcement authorities need to know how lawfully to comport

themselves, and second, under the broad language of the plurality opinion, an occupant who simply acquiesces in the consent of a joint occupant nevertheless would be entitled to the suppression of the fruits of the otherwise lawful, ensuing search. The concurring justice recognizes this distinction in concluding that ''a consent to search given by one co-occupant is invalid as against the other when both are on the scene *and one has refused to consent*.'' (Emphasis added.) Indeed, the defendant, himself, casts his claim in similar terms, asserting that his ''father's consent [cannot] 'triumph' over [his] mother's contemporaneous *refusal to consent*.'' (Emphasis added.) In any event, as I explain subsequently in this opinion, the record is inadequate to address the defendant's unpreserved claim no matter how broadly or narrowly it is characterized by the plurality.

[4] The defendant inflicted several potentially fatal injuries to the victim, including blunt trauma to the head resulting in bruising to the brain, blunt injury manual strangulation to the neck resulting in fracturing of the hyoid bone, and blunt trauma to the chest and abdomen resulting in fractured ribs and a laceration of the spleen. In his statement to the police, the defendant revealed how he had inflicted these injuries on the victim. The defendant explained that, on the night of the murder, he was walking near Campbell and Main Streets in West Haven when the victim, a white female unknown to the defendant and subsequently identified as Doris Crain, approached the defendant and asked him if he had any marijuana. The defendant did have one marijuana cigarette, and he and the victim went behind the Washington Avenue Magnet School to smoke it.

When they finished the marijuana cigarette, the defendant and the victim began kissing and eventually engaged in sexual intercourse. At some point, the victim told the defendant that she wanted to stop because he was hurting her. The defendant, however, continued to engage in sexual intercourse with her, subsequently ejaculating inside her. The victim was very upset with the defendant and told him that she intended to call the police.

The defendant's statement to the police contains the following account of what transpired next. ''At this point, I got scared because I knew that I was on probation all ready [sic] and did not want to go back to jail. As the girl stood up, I grabbed her from behind and used both hands to put her in a choke hold. One arm was wrapped around her neck and my other arm/hand was pushing on her neck. My intention at this point was to kill her so she could not tell anybody what happened. I continued to choke the girl out by placing her to the ground and wrapped [sic] my legs around her. As we went to the ground I went down first and she fell on top of me. At this point, the girl was gurgling and was trying to catch her breath.

''I thought the pressure I was applying was enough to kill her but she was still alive. I then threw her off me and she was laying [sic] on her back, and she was still making a gurgling sound.

''I then took my left hand and put my thumb into her throat area and was digging into her throat. At the same time, I punched her in the jaw with my right hand. I also used a 'hammer' fist punch and struck the girl in the skull area of the head. I don't know where she was bleeding from but there was a lot of blood. After all this punching and choking I believed that she was still alive. I also kicked the girl with the heel of my boot in the stomach. The girl somehow reacted to this and flipped on her stomach.

''I then proceeded to drag the girl by her hair for a short distance. The girl's hair started to pull out so I stopped dragging her in this manner. I then grabbed the girl by her feet and dragged her into the high grass. When I got into the high grass the girl continued to grasp [sic] for air. I left the girl in the woods and saw an Olde English 40 [ounce beer] bottle (empty) that I had drank [sic] earlier in the day. I picked up the 40 [ounce] bottle and returned to the girl. I began to hit the girl with the 40 [ounce] bottle at least six times in the head. As I was striking the girl blood was flying in the air and getting all over my clothes. After hitting the girl all these times, she continued to gurgle, but I figured she had to be dead.

''I then threw the 40 [ounce] bottle to the right side of the girl's body. I returned to where the girl's pants and shoes were and threw them in the same vicinity as the beer bottle.

''I then proceeded to leave the school by the picnic table and play area. When I reached the area, I saw several people rolling a 'blunt' (marijuana). I recognized these people as: Jerrell, Big Mike, and Fat Cat. I only know these people by their street names. As I walked by them Jerrell said 'What up it's Nick Brunetti.' I said 'What up' and continuing [sic] walking. I did not want to stop because I was covered in blood and I did not want them to know that I had just killed a girl behind the school.''

Shortly after giving this statement, the defendant provided an addendum to it. The addendum provides in relevant part: "[W]hen I was choking the girl my silver scorpion [pendant] got caught in the girl's hair. I did not realize that I lost the pendant until this morning. I usually wear the pendant on my silver link necklace."

[5] The defendant maintained that his confession was the product of the allegedly unlawful search of his home because he gave the confession after being told of the bloody clothing that the police had discovered during their search of the home. At trial, the state established that at least one such article of clothing, a tank top, contained DNA identical to the DNA of the victim.

[6] As the plurality has explained, the defendant's mother and father were together at the police station, waiting for the defendant, when the police approached them to seek consent to search the family home.

[7] Although the state bears the burden of establishing the voluntariness of a consent to search; e.g., *State* v. *Cobb*, 251 Conn. 285, 315, 743 A.2d 1 (1999), cert. denied, 531 U.S. 841, 121 S. Ct. 106, 148 L. Ed. 2d 64 (2000); the suppression hearing in the present case commenced with the presentation of evidence by the defendant rather than by the state. Indeed, the state called no witnesses, relying, instead, on its cross-examination of the defendant's witnesses.

[8] The other witnesses whom the defendant called to testify at the suppression hearing were Joseph Biondi and James Sweetman, both detectives employed by the West Haven police department, and Anthony Buglione, a detective with the major crime unit of the Connecticut state police. The defendant also testified at the hearing.

[9] Among other things, the defendant's father indicated that, upon consenting to the search, he and his wife went back to their home to let the police in.

[10] The defendant's mother did indicate that she may have offered to make coffee for the police officers while they were conducting the search.

[11] In *Jones*, the defendant, Reginald Jones, was residing with his father and stepmother when he became a suspect in the murder of a teacher at a high school in New Haven. *State* v. *Jones*, supra, 193 Conn. 73, 77. The police executed two separate consent searches of the family home, one predicated on the consent of Jones' father and the other on the consent of his stepmother. Id., 77–78. Jones challenged the voluntariness of each such consent and adduced testimony from his father and stepmother that they had given their consent to search only because the police had led each of them to believe that a warrant inevitably would be issued if they declined to do so. See id., 78. In denying Jones' motion to suppress certain physical evidence, the trial court rejected that testimony, however, crediting, instead, the contrary testimony of certain police officers. See id., 77, 78–79. We concluded that the trial court reasonably had credited the testimony of the state's witnesses, and, therefore, rejected the defendant's claim on appeal that the trial court improperly had concluded that the searches were lawful. See id., 80–81.

[12] The following is the court's ruling on the defendant's motion to suppress with respect to the issue of whether the consent search was illegal: "Regarding the consent to search, counsel—and I must place on the record that perhaps one reason for the state's . . . [request for an immediate ruling on the suppression issues] was that the [state] had provided me at least a day or so earlier with the applicable case law in every aspect of the issue regarding voluntariness and custody as deemed appropriate for this issue. And the court—and also defense counsel as well provided the court with the case law. This is a courtroom of law. We are confined and operate in accordance with the law.

"Now in [*State* v. *Jones*, supra, 193 Conn. 70], cited by [defense counsel] in support of [the defendant's] . . . motion to suppress the evidence in regard to the consent offered by the parents such as it was before the court, the court heard the evidence and indeed ordered the transcripts last night, and they were presented to the court this morning. The court distinguishes this case from [*Jones*]. It is clear to the court that this is not an issue as decided in [*Jones*], one of acquiescence to a lawful—to a claim of lawful authority. It is not that. It is clear that at least one of the parties, one of the parents, declined to consent to [the] search.

"This was conducted at the police station. [The defendant's father's] brother is an officer. And, as he did, he sought information, information to decide whether or not he should sign the consent [form]. He sought information to make an informed decision. He made it clear for the record that he

knew he did not have to sign it. He made that quite clear. There was no coercion. There was no force. There was no mere acquiescence. He invited comment by his brother, sought his advice, as he should. He's experienced in this area. And based upon that advice, he consented to [the] search.

"There is no issue of whether or not he had authority to consent to the search of the defendant's bedroom, and it's been an issue before [the] court, and that's been satisfied. So, in regard to the search, the court finds that the consent to search was given knowingly and voluntarily. And the court is mindful of the fact that our courts look for warrants, [encourage] the use of warrants when going to persons' homes in our country pursuant to our constitution. This is a matter where the consent to search was given freely . . . [and] voluntarily. It was not a product of coercion, [express] or implied. That motion is denied."

[13] The defendant testified in his own defense at trial. In that testimony, he disavowed the truth of the detailed confession that he had given to the police on the day following the murder, claiming, instead, that his confession was the product of police threats and intimidation. He further maintained that the victim actually had been killed by four members of a cult known as the "Black Dragon" cult. According to the defendant, on the night of the murder, he met the four men, two of whom testified for the state that they had seen the defendant emerge from the wooded area where the murder of the victim had been committed. The defendant maintained that the men took him to the victim's body, where the defendant took off his sweatpants. According to the defendant, one of the cult members then "dipped the [defendant's] sweatpants in the [victim's] blood." The defendant explained that, because of the heat, he previously had taken off his tank top and placed it in the pocket of his sweatpants. The defendant put his sweatpants back on and proceeded home, where he told his father that he had gotten blood on him while attempting to defend himself against three unidentified assailants who had tried to rob him. The defendant's trial testimony regarding the events surrounding the killing of the victim, which the jury plainly rejected as a contrivance, purported to explain how the victim's blood had found its way onto the defendant's clothing.

[14] The other three questions for which the defendant sought an articulation were: 1. "At what point in time did the police have probable cause to arrest the defendant?" 2. "Did the police seize or obtain clothing and jewelry from the defendant in the early evening hours of June 24, 2000, shortly after they arrived at the defendant's house?" 3. "Were the defendant's parents allowed to talk to the defendant at the police station, while he was being interrogated?"

[15] I note that the defendant's motion for articulation contains no suggestion that the defendant was seeking to raise any issue on appeal that he had not raised in the trial court. Nevertheless, the concurring justice states that she is "mindful of the defendant's efforts to perfect the record on [the] issue [of the validity of consent]—*filing a motion for an articulation on . . . this issue* and filing a motion for review of the trial court's denial of that motion—and the state's opposition to those efforts." (Emphasis added.) This statement is, at best, misleading. As I explained previously, it is true that the defendant did seek to have the trial court render a further articulation in regard to whether the defendant's mother had "decline[d] to give her consent for a search of the house." Contrary to the suggestion of the concurring justice, however, the defendant's motion for articulation did not indicate that the defendant was raising, or intended to raise, any new "issue" regarding the validity of the consent to search. In any event, even if the defendant had sought to raise a new issue regarding the validity of the consent to search in his motion for articulation, it is axiomatic that a trial court is under no obligation to render an articulation on a claim that had not been raised before it. See Practice Book § 66-5 (articulation appropriate when further facts are necessary for the proper presentation, on appeal, of "the issues raised" in trial court); see also *Cable* v. *Bic Corp.*, 270 Conn. 433, 444–45, 854 A.2d 1057 (2004) ("[p]roper utilization of the motion for articulation serves to dispel any . . . ambiguity by clarifying the factual and legal basis upon which the trial court rendered its decision" [internal quotation marks omitted]). Indeed, to conclude otherwise would lead to the absurdity of requiring a trial court to assist in its own ambuscade by the defendant. Thus, even if the defendant *had* explained his reason for seeking an articulation regarding the defendant's mother's unwillingness to sign the consent to search form, that reason would have provided a wholly insufficient basis for the court to have granted the defendant's motion for articulation. Moreover, for the reasons I discuss more fully hereinafter, the record of the

suppression hearing was inadequate for an articulation on that issue because the facts adduced at the hearing were insufficient for any such articulation.

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

[17] In concluding that appellate review of such a claim is appropriate, this court has noted the exceptional circumstances that warrant that review. See *State* v. *Golding*, supra, 213 Conn. 238–39.

[18] Of course, if the record is inadequate for review, *Golding* prohibits a reviewing court from remanding to the trial court for the purpose of supplementing the record. Indeed, that is what the first prong of *Golding* was designed to avoid. *State* v. *Medina*, 227 Conn. 456, 474, 636 A.2d 351 (1993); *State* v. *Stanley*, 223 Conn. 674, 689–90, 613 A.2d 788 (1992). A contrary rule would promote ceaseless litigation by discouraging parties from raising claims in a timely manner, thereby seriously undermining the efficient administration of justice. I note that, consistent with this well founded rule, neither party in the present case has sought such a remand.

[19] It is equally well established that an accused may be found to have knowingly and voluntarily waived his *Miranda* rights even though he has elected not to sign a waiver form. See, e.g., *North Carolina* v. *Butler*, 441 U.S. 369, 373, 99 S. Ct. 1755, 60 L. Ed. 2d 286 (1979); *State* v. *Harris*, 188 Conn. 574, 580, 452 A.2d 634 (1982), cert. denied, 460 U.S. 1089, 103 S. Ct. 1785, 76 L. Ed. 2d 354 (1983). Similarly, an oral statement or confession will not be deemed to be involuntary merely because an accused has declined to reduce it to writing. E.g., *State* v. *Barrett*, 205 Conn. 437, 450–51, 534 A.2d 219 (1982).

[20] The concurring justice acknowledges that the validity of a consent to search is determined on the basis of the totality of the circumstances. The concurring justice also indicates that such consent may be established even though the person consenting has declined to sign a consent to search form. Inexplicably, however, the concurring justice then proceeds to equate the defendant's mother's refusal to sign the form with her refusal to consent to the search even though (1) there is absolutely nothing in the record regarding the other circumstances that the concurring justice concedes are necessary to the determination of whether the defendant's mother did consent to the search, and (2) the absence of that factual record is attributable to the defendant, and to the defendant alone, because the state never had any reason or opportunity to present those circumstances in view of the fact that the only claim that the defendant raised in the trial court implicated the consent of the defendant's father and not the consent of his mother.

[21] *Although mere acquiescence to a claim of lawful authority is not sufficient to establish consent; see, e.g., State* v. *Jones*, supra, 193 Conn. 79; to the extent that the constitutional principle adopted by the plurality bars the police from conducting a search only when one of the co-occupants present affirmatively objects to the search; see footnote 3 of this opinion; the state could have prevailed under the plurality's new constitutional principle merely by showing that the defendant's mother did not affirmatively object to the search. Thus, for example, under that constitutional principle, the state could have demonstrated that the search was lawful if it had established that the defendant's mother had acquiesced in her husband's consent.

[22] In fact, to the extremely limited extent that the record contains any other evidence that may be deemed to bear upon the question of the defendant's mother's consent, that evidence, specifically, the fact that the defendant's father and mother returned home together to let the police in, and the fact that the defendant's mother may have offered coffee to the police during their search of her home; see footnotes 9 and 10 of this opinion; suggests that she did not oppose the search. This evidence, adduced by the parties during the litigation of the defendant's claim challenging the validity of his father's consent, merely underscores the obvious and undisputed fact that a person's refusal to sign a consent to search form is one of several relevant factors to be considered in determining the broader issue of consent.

[23] The concurring justice incorrectly postulates that the defendant's mother's lack of consent reasonably may be inferred from her refusal to sign the consent to search form. This conclusion, which fairly can be characterized as the product of a judicial sleight of hand, would be correct if the state had borne the burden of establishing that the defendant's mother had consented. Indeed, in that case, the trial court would have been required to find that the mother had declined to consent because there is no other evidence in the record with respect to that issue. No such conclusion or inference may be drawn in the circumstances of the present case, however, because the issue of the mother's consent never was before the court and, therefore,

the state never had any reason to establish that the mother had consented or otherwise had not objected to the search, let alone any burden to do so. Indeed, the state satisfied the only burden that the defendant's claim required it to shoulder, namely, to prove that the defendant's father's consent to search was valid. Consequently, as I have explained, we simply do not know what the mother did or said, aside from refusing to sign the form, in regard to granting or withholding her consent to the search. Like the plurality, the concurring justice simply ignores this fact, thereby placing the burden of the inadequate record on the state rather than on the defendant. In doing so, the concurring justice joins the plurality in rendering a decision that is patently in violation of the first prong of *Golding*.

[24] The concurring justice seeks to remove the trial court's statement from the realm of dicta by arguing that it was material to the court's finding regarding the validity of the defendant's father's consent to search. Specifically, the concurring justice refers to the juxtaposition of the trial court's statement that the defendant's mother had ''declined to consent to [the] search'' with the court's reference to *State* v. *Jones*, supra, 193 Conn. 70. The concurring justice's labored effort to inject some significance into the trial court's statement is entirely unavailing. The trial court adverted to *Jones* in reference to the defendant's contention that his father's consent was invalid because it was based on a claim of lawful authority by the police, the very argument that we had addressed in *Jones*. Indeed, there is absolutely nothing about the conduct of the defendant's mother that is relevant, let alone essential, to the trial court's finding regarding the validity of the father's consent. Moreover, even if the court's statement about the mother's refusal to consent was somehow material to the court's finding concerning the father's consent, that statement would not be entitled to any weight because, as I discussed previously, the state never had any reason to address the issue of the mother's consent in light of the fact that the defendant never raised it below.

In a further effort to justify the conclusion that the trial court's statement is entitled to weight, the concurring justice contends that, ''it is evident by comparing the trial court's discussion of [the defendant's mother's] consent or lack thereof with its discussion of [the defendant's father's] consent that, in the trial court's view, the decision to sign or not to sign the consent form was synonymous with a decision whether to consent to the search, absent evidence to the contrary. The trial court found that [the father] voluntarily had consented to the search of his home based solely on his decision to sign the consent form following a discussion with his brother. The trial court did not discuss consent based on conduct or verbal acquiescence. Rather, the court discussed consent only in the context of the signed form.'' The concurring justice then asserts that, because the defendant's mother did not sign the form, the trial court must have viewed that conduct as reflecting her ''refusal to consent to the search.'' This argument also is baseless. First, it is a mischaracterization to describe the trial court's comment regarding the mother's conduct as a ''discussion'' of that conduct, and the concurring justice cannot transform that passing reference into something comparable to the trial court's findings and ruling on the issue of the father's consent simply by asserting it to be so. Moreover, as I have explained, because the defendant never raised the issue of the mother's consent in the trial court and the record never was developed regarding that issue, it is patently unreasonable to presume that the trial court nevertheless would have endeavored to make a ''finding'' with respect to that issue. The concurring justice completely overlooks that fact in contending that the trial court found that the mother's refusal to sign the consent form was tantamount to a refusal to consent ''absent evidence to the contrary.'' There was no such ''evidence to the contrary'' because, as the trial court well knew, the issue of the mother's consent was not before the court. Furthermore, in rejecting the defendant's motion to suppress, the trial court properly focused on the fact that the defendant's father had signed the consent form and that he had done so freely and with a full understanding of his rights. See footnote 25 of this opinion. Because the defendant's father had signed the form, and because the defendant presented no evidence to suggest that his signature did not reflect his informed consent, the court had no reason otherwise to comment extensively on the father's ''conduct or verbal acquiescence.'' Finally, the concurring justice's assertion that the trial court necessarily equated the defendant's mother's refusal to sign the form with her refusal to consent ignores the fact that the determination of whether consent is knowing and voluntary depends on the totality of the circumstances, not just whether a consent form has been signed. In fact, to assert that the trial

court believed that the mother's refusal to sign the consent to search form was tantamount to a refusal to consent unfairly imputes to the trial court the same fundamental misunderstanding of the law of consent that pervades the plurality and concurring opinions.

[25] The plurality asserts that, "[b]ecause 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 [the state] had sufficient opportunity and incentive to address the issue of the defendant's mother's consent at the suppression hearing." Footnote 6 of the plurality opinion. The plurality's attempt to rationalize its conclusion in this manner is inexplicable in view of the suppression hearing testimony, which established beyond doubt that the defendant's father voluntarily and knowingly had consented to the search. Indeed, the defendant's father *himself* testified that: (1) he had reviewed the consent to search form, and the police had explained the form to him; (2) he understood the form; (3) he had been advised by the police that he had the right to refuse to sign the form; (4) no one had forced him to do so; and (5) he voluntarily had signed the form. In light of the foregoing testimony, it is manifestly unreasonable and unfair to hold the state responsible for failing to adduce evidence that the defendant's mother also had consented to the search. Indeed, the evidence of the defendant's father's consent was so overwhelming that it would have seemed curious for the state to have sought to prove that the defendant's mother also had consented.

The plurality's argument fails for a second reason. It may well be that the defendant's mother neither affirmatively consented to the search nor affirmatively objected to it. For example, she simply may have acquiesced in the defendant's father's decision to consent. See footnote 21 of this opinion. In that case, it is likely that (1) the state could not have established a valid consent to search on the basis of the mother's conduct *and* (2) the mother's acquiescence in the father's consent would *foreclose* a claim by the mother that the search violated her rights even under the new constitutional doctrine espoused by the plurality. In such circumstances, the state would have had no reason to adduce testimony demonstrating the mother's acquiescence, yet such a showing would have defeated the constitutional claim that the defendant has raised for the first time on appeal. Due to the plurality's terribly flawed *Golding* analysis, however, the state is forever barred from making such a showing.

I note, finally, the concurring justice's suggestion that the state somehow bears responsibility "[t]o the extent that the record is not as complete as this court ideally would like . . . ." In support of her assertion, the concurring justice observes that "it was the state's burden to prove that the police [had] obtained consent to the search" and, further, that she is "mindful of the defendant's efforts to perfect the record on this issue—filing a motion for an articulation on, inter alia, this issue and filing a motion for review of the trial court's denial of that motion—and the state's opposition to those efforts." This contention is specious, at best, for a multitude of reasons. Before enumerating those reasons, however, I am constrained to comment on the concurring justice's euphemistic characterization of the record as "not as complete as this court ideally would like . . . ." Under the first prong of *Golding*, the record either is adequate for review or it is not, and the defendant bears the burden of demonstrating that it is adequate. See *State* v. *Golding*, supra, 213 Conn. 240. Consequently, in fairness to the state, I see no reason why an appellate court ever should conduct a *Golding* review of an unpreserved constitutional claim unless the record *is* "as complete as [the] court ideally would like . . . ." More importantly, for purposes of *Golding*, the record is not adequate unless, inter alia, it contains the facts upon which the unpreserved constitutional claim is predicated. In the present case, the record clearly is inadequate because a critical factual predicate is missing: we do not know whether the defendant's mother objected to the search.

I turn now to the reasons why there is absolutely no merit to the argument of the concurring justice that the state bears responsibility for the present state of the record. First, as the trial court found, the state clearly met its burden of establishing the validity of the search by demonstrating, contrary to the defendant's claim, that his father's consent was voluntary. Having made that showing, there was nothing more for the state to prove in order to defeat the defendant's motion to suppress. Second, as I previously have explained, the defendant's motion for articulation contained no indication that the defendant intended to raise a claim on appeal that he had not raised in the trial court. See footnote 15 of this opinion. Third, even if the defendant had alerted the trial court that he was seeking an articulation because he

intended to raise a new claim on appeal, the trial court would have been under no obligation to grant the defendant's motion because it is axiomatic that a trial court is not required to render an articulation on a factual or legal claim that was not raised in the trial court. See id. Consequently, it is patently unreasonable for the concurring justice to intimate that the state's objection to the defendant's motion for articulation constituted an unwarranted attempt to block the defendant's legitimate efforts to amplify the record. Fourth, it is undisputed that the trial court properly denied the defendant's motion for articulation because the trial court's findings and conclusion are fully sufficient for this court's review of the sole claim that the defendant raised in the trial court with respect to the validity of the search, namely, that his father's consent to search was not valid. Fifth, the first time that the defendant indicated why he had sought an articulation regarding the question of his mother's consent was in his motion for review, a motion that this court properly denied because, as I indicated previously, a trial court is under no obligation to file an articulation on an issue that was not raised in that court. Sixth, the concurring justice does not, because she legitimately cannot, question the propriety of this court's determination, implicit in our denial of the relief sought by the defendant in his motion for review, that the trial court properly had denied the defendant's motion for articulation. Seventh, even if the trial court had granted the defendant's motion for articulation with respect to the issue of defendant's mother's consent, that articulation would have been unavailing because, as I have explained, the evidence presented at the hearing on the defendant's motion to suppress simply was not adequate for any finding or determination regarding the mother's consent or lack thereof in light of the fact that that issue was not the subject of the suppression hearing. For all these reasons, it is manifestly incorrect and unfair for the concurring justice to suggest that the state bears some responsibility for the inadequacy of the record.

[26] The same may be said of the concurring opinion insofar as the concurring justice adopts the reasoning of the plurality on this point.

[27] As I discussed previously in this dissent, the record does not establish that the defendant's mother declined to consent, merely that she declined to sign the consent to search form. For purposes of this discussion only, however, I assume that the record establishes that the defendant's mother declined to consent to the search itself.

[28] See *Silva* v. *State*, 344 So. 2d 559, 563 (Fla. 1977); *State* v. *Randolph*, 278 Ga. 614, 614, 604 S.E.2d 835 (2004), cert. granted, U.S. , 125 S. Ct. 1840, 161 L. Ed. 2d 722 (2005); *In re Welfare of D.A.G.*, 484 N.W.2d 787, 790 (Minn. 1992); *State* v. *Leach*, 113 Wash. 2d 735, 744, 782 P.2d 1035 (1989).

[29] Indeed, in the seminal federal case in this area, *United States* v. *Matlock*, 415 U.S. 164, 94 S. Ct. 988, 39 L. Ed. 2d 242 (1974), the United States Supreme Court concluded that the consent of the defendant's co-occupant was binding on the defendant even though the defendant was present at the scene of the search and never was asked by the police whether he would consent to it. Id., 166–67, 177. *Matlock* and the present case, therefore, are factually very close; in fact, I do not believe that there is any meaningful factual distinction—that is, a factual distinction of federal constitutional significance—between the two cases.

[30] I reiterate that the judgment of this court is fundamentally erroneous because *Golding* operates as a bar even to our consideration of the issue of whether the defendant is entitled to invoke his mother's purported refusal to consent to the search.

[31] As a consequence of the plurality's holding that the defendant's state constitutional rights were violated by the search of his house, the state will be precluded from using the fruits of that search, in its case-in-chief, at any future trial of the defendant. That evidence consists of the defendant's bloody tank top, which contains the victim's DNA, and his detailed confession, including his acknowledgment that the pendant that was found in the victim's hair belonged to him. Although it is conceivable, of course, that the state may be able to salvage some of the evidence that the plurality concludes was obtained illegally by the police; see, e.g., *State* v. *Clark*, 255 Conn. 268, 280–81 n.29, 764 A.2d 1251 (2001) ("[u]nder the inevitable discovery rule, evidence illegally secured in violation of the defendant's constitutional rights need not be suppressed if the state demonstrates by a preponderance of the evidence that the evidence would have been ultimately discovered by lawful means" and that those "lawful means which made discovery inevitable . . . were being actively pursued prior to the occurrence of the constitutional violation" [internal quotation marks omitted]); it is by no means clear from the record that the state will be able to

demonstrate an exception to the suppression requirement.

[32] Although the defendant invokes both the federal and state constitutions in support of his claim, he does not contend, with respect to this claim, that the state constitution affords him any greater rights than the federal constitution. Accordingly, for purposes of this appeal, I treat the applicable federal and state constitutional provisions as affording the defendant the same level of protection.

[33] The police received this information about the defendant from Michael Scott, whom the defendant knew as "Big Mike." In his confession, the defendant noted that, as he was leaving the scene of the crime, he saw Scott and several other men seated at a picnic table nearby and exchanged greetings with them.

[34] As I previously noted, the defendant testified at the suppression hearing and at trial. See footnotes 8 and 13 of this opinion.

[35] In light of the trial court's conclusion that the defendant was in custody when he gave his first statement, and because the state conceded that the defendant had not been advised of his *Miranda* rights prior to that statement, the trial court granted the defendant's motion to suppress that initial statement. Although the state does not concede that the trial court properly found that the defendant was in custody at that time, the state nevertheless has not challenged that finding on appeal. Consequently, the propriety of the court's ruling with respect to the defendant's motion to suppress his first statement is not the subject of this appeal.

[36] The same is true with respect to Detective Brunetti's further comment that the police "possibly" could bar the defendant's parents from entering their home if the decision was made to seek a search warrant. That comment was an accurate representation of standard police practice and it carried no suggestion that the defendant's father's refusal to consent to a search of the home automatically would result in a bar to the defendant's parents' reentry.

[37] The trial court did not explicitly address the state's claim of attenuation. Both parties expressly agree, however, that the record nevertheless is fully adequate for our resolution of that issue on appeal.

[38] I agree with the defendant's assertion that "there was a close temporal sequence: (1) between the illegal seizure and the first statement, obtained less than two hours later . . . and (2) between the first and second statement, which commenced about thirty minutes after the first one was finished."

[39] At the suppression hearing, the defendant did not indicate that the police had threatened him while he was at the police station. At trial, however, the defendant testified that the police told him that he was "f-ed," and that, unless he cooperated, he would spend the rest of his life in prison. According to the defendant, the police also told him that, if he cooperated, he would be charged with manslaughter and "probably [would] do ten years."

[40] The defendant relies on *Brown* v. *Illinois*, supra, 422 U.S. 590, and *Dunaway* v. *New York*, 442 U.S. 200, 99 S. Ct. 2248, 60 L. Ed. 2d 824 (1979), in support of his contention that his confession was the product of his first statement, which, for purposes of this appeal, the state concedes was the inadmissible fruit of the defendant's unlawful arrest. This claim lacks merit. *Brown* and *Dunaway* each involved factual scenarios in which the petitioner, after being arrested illegally, gave two statements to the police, *both of which* were incriminating. *Dunaway* v. *New York*, supra, 203–204; *Brown* v. *Illinois*, supra, 591, 594–95. In each case, the prosecution claimed that the second statement was admissible, and, in each case, the United States Supreme Court disagreed, concluding that the second statement was "the result and the fruit of the first." *Brown* v. *Illinois*, supra, 605; accord *Dunaway* v. *New York*, supra, 218 n.20. In the circumstances presented by *Brown* and *Dunaway*, the state has a heavy burden of establishing that the second statement is not the product of the first because a defendant who gives one incriminating statement is likely to believe that he has little to lose by giving a second such statement. In contrast to the statements in *Brown* and *Dunaway*, however, the defendant's first statement in the present case was *exculpatory*, and, consequently, any relationship between that statement and the confession that followed necessarily was significantly less direct than that of the statements at issue in *Brown* and *Dunaway*.

[41] The record indicates that the defendant did not preserve this claim in the trial court. Nevertheless, the record is adequate for our review of the claim.

[42] According to defense counsel, he had sought to subpoena Credle earlier in the week by attempting to subpoena him at an address in West Haven.

Those efforts were unsuccessful because Credle apparently had moved. Defense counsel noted that he had obtained a New Haven address for Credle, which the state indicated was consistent with the information that it had regarding Credle's whereabouts. Moreover, both the state and the defendant indicated that Credle recently had been arrested.

[43] The defendant suggests that defense counsel's failure to attempt to locate Credle was due to the fact that Credle had been identified as a possible state's witness. That fact alone does not help the defendant because the state had identified Credle as a *potential* witness only. In view of the fact that neither the state nor the defense was obligated to call any witness so identified, defense counsel's failure to subpoena or otherwise to locate Credle cannot be excused merely because Credle appeared on the state's witness list.

[44] In *Silano*, we nevertheless concluded that the *Doyle* violation was harmless. *State* v. *Silano*, supra, 204 Conn. 782, 784.

[45] The defendant asserts that, on four occasions during closing argument, the state's attorney underscored the defendant's failure to contact the authorities to correct his story. A careful review of the record, however, reveals that the comments on which the defendant relies pertained only to the patent inconsistencies between the confession that the defendant had given to police and his exculpatory trial testimony. That argument was proper because, as I explained previously, the state is free to impeach a defendant with such inconsistencies. See, e.g., *State* v. *Silano*, supra, 204 Conn. 780–81.