STATE OF CONNECTICUT *v.* TRICIA LYNNE COCCOMO
(SC 18443)

Rogers, C. J., and Norcott, Palmer, Zarella, McLachlan, Eveleigh and Vertefeuille, Js.

Argued March 22—officially released November 22, 2011

Timothy J. Sugrue, assistant state's attorney, with whom were *Joseph C. Valdes* and *Dina Urso*, assistant state's attorneys, and, on the brief, *David I. Cohen*, state's attorney, and *Robin S. Schwartz*, former assistant state's attorney, for the appellant (state).

Robert S. Bello, with whom, on the brief, was *Patrick D. McCabe*, for the appellee (defendant).

Opinion

ZARELLA, J. In this certified appeal, we are required to determine whether the Appellate Court correctly concluded that the admission of evidence that the defendant, Tricia Lynne Coccomo, had transferred certain real property that she owned for less than fair value as proof of consciousness of guilt constituted an abuse of the trial court's discretion and deprived the defendant of a fair trial. Additionally, the defendant asks this court to consider, as an alternative ground for affirmance, whether the trial court committed plain error when it admitted the results of a blood alcohol test that the defendant claims was performed on blood that was not hers. The state claims that the Appellate Court incorrectly concluded that the trial court abused its discretion in admitting the property transfer evidence. Because we agree with the state and reject the defendant's alternative ground for affirmance, we reverse the judgment of the Appellate Court.

The jury reasonably could have found the following facts. On the evening of July 26, 2005, the defendant attended a dinner party hosted by Louise Orgera at her home on Dannell Drive in the city of Stamford. Orgera had prepared two pitchers of sangria, each containing a "double bottle" of wine, to which the party guests helped themselves. Between the time that the defendant arrived at the party shortly after 7 p.m. and the time that she left at approximately 9 p.m., she consumed approximately one and three quarters cups of sangria.

After leaving the party, the defendant was driving northbound on Long Ridge Road at approximately 9:30 p.m. when her vehicle crossed the center line and collided with a southbound vehicle occupied by James Inverno, Barbara Inverno and Glenn Shelley. The estimated combined speed of the impact was ninety miles per hour, and both vehicles sustained severe damage. All three occupants in the other vehicle died as a result of the injuries that they incurred in the collision. The defendant suffered broken bones in her left foot and lacerations, and was transported to Stamford Hospital (hospital), where a blood test revealed that she had a blood alcohol content of 241 milligrams per deciliter or 0.241 percent. It was estimated that the defendant's blood alcohol content at the time of the collision was approximately 250 milligrams per deciliter or 0.25 percent.

The defendant subsequently was charged with numerous offenses and was convicted, after a jury trial, of three counts each of manslaughter in the second degree with a motor vehicle in violation of General Statutes § 53a-56b (a) and misconduct with a motor vehicle in violation of General Statutes § 53a-57 (a), and one count of operating a motor vehicle while under the influence of intoxicating liquor or drugs in violation of

General Statutes § 14-227 (a) (2). The defendant appealed to the Appellate Court, which reversed the judgment of conviction on the ground that the trial court improperly had admitted the evidence relating to the property transfer as proof of consciousness of guilt. *State* v. *Coccomo*, 115 Conn. App. 384, 402, 972 A.2d 757 (2009). We then granted the state's petition for certification to appeal, limited to the following issue: "Did the Appellate Court properly conclude that the trial court abused its discretion in admitting evidence of a transfer of property for less than fair value as evidence of consciousness of guilt and that such admission of evidence was not harmless?" *State* v. *Coccomo*, 293 Conn. 909, 910, 978 A.2d 1111 (2009). Thereafter, we granted the defendant's request to raise a claim, as an alternative ground for affirmance of the Appellate Court's judgment, that the trial court had committed plain error in admitting the results of a blood alcohol test that, according to the defendant, was performed on someone else's blood. We conclude that the trial court did not abuse its discretion when it admitted the consciousness of guilt evidence and did not commit plain error when it admitted the results of the defendant's blood alcohol test.

I

We first address the state's claim that the Appellate Court incorrectly concluded that the trial court abused its discretion in admitting evidence that the defendant had transferred, after the collision, certain property for less than its fair value to prove consciousness of guilt, and that the admission of this evidence denied the defendant a fair trial. The defendant contends that the evidence was inadmissible because it did not tend to show that she believed that she was guilty but, at most, was consistent with her guilt. We disagree.

The following additional facts and procedural history are relevant to our resolution of this claim. At trial, the state sought, over the defendant's objection, to present evidence that, during her stay in the hospital, the defendant had requested and received the results of a blood alcohol test that had been performed on her blood. It also sought to present evidence that, several days after the collision, the defendant had quitclaimed to her mother her one-half interest in her Stamford residence (property), which she had co-owned with her mother, for consideration of $1 and other value less than $100. The state argued that the foregoing evidence showed consciousness of guilt and was therefore relevant. The trial court agreed and admitted the evidence.[1] In rebuttal, the defendant testified that she had begun the process of quitclaiming her interest in the property to her mother two weeks before the collision and that the purpose of doing so was to protect the property from any future claim that her husband might make in light of their pending divorce. The defendant also testified

that, before trial, at the advice of her attorney, her mother had quitclaimed a one-half interest in the property back to the defendant.

We begin our analysis with a review of the applicable legal principles. "Relevant evidence is evidence that has a logical tendency to aid the trier in the determination of an issue. . . . One fact is relevant to another if in the common course of events the existence of one, alone or with other facts, renders the existence of the other either more certain or more probable. . . . Evidence is irrelevant or too remote if there is such a want of open and visible connection between the evidentiary and principal facts that, all things considered, the former is not worthy or safe to be admitted in the proof of the latter. . . . Evidence is not rendered inadmissible because it is not conclusive. All that is required is that the evidence tend to support a relevant fact even to a slight degree, so long as it is not prejudicial or merely cumulative." (Internal quotation marks omitted.) *State* v. *DeCaro*, 252 Conn. 229, 257, 745 A.2d 800 (2000).

"In a criminal trial, it is relevant to show the conduct of an accused, as well as any statement made by him subsequent to the alleged criminal act, which may fairly be inferred to have been influenced by the criminal act." (Internal quotation marks omitted.) *State* v. *DePastino*, 228 Conn. 552, 563, 638 A.2d 578 (1994). "Generally speaking, all that is required is that . . . evidence [of consciousness of guilt] have relevance, and the fact that ambiguities or explanations may exist which tend to rebut an inference of guilt does not render [such] evidence . . . inadmissible but simply constitutes a factor for the jury's consideration. . . . The fact that the evidence might support an innocent explanation as well as an inference of a consciousness of guilt does not make [the admission of evidence of consciousness of guilt] erroneous. . . . Moreover, [t]he court [is] not required to enumerate all the possible innocent explanations offered by the defendant." (Citations omitted; internal quotation marks omitted.) *State* v. *Freeney*, 228 Conn. 582, 593–94, 637 A.2d 1088 (1994). "[I]t is the province of the jury to sort through any ambiguity in the evidence in order to determine whether [such evidence] warrants the inference that [the defendant] possessed a guilty conscience." *State* v. *Kelly*, 256 Conn. 23, 57, 770 A.2d 908 (2001). In that connection, "[p]roof of a material fact by inference from circumstantial evidence need not be so conclusive as to exclude every other hypothesis. It is sufficient if the evidence produces in the mind of the trier a reasonable belief in the probability of the existence of the material fact. . . . Thus, in determining whether the evidence supports a particular inference, we ask whether that inference is so unreasonable as to be unjustifiable. . . . In other words, an inference need not be compelled by the evidence; rather, the evidence need only be reasonably suscepti-

ble of such an inference. Equally well established is our holding that a jury may draw factual inferences on the basis of already inferred facts." (Internal quotation marks omitted.) *State* v. *Niemeyer*, 258 Conn. 510, 518–19, 782 A.2d 658 (2001).

"The trial court's ruling on evidentiary matters will be overturned only upon a showing of a clear abuse of the court's discretion. . . . We will make every reasonable presumption in favor of upholding the trial court's ruling, and only upset it for a manifest abuse of discretion. . . . [Thus, our] review of such rulings is limited to the questions of whether the trial court correctly applied the law and reasonably could have reached the conclusion that it did."[2] (Internal quotation marks omitted.) *Hurley* v. *Heart Physicians, P.C.*, 298 Conn. 371, 401–402, 3 A.3d 892 (2010).

In the present case, we conclude that the defendant's transfer of her interest in the property to her mother "may fairly be inferred to have been influenced by the criminal act" of causing the deaths of three persons while she was operating a motor vehicle under the influence of liquor. (Internal quotation marks omitted.) *State* v. *DePastino*, supra, 228 Conn. 563. The jury reasonably could have inferred that the defendant's decision to transfer the property was influenced by her belief that she was guilty and that her criminal liability inevitably would give rise to civil liability for the wrongful deaths. Put differently, the jury reasonably could have inferred that the defendant's act of transferring the property arose directly from her belief that her actions resulted in the death of the other three individuals involved in the collision, and that this belief gave rise both to consciousness of civil liability and criminal guilt.[3] Cf. *Batick* v. *Seymour*, 186 Conn. 632, 637–38, 443 A.2d 471 (1982) (in civil case, trial court improperly excluded evidence that defendant had transferred property approximately three months after allegedly negligent act to prove consciousness of liability because evidence showed that defendant "did not view his position in the possible forthcoming litigation as entirely impregnable"); *United States* v. *Ferguson*, Docket No. 3:06CR137 (CFD), 2007 U.S. Dist. LEXIS 87842, *8–*12 (D. Conn. November 30, 2007) (evidence of defendant's transfer of property after civil proceedings had commenced but before criminal charges were filed was probative of defendant's consciousness of guilt, but such evidence was excluded on ground that its probative value was outweighed by certain balancing factors because "admitting the evidence create[d] a serious risk that the question of [the defendant's] actual reason for transferring the property [would] result in a trial-within-a-trial on this issue"). Although that was not the only possible explanation for the defendant's conduct, "[t]he fact that the evidence might support an innocent explanation as well as an inference of a consciousness of guilt does not make [the admission of such evidence]

erroneous." (Internal quotation marks omitted.) *State* v. *Freeney*, supra, 228 Conn. 594. Rather, "it is the province of the jury to sort through any ambiguity in the evidence in order to determine whether [such evidence] warrants the inference that [the defendant] possessed a guilty conscience." *State* v. *Kelly*, supra, 256 Conn. 57.

We further conclude that the evidence was not more prejudicial than probative. For that reason, we do not agree with the Appellate Court's assessment that the evidence regarding the property transfer "was likely to inflame the jury" because the defendant was charged with causing the death of three individuals as opposed to just one. *State* v. *Coccomo*, supra, 115 Conn. App. 401. "[W]e recognize that [t]here are situations [in which] the potential prejudicial effect of relevant evidence would suggest its exclusion. . . . These are: (1) where the facts offered may *unduly* arouse the [jurors'] emotions, hostility or sympathy, (2) where the proof and answering evidence it provokes may create a side issue that will *unduly* distract the jury from the main issues, (3) where the evidence offered and the counterproof will consume an *undue* amount of time, and (4) where the defendant, having no reasonable ground to anticipate the evidence, is *unfairly* surprised and unprepared to meet it. . . . We note that [a]ll adverse evidence is [by definition] damaging to one's case, but [such evidence] is inadmissible *only if* it creates *undue* prejudice so that it threatens an injustice were it to be admitted." (Citations omitted; emphasis in original; internal quotation marks omitted.) *State* v. *James G.*, 268 Conn. 382, 398–99, 844 A.2d 810 (2004).

In the present case, the evidence of the property transfer does not rise to the level of prejudice identified in any of the four factors enumerated in *James G*. First, defense counsel did not argue at trial that this evidence would unduly arouse the jurors' emotions, hostility or sympathy, nor do we believe that evidence as mundane as a transfer of property for less than valuable consideration is the type of evidence that would inflame a reasonable juror in a criminal manslaughter case. Second, there is nothing in the record to indicate that the admission of this evidence created an unduly distracting side issue. The state connected the relevance of the evidence to the underlying criminal charges, and no significant amount of time was expended exploring the factual or legal issues raised by the transfer. Third, the state's introduction and explanation of the evidence, and defense counsel's subsequent rebuttal, comprised only a small portion of the multi-day trial. Cf. *United States* v. *Ferguson*, supra, 2007 U.S. Dist. LEXIS 87842, *12 (admission of property transfer evidence would create serious risk of mini-trial on question of why defendant transferred property). Fourth, the defense was permitted to provide an innocent explanation for the transfer, and the defendant was allowed to testify that, at the time of the trial, a one-half interest in the property

already had been transferred back to her. Furthermore, in light of the conflicting evidence on this issue, we find it unlikely that the jury gave significant credence to the state's contention that the transfer evinced a guilty conscience.

Finally, we emphasize that "[t]he trial court's ruling on evidentiary matters will be overturned only upon a showing of a *clear* abuse of the court's discretion." (Emphasis added; internal quotation marks omitted.) *Hurley* v. *Heart Physicians, P.C.*, supra, 298 Conn. 401–402. Although the trial court reasonably could have excluded this evidence, we cannot conclude that its decision to admit the evidence was a clear abuse of discretion. Accordingly, we conclude that the trial court properly admitted the evidence relating to the defendant's request to review the results of her blood alcohol test and her transfer of her interest in the property to her mother to show consciousness of guilt,[4] and that the Appellate Court improperly reversed the defendant's conviction on that ground.

In support of her claim to the contrary, the defendant relies on several cases in which this court has held that the admission of ambiguous evidence of consciousness of guilt was improper. See *State* v. *Angel T.*, 292 Conn. 262, 283 n.15, 973 A.2d 1207 (2009) ("[t]o draw an inference of consciousness of guilt from the seeking of [legal] advice . . . is both illogical and unwarranted; the fact to be inferred—the consciousness of guilt—is not made more probable [or less probable] from the mere seeking of legal advice or representation, and so evidence of the predicate fact is simply irrelevant" [internal quotation marks omitted]); *State* v. *Jones*, 234 Conn. 324, 358, 662 A.2d 1199 (1995) (evidence of defendant's resistance to taking of hair and blood samples for testing was improperly admitted to establish consciousness of guilt because evidence was "not a valid basis from which one may infer guilt"); *State* v. *Mayell*, 163 Conn. 419, 425–26, 311 A.2d 60 (1972) (evidence that defendant could not be found during investigation and that he resisted extradition was improperly admitted to prove consciousness of guilt because evidence was "not a proper basis for inferring a consciousness of guilt"); *Danahy* v. *Cuneo*, 130 Conn. 213, 216, 33 A.2d 132 (1943) (evidence that defendant had offered to compensate plaintiff for injuries was improperly admitted as admission of liability because "whether [the offer] was made out of a sense of moral responsibility because [the defendant's] son was operating the car or a desire to compromise or as an admission of liability was mere speculation"). All of the foregoing cases, however, are distinguishable.

In *State* v. *Angel T.*, supra, 292 Conn. 262, this court's conclusion that the prosecutor improperly had elicited and commented on evidence that the defendant had failed, upon the advice of counsel, to meet with police

during their investigation of the crime was couched in a lengthy discussion of the constitutional right to counsel. See id., 273–74, 281–86 and nn.15 through 19. Accordingly, our conclusion that evidence that the defendant had sought the advice of counsel was inadmissible to prove consciousness of guilt clearly was premised at least in part on our recognition that the admission of such evidence would chill this important right, and not solely on the ambiguity of the evidence. See id., 281–83. Similarly, in *State* v. *Jones*, supra, 234 Conn. 324, our conclusion that the trial court improperly had admitted evidence that the defendant had resisted, on religious grounds, the taking of hair and blood samples was premised in large part on our determination that the defendant, in resisting the procedures, had done "that which the law allows and even encourages." Id., 358. Thus, we implicitly recognized that allowing the admission of such evidence to show consciousness of guilt would chill an important legal right. See id. In *State* v. *Mayell*, supra, 163 Conn. 419, this court concluded that evidence of the defendant's flight and resistance to extradition was not admissible to prove his consciousness of guilt because (1) the evidence did not support a finding that he had fled; id., 425; and (2) the defendant's exercise of "his legal right to defend against his extradition . . . [was] not a proper basis for inferring that [he] . . . possessed a consciousness of guilt . . . just as pleading not guilty or defending against any criminal charge is not a proper basis for inferring consciousness of guilt." Id., 425–26. Again, therefore, our conclusion implicitly was based on a concern that a defendant's legal rights would be chilled by the admission of such evidence. See id. Finally, our conclusion in *Danahy* v. *Cuneo*, supra, 130 Conn. 213, that the defendant's offer to pay for the plaintiff's damages could not be used as an admission of liability was based on the public policy in favor of promoting settlement, not solely on the ambiguity of such evidence. See id., 216–17; see also *Tomasso Bros., Inc.* v. *October Twenty-Four, Inc.*, 221 Conn. 194, 198, 602 A.2d 1011 (1992) (settlement negotiations are not admissible pursuant to public policy favoring settlement); *Sokolowski* v. *Medi Mart, Inc.*, 24 Conn. App. 276, 280–81, 587 A.2d 1056 (1991) (citing *Danahy* for proposition that offers of compromise are not admissible against party making them in interest of promoting settling of disputes).

In sum, the foregoing cases do not stand for the proposition that if evidence is ambiguous, it cannot be admitted to prove consciousness of guilt. Rather, they stand for the proposition that consciousness of guilt evidence should not be admitted when doing so would chill an important legal right or undermine public policy. Accordingly, because the defendant in the present case has not identified any independent legal right or public policy that was implicated by the admission of the consciousness of guilt evidence, the foregoing cases

are inapposite.

The defendant also refers to a small number of cases from other jurisdictions in support of her claim that evidence of the property transfer should not have been admitted to establish consciousness of criminal guilt. See *United States* v. *Ramirez*, 176 F.3d 1179, 1182–83 (9th Cir. 1999); *United States* v. *Ferguson*, supra, 2007 U.S. Dist. LEXIS 87842, *11–*12; *United States* v. *Nacchio*, United States District Court, Docket No. 05-CR-00545 (EWN) (D. Colo. March 29, 2007) (transcript of unpublished oral ruling by Nottingham, J.). Examination of those cases, however, reveals that they do not support the defendant's claim. In *Ramirez*, the court engaged in no analysis of consciousness of guilt except to criticize the government's weak case. See *United States* v. *Ramirez*, supra, 1182–83.[5] In *Ferguson*, the court concluded that a transfer of property was relevant to show consciousness of guilt but excluded the evidence on the ground that it would require a "trial-within-a-trial" in order to admit all the necessary additional evidence surrounding the transfer. *United States* v. *Ferguson*, supra, *11–*12. Finally, the court in *Nacchio* ruled that the defendant's transfer of assets to another family member was too ambiguous to show guilt in large part because the transfer occurred too far apart in time from the criminal acts in question. *United States* v. *Nacchio*, supra. Accordingly, we do not find those cases persuasive.

II

As an alternative ground for affirming the Appellate Court's judgment, the defendant argues that the trial court committed plain error in admitting the results of a blood alcohol test because it was not clear that the blood tested was that of the defendant. Specifically, the defendant challenges the admission of the test results on the basis of a discrepancy between the type of tube used by the paramedics to draw her blood and the type of tube listed in the computer records as the one that was used to test her blood.[6] We conclude that the trial court's admission of the blood test results does not support reversal on plain error grounds.

The following additional facts and procedural history are relevant to our resolution of this claim. Upon arriving at the scene of the accident, Jennifer Mardi, a paramedic, asked the defendant if she was alright, and the defendant responded, "hold on . . . [I'm] on the phone." Mardi smelled alcohol and asked the defendant if she had been drinking. The defendant told her that she had consumed "a few drinks." Mardi then placed the defendant in the care of another paramedic, Kirsten Engstrand, and an emergency medical technician, Yannick Passemart. Both Engstrand and Passemart detected the smell of alcohol on her breath, and noticed that her speech was slightly slurred. Engstrand asked the defendant if she had been drinking, and the defen-

dant replied that she had consumed "a few glasses of champagne and a glass of wine at a party downtown." Passemart heard the defendant state that she had had "a few drinks." The defendant did not inquire about the people in the other vehicle but spoke to Engstrand about her pending divorce.

The defendant was secured on a spinal board, and Passemart placed a cervical collar around the defendant's neck. Shortly thereafter, Engstrand established an intravenous line, as a standard precaution, in the defendant's left arm, from which she drew five tubes of the defendant's blood. Engstrand placed the tubes into a plastic biohazard bag, which she sealed and taped to an intravenous fluid bag already attached to the intravenous line. The defendant then was transported by ambulance to the hospital,[7] accompanied by Engstrand and Passemart. In the ambulance, the defendant again spoke about her pending divorce.

Upon the defendant's arrival at the hospital, Toren Utke, a registered nurse, took over her care. Officer Robert Bulman of the Stamford police department also met her in the emergency department trauma room and asked her several questions. Because of the activity and noise, Bulman testified that he had to bend down to within one inch of the defendant's face so that he could hear her speak, and that, upon doing so, he detected a "strong" smell of alcohol on her breath. Utke further testified that the defendant was confused about what had happened and that she repeatedly had called for her mother, even after her mother arrived at the hospital. Although Utke did not notice any alcohol odor or slurred speech, it struck him that the defendant's mental status was not quite right. Utke removed the tubes containing the defendant's blood from the biohazard bag that was taped to the intravenous fluid bag and affixed to each tube a label containing, inter alia, the defendant's biographical information. Using another such label, Utke then prepared a requisition form for various laboratory analyses of the blood samples and, at approximately 10:30 p.m., sent the tubes to the hospital laboratory for testing.

Mariela Borrero, a laboratory technician, conducted a blood alcohol test on the defendant's blood using the tubes that she received from Utke. The test revealed an alcohol content of 241 milligrams per deciliter, putting the defendant's blood alcohol content at the time of the collision at approximately 250 milligrams per deciliter. The only other blood sample tested in the laboratory for blood alcohol content around the same time that the defendant's blood was tested belonged to Shelley, a passenger in the other vehicle who subsequently died of his injuries, and his sample did not contain any detectable level of alcohol. Blood samples from two other persons also were tested in the laboratory at or around the same time, neither of which was

tested for blood alcohol content. Other testimony at trial revealed a discrepancy between the types of tubes that the paramedics used to draw the defendant's blood and the type of tube listed in the hospital laboratory computer records as the tube used for testing the defendant's blood alcohol content.[8]

We first set forth the applicable standard of review for a claim under the plain error doctrine. "This doctrine, codified at Practice Book § 60-5, is an extraordinary remedy used by appellate courts to rectify errors committed at trial that, although unpreserved, are of such monumental proportion that they threaten to erode our system of justice and work a serious and manifest injustice on the aggrieved party. [T]he plain error doctrine . . . is not . . . a rule of reviewability. It is a rule of reversibility. That is, it is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy." (Internal quotation marks omitted.) *State* v. *Myers*, 290 Conn. 278, 289, 963 A.2d 11 (2009). "An appellate court addressing a claim of plain error first must determine if the error is indeed plain in the sense that it is patent [or] readily discernable on the face of a factually adequate record, [and] also . . . obvious in the sense of not debatable." (Internal quotation marks omitted.) Id., 287. "Although a complete record and an obvious error are prerequisites for plain error review, they are not, of themselves, sufficient for its application. Plain error review is reserved for truly extraordinary situations [in which] the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings." (Internal quotation marks omitted.) Id., 287–88.

In other words, we must determine whether the error was "obvious in the sense of not debatable. . . . [T]his inquiry entails a relatively high standard, under which it is not enough for the defendant simply to demonstrate that his position is correct. Rather, the party seeking plain error review must demonstrate that the claimed impropriety was so clear, obvious and indisputable as to warrant the extraordinary remedy of reversal." (Internal quotation marks omitted.) *Crawford* v. *Commissioner of Correction*, 294 Conn. 165, 205, 982 A.2d 620 (2009).

Additionally, when the chain of custody of evidence is at issue, as in this case, "[t]he state's burden . . . is met by a showing that there is a reasonable probability that the substance has not been changed in important respects. . . . The court must consider the nature of the article, the circumstances surrounding its preservation and custody and the likelihood of intermeddlers tampering with it . . . ." (Citations omitted; internal quotation marks omitted.) *State* v. *Greene*, 209 Conn.

458, 479, 551 A.2d 1231 (1988); accord *State* v. *Johnson*, 162 Conn. 215, 232–33, 292 A.2d 903 (1972). Finally, it is well established that "[t]he trial court has wide discretion in determining the relevancy of evidence . . . and [e]very reasonable presumption should be made in favor of the correctness of the court's ruling in determining whether there has been an abuse of discretion." (Internal quotation marks omitted.) *State* v. *Osimanti*, 299 Conn. 1, 13, 6 A.3d 790 (2010).

In the present case, the defendant has not demonstrated that the trial court committed plain error by admitting the evidence of her blood test results. Blood tests performed in order to screen for the presence of alcohol in a person's blood are considered reliable; see, e.g., *Maher* v. *Quest Diagnostics, Inc.*, 269 Conn. 154, 171, 847 A.2d 978 (2004); the blood test results in this case qualify as relevant evidence because the defendant told paramedics and a hospital nurse that she had consumed alcohol prior to the collision, and the trial court has broad discretion in determining whether a sufficient chain of custody has been established to warrant the admission of the proffered evidence. See *State* v. *Greene*, supra, 209 Conn. 479.

The defendant claims that the trial court committed plain error because a discrepancy existed between the type of tube used to draw the defendant's blood immediately before or during the ambulance ride to the hospital and the type of tube listed in the computer records as containing the blood that was tested for her blood alcohol content. This discrepancy, however, arises solely from the record of the computer entry of the tube tested and not from the recollection of the laboratory technician or laboratory supervisor. At trial, the laboratory technician had no personal recollection of the defendant's blood test, and the laboratory supervisor testified merely that such a discrepancy existed, stating that "the tube that was indicated in the computer is not in that bag" containing the types of tubes that the paramedics used to draw the defendant's blood.

Moreover, it is uncontroverted that the defendant consumed alcohol prior to the accident; indeed, the defendant herself so testified. It is also uncontroverted that, because the defendant admitted to consuming "a few drinks" earlier that evening and four persons detected the smell of alcohol on her breath after the collision, one of whom described it as "strong," the defendant's blood would have had to contain a *detectable* level of alcohol when it was drawn by the paramedics. Finally, it is uncontroverted that the only other tube of blood tested in the hospital laboratory for blood alcohol content around the same time as the defendant's blood contained an *undetectable* level of alcohol. Simply put, the trial court did not commit plain error in admitting the defendant's blood alcohol test results because it was clear that, of the two tubes of blood

tested for blood alcohol content at the time in question, only the tube attributed to the defendant had a detectable level of alcohol.

The defendant nevertheless argues that defense counsel raised concerns at trial that the blood tubes may have been "mixed-up" and states, without any additional support, that a mix-up was indeed "revealed" at trial by virtue of the discrepancy between the tubes. The defendant refers to no evidence or testimony, however, other than this discrepancy, to support her conclusion. We decline to accept the defendant's interpretation of the trial record. In order for this court to entertain the defendant's plain error claim with respect to the blood test results, it would have to engage in pure speculation as to why the record contains a discrepancy, which, in turn, would require it to engage in impermissible fact-finding. See, e.g., *State* v. *Ovechka*, 292 Conn. 533, 547 n.19, 975 A.2d 1 (2009) ("we are constrained to note that well established principles governing appellate review of factual decisions preclude us from utilizing this material to find facts on appeal"). Accordingly, we conclude that the defendant cannot prevail on her plain error claim.

The dissent contends that the defendant properly preserved her claim and that the trial court's decision to admit the evidence of her blood alcohol content should be reviewed under the abuse of discretion standard. For the reasons discussed in footnote 6 of this opinion, however, we must review the defendant's claim under the plain error doctrine, and we thus do not comment on the substance of the dissent's analysis under the abuse of discretion standard.

The dissent further contends that, even if the defendant failed to preserve her claim, this court should find plain error and uphold the Appellate Court's reversal of the trial court's judgment because the trial court improperly admitted her blood test results. The dissent takes issue with (1) the statement in this opinion that "[i]t is . . . uncontroverted that . . . the defendant's blood would have had to contain a detectable level of alcohol when it was drawn by the paramedics" following the collision, (2) the majority's failure to consider that blood samples drawn from other persons that were sent to the laboratory at about the same time as the defendant's blood but were not tested for blood alcohol content may have contained a detectable level of alcohol, and (3) the majority's willingness to accept the reliability of the laboratory procedures used to test the defendant's blood. In our view, none of these grounds, either individually or in combination, serves as a valid basis for reversal of the trial court's judgment under the plain error doctrine, which requires that "the existence of the error [be] so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings." (Internal quotation marks omit-

ted.) *State* v. *Myers*, supra, 290 Conn. 287–88.

The dissent first claims that it is not uncontroverted that the defendant's blood would have had to contain a detectable level of alcohol. Specifically, it claims that other guests at the dinner party that the defendant attended before the collision testified that she did not consume more than one and three-quarters glasses of a sangria mixture that was low in alcohol content, and two toxicologists testified that, theoretically, the blood of a person who had consumed the amount of alcohol the defendant purportedly had consumed would not have had the high blood alcohol content revealed in her blood test results. Both of these reasons, however, relate to the *amount* of alcohol in the defendant's blood, not to whether her blood contained a *detectable* level of alcohol. With respect to the latter, the dissent fails to acknowledge the testimony of four witnesses who either cared for the defendant or spoke with her following the collision, three of whom testified that she had admitted to consuming "a few drinks" earlier that evening, two of whom testified that her speech was "slurred," and all of whom testified that they detected the smell of alcohol on her breath, with one describing it as "strong . . . ." Furthermore, no witness testified that the blood of a person whose breath smells of alcohol would *not* contain a detectable level of alcohol, and, indeed, such testimony would not have been expected because it would defy common sense and logic. To the extent that there was any testimony even remotely related to the issue, one of the toxicologists explained that the amount of alcohol in a person's blood could not be determined by the smell of alcohol on their breath and that certain levels of alcohol would be detectable under various assumptions relating to the weight of the person and the length of time between their consumption of alcohol and the drawing of their blood. We thus reaffirm our conclusion that, although the amount of alcohol that could be detected in the defendant's blood might be subject to debate, it is uncontroverted, on the basis of the record before us, that the defendant's blood would have had to contain a detectable level of alcohol when it was drawn by the paramedics.[9]

The dissent also faults the majority for failing to consider that blood samples drawn from other persons that were tested around the same time as the defendant's blood were not tested for blood alcohol content, and, consequently, there is no evidence as to whether any of those samples contained a detectable level of alcohol. The significance of the fact that blood alcohol tests were not ordered for other persons whose blood was tested around the same time as the defendant's blood, however, escapes us. As we discuss subsequently in this opinion, to the extent that the dissent may be suggesting that other blood samples could have been mixed-up with the defendant's samples, there was absolutely no

testimony by hospital staff that a mix-up might have occurred. Accordingly, the dissent's conclusion is highly speculative and, therefore, insufficient to raise doubt about the fairness and integrity of the trial court proceedings under the plain error doctrine.

The dissent finally contends that the majority places too much emphasis on the reliability of the procedures used by the hospital laboratory to test the defendant's blood. The dissent states that "the record demonstrates a litany of errors . . . regarding the testing of the defendant's blood" and that "[w]e do not know how the vials were tested, the procedures used on them, or the labeling or collection procedure . . . ." The dissent specifically contends that "the state failed to establish that the blood test completed the last link in the chain [of custody], i.e., that the blood . . . test results were connected to the blood samples drawn from the defendant." In reaching this conclusion, the dissent focuses principally on evidence of the discrepancy between the type of tubes used to draw the defendant's blood and the tube listed in the computer records as the one used to test for the defendant's blood alcohol content. We disagree with the dissent that the reliability of the blood tests has been undermined because the record reveals a "litany of errors" in the collection, labeling and testing of the defendant's blood.

At the outset, the dissent refers to no testimony by anyone involved in the defendant's care suggesting a break in the chain of custody. Engstrand testified that she drew five tubes of the defendant's blood, each with a different colored cap, namely, gold, green, pink, purple and blue, placed the tubes in a biohazard bag, rolled the bag up, and taped it to the defendant's intravenous fluid bag, all before the ambulance arrived at the hospital. Although Engstrand did not label the blood tubes or the biohazard bag, she stated that, upon arriving at the hospital, she placed the intravenous fluid bag and the biohazard bag containing the tubes on or between the defendant's legs. She then turned the defendant's care over to Utke, the nurse who met Engstrand and the defendant when the ambulance arrived at the hospital.

Utke testified that Engstrand identified the biohazard bag as belonging to the defendant and that he left the bag with the defendant while he went to obtain the printed labels produced for each patient during the hospital registration process. At that time, Shelley, the only other patient in the trauma room, was approximately twenty-five feet away from the defendant and was separated from the defendant by several curtains. Utke stated that he knew the blood in the biohazard bag was the defendant's blood because Engstrand had informed him that it was, the bag was taped to the defendant's intravenous fluid bag and each emergency medical team dealt with only one person at a time. Utke stated that, after he obtained the sheet of printed labels

containing information identifying the defendant, he affixed a label to each tube of blood, initialed the labels, returned the tubes and a requisition sheet listing the tests to be performed to the biohazard bag, placed the bag in a special canister for transport to the laboratory and sent the canister to the laboratory through the hospital's pneumatic tube system. Utke also testified that the labels contained bar codes and that all of the other documentation pertaining to the defendant contained printed labels from the same label sheet.

No witness recalled testing the defendant's blood after it arrived at the laboratory, but William H. Wilson, the administrative director of the laboratory, testified as to the procedures that were typically followed at the time in question. Wilson explained that the technician receiving the canister would take the biohazard bag out of the canister, open it, compare the name on the blood tube labels with the name on the requisition sheet to make sure they matched and then order the requested tests through the laboratory computer system by identifying the name of the patient and the tests to be performed. If a label indicated the time that the blood was drawn, the technician would enter that time into the system, but, if no time was indicated, the computer would default to the time that the information was entered into the system. Similarly, if the label contained the initials of the person who had drawn the blood, that person's initials would be entered into the system. Following entry of this information, the computer would scan the tests to be performed and print out a new label for each tube containing the patient's name, a laboratory identification number, a new bar code and the tests to be performed on the blood in that tube. The technician then would compare the name on the new laboratory label and the name on the label affixed to each tube by the emergency department staff to determine that the names matched before placing the new bar coded and numbered laboratory label over the previous label. At that point, the technician would centrifuge the bar coded tubes, if necessary, before setting them on a rack between the processing and testing areas. Once inside the testing area, the tubes would be placed in the testing machine, which would read the bar code on each tube and perform the requested tests. In short, once the new bar coded label was placed on the tube and the tube was accepted for testing, there would be no human intervention, and the machine would mechanically read the label, conduct the tests and produce a report containing the test results. At the conclusion of this process, the technician would take the printout, check the computer screen to make sure the printout matched the information on the screen and verify and release the results, which would be communicated back to the emergency department.

With respect to the testing of the defendant's blood, Wilson testified that, after checking the records for the

night of the collision, it appeared that the blood from the defendant and three other patients had been tested around the same time. Neither Wilson nor Borrero, the laboratory technician who processed the requisition, recalled any problems or mix-ups that night. In responding to a question as to whether any of the five tubes used to draw the defendant's blood was the type of tube normally used for testing blood alcohol content, Wilson testified that "[t]he [type of] tube that was indicated in the computer is not in that bag." In other words, the computer printout indicated that the tube used to test the defendant's blood alcohol content had a red and gray cap, but none of the five tubes in the defendant's biohazard bag had a red and gray cap. Wilson further explained, however, that, although a tube with a red and gray cap normally was used for testing blood alcohol content because it contained a gel that separates serum from red blood cells, a smaller tube with a gold cap, like one of the tubes in the defendant's biohazard bag, contained the same gel and also could be used to test a person's blood alcohol content. In addition, Wilson explained that the computer printout describing each patient's test results contained a check mark indicating that the technician on duty had compared the printed report and the patient information with the computer results for accuracy.

On the basis of the foregoing testimony and evidence, we disagree with the dissent that "the record demonstrates a litany of errors . . . regarding the testing of the defendant's blood," and that "[w]e do not know how the vials were tested, the procedures used on them, or the labeling or collection procedure . . . ." Rather, the testimony indicates that the procedures used in collecting, labeling and testing the defendant's blood were straightforward and apparently free of errors and that, even though the administrative director of the laboratory and the technician who processed the requisition for the tests could not specifically recall testing the defendant's blood, their testimony regarding the course of conduct and their inability to recall or identify any errors in the testing procedures at the time the blood was tested supports the conclusion that there was no break in the chain of custody.

To the extent the dissent, like the defendant, claims that the inconsistent evidence regarding the color of the blood tube caps indicates that the defendant's blood alcohol test results could have been obtained from a sample of someone else's blood, we reiterate that the discrepancy arises solely from a single computer record and that Wilson merely testified that the tube identified in the computer printout as containing the defendant's blood did not resemble any of the tubes in the biohazard bag. The dissent fails to acknowledge that "[e]very reasonable presumption should be made in favor of the correctness of the [trial] court's ruling in determining whether there has been an abuse of discretion." (Inter-

nal quotation marks omitted.) *State* v. *Osimanti*, supra, 299 Conn. 13. The dissent also fails to acknowledge that the blood test results for the defendant and the three other persons whose blood was tested around the same time corresponded precisely with the work list detail report describing the individual tests requested for each patient. Thus, because blood alcohol tests were requested only for the defendant and Shelley, only their reports contained results for blood alcohol content. Similarly, all of the other tests requisitioned for Shelley and the defendant matched the results on their respective laboratory reports.[10] Finally, logic dictates that the defendant's blood alcohol test results cannot be attributed to any other person because (1) no blood alcohol test was ordered for two of the other three persons whose blood was tested around the same time as the defendant's blood, and, therefore, it is highly unlikely that any of the tubes used to collect their blood and sent to the laboratory for testing would have had a red and gray cap,[11] (2) Shelley's blood alcohol test showed no discernible level of alcohol in his blood, (3) the defendant admitted that she had consumed "a few drinks" before the collision, and (4) four persons smelled alcohol on the defendant's breath after the collision. Consequently, Shelley's test results cannot be attributed to the defendant, and the description of the tube in the defendant's blood alcohol test results most likely was incorrect because of human or computer error.

In addition to these evidentiary considerations, counsel did not object at trial to the admission of the computer printout or the testimony describing the discrepancy in the color of the blood tube caps. As a result, there was no indication that a claim relating to this discrepancy would be raised at trial, and, therefore, there was no incentive for either party to ask any questions relating to whether the discrepancy was caused by computer or human error.[12] The record is thus inadequate to determine the reason for the discrepancy, and we cannot conclude, on the basis of all of the other evidence regarding the procedural safeguards used when testing blood samples, generally, and the defendant's blood, in particular, that the trial court's admission of the defendant's blood test results was plain error on the alleged ground that there was not even "one shred of evidence" establishing a connection between the blood drawn from the defendant and the test results pertaining to her blood alcohol content. As previously stated, reversal under the plain error doctrine requires the existence of an "error so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings." (Internal quotation marks omitted.) *State* v. *Meyers*, supra, 290 Conn. 287–88. In the present case, the existence of such an error has not been established, and, therefore, we reject the dissent's contention that the Appellate Court properly reversed

the judgment of conviction on that ground.

The judgment of the Appellate Court is reversed and the case is remanded to that court with direction to affirm the judgment of the trial court.

In this opinion ROGERS, C. J., and NORCOTT and McLACHLAN, Js., concurred.

[1] The trial court concluded that the defendant's request for the results of the blood alcohol test, in and of itself, did not tend to show consciousness of guilt but that her knowledge of the results of the test, coupled with her transfer of the property several days later, was probative.

[2] The defendant argues that the appropriate standard of review for this issue is de novo, citing *State* v. *Saucier*, 283 Conn. 207, 926 A.2d 633 (2007), for support. In *Saucier*, we addressed the issue of the appropriate standard of review for a trial court's ruling on whether proffered testimony should have been categorized as hearsay. Id., 214–21. The defendant's claim in the present case does not involve a question of hearsay but, rather, whether the evidence was relevant. *Saucier* is, therefore, inapplicable to the defendant's claim.

[3] We clarify that evidence tending to show consciousness of civil liability will not always be admissible in a criminal trial as evidence tending to show consciousness of criminal liability. Nevertheless, there may be instances, such as in the present case, in which a defendant's conduct subsequent to the criminal act is relevant in establishing a mental state that demonstrates both consciousness of civil liability and consciousness of criminal guilt. Here, the jury reasonably could have inferred that the defendant's transfer of real property for nominal consideration after the collision tended to show a guilty mental state, resulting from both the defendant's consciousness of criminal liability in causing the death of three individuals while operating a motor vehicle under the influence of liquor as well as from the defendant's consciousness of the civil liability that flows from being convicted of such offenses in wrongful death actions brought by the estates of the decedents.

[4] Because we conclude that the trial court properly admitted the evidence regarding the defendant's consciousness of guilt, we need not determine whether the Appellate Court properly concluded that the improper admission of that evidence constituted harmful error.

[5] Indeed, the court in *Ramirez* stated, without providing further explanation, that "the admission of the evidence that [the defendant's] sister registered his cars in her name six days after his arrest was harmless error." *United States* v. *Ramirez*, supra, 176 F.3d 1183.

[6] Although the defendant has raised various objections to and claims regarding the admission of the blood test results, both at trial and on appeal, none of the objections or claims were properly preserved for review. At trial, defense counsel objected to admission of the test results on chain of custody grounds relating to events surrounding the collection and labeling of the blood before it was sent to the laboratory for testing but did not object on grounds relating to the discrepancy in the type of tubes used to draw and test the blood. Accordingly, the Appellate Court concluded that the defendant had failed to preserve the chain of custody issue for review because she did not appeal from the trial court's ruling on grounds relating to events that occurred before her blood was tested. See *State* v. *Coccomo*, supra, 115 Conn. App. 394. The Appellate Court also concluded that her claim on appeal relating to the discrepancy in the type of tubes used to draw and test her blood had not been preserved because defense counsel did not object to the admission of the test results on that ground at trial. See id., 392–94.

In light of the Appellate Court's decision, the defendant now seeks review under the plain error doctrine, contending that it was plain error for the trial court to admit the blood test results because the blood that was tested belonged to someone else. See, e.g., *State* v. *Myers*, 290 Conn. 278, 289, 963 A.2d 11 (2009) ("[the plain error doctrine] is a doctrine that this court invokes in order to rectify a trial court ruling that, although either not properly preserved or never raised at all in the trial court, nonetheless requires reversal of the trial court's judgment, for reasons of policy" [internal quotation marks omitted]). We thus review her unpreserved claim under that doctrine.

The dissent, however, contends that the defendant properly preserved her claim, thus choosing to follow a path that defense counsel, the state *and* the Appellate Court have rejected. The dissent specifically contends

that the defendant preserved her claim when she filed her motion for a *Porter* hearing; see *State* v. *Porter*, 241 Conn. 57, 698 A.2d 739 (1997), cert. denied, 523 U.S. 1058, 118 S. Ct. 1384, 140 L. Ed. 2d 645 (1998); challenging the admission of the blood test results on chain of custody grounds, and when she subsequently appealed to the Appellate Court from the trial court's decision to admit those results. We disagree.

We first note that the defendant herself does not argue on appeal that she properly preserved her claim for review, and, consequently, a decision by this court to treat her claim as preserved not only would be inconsistent with the defendant's own position but would deprive the state of the opportunity to argue that the abuse of discretion standard is incorrect. Moreover, the dissent cannot assume the role of the defendant's advocate and treat her claim as if it had been properly preserved merely because it construes the record differently. See *State* v. *Tocco*, 120 Conn. App. 768, 786, 993 A.2d 989 (reviewing court may not act as advocate for any party), cert. denied, 297 Conn. 917, 996 A.2d 279 (2010). Accordingly, these reasons alone constitute sufficient grounds on which to reject the dissent's approach.

Furthermore, the defendant's claim at the *Porter* hearing is not the claim that she raises on appeal, which is based on a discrepancy between the color of the cap on the tube that was used to draw her blood (yellow or gold) and the color of the cap on the tube that was listed in the hospital laboratory records as the tube that was used to test her blood for its alcohol content (red and gray). The defense argued at the *Porter* hearing that the blood test results were inadmissible because the defendant's blood had not been drawn at the hospital but, rather, at the scene of the accident or in the ambulance by a person whose identity was unclear, and because the tubes may have been improperly labeled before they were sent to the laboratory for testing. There was no testimony regarding the discrepancy in the color of the blood tube caps until much later in the proceeding. The trial court's ruling thus was based on information pertaining only to events that occurred before the blood was sent to the laboratory for testing. As the trial court explained, "there's a line of evidence here, which, if the jury chooses to accept it, that the defendant's blood was drawn in the ambulance and taped to a saline bag and then taken down by the emergency department nurse, and a label [was] put on the tubes and [they were] put in this pneumatic system up to the lab and tested. And [there are] things that the defense will raise to question *that chain of events*, but I don't see it as sufficiently affecting the integrity of the sample so that the jury should not be in a position to weigh that evidence and make a decision as to its credibility." (Emphasis added.) We have repeatedly stated that "[o]ur review of evidentiary rulings made by the trial court is limited to the specific legal ground raised in the objection [to the trial court]. . . . This court reviews rulings solely on the ground on which the party's objection is based." (Internal quotation marks omitted.) *DiLieto* v. *County Obstetrics & Gynecology Group, P.C.*, 297 Conn. 105, 133, 998 A.2d 730 (2010); see also *State* v. *Johnson*, 288 Conn. 236, 287–88, 951 A.2d 1257 (2008) ("we have explained that, to afford petitioners on appeal an opportunity to raise different theories of objection would amount to ambush of the trial court" [internal quotation marks omitted]). Accordingly, because the evidence that the parties discussed at the *Porter* hearing was not the evidence relating to the discrepancy in the color of the caps on the tubes used to draw and test the defendant's blood, we cannot conclude, merely because defense counsel argued at that hearing that the blood test results were unreliable on chain of custody grounds, that the basis for the chain of custody claim at the time of defense counsel's objection can be expanded on appeal to include evidence that never was disclosed, or even known to exist, when the *Porter* hearing was held.

The dissent claims that testimony outside the presence of the jury directly before the *Porter* hearing by William H. Wilson, administrative director of the hospital laboratory, describing laboratory procedures, contradicts our conclusion that defense counsel objected to the admission of the blood test results only on grounds relating to events surrounding the collection and initial labeling of the blood. A fair reading of the transcript, however, shows that Wilson made no reference to a discrepancy in the color of the caps on the tubes used to draw and test the defendant's blood and that defense counsel made no argument that the defendant's blood test results should be excluded on that ground or on any other ground relating to the procedures used in the laboratory for testing.

The dissent also argues that this court has repeatedly reviewed issues on appeal that were not specifically raised at trial, as long as they were properly

within the scope of the issue that was raised. See, e.g., *Morgan* v. *Hartford Hospital*, 301 Conn. 388, 394 n.7, 21 A.3d 451 (2011); *Rowe* v. *Superior Court*, 289 Conn. 649, 663, 960 A.2d 256 (2008); *State* v. *Mitchell*, 169 Conn. 161, 168, 362 A.2d 808 (1975), overruled in part on other grounds by *State* v. *Higgins*, 201 Conn. 462, 472, 518 A.2d 631 (1986). The cases cited by the dissent are distinguishable, however, either because they do not involve evidentiary rulings or do not involve a claim that the disputed evidence was not the subject of the trial court's ruling, as in the present case. See, e.g., *Morgan* v. *Hartford Hospital*, supra, 394 n.7 (considering whether defendants waived their right to file motion to dismiss challenging sufficiency of opinion letter attached to original complaint in medical malpractice action); *State* v. *Mitchell*, supra, 168 (considering whether results of polygraph examination should be admitted to show prior consistent statements or to prove truth of responses given during examination).

We further disagree with the dissent that defense counsel's subsequent objection to admission of the blood test results as a full exhibit was sufficient to preserve the defendant's claim. Defense counsel simply stated, when the exhibit was introduced: "No objection, other than the objection that was already made and ruled upon, Your Honor." Defense counsel did not specify any additional grounds, other than the ground of chain of custody, on which he previously had objected, for excluding the blood test results, and, therefore, the renewal of counsel's objection to the admission of the blood test results was no more effective than his objection during the *Porter* hearing in seeking to preclude the admission of that evidence. Finally, because defense counsel made no objection to subsequent testimony that the blood alcohol test was performed on blood from a tube that was not in the bag of tubes containing the defendant's blood, we agree with the defendant that her claim must be reviewed under the plain error doctrine because it was not properly preserved.

The dissent nonetheless contends that this court concluded in *State* v. *Ryder*, 301 Conn. 810, 23 A.3d 694 (2011), that the defendant in that case had preserved a claim for review on the basis of far less evidence than in the present case. The dissent argues that the court in *Ryder* determined that the defendant had preserved his claim that the state had conducted a warrantless search that began when a police officer crossed a security gate onto the curtilage of his home, even though the defendant had not referred to the curtilage in his motion to suppress, merely because a witness had used the term "curtilage" during his testimony at the suppression hearing and the defendant had used the term twice in his brief to the Appellate Court. Id., 818–19 n.5. This argument, however, greatly oversimplifies our reasoning in *Ryder*. First, we did not know in *Ryder* what the defendant had argued in his written motion to suppress because the trial court improperly had destroyed the file containing the motion after the defendant entered a conditional plea of nolo contendere specifically reserving his right to appeal from denial of the motion. See id., 819–20 n.5 Moreover, what we actually stated in *Ryder* was that, "although the transcripts of the suppression hearing do not reveal that the defendant specifically used the term 'curtilage' in arguing that the entry upon his property was improper, they confirm that the trial court clearly anticipated and understood that the defendant claimed that [the police officer] had violated his fourth amendment rights by crossing the gate." Id., 818 n.5. We also discussed the testimony of three different witnesses at the suppression hearing regarding the gate and the security apparatus that extended across the front lawn of the defendant's home, noting that one witness had testified that he understood that he was entering the "curtilage" of the defendant's home when he climbed over the gate. (Internal quotation marks omitted.) Id. We further observed that, during redirect examination of one of the other three witnesses on the significance of the gate, the trial court had interrupted the prosecutor twice, stating that it "underst[ood] the whole issue of the gate . . . . I got it." (Internal quotation marks omitted.) Id. We thus concluded that the trial court understood the curtilage issue and that the issue had been properly raised. Id. We also rejected the dissenting justices' "mischaracteriz[ation]" in *Ryder* of the defendant's brief to the Appellate Court as containing only "two passing references to the curtilage"; id.; concluding instead that the defendant had "clearly raised the curtilage claim before the Appellate Court" because he had discussed at length the need to cross over the security gate to reach the front door of his house. Id., 819 n.5. In contrast, the defense in the present case not only made no reference to the discrepancy in the description of the blood tube caps at the *Porter* hearing but had no knowledge that such evidence even existed, and, therefore, the defendant's chain

of custody claim cannot be construed after the fact as encompassing that issue. We thus disagree with the dissent that *Ryder* is applicable to the facts of this case and that the present record is "more than sufficient to demonstrate that the defendant properly preserved . . . her claim" for review.

[7] It is unclear from the record whether the defendant's blood was drawn immediately before or during the ambulance ride to the hospital, or both.

[8] The alleged discrepancy was between the color of the cap of the tube used by the paramedics to draw the defendant's blood (yellow or gold) and the color of the cap of the tube listed in the hospital laboratory records as the one from which blood was taken to test for the defendant's blood alcohol content (red and gray).

[9] To the extent the dissent argues that it is not uncontroverted that the defendant's blood contained a detectable level of alcohol because "[n]one of the evidence cited by the majority establishes conclusively that the defendant's blood would have had to contain a detectable level of alcohol when it was drawn by the paramedics," it misunderstands our analysis. We do not state that the evidence "conclusively" establishes that the defendant's blood would have had to contain a detectable level of alcohol, only that the record contains no evidence to establish that her blood did *not* contain a detectable level of alcohol. Although there was expert testimony as to the rate that a person of the defendant's weight and gender might have metabolized varying amounts of alcohol, no witness testified or claimed that her blood would have contained no detectable level of alcohol at the time it was drawn. Thus, the dissent's claim to the contrary is based on sheer speculation as to how selected portions of the testimony at trial might have been construed and applied to the defendant in light of various presumptions.

[10] For example, a comprehensive metabolic panel and a blood alcohol content test were ordered for the defendant, whereas a basic metabolic panel, which consists of fewer blood tests than a comprehensive metabolic panel, and a blood alcohol content test were ordered for Shelley.

[11] The stringent labeling procedure required when blood samples are taken before they are sent to the laboratory for testing further reduced the potential for a mix-up of the defendant's blood with blood samples from other persons tested around the same time.

[12] For example, computer and human error was discussed in other contexts, such as when Robert Voss and James Duffy, two paramedics employed by Stamford Emergency Medical Services (SEMS), explained how inaccurate information could end up in the SEMS computer system due to the fact that the options available for describing a patient's condition in the system's drop down menus sometimes were limited.