HARPER, J., concurring. I concur with the result reached by the majority but respectfully disagree with its analysis of the claim by the defendant, Vincent V. Cornelius. I disagree that the claim is reviewable under *State* v. *Golding*, 213 Conn. 233, 239–40, 567 A.2d 823 (1989).

The majority opinion accurately states that the defendant, in his principal brief, affirmatively requests review of his unpreserved claim under the *Golding* doctrine. Also, the majority opinion accurately states that, invoking such level of review, the defendant couches his claim in constitutional terms. The defendant does not challenge the propriety of delivering a consciousness of guilt instruction in this case or argue that the court's consciousness of guilt instruction was inaccurate as a statement of the law. The defendant takes issue with the fact that the court, in the context of its consciousness of guilt instruction, drew the jury's attention to the state's argument that the defendant had testified untruthfully. The defendant argues that the court thereby improperly highlighted the state's argument that his testimony was false, thus burdening "his right to an impartial judge and jury" and "his right to testify in his own defense."

A claim is not reviewable under *Golding* unless it "is of constitutional magnitude alleging the violation of a fundamental right . . . ." *State* v. *Golding*, supra, 213 Conn. 239–40; see also *State* v. *Moore*, 293 Conn. 781, 805, 981 A.2d 1030 (2009) ("[t]he first two [prongs of *Golding*] involve a determination of whether the claim is reviewable; the second two . . . involve a determination of whether the defendant may prevail" [internal quotation marks omitted]). In determining whether a claim is reviewable under *Golding*, this court is not bound by an appellant's representation that his claim is constitutional in nature; we must independently determine the true nature of the claim. See *State* v. *Samuels*, 273 Conn. 541, 560, 871 A.2d 1005 (2005) ("[m]erely placing a constitutional tag on a nonconstitutional claim does not make it so" [internal quotation marks omitted]); *State* v. *Schiappa*, 248 Conn. 132, 164, 728 A.2d 466 ("a nonconstitutional claim cannot be transformed into a constitutional claim simply by virtue of the label placed upon it by a party"), cert. denied, 528 U.S. 862, 120 S. Ct. 152, 145 L. Ed. 2d 129 (1999); *State* v. *Taylor*, 239 Conn. 481, 502–503, 687 A.2d 489 (1996) ("it would trivialize the constitution to transmute a nonconstitutional claim into a constitutional claim simply because of the label placed on it by a party" [internal quotation marks omitted]), cert. denied, 521 U.S. 1121, 117 S. Ct. 2515, 138 L. Ed. 2d 1017 (1997).

"Although our Supreme Court clearly has recognized that some errors in jury instructions are of constitu-

tional magnitude, it has limited *Golding* review to instructional errors that so adversely prejudice the defendant that he is effectively deprived of his right to a trial by jury." *State* v. *Carty*, 100 Conn. App. 40, 58, 916 A.2d 852, cert. denied, 282 Conn. 917, 925 A.2d 1100 (2007). Our Supreme Court "repeatedly has held that consciousness of guilt claims [that do not mandate inferences to be drawn from the evidence] are not constitutional and, therefore, are not subject to *Golding* review." *State* v. *Luster*, 279 Conn. 414, 421–22, 902 A.2d 636 (2006); see also *State* v. *Johnson*, 288 Conn. 236, 288, 951 A.2d 1257 (2008); *State* v. *Schmidt*, 92 Conn. App. 665, 677, 886 A.2d 854 (2005), cert. denied, 277 Conn. 908, 894 A.2d 989 (2006); *State* v. *Beverly*, 72 Conn. App. 91, 104, 805 A.2d 95, cert. denied, 262 Conn. 910, 810 A.2d 275 (2002); *State* v. *Turner*, 67 Conn. App. 519, 526–27, 787 A.2d 625 (2002); *State* v. *Rodriguez*, 61 Conn. App. 700, 712–13, 767 A.2d 756 (2001); *State* v. *Ham*, 55 Conn. App. 281, 292–93, 739 A.2d 1268, cert. denied, 252 Conn. 916, 743 A.2d 1128 (1999). With regard to consciousness of guilt instructions, our Supreme Court has recognized that "unpreserved challenges to jury instructions that *mandate* inferences adverse to a defendant may sufficiently implicate constitutional rights to satisfy the second condition of *Golding*. . . . By contrast, instructions addressing *permissive* inferences are not of constitutional magnitude." (Citation omitted; emphasis in original; internal quotation marks omitted.) *State* v. *Alston*, 272 Conn. 432, 448, 862 A.2d 817 (2005).

The instruction at issue in the present case did not mandate that the jury draw a particular inference from the evidence presented at trial but merely identified a permissive inference that the jury might draw from the defendant's testimony. In conformity with the precedent set forth previously, I conclude that that claim fails under *Golding*'s second prong. Additionally, with regard to the issue of *Golding* review, I rely on our Supreme Court's analysis in *State* v. *Coward*, 292 Conn. 296, 313–15, 972 A.2d 691 (2009), which is consistent with the precedent set forth previously. In *Coward*, the defendant, for the first time on appeal, challenged the trial court's consciousness of guilt instruction that it was permissible for the jury to infer that the events described by a certain witness, Maurice Lawrence, constituted consciousness of guilt. Id., 314. The defendant, seeking *Golding* review, placed a constitutional tag on his claim; he asserted that the court "improperly put the court's imprimatur on the state's version of events, and thereby bolstered the state's case by supporting Lawrence's uncorroborated testimony and suggesting that the inference of guilt to be drawn from that testimony is, at least, favored by the law." Id. Our Supreme Court in *Coward* declined to afford *Golding* review to the defendant's claim because it was not truly constitutional in nature. Id., 315. The court emphasized that it

"repeatedly has held that consciousness of guilt claims, including claims involving [instructional error], are not constitutional and, therefore, are not subject to *Golding* review." (Internal quotation marks omitted.) Id., 314–15.

In light of my resolution of the *Golding* issue, I would address the defendant's affirmative request, made in the alternative, to review the claim for plain error. See Practice Book § 60-5 ("[t]he court may in the interests of justice notice plain error not brought to the attention of the trial court"). "It is . . . well established that plain error review is reserved for truly extraordinary situations where the existence of the error is so obvious that it affects the fairness and integrity of and public confidence in the judicial proceedings. . . . A defendant cannot prevail under [the plain error doctrine] . . . unless he demonstrates that the claimed error is both so clear and so harmful that a failure to reverse the judgment would result in manifest injustice." (Internal quotation marks omitted.) *State* v. *Jackson*, 73 Conn. App. 338, 386, 808 A.2d 388, cert. denied, 262 Conn. 929, 814 A.2d 381 (2002).

The defendant has isolated one sentence within the court's consciousness of guilt instruction. The defendant asserts that the court's single reference to an argument made by the state warrants a new trial. The defendant does not claim that the court engaged in one-sided commentary in favor of the state's case during the course of its entire charge. Additionally, the record plainly reflects that the court's reference to the state's argument was both relevant to the consciousness of guilt instruction and entirely neutral. Following its reference to the state's argument, the court immediately stated that "[it was] only a claim by the state." My careful examination of the defendant's brief and the record leads me to conclude that the claimed error is not so egregious or obvious that it warrants review under the plain error doctrine. See *State* v. *Houle*, 105 Conn. App. 813, 821, 940 A.2d 836 (2008); *State* v. *Beverly*, supra, 72 Conn. App. 104–105; *State* v. *Tyson*, 43 Conn. App. 61, 66, 682 A.2d 536, cert. denied, 239 Conn. 933, 683 A.2d 401 (1996).

For the foregoing reasons, I concur with the majority's conclusion that the judgment of the trial court should be affirmed.