being beaten in the head with a cylindrical object. He acknowledged that he could not definitively describe how the fall happened. (60: 11942, 11985-86; 61: 12011, 12029-37, 12044-45)

Dr. Bandak had never attended an autopsy of an adult person who had died as a result of a beating. He had testified about six times in criminal cases but had never testified in a homicide case when the victim was an adult and the issue was whether there was an accidental fall versus a beating. He charges $500 an hour for his work and for testifying and had billed the defense nearly $40,000 so far. (60: 11990; 61: 12025-26, 12073-78)

The State called Dr. James McElhaney as an expert rebuttal witness in injury biomechanics. He had been a professor at Duke in biomedical engineering and surgery for 30 years. Dr. Bandak knew him and respected his work and considered him to be a well respected person in the field of injury biomechanics. Dr. McElhaney was aware of Dr. Bandak's testimony and disagreed with him. In his opinion, Kathleen's injuries were inconsistent with a fall down the steps but were consistent with a beating with a blunt instrument, most likely a rounded and relatively light instrument that could be swung with the velocity to cause lacerations without skull fracture. (61: 12021-22; 67: 12411-28)

Particularly as to the seven major lacerations on the back of Kathleen's head, there are six factors Dr. McElhaney associates with these lacerations in trying to understand how they happened: 1) location, 2) length, 3) number, 4) direction, 5) velocity (how fast her head was going when it struck something or how fast

something was going when it struck her), and 6) the amount of energy associated with an injury. These factors demonstrate that a beating took place. For instance, considering the length and location of the various lacerations, the lacerating object had to cause the head to flex forward and roll, which would not occur from impact with a flat surface or edge except possibly for a couple of horizontal lacerations at the base of Kathleen's skull. The other five lacerations start at the wrong place and are in the wrong direction to have occurred from her head hitting the stairs. (67: 12416-28; 68: 12489-92, 12497)

Blood Spatter

Special Agent Duane Deaver of the SBI testified as an expert in the field of bloodstain pattern analysis, also known as blood spatter analysis. He has performed such analyses in many cases. Blood spatter analysis is the study of bloodstains at a crime scene to determine how they were caused. (41: 8155-61, 8207, 8212-14)

Different kinds of forces come into play in regard to blood at a crime scene, including gravity and centrifugal force. Impact spatter comes from an impact and will have a point of origin somewhere. When a source of blood, such as a person bleeding, is impacted, a point of origin corresponding to that source of blood can be found by examining the spatter resulting from the impact. Generally, the more force that is applied to blood, the smaller the droplets that will be produced. Even a few small drops in a pattern can indicate force. (41: 8217-8232, 8245; 42: 8276, 8346-47, 8351-52; 44: 8636, 8722-23)

By making certain measurements and using strings, a spatter analyst can find a point of origin out in space, that is, the location in space of a source of blood that has been impacted. The "stringing" method for locating points of origin in blood spatter is a current technique that experienced bloodstain pattern analysts use. (41: 8230-34; 42: 8630-35; 58: 11828-29; 62:12162-63)

Agent Deaver was called to defendant's house and arrived around 5:00 p.m. on 9 December 2001. He was informed that the victim had fallen down the stairs. The police wanted to ascertain whether the bloodstains in the stairway were consistent with an accidental fall or consistent with some different action. (41: 8237-38, 8248-49, 8258; 42: 8272, 8281; 44: 8638-39)

The agent gathered information bearing on whether analysis of the bloodstains in the stairway could be conducted. He was satisfied it could be done. No emergency action or other action had taken place within the stairway of such a nature as to prevent him from doing an analysis, especially with respect to the walls. (41: 8238-58; 42: 8278-82; 49: 10206-07)

Using the stringing process in relation to wall stains, Agent Deaver found a minimum of three points of origin in space within the stairway. These points were places in space where impacts occurred as opposed to impact on a surface, meaning force was applied to the source of blood in space within the stairway rather than the source of blood impacting a surface like a wall or step. These impacts in space were inconsistent with a fall. There were other possible points of origin in the stairway, but these three as

a minimum answered the question of whether some stains were inconsistent with a fall. At least four blows produced the stains corresponding to the three points of origin: one to cause the bleeding and three to cause the stains associated with the three points. (44: 8630-40, 8749-50; 45: 8910)

This scene was comparable to many scenes the agent had been to, and the impact spatters were consistent with beatings he had examined in the past. In his opinion Kathleen was alive for some time based on different positions her body was in when impacts occurred and stains were produced. Her footprints in blood in the stairway indicated that she was stepping in her own blood after bloodshed began to occur. (42: 8354; 44: 8741-49, 8758-59; 45: 8873, 8893, 8942; 49: 10213-14)

Examination of the shorts and tennis shoes defendant had been wearing disclosed bloodstain evidence. The shorts had been heavily stained with blood on the outside, including transfer stains. Some very small droplets were visible inside the right leg toward the back. They formed a spatter pattern resulting from an impact when the shorts were very close to the source of the blood. Microscopic examination of this pattern revealed that the droplets were deposited on the inside surface of the leg as opposed to hitting the outside and soaking through. The shorts were baggy, which would allow the leg to be opened adequately in back with the knee bent for blood to be deposited on the inside. Agent Deaver was able to create similar spatter in testing at the SBI lab. In previous cases he had seen similar spatters and had done similar

testing. Some stains on the toes and sides of defendant's shoes resulted from impact by something with a source of blood when the source was directly above the shoes. (41: 8095-99, 8108-24; 42: 8288-91, 8358-75; 44: 8640-45, 8686-88, 8701-04, 8759-61)

At the SBI lab Agent Deaver did some normal confirmatory testing to assure that the actions he believed caused the stains at the crime scene and on defendant's shorts and shoes in fact did so. Much of the testing involved a mock-up of the stairway at defendant's house that had been built for such testing. Based upon all the information available to him, including his examination of the bloodstain patterns in question, his confirmatory testing, the autopsy report and photographs, and so on, the agent was able to reach conclusions about the actions that had occurred regarding Kathleen's death. He concluded that the impact spatters he had examined and the points of origin he had determined resulted from impacts to the back of Kathleen's head when her head was up and impacted in space. He could not rule out that her hair produced some drops of blood on the walls, but hair would not produce the small droplets that he was interested in and that constituted the majority of the drops. Especially taking into account the autopsy report, he believed the majority of blood on the walls came from impacts on Kathleen's head and not from any blood coming out of her nose or mouth or from her hair. (41: 8235-37; 44: 8640-8714, 8732-41; 45: 8910-11; 49: 10202, 10213)

Defendant offered the testimony of Major Timothy Palmbach and Dr. Henry Lee to rebut the State's blood spatter evidence. Major

Palmbach is employed full-time by the Connecticut Department of Public Safety. He also works privately as a consultant for the Forensic Research Training Center run by Dr. Lee. They work closely together and appeared in their capacities with the research center. They had been paid $27,000 so far for their work in this case. (55: 11367-77, 11388-91; 56: 11618-19, 11629; 58: 11872; 62: 12108-09; 63: 12180)

Major Palmbach was critical of how the crime scene was managed. Dr. Lee and he did not do any stringing at the scene as Agent Deaver did, nor did they attempt to replicate any of the bloodstain patterns with testing such as he did even though in a book they wrote they speak about how valuable that can be. The defense offered no testimony to refute Agent Deaver's determination that the stairway was in a condition suitable for blood spatter analysis. (55: 11476-77; 57: 11746, 11770; 58: 11829, 11873-76; 62: 12114-20, 12152-63; 63: 12174)

Dr. Lee testified that he thought the Durham Police Department did a pretty good job at the crime scene. From looking at all the blood spatter, he opined that the patterns were more consistent with an accidental fall than with a beating. He could not exclude the possibility that Kathleen was beaten, however. He could not eliminate the possibility that some of the patterns were caused by impacts to her head. (56: 11648, 11675, 11681; 57: 11691-92, 11700-04, 11741-43, 11767; 58: 11823-24, 11873-77)

Dr. Lee did not disagree with any aspect of Agent Deaver's finding points of origin out in space in the stairway but said they

were not necessarily related to a beating. He thought the agent had done a good job but failed to consider coughing or breathing as alternatives. Dr. Lee had seen a photo of Kathleen in which he saw in the lip area some reddish stain that could be blood. In looking at scene photos, he saw evidence of aspirated blood, blood that has been coughed or sneezed out of a person's mouth or nose. He could not say aspirated blood or coughed blood was present because he did not test for saliva. He was not aware of a lab report that indicated from swabbing no presence of blood in Kathleen's mouth. (57: 11712-13, 11743-47, 11792; 58: 11852, 11864)

Death of Elizabeth Ratliff in Germany

Elizabeth Ratliff (Liz) and her husband, George, lived in Graefenhausen, Germany, in the early 1980s. George was a pilot in the USAF. Liz was a teacher in a school for children of American service personnel. Defendant and his wife, Patty, also a teacher, were Liz's neighbors and friends as were Amybeth Berner and her husband, Bruce. Cheryl and Tom Appel-Schumacher were in this group of friends. In 1984 Barbara Malagnino became a nanny for the Ratliffs' two daughters, Margaret and Martha, who were four and two when their mother died in 1985 at the age of 43. (47: 9692-97, 9706, 9733, 9781; 48: 9855, 10094-97; 49: 10230-32; R pp. 76, 96)

George died in October 1983 while on a classified mission with the air force. His death was devastating to Liz. Defendant stepped in and helped her with various matters, including to have George's body sent to Texas for burial. She was unable to handle the financial and personal business subsequent to the death of her

husband, so defendant took care of these things. He was able to contact all of the investments George had at the time and to be a spokesperson for her. He handled the payment of bills and took care of all of her affairs. She would talk to him about her finances and accounts and so on because she needed help in managing her affairs. This continued for a long time. (47: 9694-97, 9730-31, 9735-41; 49: 10136)

After a long period of deep depression, Liz began feeling better in the fall of 1985 and was more positive. She planned a surprise party for Cheryl and Tom, who had recently married. The party was held at Liz's house Saturday evening before Thanksgiving. It snowed that weekend. Although she was having severe headaches during a time preceding the party, she was feeling good after the party. (47: 9699-9702, 9746-50; 48: 10105; 49: 10232)

Liz and the girls had dinner at the Petersons' home that Sunday night. Defendant walked them home and helped Liz put the girls to bed. He took out the trash. She needed to take her car to another village to leave it for servicing, and defendant was going to bring her back home. This was usually done late in the evening when the children were asleep. According to Barbara Malagnino, there was nothing unusual about leaving children asleep to do such an errand. (48: 9938-39, 10105-07)

Barbara came to Liz's home about 7:15 on Monday morning, 25 November 1985. Liz would leave for work at 7:40 a.m. She was supposed to ride with Patty that morning. When Barbara got to the door, she noticed that all the lights were on: kitchen lights,

hallway lights, and even the living room lights which were rarely turned on. It was unusual for all the lights to be turned on like this in the morning. Liz always locked up at night, and the lights would be turned off for bedtime. (48: 10100-02, 10107-10)

The front door was locked, so Barbara used her key to get in. Liz was lying in the foyer area at the bottom of the stairs, which are toward the front door and lead to the second floor. She had yellow snow boots on her feet and was wearing a red pullover. Barbara could not remember what she was wearing on the lower part of her body. (47: 9705, 9723, 9811-12; 48: 10097-10105, 10110-15)

Barbara ran to the Petersons' home and banged on the door. She told Patty something terrible had happened. She also ran to the Berners' home and told them to come quickly, something's happened to Liz. When the Berners got to Liz's house with Barbara, defendant said she had had a brain aneurism and fallen down the stairs. He did not explain how he knew this. According to Amybeth Berner, those present at this time were her husband and her, the Petersons, and Barbara. She went back home to call Tom Appel-Schumacher and then returned to Liz's. The German authorities arrived after she got back to Liz's. Defendant said to them that this was an accident, this is an American family, and it has already been reported on base. Liz was lying on the floor on her right side with her knees pulled up. Her head was soaked in blood. There was a lot of blood on the floor and walls. Amybeth was told later that day that Liz's father had died ten years earlier of an aneurism. (48: 10114-16; 49: 10130-33, 10233-41, 10258)

The doors to the house had been locked. There were no signs of forced entry. It did not appear that anyone had gone through things in the house, and it was reported that no personal effects had been removed. The girls were still asleep upstairs. When Barbara expressed disbelief that Liz was dead because her body was still warm, defendant told her that Liz was not warm, that the warmth came from the floor heating. In fact the house had a floor heating system. (47: 9810-11; 48: 9855, 10116-17; 49: 10237-40)

Barbara noticed that nothing was set out in preparation for breakfast. Liz would have all the breakfast arrangements ready at night. She would always lay things out for breakfast at nighttime so she could come down and start making breakfast in the morning, but on this morning nothing was set out. (49: 10129-30)

Cheryl and Tom arrived about 9:00 after learning of Liz's death. Liz was still lying at the bottom of the staircase. Cheryl and Tom observed blood in the foyer area and in the staircase, including all the way down the wall that was on one side of the staircase. There was a lot of blood. No photographs were taken of the scene. (47: 9702-08, 9713-14, 9784-86, 9798; 49: 10241-43)

Some of the blood spots on the wall by the staircase were like a very light spray and high up. Drips of blood appeared to be splattered on the wall rather than rubbed. As Amybeth looked at the wall, she could not understand how the blood got up so high. It seemed obvious to her that this was a crime scene, but there was protocol to follow and she figured the German authorities would examine the wall. Hence she did not say anything to them. (47:

9724-25, 9731-32; 49: 10243-46, 10260-61, 10269)

An army investigator, Steven Lyons, went to the scene to assist the German police as necessary. Even though Americans were involved, the Germans had jurisdiction. Lyons had little or no experience investigating homicides. Liz was lying on the landing at the bottom of the stairs in a pool of blood around her head, but he did not examine the body. He did not recall seeing any blood on the wall by the stairs though he made a cursory inspection of the staircase. He did not conduct any interviews. He did not have much to do with the matter except to be available to the Germans. From what he was told, he believed something happened in Liz's brain and she fell down the steps. Thus he believed the death was by natural cause or accident. (48: 10039-49, 10073, 10076, 10080)

An army doctor, Larry Barnes, whose field of work is general pathology and not forensic pathology, conducted the autopsy of Liz. He worked in general pathology while stationed in Germany in 1985 and had been involved in only a few forensic autopsies, which concerned vehicular trauma and not blunt force trauma. In his field, autopsies are reviews of deaths associated with natural causes. His work in Germany basically was what he does now: examining tissues removed during surgery. (48: 9849-55, 9893)

When he performed the autopsy, Dr. Barnes was aware that Liz had a history of von Willebrand's disease, a blood abnormality. The Petersons knew she had this disease. He was aware of severe headaches she had within a couple of weeks before her death. He found bleeding in the brain and was informed that German

authorities had found bloody spinal fluid. She had multiple lacerations on the back of her head and on the side in back. He felt the most consistent cause of death was intracranial hemorrhage from natural causes: ruptured aneurism, had a bleed, and then fell down the steps. Traumatic injury to the head would not necessarily be inconsistent with his way of thinking at the time, however. (47: 9748; 48: 9855, 9861-62, 9885-86)

Glass slides with tissue from the autopsy were reviewed by the Armed Forces Institute of Pathology (AFIP). The Institute reviews autopsies but does not do them. It is more of a repository. The Institute concluded consistently with Dr. Barnes's findings, "Sudden unexpected death due to spontaneous intracranial hemorrhage complicating von Willebrand's Disease; natural." (48: 9869, 9906)

Nonetheless, Dr. Barnes acknowledged that he could not specify what caused the bleeding in Liz's brain. He could not say whether it was caused by spontaneous vessel rupture in the brain or a blow to the head. He did not dispute a subsequent autopsy in North Carolina that the cause of death was blunt trauma to the head. Had he suspected an unnatural death, he would have sought to have the case transferred to someone better qualified to do a forensic autopsy. (48: 9875, 9886, 9889, 9929-30)

Dr. Deborah Radisch and Dr. Aaron Gleckman, a neuropathologist, conducted an autopsy of Liz on 21 April 2003 once the body was exhumed. They considered the reports from Dr. Barnes and the AFIP. Dr. Barnes's report did not rise to the standard for a forensic autopsy. The body had been embalmed very well and was

well preserved despite the passage of time. Her brain was remarkably well preserved. Dr. Gleckman microscopically examined brain tissue taken at the original autopsy and additional tissue removed by Dr. Radisch. (50: 10382-90, 10396-400; 51: 10754-58, 10786-802; 52: 10910-11, 10959-62, 10973-74; 54: 11306-07)

Dr. Gleckman found abnormalities in Liz's brain that involved bleeding while she was dying. He believed she died from blunt force trauma to the head. Her injuries were such that he believed the trauma was clearly from a homicidal assault. He felt the AFIP had inaccurate information in reaching its conclusion. Among other things, the AFIP did not see the scalp lacerations, and Dr. Barnes did not discover that Liz had a fractured skull. (50: 10390-91, 10396, 10439-40, 10495-99, 10503; 52: 10913)

Dr. Radisch believed that Dr. Barnes, and subsequently the AFIP, were incorrect in attributing Liz's death to a spontaneous intracranial hemorrhage. She thought that an intracranial hemorrhage was most likely part of the mechanism of death, but she particularly disagreed that it occurred spontaneously. She did not believe Liz had a vascular malformation or a stroke as opposed to blunt trauma. The pertinent hemorrhage and the fracture of her skull were in the same area. In the doctor's opinion the fracture was caused before death by the infliction of injuries to the back of her head. (52: 10910-11, 10962)

The cause of death was blunt trauma of the head, and the manner of death was homicide in Dr. Radisch's opinion. Liz had seven lacerations to her head, most of them down to the skull. She

had facial bruising and bruising to her left arm and hand. The injuries she sustained to her body and head and face were not consistent with a fall down the steps. The number, locations and severity of the head lacerations especially were not due to a fall down the stairs as Dr. Radisch concluded. She noted that the injuries to Kathleen and Liz were similar. (51: 10762-63, 10770-79, 10786, 10802-03, 10821-22, 10828-32; 52: 10863)

Dr. Radisch did not know if anyone made any observation about rigor mortis in Liz's body. Medical examiners may roughly estimate the time of death by considering rigor mortis, which will vary depending on different factors. Rigor can develop over about a twelve hour period, give or take some time, and will dissipate over time. (52: 10916-17) No substantive evidence was introduced at trial concerning rigor mortis except that moderate rigor was noted at the autopsy on 27 November 1985. (46: 9430-31; R pp. 84-85)[7]

According to Margaret Blair, Liz's sister with whom she had a close relationship, Liz's will provided for defendant and Patty to act as guardians for her daughters. Margaret was not aware of this before Liz's death. Defendant told her he had drawn up the will for Liz. Apparently he was the executor of the will. Once the estate was settled, Margaret and her family did not receive any of Liz's property from defendant. At a point when she viewed a videotape of defendant's home in Durham, Barbara Malagnino saw some of Liz's personal belongings. Margaret talked to defendant a

[7] State's Exhibits consisting of Dr. Radisch's autopsy reports on Kathleen and Liz as well as certain autopsy and crime scene photographs will be delivered to this Court.

number of times to ask him to let her husband and her adopt the girls. At one point Patty came to her house and said she could adopt them. Defendant continued to decline, however. (48: 9932-33, 9937-44, 9951-52; 49: 10136-37)

ARGUMENT

I. THE TRIAL COURT DID NOT ERR IN DENYING THE MOTION TO SUPPRESS.

There are two search warrants in issue, one dealing with seizures at defendant's home and one dealing more particularly with the subsequent seizure of his computer. (R pp. 28-30, 42-45) A copy of the pertinent parts of these warrants (R pp. 29 and 43-44) is attached as appendix pages 5-7. The warrant for the computer mostly duplicates the one for the home but adds the computer to the description of property to be seized. (R p. 43; App. p. 6) Defendant's pretrial motion to suppress evidence seized pursuant to these warrants (R pp. 6-46) was denied on 1 April 2003 by the trial court (R pp. 56-61). On appeal defendant argues that the two warrants are constitutionally defective because they are not supported by probable cause and are too broad. The State responds that the warrants are defective in neither respect.

Furthermore, defendant should not be heard on this question because of the insufficiency of his argument to identify the specific evidence that was admitted at trial and is actually in contention now, which makes it difficult to determine what prejudice he might have suffered from the seizure of property pursuant to the warrants. More exactitude in identifying contested items of evidence is contemplated by N.C. R. App. P. 28(a) and

(b)(6) than is reflected by defendant's argument. The State can hardly cite other instances when similar uncontested evidence may have been admitted,[8] or rely on the plain view doctrine, or otherwise refute the possibility of prejudice, without knowing more explicitly which items of evidence defendant is complaining about.

This Court should not have to identify on its own any evidence that may be prejudicial. Defendant has the responsibility to specify the items actually in issue so the State can respond to each item and so this Court can give the matter meaningful review and, in the event of reversible error, guide the trial court explicitly on what items should be excluded at a new trial. This Court should reject defendant's argument as insufficient under Rule 28(a) and (b)(6). See State v. Roache, 358 N.C. 243, 322, 595 S.E.2d 381, 431 (2004); State v. Williams, 355 N.C. 501, 584, 565 S.E.2d 609, 657 (2002); State v. Cheek, 351 N.C. 48, 71, 520 S.E.2d 545, 558 (1999).

Search warrants may not be issued except upon probable cause. U.S. Const. amend. IV. Whether probable cause exists to believe that evidence may be found in a particular location is a common sense, practical question, Illinois v. Gates, 462 U.S. 213, 230, 76 L. Ed. 2d 527, 543 (1983), relating to practical considerations of everyday life, id. at 241, 76 L. Ed. 2d at 550. The sufficiency of a probable cause affidavit is decided by what is contained in the

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[8] Even had the search of the computer been unconstitutional, similar evidence from defendant's desk was introduced. Anyway, defendant opened the door for such evidence as contended in the State's third argument. Any prejudice was harmless beyond a reasonable doubt in view of the other evidence against defendant.

affidavit. See, e.g., N.C.G.S. § 15A-245(a) (2001); State v. Heath, 73 N.C. App. 391, 326 S.E.2d 640 (1985).

The totality of the circumstances is considered in determining probable cause. State v. Arrington, 311 N.C. 633, 319 S.E.2d 254 (1984). A warrant issuing magistrate simply must make a practical, common sense determination, in light of **all** the circumstances set forth in a proper affidavit, whether there is a fair probability that evidence of a crime will be found in a particular place. Gates, 462 U.S. at 238, 76 L. Ed. 2d at 548; State v. Riggs, 328 N.C. 213, 220, 400 S.E.2d 429, 434 (1991).

The experience of an officer-affiant should be considered in determining probable cause. See Riggs, 328 N.C. at 221, 400 S.E.2d at 434. Magistrates may draw reasonable inferences from the material that the officer supplies. State v. Sinapi, 359 N.C. 394, 399, 610 S.E.2d 362, 365 (2005). The material "must be seen and weighed not in terms of library analysis by scholars, but as understood by those versed in the field of law enforcement." Gates, 462 U.S. at 232, 76 L. Ed. 2d at 544 (citation omitted).

Courts that review the probable cause determination made by a magistrate have the duty "simply to ensure that the magistrate had a 'substantial basis for . . . conclud[ing]' that probable cause existed." Arrington, 311 N.C. at 638, 319 S.E.2d at 258 (citation omitted). They should not conduct a *de novo* review, and they should accord the magistrate's conclusion great deference. Id. They "should not invalidate warrants by interpreting affidavits in a hypertechnical, rather than a commonsense, manner. The

resolution of doubtful or marginal cases in this area should be largely determined by the preference to be accorded to warrants." Riggs, 328 N.C. at 222, 400 S.E.2d at 434-435 (internal brackets and quotation marks and citations omitted); accord Sinapi, 359 N.C. at 398, 610 S.E.2d at 365. This is especially important considering that affidavits normally are written by non-lawyers in the midst and haste of a criminal investigation. Gates, 462 U.S. at 235-36, 76 L. Ed. 2d at 546.

In Sinapi our Supreme Court recently emphasized that "*[p]robable cause is a flexible, common-sense standard.* It does not demand any showing that such a belief be correct or more likely true than false." 359 N.C. at 399, 610 S.E.2d at 365 (internal quotation marks and citation omitted) (emphasis in original).

As to the particularity requirement, there is no objective standard for Fourth Amendment purposes. "A determination of whether a description is sufficiently particular must take into account the factual setting of the individual case." State v. Hodges, 43 Ore. App. 547, 551, 603 P.2d 1205, 1207-1208 (1979). Elaborate detail is not necessary, and generic language may be used. Russell v. Harms, 397 F.3d 458, 464 (7th Cir. 2005).

The affidavit completed by Detective Holland for the search warrants establishes his experience. It establishes that he went to the scene knowing that a bloody death was involved. He observed blood on the sidewalk that leads to the front door and blood on the inside of the door. Another officer informed him that the victim's husband had blood all over his person. (App. pp. 5, 6)

Given such information as contained in the probable cause affidavit and taking a practical, common sense approach, the issuing magistrate could have reasonably inferred that a killing took place at the residence. It was possible, of course, at the time, that an accident or some other innocent action had taken place, although common sense tells us that the large amount of blood seems more likely related to the use of a deadly weapon than to an accidental fall down the stairs. Neither the police nor the magistrate had to eliminate every hypothesis of innocence, however.

Too, Detective Holland did not have to investigate in more detail after arriving at the scene to figure out whether the action was criminal or innocent in nature. He was authorized to take the information he had to the magistrate to seek a warrant so that he could then investigate with the judicially approved thoroughness that was needed. His decision to do so was made in the midst and haste of an investigation, and the propriety of the warrant is judged not by what more he could have done before seeking the warrant but by the information contained in the warrant.

Blood on the sidewalk and on the front door suggested someone may have fled the scene after being injured or after becoming so bloody from killing the victim that he trailed blood in fleeing. The amount of blood present suggested use of a deadly weapon. Blood all over the victim's husband suggested that he killed the victim. To be sure, he could have gotten the blood on him by rendering assistance to her, but again, the police did not have to eliminate every hypothesis of innocence. Indeed, they were not

even required to interview defendant before seeking a warrant.

Blood on defendant, blood leading out of the house, a lot of blood at the scene, a deceased person, these are things that do indicate a crime regardless of what else they could indicate and regardless of what innocent explanation could be offered for each of them. Probable cause does not demand any showing that the detective's belief that a crime occurred be correct **or be more likely true than false**, Sinapi, 359 N.C. at 399, 610 S.E.2d at 635.

Consequently, this Court as a reviewing court can be satisfied that the magistrate had a substantial basis for concluding that probable cause existed. The magistrate's decision is accorded great deference and should not be subjected to *de novo* review. If this is a doubtful or marginal case, it should be largely determined by the preference to be accorded to warrants.

The information justifying issuance of the first warrant also created probable cause for the other warrant in contention. Probable cause did not disappear merely because one warrant was issued and executed. "[D]ocumentary evidence indicating ownership, possession and control of the premises" (App. pp. 5, 6) could be useful in identifying persons connected to the Petersons and the house who might have information shedding light on the incident. Such information can be found on computers. Hence it may not have been necessary to list computer equipment specifically (App. p. 6), and it makes no difference that the affidavit did not mention the presence of a computer in the house, see United States v. Hunter, 13 F. Supp. 2d 574, 581 (D. Vt. 1998). Many households

have computers, so it was appropriate to look for a computer in the house regardless of whether the police had noticed one earlier.

If the computer could be searched, not only might evidence of persons connected to the premises and to the victim be discovered, but also evidence of threats or of relevant relationships might be discovered, which could lead to evidence relating to the motive of the killer. In difficult situations like this, the police must have more leeway in what to search for than in cases for which the evidence is more certain, such as cases of stolen property or drug trafficking. See State v. Hodges, 43 Ore. App. at 551-53, 603 P.2d at 1207-1209; cf. Russell v. Harms, 397 F.3d at 464 (noting warrant gave as much guidance as feasible).

The additional information provided in Detective Holland's affidavit for the "computer warrant" (App. p. 7) at least demonstrates that the investigation was ongoing. The police obviously had more leads to follow. There was nothing improper about seeking another warrant for the house in order to be as thorough as possible in checking all potential explanations of the crime. Any computer in the house potentially had information that could shed light on persons having some motive to harm the victim or persons connected to the premises or the victim who could provide useful information about her activities and associates. The issuance of another warrant was therefore justified, and its propriety should be judged in the same manner as the first one.

Once the computer was in the custody of the police, they were entitled to look for evidence in it associated with the killing

just as they could look in a locked filing cabinet. The command of the warrant was to search for described property, and that means to search wherever any such property can be found. Documentation on a computer is comparable to documentation in a locked file. "Computer records searches are no less constitutional than searches of physical records, where innocuous documents may be scanned to ascertain their relevancy." Hunter, 13 F. Supp. 2d at 584.

There was control over the scope of the search of defendant's computer in that the seizure of any item not specified in the warrant had to relate to "evidence that may be associated with this investigation." (App. p. 6) Anything not associated with the investigation could not be seized or scrutinized (unless it fell within the plain view doctrine). So, contrary to defendant's assertion (Br. p. 56), the warrant was not without limitation. The exclusionary rule would apply to anything that was seized but was not associated with the investigation. An inclusive provision like the one above is necessary in murder cases when it is impossible to know beforehand exactly what the evidence may be. Again, the police must have some leeway for investigations of this sort when so much is unknown initially. Exceptional circumstances like these justify exceptional latitude. See generally Robert L. Farb, Arrest, Search and Investigation in North Carolina 131 and n.53 (3d ed. 2003) (discussing need for particularity).

Similarly, there was control over the scope of the search with the first warrant in that something not referred to as specifically as, say, "[f]ingerprints, bloodstains, . . . and clothing fibers,"

still had to "relate to the Death Investigation." (App. p. 5) Cf. id. at 131 (suggesting description of property to be seized similar to instant description). Even if some part of the description of property to be seized was not sufficient, that would not invalidate the other parts that were sufficient. E.g., Warren v. State, 760 N.E.2d 608 (Ind. 2002). Evidence in plain view in a place where the police were authorized to search, such as a place where a weapon could be concealed, naturally could be seized under the plain view doctrine. Horton v. California, 496 U.S. 128, 110 L. Ed. 2d 112 (1990). The size of the house offered innumerable places for concealment, so the search had to be extensive. Moreover, a search of a computer is not more inherently intrusive than a search of a house for a weapon. United States v. Upham, 168 F.3d 532, 535 (1st Cir. 1999).

Defendant has not identified anything introduced into evidence that was not covered by the enumerated items of property to be seized or was not in plain view. He has not elucidated well enough for meaningful review any items of evidence that were improperly seized in that they exceeded the scope of the warrants. These search warrants were valid, and defendant's complaint has no merit.

In any event, the trial court determined that Detective Holland acted in good faith (R p. 61), and the good faith exception should be applicable despite the decision in State v. Carter, 322 N.C. 709, 370 S.E.2d 553 (1988). Any weakness in the warrants resulted from a weakness in writing, not a weakness in facts. See generally Duckworth v. Eagan, 492 U.S. 195, 208, 211-12, 106 L. Ed.

2d 166, 180, 183 (1989) (concurring opinion by Justice O'Connor). The view of the dissenting justices in Carter should prevail here.

II. THE TRIAL COURT DID NOT ERR IN ADMITTING THE RATLIFF EVIDENCE.

Defendant moved in limine to exclude evidence regarding the death of Elizabeth Ratliff. (R pp. 69, 91, 104) "The decision to either grant or deny a motion *in limine* is within the sound discretion of the trial court." State v. Fritsch, 351 N.C. 373, 383, 526 S.E.2d 451, 458 (citation omitted), cert. denied, 531 U.S. 890, 148 L. Ed. 2d 150 (2000). At several points during the trial Judge Hudson received evidence on the matter, including the testimony of Cheryl Appel-Schumacher, Margaret Blair, and Doctor Radisch. Their testimony during voir dire was consistent with their testimony before the jury as set forth briefly in the statement of the facts. The judge also received some photographs and documents, including the autopsy reports. He denied the motion (47: 9679-81) and reduced his order to writing with findings of fact and conclusions of law (R pp. 179-184).

Defendant contends that the trial court erred in admitting the Ratliff evidence. He argues for exclusion under Rules 401-404 of the North Carolina Rules of Evidence and further says the evidence deprived him of a "fundamentally fair trial, in violation of his constitutional right to due process." (Br. p. 58) This reference to due process is the only means by which defendant's argument purports to present a constitutional issue. He focuses primarily on the supposed failure of the State to connect him to Liz's death even if she was murdered. Without an evidentiary link to her

death, he says the evidence from Germany had no relevance to Kathleen's death (Br. pp. 65-66). By footnote (Br. p. 59 n.23) he challenges the admission of the evidence under Rule 402. He directs nearly all of his attention to admission of the evidence under Rule 404(b) relying in large part on his contention that the State failed to link him to the death.

The State says the evidence was admissible under Rule 402 and also under Rule 404(b). Defendant has not sufficiently presented a constitutional issue for this Court to resolve as the State has argued in its responsive brief to the amicus brief, and he has not shown a constitutional violation in any event. He has not shown prejudicial error under the rules of evidence. The State incorporates by reference the argument presented in its responsive brief to the brief from amicus curiae.

Discretionary rulings are accorded great deference on appeal. Such a ruling will be overturned only if the defendant establishes that it was too arbitrary to have been the result of a reasoned decision. State v. T.D.R., 347 N.C. 489, 503, 495 S.E.2d, 700, 708 (1998). An evidentiary ruling by the trial court is presumed correct unless the defendant demonstrates otherwise. State v. Herring, 322 N.C. 733, 749, 370 S.E.2d 363, 373 (1988). This Court should look to the entire record, and not just to the evidence offered on voir dire, in determining whether Judge Hudson correctly ruled on the motion in limine. See State v. Moore, 316 N.C. 328, 333, 341 S.E.2d 733, 737 (1986); State v. Silver, 286 N.C. 709, 717-18, 213 S.E.2d 247, 253 (1975).

Further, appellate courts should consider findings of fact to be conclusive if supported by the evidence, State v. Steen, 352 N.C. 227, 237, 536 S.E.2d 1, 7 (2000), cert. denied, 531 U.S. 1167, 148 L. Ed. 2d 997 (2001), or if they are not properly challenged on appeal, id. at 238, 536 S.E.2d at 8; State v. Trull, 153 N.C. App. 630, 635, 571 S.E.2d 592, 596 (2002), appeal dismissed and disc. rev. denied, 356 N.C. 691, 578 S.E.2d 596, 597 (2003).

Defendant's assignment of error number 7 claims error for all the findings of fact but expressly refers just to findings 8, 11, and 12 (R pp. 181-183). The twelfth finding sets forth 17 discrete facts, (a) through (q), that constitute similarities between Kathleen's and Liz's deaths. "It is well-established that a single assignment generally challenging the sufficiency of the evidence to support numerous findings of fact, as here, is broadside and ineffective." State v. Sutton, 167 N.C. App. 242, 244-45, 605 S.E.2d 483, 485 (2004) (internal quotation marks and brackets and citation omitted), appeal dismissed and disc. rev. denied, 359 N.C. 326, 611 S.E.2d 847 (2005); accord State v. Phillips, 151 N.C. App. 185, 199-91, 565 S.E.2d 697, 701 (2002).

Assigning error to a specific finding does not suffice for contesting the finding on appeal. The defendant must specifically argue against the finding to avoid abandonment of the assignment of error. Trull, 153 N.C. App. at 635, 571 S.E.2d at 596; see also Sutton, 167 N.C. App. at 244-45, 605 S.E.2d at 485; Phillips, 151 N.C. App. at 190-91, 565 S.E.2d at 701.

As Trull, Sutton, and Phillips demonstrate, this Court should

considered itself bound by the findings made by Judge Hudson. Defendant should have assigned error explicitly to the factual similarities that he wanted to contest among findings of fact 12(a) through (q) (R pp. 181-183), and he should have provided specific and substantiated arguments against all facts that he contends were not supported by the evidence. His failure to do so renders the findings of fact conclusive and binding on appeal.

Anyway, there was evidence to support the findings. The question, then, is whether the judge's ruling on the motion in limine was so arbitrary that it could not have been the result of a reasoned decision. Obviously it would be a result of a reasoned decision if the court had an appropriate basis for concluding that the Ratliff evidence was admissible under Rule 402 or 404(b). Defendant has failed to show that such a basis was lacking.

A. The trial court had a basis for admitting the evidence under Rule 402.

All relevant evidence is admissible at trial unless precluded by constitutional or statutory authority or by the rules of evidence. N.C. R. Evid. 402. "A trial court's rulings on relevancy are given great deference on appeal." State v. Chance, 130 N.C. App. 107, 113, 502 S.E.2d 22, 25 (citation omitted), cert. denied, 349 N.C. 366, 525 S.E.2d 180 (1998).

The standard for admitting evidence based on relevancy is necessarily elastic especially in view of the great variety and number of fact situations that can give rise to relevancy questions. The requirement of a reasonable connection between the evidence presented and the crime committed has been emphasized.

When the prosecution can show a logical basis on which objected to evidence may be connected with the crime, the evidence may have some probative value on an issue and thus be relevant. See State v. Prevette, 317 N.C. 148, 162-63, 345 S.E.2d 159, 168 (1986).

Evidence does not have to be directly probative to be admissible. State v. Barnes, 345 N.C. 184, 221, 481 S.E.2d 44, 64, cert. denied, 522 U.S. 876, 139 L. Ed. 2d 134 (1997), and cert. denied, 523 U.S. 1024, 140 L. Ed. 2d 473 (1998). It will be relevant "if it reasonably allows the jury to draw an inference as to a disputed fact." State v. Arnold, 284 N.C. 41, 47-48, 199 S.E.2d 423, 427 (1973) (citations omitted). "In the context of a murder, evidence is relevant if it tend[s] to shed light upon the circumstances surrounding the killing, or if it has *any logical tendency, however slight*, to prove a fact in issue[.]" State v. Garcia, 358 N.C. 382, 416, 597 S.E.2d 724, 748 (2004) (internal quotation marks and citations omitted) (emphasis added), cert. denied, ___ U.S. ___, 161 L. Ed. 2d 122 (2005).

The heart of the defense in the trial of this case was that Kathleen Peterson died not from a beating, but from an accidental fall down the stairs. In his opening statement defendant virtually challenged the prosecution to disprove accident. He spoke of the potentiating effect of Kathleen's ingestion of alcohol and Valium shortly before her death, of the headaches and dizziness she had been experiencing for weeks, and of the flip-flops she was wearing as she was climbing a narrow, steep and poorly lit stairway (App. pp. 16, 32, 35; see also Def's Br. p. 36), all of which suggest a

reason for her accidentally falling down the stairs. Several times he particularly described Kathleen as having died from an accident rather than from a beating. (App. pp. 18-19, 26, 31-32, 33, 34) He even suggested the police were biased and had tunnel vision in light of their concluding that this event involved a beating and not an accident. (App. pp. 18-19, 22-30)

The State met defendant's challenge head-on with its expert witnesses. It was not limited to evidence directly probative of an intentional killing, of course. Liz's death was useful to throw light on the crime because it provided defendant with a model by which he could try to make Kathleen's death appear accidental. This model was not dependent upon the State's showing that Liz was murdered or that defendant was responsible for her death. As a model, something by which defendant could be guided in staging an apparent accident to account for Kathleen's death, this circumstantial evidence was relevant and admissible under Rule 402.

The State argued to this effect as a basis for admission of the evidence from Germany. (47: 9667-68, 9678) Judge Hudson concluded that the evidence was relevant and admissible under Rule 402. (R pp. 183-184 ¶¶ 1 and 4) The point is not whether defendant did use Liz's death as a model, even though the physical circumstances of both deaths are so remarkably similar that one can infer as much. The point is that he could have done so.

Defendant dismisses this idea as flawed because Liz was believed to have died from a stroke rather than a fall. (Br. p. 59 n.23) The precise cause of her death was immaterial insofar as the

practical things that defendant likely learned from her death are concerned. He would have understood that different conditions can cause a person to fall down stairs. Impairment by a medical condition may lead to a fall. It is not a stretch similarly to understand that impairment from alcohol and Valium or from severe headaches may contribute to a fall. Both victims had been suffering from severe headaches (R p. 182 ¶ I).

More important, defendant would have learned from Liz's "accident" that a fall down stairs can be very bloody. He would have understood that impacts of a person's head on steps can cause deep lacerations that could contribute to death from bleeding. A lot of blood may be splattered along and high upon a staircase wall. The bloody appearance of the corpse and the scene could as much be suggestive of a fall as it could be of a beating.

This understanding, these lessons, would not have been lost on defendant once he decided to kill Kathleen. Beating her in the stairway with controlled blows by an object that would not necessarily cause suspicious wounds would allow for an opportunity that her death might be mistaken for an accident. If he could manage to make the physical circumstances of her death resemble those occurring in Liz's supposedly accidental fall, then he had a chance that Kathleen would be considered the victim of a fall rather than a beating. He had a pattern, a model, that he could follow in creating the illusion of an accident. He did a fairly good job in creating such an illusion. His having a model was therefore probative in helping to dispel the notion that Kathleen

died from a fall.

Accordingly, a reasonable connection between the two deaths existed regardless of whether defendant killed Liz. This evidence had a logical tendency, however slight, to prove a fact in issue: whether Kathleen died by accident or by homicide. The ruling is entitled to great deference. As to Rule 402, defendant has not shown that the denial of the motion in limine was so arbitrary that it could not have been the result of a reasoned decision.

B. The trial court also had a basis for admitting the evidence under Rule 404(b).

Judge Hudson concluded that the Ratliff evidence was relevant to show intent, knowledge, and absence of accident and was admissible under Rule 404(b) (R pp. 183-184 ¶¶ 1 and 5), which provides for the admission of evidence of other crimes, wrongs, or acts when relevant for purposes other than showing the character of the defendant. The purposes for which the judge admitted the evidence are expressly included in the rule.

The admission of Rule 404(b) evidence as relevant for the purposes given by the judge has been upheld often. E.g., State v. Barfield, 298 N.C. 306, 328, 259 S.E.2d 510, 529 (1979) (intent), cert. denied, 448 U.S. 907, 65 L. Ed. 2d 1137 (1980); State v. Hipps, 348 N.C. 377, 404-405, 501 S.E.2d 625, 641-42 (1998) (knowledge), cert. denied, 525 U.S. 1180, 143 L. Ed. 2d 114 (1999); State v. Boczkowski, 130 N.C. App. 702, 707, 504 S.E.2d 796, 799 (1998) (lack of accident). When a defendant relies on accident as a defense, evidence of his prior involvement in another supposedly accidental death may be especially probative on whether the later