IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE,	)	
	)	ID Nos. 0912011155
v.	)	0912008771
	)	0912011621
EARL B. BRADLEY,	)	
	)	
Defendant.	)	

Submitted: December 10, 2010
Decided: April 13, 2011

OPINION

On Defendant's Motion to Suppress.
DENIED

Paula T. Ryan, Esquire; David Hume, Esquire; Alexis Gatti, Esquire; Department of Justice, 114 East Market Street, Georgetown, Delaware 19947.
Paul Wallace, Esquire; Department of Justice, 820 N. French Street, Wilmington, Delaware 19801. Attorneys for the State of Delaware.

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CARPENTER, J.

Defendant Earl Bradley ("Dr. Bradley") has filed a Motion to Suppress evidence collected from his medical practice during a search executed pursuant to a warrant on December 16, 2009. Police searched four buildings on the premises and seized patient medical files and various forms of digital media and recording equipment. For the reasons set forth below in this opinion, Dr. Bradley's Motion to Suppress will be denied.

FACTS

Dr. Bradley is a pediatrician practicing in the Lewes, Delaware area. His medical office, BayBees Pediatrics, is located on Route 1, just outside of Lewes, with the address 18259 Coastal Highway. There are four structures located on the premises. The main office building (hereinafter "Building A"), where Dr. Bradley saw patients, is a two-story residential style building. Towards the end of the property is a large white building with a checkerboard facade (hereinafter "Building B"), a white garage building (hereinafter "Building C"), and a tan shed on a flatbed trailer (hereinafter "Building D").

Beginning around 2005 information had been provided to various law enforcement agencies regarding alleged improper conduct by Dr. Bradley involving his interaction with adolescent children.[1] In December of 2008 the

[1] The initial information was provided to the Milford Police in 2005.

Delaware State Police sought a warrant to search Dr. Bradley's medical practice for evidence of child pornography, but the application was judicially denied. As such, the investigation stalled until December of 2009 when the police again received additional information from the mother of one of Dr. Bradley's patients that he had touched her daughter's vaginal area during a routine office visit. This led to the Delaware State Police preparing another warrant which outlined the information received since 2005, but this time focused and limited the warrant to patient files associated with the children identified in the warrant and video and photographs of the BayBees Pediatrics premises.

On December 15, 2009, the warrant prepared by the Delaware State Police was approved by a Superior Court judge.[2] In the warrant, under the heading "**SPECIFIC DESCRIPTION OF PREMISES AND/OR PLACE(s) AND/OR VEHICLES OR PERSON(S) TO BE SEARCHED**," the police identified:

> A two story residence style building, white in color, located at 18259 Coastal Highway, Lewes, DE 19958. There is a yellow Volk[s]wagon, with Baybees Pediatrics displayed on the car. There are signs at the front of the building that display "BayBees Pediatrics[“] and [“]Earl B. Bradley[“] on the signs.[3]

The warrant also identifies "BayBees Pediatrics, 18259 Coastal Highway, to

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[2] The police also sought and received an arrest warrant for Dr. Bradley on December 15, 2009 arising out of the same allegations. Dr. Bradley does not challenge his arrest.

[3] Search warrant, 1, Dec. 15, 2009.

include a white outbuilding, located on the property," but this description is misplaced in the warrant since it is found in the portion of the warrant used to identify the owners of the property.[4] The warrant makes no other explicit reference to any other buildings on the property.

The police executed the search warrant at BayBees Pediatrics shortly after 7 a.m. on the morning of December 16, 2009. A small group of police officers arrested Dr. Bradley at his residence and brought him to the office before the search warrant was executed. Dr. Bradley unlocked the buildings and de-activated the alarm. Upon arriving at BayBees Pediatrics, it became obvious to the police that there were four structures located on the premises, rather than two, as had previously been believed. At the suppression hearing on August 31, Detective Thomas Elliott, an officer in the Major Crimes Unit in Delaware State Police Troop 4 in Sussex County, who prepared the 2009 warrant application, testified that he had only observed two buildings on the premises when he drove by it on December 14, 2009 to prepare the search warrant application.[5] Detective Elliott observed the building(s) from a turn lane on the northbound side of Route 1 and from his vantage point, Detective Elliott testified, he only observed the main office

[4] *Id.*
[5] Hearing Tr. Day 1, 67, Aug. 31, 2010.

building and a "large white building towards the rear of the property," which Detective Elliott identified at the suppression hearing as the checkerboard building, or Building B.[6] Detective Elliott testified that he believed that any additional structures on the property were all contiguous with the main office building.[7]

At the scene, after realizing that there were actually four structures on the premises, Detective Elliott and his superiors from Troop 4 met to discuss whether the search warrant extended to all of the buildings on the premises. Detective Elliott testified that they called an unidentified Deputy Attorney General, who told the police that she was on her way to the scene.[8] The Deputy Attorney General did arrive at BayBees Pediatrics on the morning of December 16,[9] however, by the time she arrived, the search was already well under way. The police concluded that the search warrant applied to the entire commercial premises and began the search without waiting for confirmation or advice from the Deputy Attorney General regarding the possible limits of the search authorized under the warrant.[10]

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[6] *Id.*at 65.
[7] *Id*. at 67.
[8] *Id*. at 127.
[9] *Id*.
[10] *Id*. at 95.

The warrant identified the following under the heading "**ITEMS TO BE SEARCHED FOR AND SEIZED**":

1. Files to include medical files relating to the treatment and care of listed children, to include paper files, as well as computer files in regard to [the eight children identified at the time of the search as victims of Dr. Bradley's alleged abuse].
2. Video and photographs of [the BayBees premises].[11]

Police concluded during the investigation that there was reason to believe that they might find information corroborating the allegations against Dr. Bradley in forms other than traditional paper medical files. In 2005, for example, the Milford police had learned from a former colleague of Dr. Bradley's that Dr. Bradley uploaded photos of his patients to his personal computer and would manipulate the photos.[12] Detective Garland of the Delaware State Police High Tech Crime Unit also testified that he advised Detective Elliott during the preparation of the warrant that from his experience, medical files could be stored in many different forms, including digital images to facilitate sharing of information between different offices.[13] Furthermore, Detective Garland testified that it is common for medical practices to maintain backup copies of records, documents and images used in the practice on devices such as thumb drives, DVDs or other media cards[14] and

[11] Search warrant, 1, Dec. 15, 2009.
[12] Hearing Tr. Day 1, 60, Aug. 31, 2010.
[13] Hearing Tr. Day 2, 133, Sept. 1, 2010.
[14] Hearing Tr. Day 2, 151, Sept. 1, 2010.

suggested that the police could reasonably expect to find data from the surveillance cameras installed at BayBees Pediatrics on removable media storage devices.[15]

During the execution of the warrant, the police located and seized paper medical files for seven of the eight children identified in the warrant in the main practice building, Building A. They also seized several digital devices, including computers, cameras, and various forms of digital media storage from multiple buildings on the property. From an exam room in Building A, the police seized a handheld video camera containing a memory card and a digital SLR camera. The police also seized a handheld video camera from a file cabinet in the basement of Building A that was next to the patient file storage area, and a computer from the office's main reception area that did not appear to be in use. In Building B, where Dr. Bradley maintained his office, police seized Dr. Bradley's desktop computer, a total of thirteen thumb drives from various locations in the office, three handheld video cameras, three larger removable media storage devices, a 2-gigabyte SanDisk memory card, a Sony HD Webcam containing a memory card, a Sony Net Share camera, and a DVD. The police also seized a box containing two pen cameras from the floor near Dr. Bradley's desk in Building B. From Building D,

[15] *Id.* at 152.

the tan shed, the police seized another desktop computer, which was visible to the police through the window of the shed, a clear plastic storage container holding twenty-three memory cards, eleven other memory cards, a DVD, and a thumb drive. The police did not seize any evidence from Building C.

Police involved in the execution of the search indicated at the suppression hearing that they were working under a broad definition of "medical files" and understood the term to include any information relevant to the patients listed in the warrant.[16] Thus, members of the search team from the Delaware State Police High Tech Crimes Unit ("HTCU") and Internet Crimes Against Children ("ICAC") division, were assigned to search for computer programming for scheduling and other relevant patient information.[17] During the search, Detective Scott Garland did use previewing equipment to review material that was stored on two computers in use at the reception desk in the main office. Because he concluded that taking the computers would potentially disrupt the business and because he found nothing in the preview search that indicated that the computers contained substantial information about Dr. Bradley's child patients,[18] they were left at the

[16] Hearing Tr. Day 2, 147-48, Sept. 1, 2010.
[17] Hearing Tr. Day 1, 71, Aug. 31, 2010.
[18] Hearing Tr. Day 2, 147-48, Sept. 1, 2010.

location. Otherwise, all other items found during the execution of the warrant were seized.

The Delaware State Police did not examine the contents of the digital media seized from BayBees Pediatrics until December 17, 2009. On that date, Detective James Spillan, another officer in the HTCU, began the formal analysis of the digital evidence collected from the BayBees Pediatrics practice in the HTCU forensics lab. He started his review of the evidence with a thumb drive that had been connected to the desktop computer in Dr. Bradley's private office in Building B. Spillan first opened a file labeled with numbers indicating the date September 30, 2009 and the label ".mpg" indicating a video file. Spillan watched the video for approximately one minute and stopped it when he saw Dr. Bradley removing a young female patient's diaper. He subsequently applied for a new search warrant seeking permission to search every piece of evidence that the police had seized during the December 16, 2009 search for digital evidence of child pornography and/or child sexual exploitation.

DISCUSSION

There are three primary questions for the Court to address in determining the merits of Defendant's Motion to Suppress. While the issues are interrelated, the Court will address each one separately. The questions are:

(a) Did the search warrant issued on December 15, 2009 authorize the police to search all of the buildings located at Dr. Bradley's place of business;

(b) Did the police conduct the search and seize items beyond that authorized by the warrant; and

(c) Is there an alternative basis to allow the seized evidence to be admissible if the warrant or the police's execution of it is found defective?

While the Court held a two day hearing regarding the Motion, generally the determination of the issues are confined to a common sense review of the information contained within the four corners of the search warrant and what was legally authorized by that document.

I. The Buildings

When the Court considers a Fourth Amendment challenge it begins with the premise that the warrant must describe with particularity the place to be searched. Requiring such particularity "ensures that the search will be carefully tailored to its justifications and will not take on the character of the wide-ranging exploratory search the framers intended to prohibit."[19] Fundamental to a protection of this

[19] *Maryland v. Garrison*, 480 U.S. 79, 84 (1987).

right is that the police are generally limited to the specific places they have described in the warrant and cannot extend the scope of the warrant to additional or different places without seeking additional authority from the courts.[20] As such, the specificity requirement is intended to leave little discretion to the officers in executing the warrant, and their searching authority will be limited to the places that have been approved by the Court.[21] "The test for determining the sufficiency of the description of the place to be searched is whether it is described with sufficient particularity as to enable the executing officers to locate and identify the premises with reasonable effort and whether there is any reasonable probability that another premise might be mistakenly searched."[22] It is from this basis the Court will review the warrant issued here.

The standard warrant form utilized by the police agencies in the state have four pre-printed areas for the officers to complete. They are required to (1) list the items to be searched for and seized; (2) describe the premises, place, vehicle or person to be searched; (3) set forth the name of the individual who owns, occupies or possesses the place to be searched; and finally (4) to specify the criminal offenses the officer believes the items seized would tend to support. As such, the

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[20] *United States v. Alberts,* 721 F.2d 636, 639 (8th Cir. 1983).

[21] *Fink v. State*, 817 A.2d 781, 786 (Del. 2003).

[22] *State v. Young,* 39 P.3d 651, 655 (Idaho Ct. App. 2002). *See also Doe v. Groody*, 361 F.3d 232, 239 (3d Cir. 2004) (noting that one purpose of a warrant is to limit the discretion of the officers executing the search).

Court will first start with the premises described. In the warrant executed before the Court, Detective Elliott stated that he was seeking authority to search:

> A two story residence style building, white in color, located at 18259 Coastal Highway, Lewes, Delaware 19958.

He further described that there was a yellow Volkswagen car located on the premises with the words "BayBees Pediatrics" displayed on the vehicle and that the sign at the front of the building displayed the names "BayBees Pediatrics" and "Earl B. Bradley". There is no dispute that the "residence" being described in this portion of the warrant was the building that was being used by Dr. Bradley for his patient office.[23] The Defendant has presented little, if any, argument that as to this building the warrant is not specifically particularized to justify it being searched. The Court agrees and finds that the warrant issued on December 15, 2009 clearly authorized the search of Dr. Bradley's office. Unfortunately that does not end the inquiry.

In preparing the warrant, Detective Elliott of the Delaware State Police drove by Dr. Bradley's office area so that he could describe the premises he was seeking permission to search. He initially traveled northbound on Route 1 but missed the property. He subsequently turned around and again traveling

[23] This is the building marked as Building A on the sketch used in the evidentiary hearing.

northbound drove just past the property and parked in the turn lane of Route 1. He looked back over his shoulder and observed what he believed was a single continuous structure that was in the form of a "L". At the hearing, the officer testified:

> Coming from the south, with this white building here, [. . .], the angle of this building is set back far enough that the makeup of all the objects in this parking lot here, it appears this is one building, that is like an offset of the building, may have an L hallway or something that turns down.[24]

Detective Elliott then indicated that from his observation the only apparent separate structure was a white outbuilding located in the back of the property.[25] Therefore it appears that at the time the officer was requesting the warrant, he believed that there were at most two buildings located at the facility. The officer believed the main office building extended out from the back and would perhaps connect to the outbuilding which he indicated was white in color. Unfortunately, the outbuilding is not listed in the warrant as a place to be searched so the Court must determine whether based on the information provided in the warrant and

[24] Hearing Tr. Day 1, 66, Aug. 31, 2010.

[25] This is the building marked as Building B on the sketch used in the evidentiary hearing and will be referenced as such throughout this opinion.

affidavit it would be clear to the issuing judge that an additional outbuilding was included within the property that would be searched.

While not listed in the correct portion of the warrant, the white outbuilding is referenced in the portion of the warrant used to identify the owner of the premises to be searched. In this part of the form it states:

NAME OF OWNER (S), OCCUPANT (S) OR POSSESSOR (S) OF PREMISES AND / OR PLACE (S) AND / OR VEHICLE (S) AND/OR PERSON (S) TO BE SEARCHED:
Earl B. Bradley (DOB - 05/10/53), a white male. BayBees Pediatrics, 18259 Coastal Highway, to include a white outbuilding, located on the property.

In addition, in the affidavit sworn to by Detective Elliott, he states:

> On December 14, 2009 your Affiant observed the exterior of Dr. Bradley's office in order to confirm and corroborate the address of each location. The Doctor's office is located at 18259 Coastal Highway, Lewes, DE and is identifiable by the names of Earl B. Bradley and Baybee's Pediatrics, which are displayed on signs located at that location. The office also has an outbuilding, which affiant [h]as learned is utilized by Dr. Bradley. Dr. Bradley takes his patients into the outbuilding as well as the basement of the office.[26]

When the Court is considering the legality of the warrant, it is important to read it in a common sense manner, and while the warrant may not violate its

[26] Search warrant, 1, Dec. 15, 2009.

fundamental constitutional purposes, it should not be interpreted in such a technical or unreasonable manner that it undermines what was clearly authorized by the issuing judge.[27] While the "outbuilding" reference was clearly placed in the wrong section of the warrant, this Court has no question that the warrant and affidavit clearly set forth for the issuing judge that at the 18259 Coastal Highway location, there was a white outbuilding that had been used by Dr. Bradley with his patients and for which they were seeking authorization to search. The Court also finds that the outbuilding referenced in the warrant was Building B which was identified during the suppression hearing. While identifying the building by describing its racing checkerboard design would have been a more accurate description and would clearly have eliminated any confusion, the failure of the officer to describe it in that manner is not fatal.[28] Based upon the manner the detective used to make his observation of the property, this is the only outbuilding that one would have been able to observe. Therefore, the Court finds the warrant also authorized the police to search the outbuilding identified as Building B.

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[27] *Groody,* 361 F.3d at 239.

[28] *See Young*, 39 P.3d at 655 (holding that a search warrant containing a correct street address but an inaccurate physical description of the place to be searched was sufficient); *see also United States v. Turner*, 770 F.2d 1508, 1511 (9th Cir. 1985) (noting that searches have been routinely upheld where one part of the warrant description is imprecise but the description has other parts which identify the place to be searched with particularity); *United States v. Dancy*, 947 F.2d 1232, 1234 (5th Cir. 1991) (holding that a correct street address, without more, is a sufficiently particular description of the premises to be searched); *State v. Holman*, 707 P.2d 493, 499 (Idaho Ct.App. 1985) (holding that a detailed physical description of the premises to be searched is not required).

After obtaining the warrant, numerous officers gathered on the morning of December 16, 2009 and proceeded to accomplish two tasks. First, they went to Dr. Bradley's residence and placed him under arrest. They then, after advising him they had a warrant to search his business, took Dr. Bradley to the Coastal Highway location where he unlocked the building and deactivated the alarm. It was at this point when the officers arrived at the Coastal Highway property that they discovered that there were actually four separate buildings located on the premises. Recognizing there might be an issue whether the warrant would cover all four buildings, the senior officers at the location and Detective Elliott conferred as to whether they should proceed with the search of all the buildings. They called a Deputy Attorney General who had been assisting them and advised her of the situation. She indicated that she would proceed to their location and that she was on her way. However, for reasons that are unexplained and clearly unjustified, the officers decided not to wait for the arrival of their legal counsel and simply proceeded to search the premises on their belief that the warrant covered all four buildings.

Unfortunately, this is the second significant mistake made by the investigating officers in the days leading up to the search. First, the State presented no reasonable explanation as to why the officers would have not simply

driven into the parking lot of Dr. Bradley's office when they were preparing the warrant to obtain a better description of the premises. Dr. Bradley's office is adjacent to a very busy highway, and even a marked patrol car pulling into the lot to do paperwork would not have aroused suspicion or concern. In addition, this is a commercial property which is open to the public and in particular, to the patients of Dr. Bradley. Therefore, a car driving into the lot during business hours would have caused no concern. There is also no evidence to suggest that Dr. Bradley was aware at the time that he was under investigation nor that a quick circling of the parking lot would in any way have jeopardized the investigation. Having overcome this mistake by the Court's willingness to interpret the warrant in a common sense instead of a technical manner, the Court is now faced with even a more fundamental error by the officers by not waiting for counsel to arrive. There was no urgency to perform the search, and since they had Dr. Bradley in custody, there was no reason to be concerned that the records would in any way be destroyed. The reasonable and professional course of action would have been to secure the premises until another warrant was obtained or at least until the Deputy Attorney General arrived to give them further legal guidance. Instead of taking such logical and appropriate steps, the officers made the misguided assumptions that have now put them in the difficult position of attempting to justify their

conduct. At best, the officers' actions reflect a cavalier attitude that simply is unjustified in light of the significance of the case and the office that they were searching.

The Court finds under the unique facts of this case that it cannot find a legal basis under the warrant for the police to search the remaining two outbuildings identified during the suppression hearing as Buildings C and D located on Dr. Bradley's property. The State's argument that the use of the word "premises" in the warrant should be considered as expanding and allowing the search of all buildings on the property is simply unpersuasive. This is not a case where the buildings were joined together to make their description difficult or where the physical character of the property presented a unique, difficult or confusing situation which could only be discovered upon the execution of the warrant.[29] From the moment the police arrived at the Coastal Highway location, they were aware there were four separate and distinct buildings and they also knew they had provided no information to the issuing court that would justify entering Buildings C and D. In fact, until that moment, they were unaware that those buildings even existed. Building C upon external observation appeared to be a workshop area

[29] *See, e.g., Maryland v. Garrison*, 480 U.S. 79 (1987) (upholding police's mistaken search of defendant's apartment because the police reasonably did not know at the time the search was executed that the premises for which police had a warrant actually contained two apartments).

and Building D was a portable trailer that appeared to have no obvious connection to the doctor's medical practice. Since the items the search warrant authorized to be seized were patient medical files, the Court simply cannot find that a fair reading of the warrant would include these structures.

In this case, the police should have secured the buildings and sought additional judicial authorization to search those additional outbuildings. Their failure to do so, or even to wait for their legal counsel to arrive and give them advice, requires, absent an alternative legal basis, that the items seized from Buildings C and D be suppressed.

II. The Search

Having decided what buildings the warrant authorized the police to search, the Court will now turn to whether the warrant was sufficient to justify the seizures that took place and whether the officers exceeded the authority that was given under the warrant.

Fundamental to this review is the requirement that the affidavit in support of the search warrant set forth sufficient facts that would allow a neutral and impartial judicial officer to reasonably conclude that items the police were seeking could be found at the location to be searched. In other words, within the four corners of the affidavit, the police must demonstrate a "logical nexus between the

items sought and the place to be searched: and must demonstrate why it would be "objectively reasonable" for the police to find the items sought in those locations.[30]

Detective Elliott's affidavit identified eight adolescent children who were patients of Dr. Bradley and asserts there was inappropriate and non-medically related activity between these children and Dr. Bradley. It also appears that, except for a single reference to a parent of one of the children observing Dr. Bradley carrying a patient to an outbuilding located behind the office, that most of the alleged inappropriate conduct occurred in the office where patients were routinely examined or in that office's basement.[31] Based upon this information as well as some additional information from co-workers and other physicians, the detective requested a warrant to be approved to search for the following items:

ITEMS TO BE SEARCHED FOR AND SEIZED:

1. Files to include medical files relating to the treatment and care of listed children, to include paper files, as well as computer files in regards to Child 1, 2, 3, 4, 5, 6, 7, and 8 and any other alleged victims that come forward from the time the search warrant is signed, until it is executed.
2. Video and photographs of the below listed location.[32]

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[30] *Dorsey v. State*, 761 A.2d 807, 811 (Del. 2000).

[31] Dr. Bradley's office where he routinely saw patients is Building A.

[32] Search warrant, 1, Dec. 15, 2009.

So the first question is whether, based upon the information within the four corners of the affidavit, it is reasonable for the issuing judge to find that medical files would be found in Buildings A and B. As to Building A, the two story residence used as Dr. Bradley's primary office, the answer clearly is yes. This is where Dr. Bradley would mainly see his patients and where his staff was located. Any common sense interpretation of the warrant would lead to that conclusion. It is also a fair interpretation that the records regarding these patients could reasonably be found in either paper or computer format and seizure of both mediums were authorized and supported by the information contained in the affidavit. The Court reaches this conclusion based upon the information in the warrant from Detective Garland and the fact that computers were used in the practice inferred from the information provided by physicians and staff associated with Dr. Bradley's practice. It does, however, find it strange that the officers conducting the investigation would not have simply asked the office manager or former employees who were cooperating with them how and where patient records would be maintained. While the defense would place some sinister motive for the failure to ask these questions, the Court finds the reference to Dr. Bradley's use of computers and the information provided by Detective Garland's experience is sufficient to justify a search for computer based files.

While the answer for the main building is clear, the question of whether it was reasonable to conclude that patient files would be found in the outbuilding is not as compelling. The lone nexus regarding the use of this building to examine patients is based upon the observation of a father who observed the doctor carrying a patient to the outbuilding located behind the office. While there are many reasons why Dr. Bradley may have been taking the patient to this area, one reasonable conclusion would be that he was taking the child to this location to perform medically related procedures. This was a building located in close proximity to the main office and it would be a fair assumption that perhaps other procedures or examinations would take place in buildings nearby. The Court which issued the warrant was required to assume that the doctor would have had a legitimate medical reason for taking the child to that location. And it also follows that if a patient is taken to an outbuilding to perform a medical procedure, there may be records of what occurred at that location. In other words, until they discovered otherwise, the fair assumption would be that there was a medically based rationale for the actions of Dr. Bradley. It therefore follows that there is a reasonable basis to find that outbuilding B may hold medical files that would be

related to the treatment of his patients and the warrant appropriately authorized the search for files at that location.[33]

III. Seizure

The Defendant next asserts that the affidavit fails to set forth how the patient files would be relevant to the crimes that the police were investigating and therefore does not provide the issuing judge a sufficient basis to justify their seizure. The Court agrees with the Defendant that the police could have easily made the connection by asserting the patient files would assist in determining whether the conduct of Dr. Bradley as described by the child had any medical relationship to the treatment the doctor was providing. While such a statement would have established the required nexus, the Court finds the failure to do so is not fatal to the warrant.

Search warrants in this jurisdiction are reviewed according to a common sense interpretation and when considered in such light, it was a fair and reasonable finding of the Court that the patient files could be relevant to the investigation. The affidavit listed for each child information about what had occurred during their office visits. It would be a fair inference from this information that the files would be relevant in the police's efforts to determine the reliability of the

[33] This same conclusion cannot be reached for Buildings C and D.

statements the children had made. The patient's file would demonstrate (a) whether the child was at the doctor's office in the time frame suggested, (b) what was the reason for the visit and (c) whether there was documentation in the file to support a medically appropriate reason for the conduct described by the child. Such information would not only assist in determining whether criminal conduct was occurring and the reliability of the statements made by the young patients but perhaps would demonstrate that the conduct was medically justified and exonerate the Defendant. Even though these connections were not precisely made in the affidavit, they were common sense conclusions that did not require the issuing judge to go beyond the four corners of the warrant and assume facts not in that document. They were reasonable inferences based upon the information provided.

Next, the Defendant asserts that since the officers had "previewing" equipment on site to do a preliminary search of what was contained on computer files, their decision to seize the computer mediums and take them back to the police lab to conduct the search for patient files was improper. First, it is important to recognize that the ability of the previewing equipment is limited and the purpose in performing any screening is to allow for quick review of a computer medium to determine whether or not critical business equipment that is being used in a commercial establishment needs to be seized or whether it can be

left behind so that the business can continue to operate. It is not a substitute for the more robust and sophisticated equipment in the lab, and it is not required to be utilized during a search. It is generally done in an attempt to strike an appropriate balance between the officers' need to conduct the search and the potential significant hardship that would occur at a business if the computers or hard drives were removed.

This is exactly what occurred. A limited previewing was conducted on what appeared to be the main office computers at Dr. Bradley's practice. After the review, the computers were left behind to allow Dr. Bradley's office to continue to operate or at least allow them to respond to inquiries from patients. Having taken this reasonable approach to the search, it would be inappropriate to require that the detectives preview all of the evidence that was seized. This would simply be impractical as depending upon the amount of data stored on the computer mediums, it could take days or weeks to review the material. As such, the law in this and most jurisdictions allows the officer to seize computer files and equipment and to subsequently conduct the search at the police facility.[34] Here the warrant

[34] This Court can find no decision of a Delaware court specifically addressing the question of whether the police must conduct an on-site search of digital media equipment for a seizure to be valid, though the Delaware Supreme Court has repeatedly upheld seizures of computers and other digital storage devices where the police had probable cause to believe that the digital device contained evidence of a crime without requiring an extensive on-site examination of the device. *See, e.g.*, *Fink v. State*, 817 A.2d 781 (Del. 2003); *Sisson v. State*, 903 A.2d 288 (Del. 2006); *Smith v. State*, 887 A.2d 470 (Del. 2005). Numerous federal courts of appeals, however, have specifically rejected the theory that the police exceed the scope of their authority under a warrant by failing to conduct an on-site

authorized the seizure of computer items listed in the affidavit that could reasonably relate to the storage of patient files. The fact that the subsequent search of those files occurred away from Dr. Bradley's office is not improper nor is it cause to vacate the warrant.

Having ruled that the officer may take the seized files to perform computerized searching of the contents of that medium, the next question is whether the search conducted by Detective Spillan back at the lab was beyond that authorized by the warrant. The defense argues that since the warrant authorizes the seizure of only legitimate patient files, this case is distinguishable from the line of cases where the police are searching for illegal items. In those cases, the computer files that are allowed to be viewed and search is quite broad since by the nature of the crime, the file names would normally have no association to or connection with the contents of that file.[35] In other words, if an individual is maintaining illegal material on their computer, it is reasonable to assume they

search of digital devices before seizing them. *United States v. Stabile*, 633 F.3d 219, 234 (3d Cir. 2011). *See also United States v. Hay*, 231 F.3d 630, 637 (9th Cir. 2000) (noting that a hard drive search requires a "controlled environment"); *United States v. Upham*, 168 F.3d 532, 535 (1st Cir. 1999) (noting that computer searches are time consuming and require trained forensic investigators); *United States v. Hill*, 459 F.3d 966, 974 (9th Cir. 2006) (suggesting that on-site searches would be "fraught with difficulty and risk").

[35] *Cf. United States v. Highbarger*, 380 Fed.Appx. 127, 130 (3d Cir. 2010) (rejecting defendant's contention that the authorities exceeded the scope of the warrant by searching files on the defendant's computer with titles that indicated that they did not contain evidence of drug-related activity).

would not give the files an obvious name to allow it to be easily identified and discovered.

However, in this case, the files the warrant authorized to be searched are legitimate patient files regarding the treatment and care given by Dr. Bradley. As such, it would be illogical and unreasonable to assume the computer files would be hidden by some code or unrelated naming scheme. When such circumstances exist, the defense argues that the State is required to establish that the method used to conduct a search of the files on a particular computer medium had an obvious or at least reasonable inference that the file would relate to one of the eight patients listed in the affidavit. Under the unique facts presented by this case, the Court agrees. This case is different from the line of cases cited by the State where illegal activity was being concealed,[36] and the decision to open a particular file here must have some reasonable connection to the patient's files listed in the warrant.

The day after the search warrant was executed, Detective Spillan began the process of reviewing the computer drives and discs that had been seized, using a software product called "N Case". This software allows the officer to see all the files on the drive or disc regardless of whether they are active or deleted. The

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[36] *See Fink*, 817 A.2d 781. *See also United States v. Williams*, 591 F.3d 511 (4th Cir. 2010); *United States v. Mann*, 592 F.3d 779 (7th Cir. 2010); *United States v. Walser*, 275 F.3d 981 (10th Cir. 2001); *Rosa v. Commonwealth*, 628 S.E.2d 92 (Va. Ct. App. 2006).

detective decided to search first a 4 gig thumb drive that had been connected to the front of a Dell computer located in Building B. This decision was made simply because the amount of information that could be stored on a thumb drive would be limited and thus it would be a smaller amount for the officer to initially observe. The following testimony was given during the direct examination of Detective Spillan during the suppression hearing regarding his search of the thumb drive:

Q. So you began your analysis of that thumb drive device, and what did N Case show you.
A. You are presented in your, it's called a pane view, P-A-N-E. It shows us files that are on that drive and will indicate whether this is an active file or deleted file. Presents file names, presents created dates, date and times modified.
Q. What is a file created date?
A. That is the date that the media is introduced to that individual, like, the thumb drive. If you have today's date, you put a picture on that drive, today's date would be created on that thumb drive. That is the date that that media is introduced to that storage piece.
Q. When you looked at the pane view of the thumb drive, what did you see?
A. I observed seven files.[37]
Q. Were those seven files active files or deleted?
A. They were marked as deleted files.
Q. Did you have to perform any of that sophisticated carving out to gain access to these?
A. No.
Q. Were they readily apparent?
A. Yes.
Q. How do you see what is in one of these files?

[37] From a subsequent warrant issued on January 21, 2010 it appears the dates of those seven files were September 30, 2009 (one file), November 11, 2009 (two files), November 13, 2009 (one file) and December 14, 2009 (three files).

A. At that level working on it, it is basically a user interface on the computer. You double click on the file, the file opens. If it is properly named, it will open up.
Q. When you say properly named, what does that mean?
A. Files will have a – a document file usually has a dot DOC, or TXT. Image file is dot JPG or dot BMP. Video file can have a dot AVI or MPG file.
Q. Where are those letters, where do they exist in a file name?
A. At the very end of the file. So if you have a file "Courthouse dot MPG," would indicate to me as an examiner I have a video of a courthouse.
Q. That is just looking at the file name with its extension MPG?
A. Correct.[38]

* * *

Q. On December 17th when you were analyzing the data from that thumb drive taken from building B, what file did you elect to open first?
A. The first file listed.
Q. Do you remember when that file was created?
A. If I recall correctly, it was around September 30th.
Q. What year?
A. 2009.
Q. Are you aware if Dr. Bradley maintained his practice on September 30, 2009.
A. Yes.
Q. Was that an active or deleted file?
A. That was marked for deletion.
Q. Do you remember the actual file name?
A. Name, because our SOP requires us to stop if we see possible evidence of another crime. All I can remember is the beginning name of it was 2009. It was followed by more numerical characters with a dot MPG.
Q. Did that naming convention mean anything to you?
A. No.

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[38] Hearing Tr. Day 2, 97-99, Sept. 1, 2010.

Q. Did it appear consistent with any naming convention you have seen before?
A. It is. Most video recorders will have the defaulted names convention, typically by the date that the file was created.
Q. So a hand-held video camera such as the ones seized from the practice, they would have a default file name similar to the one that you saw?
A. When they are purchased they have a default file name, user. The owner has the option at some point to set naming conventions when a recording is made or after it is conducted.[39]

* * *

Q. You indicated that - - what was the extension on that file name?
A. It was a MPG.
Q. Was that meaningful to you?
A. At the time, I mean, it presented to me it should be a video file.
Q. So you expected it to open as a video?
A. Correct.[40]

After clicking on the file it opened and the detective observed a young child being videotaped by Dr. Bradley. He observed the file for a short period of time and believing that he was observing additional crimes, turned off the video, removed the thumb drive from the forensic equipment, secured it at the police department, and proceeded to obtain a subsequent search warrant.[41]

As a result, from all the computer discs and files taken from Dr. Bradley's premises, we have a single file on a thumb drive in the computer in Building B

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[39] *Id*. at 102-03.
[40] *Id*. at 104.
[41] The probable cause relating to that search warrant is not in question in this litigation.

that was opened prior to another warrant being obtained. So the question is whether the designation of this file as a video created on September 30, 2009 was sufficiently connected to the items that police were authorized to search to allow the detective to open the file. The Court finds there are two facts that make the answer to this question yes. First, the date of this file, September 30, 2009, is closely related to the time when Dr. Bradley was treating child number 8. While the affidavit does not precisely set forth all the dates when treatment was occurring for this child, what was provided by the parents reflected that she was a patient at Dr. Bradley's office in the fall of 2009.

Secondly, the affidavit set forth information received from other physicians and office staff that it was not uncommon for Dr. Bradley to videotape or photograph his patients. Since this conduct occurred in relation to a patient's visit, it would be reasonable to infer that those images would be connected to or part of the patient's file and perhaps were done to document the treatment provided by Dr. Bradley. The Defendant does not operate a photography studio, and even if the conduct was done for fun or entertainment, it occurred in relation to a patient's visit for medical treatment. As such, it would be a part of the patient's record and would also document if and when the child had been treated. Here the designations attached to the single file that was opened indicated it was a video, so

it would be reasonable for the officer to conclude that the file contained images of children being treated and the Court cannot characterize this action by the officer as an effort to look for criminal activity inconsistent with the limitations in the warrant. This is further confirmed by the actions of the officer when it became clear the file was not related to medical treatment that he turned off the video and obtained a new warrant. Therefore, since the file would have been created in close proximity to the time child 8 was being treated, and it was a video recording that would be consistent with the prior conduct of Dr. Bradley, the Court finds a sufficient nexus that would support the detective's decision to open this file.[42]

IV. Building "D"

Recognizing that one of the outbuildings identified at the suppression hearing as Building D was not specifically identified in the search warrant, the State has made several alternative arguments to suggest that the items seized from that building should not be suppressed. They first argue that the building was within the "curtilage" of the doctor's office and therefore should be included within the buildings the warrant authorized to be searched. However, under the circumstances of this case, the Court finds the concept simply not applicable.

[42] The Defendant is not challenging the sufficiency of the warrant issued on December 17, 2009, and the Court finds that warrant would have provided the officers broad discretion to open all the files found in Buildings A and B.

The curtilage concept was adopted to allow areas immediately surrounding one's home the same Fourth Amendment protection where the facts would reasonably establish a similar expectation of privacy in that building. As such, the curtilage argument often will appear in cases where the defendant, not the State, is arguing that the outbuilding should have been given the same constitutional protection as that of a home or business.[43] In deciding whether an outbuilding should be included within the curtilage protection, the courts have generally considered four factors:

1. The proximity of the area to the home [or business];
2. Whether the area is in an enclosure surrounding the home;
3. How the owner uses the area; and
4. The efforts undertaken by the owner to protect the area from observation.[44]

If these factors are present, then the Defendant has been able to argue that the building would enjoy the same Fourth Amendment Constitutional protection that is afforded his home before the government could search that building.

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[43] *See, e.g.*, *United States v. Dunn*, 480 U.S. 294, 299 (1987).
[44] *Id.* at 301.

Here, in a convoluted twist to this concept, the State is arguing that since they have a warrant for the office building, it should also include the outbuilding properties to which Dr. Bradley allegedly had a similar expectation of privacy. First, the property on which the outbuildings are located is not enclosed nor protected from observation in any manner which would reflect an intent by Dr. Bradley to afford them some heightened expectation of privacy. And while Building D is in close proximity to the office, it is not clear how the building was being utilized. It was a small single structure building on top of a trailer bed that potentially could be moved. To characterize it for a particular use would be a stretch of the facts presented to the Court. Therefore, at least three of the four factors utilizing when considering this issue have not been met by the State. However, perhaps more important, the Court simply refuses to expand this concept to excuse the State from obtaining a warrant that would clearly include this building. The government is obligated to protect the privacy of one's property and should not attempt to circumvent this obligation using a common law property concept unless the facts unquestionably would support such a conclusion. They do not here.

The State next attempts to save the evidence in Building D by arguing that the Court should adopt the good faith exception that has been developed under

federal case law since the United States Supreme Court issued its decision in *United States v. Leon*[45]. However, on every occasion that the State has attempted to have the Delaware Supreme Court adopt a good faith exception, the Court has declined.[46] Based on the conduct of the officers here and all the comments and concerns expressed by the Court in this opinion, it would be stretching the reasoning and rationale for this exception to the exclusionary rule for it to be found applicable to the facts of this case. Not even the State in its brief attempts to justify on the basis of good faith the actions of their officers on December 16, 2009, and the Court cannot in good conscience do so either. As such, the Court finds this argument to be without merit.

Finally, the State argues that the evidence from Building D would have been inevitably discovered as a result of the subsequent investigation that would have occurred once the video from Building B was discovered and the justification it would have provided for an additional warrant. As such, even if the Court was to decide there was a basis to suppress the evidence seized from Building D on December 16, 2009 as the fruits of an illegal search, the State argues that the

[45] 486 U.S. 899 (1984).
[46] *Dorsey v. State*, 761 A.2d 807 (2000); *see also Mason v. State*, 534 A.2d 242 (1987).

evidence should be deemed admissible because there is an independent source that would have led to the inevitable discovery of this evidence.

The Court acknowledges that both the United States Supreme Court and the Delaware Supreme Court have recognized the independent source/inevitable discovery doctrines as an exception to the exclusionary rule. The application of these exceptions was explained by Justice Ridgely in the 2009 case of *Norman v. State*[47] when he stated the following:

> Two closely-related exceptions to the exclusionary rule flow from the premise that, although the government ought not profit from its own misconduct, it also should not be made worse off than it would have been had the misconduct not occurred.[48] First, where the challenged evidence has an independent source, exclusion would put the police in a worse position than they would have been absent any error or violation. Thus, under the "independent source doctrine," even if police engage in illegal investigatory activity, evidence will be admissible if it is discovered through a source independent of the illegality.[49] Second, exclusion of evidence that would inevitably have been discovered would similarly put the government in a worse position, because the police would have obtained that evidence even if no misconduct had occurred. Thus, under the "inevitable discovery doctrine," a court may admit illegally obtained evidence if the

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[47] 976 A.2d 843 (2009).

[48] *Murray v. United States*, 487 U.S. 533, 537, 539, (1988); *see also Nix v. Williams,* 467 U.S. 431 (1984).

[49] *Silverthorne Lumber Co. v. United States,* 251 U.S. 385 (1920)*; Murray,* 487 U.S. at 537; *accord United States. v. Burton*, 288 F.3d 91, 100-01 (3d Cir. 2002) (applying independent source doctrine and declining to suppress evidence from the search of the trunk of a vehicle because, even assuming defendant's arrest was unlawful, police had a lawful independent source under the automobile exception because they had probable cause to conclude the vehicle was involved in an illegality).

> evidence would inevitably have been discovered through independent, lawful means.[50]

The doctrine of inevitable discovery, as an exception to the exclusionary rule, allows unlawfully obtained evidence to be admitted at trial if the State can establish by a preponderance of the evidence that the information ultimately or inevitably would have been discovered by lawful means.[51] For an inevitable discovery to be demonstrated the State is required to establish the evidence would have been acquired lawfully through an independent source absent the State's misconduct. The State argues that the independent lawful means that would have inevitably led them to the discovery of the items in Building D is the warrant issued on December 17th. While simplistic, the road to a finding of inevitable discovery is not that straight or narrow. Besides establishing that the officers reacted properly on December 17th by getting a subsequent warrant before reviewing any additional files, the December 17th warrant itself has little bearing on this issue. The real question is whether there is an untainted investigative chain

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[50] *Nix*, 467 U.S. at 444; *accord United States v. Vasquez De Reyes,* 149 F.3d 192, 194-96 (3d Cir. 1998) (applying the inevitable discovery doctrine, but suppressing the defendant's statement because the government failed to carry its burden of proof that the government agents, following routine procedures, would inevitably have uncovered the evidence).

[51] *United States v. Eng,* 971 F.2d 852, 859 (2d Cir. 1992). *See also State v. Lacey*, 204 P.3d 1192, 1207 (Mont. 2009); *United States v. Stabile*, 633 F.3d 219, 245 (3d Cir. 2011); and *Segura v. United States*, 468 U.S. 796, 814 (1984).

that can be established that would have inevitably led the police to obtain a warrant for Building D.

When the Court reviews the events of December 16 and 17, 2009, there are a number of key findings relevant to this issue. First it is important that while the evidence from Building D had been seized, its contents had not been searched or viewed by the police prior to the December 17th warrant. As such, while the police exceeded their authority under the earlier warrant, this error had not been compounded by the opening of these files. Secondly, the only file opened by Detective Spillan came from the evidence seized on December 16th from Building B, a building the Court has found was legally searched consistent with the warrant. As such, the underlying basis that was used to obtain the second warrant on December 17th or that would be used to obtain an additional warrant to search Building D would come from evidence legally seized. Third, there was no information or "fruits" of the search of Building D that were utilized in seeking the warrant on the 17th or would have been necessary to obtain a new warrant to search Building D. The entire basis for the warrants would have come from the information obtained from Building B and the police investigation prior to the initial warrant.

Based upon the above, the Court can find a reasonable line of investigation that is unrelated to the illegal search of Building D and is independent of the conduct of the officers on December 16th. That is the police executed a search warrant on December 16th that led to the legal search of Building B. The police subsequently opened the file legally obtained from that building which provided evidence of child pornography or child exploitation which would then justify a search for similar computer images. So the question now is whether the new information legally recovered from Building B would have inevitably led the police to seek a warrant to search Building D and whether they would have had sufficient probable cause to support that warrant. The Court believes the answer is yes.

There is no question that the police over the years had received information that Dr. Bradley was having inappropriate contact with children being seen in his medical practice, and based upon this information, they believed that Dr. Bradley may have taken photographs or videos of children in a manner that would support either a child pornography or the exploitation of children charge. However, until the discovery by Detective Spillan on December 17th, they had been unable to confirm their suspicion. In essence, the search of this one file from Building B was the key the police had been searching for to allow them to now search for

evidence of the crimes they believed Dr. Bradley had been committing. This discovery also would allow them to broaden their search beyond simply "patient files" to look for photographs or videos hidden, particularly in computer based files similar to the ones observed by Detective Spillan. The nature of these crimes would lead to a reasonable assumption that attempts would be made to hide such images from others and in particular the police, and as such, the parameters of the appropriate search would be expanded.[52] Based upon the prior investigation and now the confirmation of their suspicions by the opening of the Building B file, the State would have had sufficient probable cause to support the warrant. The only remaining question is whether they could connect this illegal conduct to evidence potentially to be found in Building D.

Of course, having probable cause to believe the Defendant may be engaging in illegal activity does not establish that evidence of that crime may be found in a particular location. There has to be a nexus established between the evidence sought and the reasonableness that it was located in a particular building, in this case Building D. As part of the inevitable discovery finding, it is also required that this nexus be established independent of the information found during the illegal search. Fortunately for the State, during the evidentiary hearing Sergeant

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[52] *Smith v. State*, 887 A.2d 470 (Del. 2005); *see also Sisson*, 903 A.2d 288.

Perna of the Delaware State Police testified that prior to entering the tan shed (Building D), he and Detective Skubik had looked in the window of the shed and had observed a computer sitting on a desk. This observation that had occurred prior to the illegal entry would have provided the State the required nexus if the police now sought a warrant for Building D. The State had evidence that Dr. Bradley was storing child pornography on computer discs and this building contained a computer in close proximity to where the alleged videotaping or photographing had occurred. Therefore, based upon this evidence, the Court has no doubt that the State would have sought an additional warrant authorizing it to search for computer based pornography and that the request would have been authorized by the Court.

As such, the Court finds that once the file from Building B was opened by the police, they would have had sufficient probable cause to seek a new warrant to search Building D, and the investigative chain was not tainted by the earlier actions of the detectives. Furthermore, since they already had in their possession the computer and files from this building, they were not required to go through the formality of obtaining a new warrant. It is sufficient if the State has established by a preponderance of the evidence that reasonable investigative conduct would have led them to obtaining such a warrant.

In making this finding, there is no doubt that the unique chain of events present here has allowed the State to unexpectedly and unintentionally fall into a legal theory that has allowed them to remove the taint of a prior illegality. But simply because it is a stroke of luck that the facts have fallen in their favor does not preclude the Court from ensuring they are not placed in a worse position than they would have been absent the violation.[53]

As a result, in spite of the Court's finding that the officers exceeded the scope of their authority granted by the warrant issued on December 16, 2009, they would have inevitably found the evidence from Building D based upon the subsequent conduct that occurred and the reasonable investigative steps that would have been taken as a result of that discovery. Therefore, the evidence from Building D will not be excluded.

CONCLUSION

As a final note, the Court believes it is important to comment on the underlying theme in the Defendant's brief that the warrant issued here was simply an improper means used by the police to get what they really were seeking, evidence of child pornography, which they sought in 2008 and were denied by the Court. While the Court can appreciate the cynicism of the Defendant, particularly

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[53] *Norman*, 976 A.2d at 859.

in light of the difficult situation he is now facing, the fact remains that the police were given authority to conduct a search for patient files, and the fact that they hoped or suspected that evidence of other criminal activity would be discovered when the search was executed is immaterial, as long as their conduct can be justified under the warrant or by another legal basis. The Court appreciates the significance of this case to all parties and the emotional underpinnings that will flow from it. However, for the reasons set forth in this Opinion, the Defendant's Motion to Suppress is DENIED.

IT IS SO ORDERED.

/s/ William C. Carpenter, Jr.
Judge William C. Carpenter, Jr.