BERDON, J. Concurring in part and dissenting in part. I agree with part III of the majority opinion that the trial court improperly admitted the alleged consciousness of guilt evidence. The request at the hospital by the defendant, Tricia Lynne Coccomo, for the results of her blood alcohol content test and evidence concerning her transfer of real property subsequent to the automobile collision at issue should not have been admitted into evidence because, under the circumstances of this case, that evidence was irrelevant and unduly prejudicial.

I write separately because in my opinion there is insufficient evidence and indeed no admissible evidence to sustain a conviction under General Statutes §§ 14-227a (a) (2), 53a-56b (a) and 53a-57, all of which were predicated on the claim that the defendant had a blood alcohol content of 0.241. It is absolutely clear that the blood tested was not that of the defendant and that the only evidence that she was intoxicated was the tested blood sample.[1] A blood alcohol content of 0.241 is a level of alcohol intoxication equivalent to a "fall down drunk" or as described by Robert Powers, the state's toxicologist, as "sloppy drunk." The evidence of consumption of alcohol by the defendant was insufficient to support a conviction of driving under the influence of alcohol.

The majority refuses to reverse the conviction on this ground because the trial attorney representing the defendant challenged the admission of the blood samples only on the ground of the chain of custody and not because of the discrepancy that the blood collected from the defendant was in a test tube completely different from that of the blood tested, which produced a blood alcohol content of 0.241. "The state's burden with respect to chain of custody is met by showing that there is a reasonable probability that the substance has not been changed in important respects." (Internal quotation marks omitted.) *State* v. *Estrada*, 71 Conn. App. 344, 353, 802 A.2d 873, cert. denied, 261 Conn. 934, 806 A.2d 1068 (2002). In this case, I would conclude that the defendant's chain of custody objection preserved her argument that her blood was not the blood that was tested. Furthermore, the court's failure to exclude blood evidence that clearly was not the defendant's blood constituted plain error within the meaning of Practice Book § 60-5, which provides in relevant part that a reviewing court "may *in the interests of justice* notice plain error not brought to the attention of the trial court. . . ." (Emphasis added.) See *State* v. *Preyer*, 198 Conn. 190, 199, 502 A.2d 858 (1985) (reversing conviction on basis of nonpreserved error because "interest of justice" required it).[2]

Although we reverse the judgment on the grounds of

the inadmissibility of evidence, which was irrelevant to consciousness of guilt, a reversal also based on the erroneous admissibility of the blood alcohol content tests would put to rest the possibility of a retrial of this second grade schoolteacher who has unjustly lived with this nightmare for more than five years.

Accordingly, I respectfully concur in part and dissent in part.

[1] See the majority opinion for the testimony of witnesses, both lay and professional, with respect to the defendant's appearance with respect to her sobriety.

[2] The majority correctly points out that the plain error doctrine was not raised by the defendant in her brief before this court. The doctrine, however, was unwittingly raised by the state when it argued in its brief before this court the following: "Reversal under plain error is equally unwarranted. Where the defendant, herself, did not even argue to the jury during her closing argument that the evidentiary discrepancy arising from the test tube evidence raised a reasonable doubt about the reliability of the blood alcohol content results, it can hardly be argued that the error was so obvious, clear and harmful as to warrant a reversal of her conviction."