IN THE SUPREME COURT OF THE STATE OF NEW MEXICO

STATE OF NEW MEXICO,

Plaintiff-Appellant,

v. **No. S-1-SC-40478**

ALEXEE J. TREVIZO,

Defendant-Appellee.

ANSWER BRIEF OF DEFENDANT-APPELLEE ALEXEE J. TREVIZO

Appeal from the Fifth Judicial District Court
D-503-CR-2023-00159
Eddy County, New Mexico
The Honorable Jane Shuler Gray

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TABLE OF CONTENTS

Citations to the record proper are in the form **[RP__]** Citations to exhibits before the trial court are in the form **[Def. Ex. __, _____]** or as originally provided to the trial court.

As required by Rule 12-318(G), undersigned counsel certifies this brief was prepared in 14-point Times New Roman typeface using Microsoft Word, and the body of the brief contains 10,646 words.

TABLE OF AUTHORITIES

NEW MEXICO CASES

DECISIONS FROM OTHER JURISDICTIONS

NEW MEXICO CONSTITUTIONAL PROVISIONS

NEW MEXICO STATUTES

NEW MEXICO COURT RULES

FEDERAL CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS

OTHER AUTHORITIES

Am. Coll. of Obstetricians and Gynecologists, *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (July 2024), https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period#:~:text=Confidentiality%20and%20trust%20are%20at,or%20based%20on%20pregnancy%20outcomes 32
F. Gary Cunningham, et al., *Williams Obstetrics* (Diane M. Twickler ed., McGraw-Hill), 23rd ed. (2009).....5
Jeremy R. Simon et al., *Law Enforcement Information Gathering in the Emergency Department: Legal and Ethical Background and Practical Approaches*, 4(2) J. Am. Coll. Emerg. Physicians Open e12914 (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9972077/.....17, 31, 34
Joseph L. Riley, et al., *Cognitive-Affective and Somatic Side Effects of Morphine and Pentazocine: Side-Effect Profiles in Healthy Adults*, 11 Pain Medicine 2 (Feb. 2010), https://academic.oup.com/painmedicine/article/11/2/195/1807067.....20
Labor and Delivery, Eunice Kennedy Shriver National Institute of Child Health and Development (last visited Oct. 16, 2024), https://www.nichd.nih.gov/health/topics/factsheets/labor-delivery 4
Patient-Physician Relationships: Code of Medical Ethics Opinion 1.1.1, Am. Med. Ass'n, https://code-medical-ethics.ama-assn.org/ethics-opinions/patient-physician-relationships 17
Privacy in Health Care: Code of Medical Ethics Opinion 3.1.1, Am. Med. Ass'n, https://code-medical-ethics.ama-assn.org/ethics-opinions/privacy-health-care...17
Valerie Reighard, *Evidence: Protecting Privileged Information-A New Procedure for Resolving Claims of the Physician-Patient Privilege in New Mexico-Pina v. Espinoza*, 32 N.M. L. Rev. 453 (2002) 28

ORAL ARGUMENT REQUESTED

This case constitutes the first time the New Mexico Supreme Court has considered how pregnancy outcome criminalization impacts federal and state constitutional questions regarding *Miranda* warnings, the line between healthcare providers and law enforcement within a hospital setting, and the public policy implications of both these issues for New Mexicans. For these reasons, and the fact specific nature of this appeal, Defendant-Appellee respectfully requests that the Court grant oral argument in this matter.

COUNTER-SUMMARY OF PROCEEDINGS

Every person entering an emergency room deserves compassionate, competent, and confidential healthcare. Accessing this care does not require a sacrifice of constitutional and statutory rights. Despite these basic truths, the State asks this Court to condone its violation of Defendant-Appellee Alexee Trevizo's constitutional right against self-incrimination and to ignore the protections guaranteed to her by the physician-patient privilege under Rule 11-504 NMRA. Alexee asks this Court to reject these attempts and offers this Counter-Summary of Proceedings pursuant to Rule 12-318(B) NMRA, to address the State's incomplete and incorrect narrative of the facts in this case.

Following an unexpected and traumatic labor and delivery in an Artesia General Hospital restroom, Alexee Trevizo, then a 19-year-old high school senior,

was subjected to a custodial interrogation orchestrated by law enforcement and hospital staff. Having determined that Alexee was pregnant and having given her an array of mind-altering pain medications, hospital staff entered Alexee's room, side-by-side with armed police officers. By then, police and hospital staff had already conferred with each other to initiate a murder investigation in the hospital emergency department with Alexee as their only suspect. Alexee's own physician interrogated her while police watched, listened, and blocked the small treatment room's only exit. Their collective presence in Alexee's room was not for the purpose of diagnosis or medical treatment, but to accuse Alexee of criminal wrongdoing.

Rather than immediately airlifting Alexee to a facility capable of treating her obstetric emergency—a potentially lifesaving measure the physician herself deemed necessary due to Alexee's severe postpartum bleeding—Alexee's physician collaborated with police to advance an investigation into Alexee as a criminal suspect. This decision was one of a cascade of failures by hospital staff that prioritized a law enforcement agenda over Alexee's medical needs, undermining her rights to due process and privacy and eroding the trust that forms the bedrock of the physician-patient relationship.

In considering these facts, the district court correctly found that: (1) Alexee's physician acted as an agent of law enforcement; (2) the confrontation the physician coordinated with police amounted to a custodial interrogation; and (3) Alexee's

statements made during that custodial interrogation, without *Miranda* warning or waiver, must be suppressed. Additionally, the district court correctly held that Alexee's communications made while seeking medical treatment were intended to remain confidential, thus rendering them inadmissible pursuant to Rule 11-504.

Rather than address the systemic failures detailed by the district court's findings, the State exploits the derelictions of hospital staff and police for prosecutorial gain. Affirming the district court's suppression of Alexee's unlawfully obtained statements is essential to uphold the constitutional guarantees protecting defendants against self-incrimination and to maintain public trust in the New Mexico healthcare system's ability to protect and prioritize patient care and confidentiality. Emergency departments must maintain a clear boundary between healthcare and law enforcement lest they undermine their most fundamental purpose: patient care. Here, police and hospital staff disregarded that boundary, instead turning private actors into state agents whose interests were to advance a criminal investigation rather than address the failures that contributed to the tragedy at the heart of this case.

For these reasons, this Court should affirm the district court's findings.

SUMMARY OF THE FACTS

At around midnight on January 27, 2023, Alexee Trevizo presented to the Emergency Department ("ED") at Artesia General Hospital ("Hospital") seeking treatment for severe lower back pain. Alexee reported to attending physician Dr.

Heather M. Vaskas and ED nursing staff that her pain began after cheerleading practice earlier that afternoon. **[RP 154 ¶ 4; RP 110]**[1] When asked if she was pregnant, Alexee told ED staff she was not, citing vaginal bleeding in the preceding weeks and stating she was currently "on her period." **[RP 155 ¶ 5(b)]** At 12:28 a.m., ED staff ordered a pregnancy test, a standard practice for patients of Alexee's age and with her symptoms. **[*Id.* at 156 ¶ 5(h)]** Around the same time, ED staff administered various intravenous ("IV") pain medications to Alexee, including cyclobenzaprine, ketorolac, ondansetron, and morphine. **[*Id.* at 155-56 ¶¶ 5(f-j)]**

At 12:51 a.m., both Dr. Vaskas and ED nursing staff were notified that the pregnancy test was positive. **[*Id.* at 156 ¶ 5(i)]** Despite this result, and despite Alexee's reporting vaginal bleeding, neither Dr. Vaskas, the treating nurse, or the charge nurse informed Alexee of her pregnancy or altered her medications or treatment. **[*Id.* ¶¶ 5(i-l)]**

Alexee's Precipitous Labor and Delivery

At 1:39 a.m., forty-eight minutes after Dr. Vaskas and the treating nurse, Chris Sanchez, became aware of Alexee's positive pregnancy test, Alexee told her medical team she urgently needed to have a bowel movement.[2] **[*See id.* at 156 ¶¶ 5(l-m)]**

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[1] Because the Record Proper ("RP") contains only one volume to date, citations to it do not include a volume number.

[2] The urge to have a bowel movement is a common sign that labor is moving into the delivery phase and that the cervix is fully dilated. *See Labor and Delivery*, Eunice

Nurse Sanchez unhooked Alexee's IV and allowed her to go to the ED restroom unaccompanied. Hospital security camera footage shows Alexee running down the hallway and past the nursing station, clutching her backside. **[*Id.* ¶ 5(k); Def. Ex. F, Hospital Video Footage at 7:51]** Over the next nineteen minutes alone in the ED restroom, Alexee endured a precipitous labor[3] and delivery resulting in the birth of a newborn she described as not moving, crying, or breathing. **[RP at 156 ¶¶ 5(m-q), 158 ¶ 11; Def. Ex. H, Body Cam. X6031529F at 3:24]** Although her mother and Nurse Sanchez periodically knocked on or stood outside the door, during those nineteen minutes, no one—not her physician or Hospital ED staff—entered the restroom, and no one reported hearing a baby cry. **[RP 156 ¶ 5(n-p)]**

At 1:57 a.m., Alexee returned, unassisted, to her bed in the ED. **[*Id.* at 156-57 ¶ 5(q); Def. Ex. F, Hospital Video Footage at 26:07]** Minutes later, Dr. Vaskas ordered a transvaginal ultrasound as Alexee was bleeding profusely. **[RP 157 ¶ 5(r)]** At 2:20 a.m., Dr. Vaskas performed a pelvic exam on Alexee for the first time. **[*Id.* at 157 ¶ 5(r, t)]** Despite noting a "significant amount of blood," "multiple extremely

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Kennedy Shriver National Institute of Child Health and Development (last visited Oct. 16, 2024), https://www.nichd.nih.gov/health/topics/factsheets/labor-delivery.

[3] Precipitous labor is extremely rapid labor, defined as the expulsion of the fetus in less than three hours. Precipitous labor is associated with placental abruption and postpartum hemorrhage and places the fetus at risk for trauma or asphyxia. *See* F. Gary Cunningham, et al., *Williams Obstetrics* 464–489 (Diane M. Twickler ed., McGraw-Hill), 23rd ed. (2009).

large clots," and Alexee's "wide open cervix," **[Def. Ex. A ("Trevizo, Alexee-Medical Records-AGH") at 22 (*hereinafter* "Medical Records")]** Dr. Vaskas still did not discuss Alexee's emergency condition with her or inform her of her prior positive pregnancy result. **[*See* RP 156 ¶ 5(l)]**

The Discovery of the Stillborn and the Introduction of Law Enforcement

After being called to clean up large amounts of blood in the bathroom, ED cleaning staff found the newborn in the restroom waste bin at 2:27 a.m. **[RP 157 ¶ 5(s, u)]** Dr. Vaskas did not attempt resuscitation and immediately pronounced the newborn deceased at 2:28 a.m.[4] **[RP 157 ¶5(v); Def. Ex. A, Medical Records at 24; *see also* Axon Body Cam. X6031747N[5] at 6:48 (cited at RP 83, 84)]** Realizing that Alexee was not just vaginally bleeding but had just given birth and "could die from a postpartum hemorrhage," Dr. Vaskas contacted Lovelace Regional Medical Center ("Lovelace") in Roswell to arrange an urgent transfer. **[Axon Body Cam. X6031747N at 7:10; Def. Ex. H, Body Cam. X6031529F at 2:20]** Dr. Vaskas later confirmed, however, that she would not re-examine Alexee or discuss Alexee's condition with her until law enforcement were present as "witnesses." **[RP 157 ¶¶**

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[4] The time of death is listed in the medical records as 2:28 a.m. *See* Def. Ex. A, Medical Records at 22, 24, 39. In a typographic error, the trial court's Findings of Fact lists the time of death as 2:38 a.m. **[RP 157 ¶ 5(v)]**

[5] Appellee references this footage as the State references it in their pleadings before the trial court. **[RP 83, 84]** The State identified the video by its AXON number rather than providing an exhibit number. Appellee does the same here and throughout her Answer.

6-7; *see also* Axon Body Cam. X6031747N at 7:30] Dr. Vaskas also instructed her team not to speak to Alexee until police were present. **[*See also* Axon Body Cam. X6031747N at 7:30]** Once police arrived, Charge Nurse Hilliard Halliday ("Charge Nurse") was the first to confer with them at 2:38 a.m. **[Def. Ex. H, Body Cam. X6031529F]**

The Custodial Interrogation

The Charge Nurse immediately engaged with Artesia Police Department ("APD") Sergeant Xavier Anaya and Officer Alexander Williams and told them that Alexee went to the restroom with the intention of harming her pregnancy and that "she killed the kid." **[Def. Ex. H, Body Cam. X6031529F at 1:16]** Dr. Vaskas quickly joined the conversation, informing the officers that she had not yet told Alexee "what was going on" or about her need for an urgent medical transfer. **[*Id.* at 2:16]** At Dr. Vaskas' request, the officers agreed to immediately enter Alexee's room together with Dr. Vaskas and the Charge Nurse. **[*Id.* at 2:40]**

Just after 2:41 a.m., having conferred about this joint approach, the two fully armed male police officers, the male charge nurse, and Dr. Vaskas entered Alexee's room. **[*Id.* at 3:02]** Dr. Vaskas positioned herself at Alexee's bedside, while the officers and the Charge Nurse blocked the doorway.[6] Body camera footage shows

[6] While much of the footage does not show the officers but only their perspectives via the body worn cameras, the footage clearly shows the layout of Alexee's room and the position of the involved actors relative to the doorway. The footage

Alexee, and her mother and emergency contact, Rose Rodriguez, **[RP 154 ¶¶ 2-3]** glancing anxiously between the physician and police officers. **[Def. Ex. H, Body Cam. X6031529F at 3:06]** Once the collective group entered the room, Dr. Vaskas told Alexee: "[w]e discovered a dead baby in the bathroom."[7] **[RP 157 ¶ 8; Def. Ex. H, Body Cam. X6031529F at 3:09]** While it was Dr. Vaskas who spoke first, Officers Williams and Anaya later attributed this sentence to APD, reporting that *they* had "inform[ed] [Alexee and] Rose Rodriguez that a baby was found in the trash." **[RP 157 ¶ 9]** In response, Alexee stated to Dr. Vaskas and the officers "'I'm sorry—it came out of me—I didn't know what to do.'" **[*Id.* ¶ 10; Def. Ex. H, Body Cam. X6031529F at 3:15]**[8] She went on to recount tearfully that "it was not crying or nothing." **[Def. Ex. H, Body Cam. X6031529F at 3:20]** Alexee later explained to the treating nurse that she had "held the baby and there was 'no movement, no breathing, nothing.'" **[RP 158 ¶ 11]**

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demonstrates that the three men–the two armed officers and the Charge Nurse–stood either inside, or in front of, the only exit. **[Def. Ex. H, Body Cam. X6031529F]**

[7] The trial court's Findings and Conclusions record Dr. Vaskas' statement, in an apparent typographical error, as "[w]e discovered a baby in the bathroom." **[RP 157 ¶ 8, 158 ¶ 1]** The body camera footage reveals that Dr. Vaskas' clearly stated, "[w]e discovered a *dead* baby in the bathroom." **[Def. Ex. H, Body Cam. X6031529F at 3:09 (emphasis added)]**

[8] Also in an apparent typographical error, the trial court's Findings and Conclusions record Alexee's statement as "I'm sorry–if it came out of me–I didn't know what to do." **[RP 157 ¶ 10]** The body camera footage reveals that her statement was, in fact, "I'm sorry–it came out of me–I didn't know what to do." **[Def. Ex. H, Body Cam. X6031529F at 3:15]**

It was only after this confrontation and Alexee's responsive statements to police that Dr. Vaskas acknowledged Alexee's medical emergency for the first time, noting Alexee needed to be airlifted to the nearest regional hospital. **[Def. Ex. H, Body Cam. X6031529F]** Immediately thereafter and less than three minutes after entering the room and blocking the doorway, Officer Williams confirmed that Alexee was "detained" and not free to leave.[9] **[*Id.*; RP 158 ¶ 13]** The officers remained in Alexee's room even as medical staff performed another vaginal examination **[Def. Ex. H, Body Cam. at 9:43-13:30]** and until Alexee was finally airlifted to Lovelace more than two hours after Dr. Vaskas determined that she could "die" from postpartum hemorrhage. **[*See* Axon Body Cam. X6031529F at 1:53:40; Axon Body Cam. X6031747N at 7:10]**

Five months later, on May 18, 2023, Alexee was charged with one count of first-degree murder, or in the alternative, child abuse resulting in death and one count of tampering with evidence for the loss of her newborn. **[RP 1]**

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[9] The State omits key details of this interaction, characterizing the officers' language as "polite" and highlighting their suggestion to Alexee's mother—made well *after* eliciting the statements they sought from Alexee—that she wait to engage with her daughter. **[BIC 8–9]** The State mischaracterizes this interaction as an attempt by police to protect Alexee's right against self-incrimination, **[BIC 25]** when, in reality, the officers only addressed Ms. Rodriguez *after* nearly seven minutes of interrogation. **[RP 159 ¶¶ 4–5; Def. Ex. H, Body Cam. X6031529F at 9:05]** Officer Anaya recognized the significance of Ms. Rodriguez's presence, noting it was "probably the best . . . mom's out of the way for now . . . if she starts filling her head, and starts telling her all kinds of different things . . ." **[Def. Ex. H, Body Cam. X6031529F at 50:51, 51:01]** What the State frames as a protective intervention is

Through counsel, Alexee moved to suppress the statements made in response to the confrontation coordinated by Dr. Vaskas and law enforcement. **[*Id.* at 37]** The trial court granted Appellee's motion, **[*id.* at 167-168]** and the State now appeals.

ARGUMENT

I. THE TRIAL COURT PROPERLY SUPPRESSED ALEXEE'S STATEMENTS TO HOSPITAL STAFF AND LAW ENFORCEMENT

The Fifth Amendment to the United States Constitution affords criminal suspects a fundamental right against self-incrimination, and the Fourteenth Amendment makes that right applicable to the states. U.S. Const. Amend. V; U.S. Const. Amend. XIV; *State v. Martinez*, 1999-NMSC-018, ¶ 13, 127 N.M. 207. Article II, Section 15 of the New Mexico State Constitution similarly and independently protects this right against self-incrimination. *See State v. Nunez*, 2000-NMSC-013, ¶ 15, 129 N.M. 63 (noting this Court has not "hesitated . . . to conclude that the New Mexico Constitution provides greater protection of individual rights than does the federal constitution"). Consistent with this broad and fundamental right to remain silent in the face of criminal accusation, this Court must suppress custodial statements taken without the protections articulated by *Miranda v. Arizona*, 384 U.S. 436 (1966).

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revealed by the officers' candid discussion as an attempt to neutralize Ms. Rodriguez' potentially mitigating influence or her ability to articulate Alexee's legal rights.

A criminal suspect cannot invoke her *Miranda* rights anticipatorily; rather, those protections are automatically triggered during a custodial interrogation. *See McNeil v. Wisconsin*, 501 U.S. 171, 182 n.3 (1991); *United States v. Cook*, 599 F.3d 1208, 1214 (10th Cir. 2010) ("[I]n order to implicate *Miranda* . . . there must be a custodial interrogation."). A suspect is considered "in custody" if "a reasonable person would believe that he or she were not free to leave the scene." *State v. Munoz*, 1998-NMSC-048, ¶ 40, 126 N.M. 535; *State v. Chamberlain*, 1991-NMSC-094, ¶ 17, 112 N.M. 723. "Interrogation" under *Miranda* refers not only to express questioning, but also to "any words or actions on the part of the police . . . that the police *should know are reasonably likely* to elicit an incriminating response from the suspect." *State v. Filemon V.*, 2018-NMSC-011, ¶ 23, 412 P.3d 1089 (emphasis added). Where police engage in a custodial interrogation, they must either read a suspect their *Miranda* rights or "obtain a knowing, intelligent, and voluntary waiver of [those] rights." *Martinez*, 1999-NMSC-018, ¶ 14 (quoting *Miranda*, 384 U.S. at 444) (alterations in original); *see also State v. Widmer*, 2020-NMSC-007, ¶¶ 13-14, 461 P.3d 881 (citing *United States v. Cash*, 733 F.3d 1264, 1276-77 (10th Cir. 2013)).

Here, the collaboration between police and medical staff to question Alexee, their knowledge of her pregnancy, the armed officers' physical presence within the room as they blocked Alexee's only exit, and the inherently accusatory statement,

"[w]e discovered a dead baby," combined to create a custodial setting. **[Def. Ex. H, Body Cam. X6031529F at 3:09]** The interrogation that took place within that custodial setting, coupled with the lack of *Miranda* warnings or waiver, mandates suppression of Alexee's statements. The trial court correctly determined that police—with Dr. Vaskas acting as their agent—employed statements and actions that any police officer should have known were reasonably likely to elicit an incriminating response, and that a reasonable person in Alexee's position would not have felt free to leave. Because police failed to inform Alexee of her rights under *Miranda*, and because Alexee never provided a *Miranda* waiver, Alexee's statements made in the presence of police must be suppressed.

A. Standard of Review for Determining a *Miranda* Violation

"Whether a person is subject to custodial interrogation and entitled to the constitutional protections of *Miranda* is a mixed question of law and fact." *State v. Wilson*, 2007-NMCA-111, ¶ 12, 142 N.M. 737 (citing *State v. Javier M.*, 2001-NMSC-030, ¶ 17, 131 N.M. 1). The Court determines *de novo* whether a police interview constitutes a custodial interrogation, applying the law to the facts established by the district court. *State v. Nieto*, 2000-NMSC-031, ¶ 19, 129 N.M. 688. This Court must accept the district court's factual findings "unless they are clearly erroneous and view the evidence in the light most favorable to the district court's ruling." *State v. Martinez*, 1999-NMSC-018, ¶ 15, 127 N.M. 207 (quoting

United States v. Toro-Pelaez, 107 F.3d 819, 826 (10th Cir. 1997).

In cases where police fail to provide a *Miranda* warning to a criminal suspect under custodial interrogation, the State must prove "by a preponderance of the evidence that the defendant knowingly, intelligently, and voluntarily waived the constitutional right against self-incrimination." *Id.* ¶ 14. Importantly, "[e]very reasonable presumption *against* waiver is indulged," at both the trial and appellate level. *Id.* (quoting *State v. Salazar*, 1997-NMSC-044, ¶ 62, 123 N.M. 778) (emphasis added).

B. Alexee Was Subjected to a Custodial Interrogation

Police, without providing a *Miranda* warning or receiving a waiver, with Dr. Vaskas operating alongside as their agent, cornered Alexee in her hospital room while confronting her with a statement any reasonable officer should have expected to elicit an incriminating response. For that reason, the trial court correctly suppressed Alexee's statements. *See State v. Ybarra*, 1990-NMSC-109, ¶ 10, 111 N.M. 234. The State's attempts to reframe these facts to reach a different conclusion should be rejected.

1. *Dr. Vaskas Acted as an Agent of Law Enforcement*

Before addressing the circumstances of the custodial interrogation, the Court should first affirm the district court's finding that Dr. Vaskas abandoned her role as physician and instead aligned herself with police to further their investigation and

interests.[10] The record supports this finding as Dr. Vaskas, knowing that Alexee had been pregnant and had just given birth, refused to treat or speak to her without police present, and instructed the ED staff to wait for police to arrive before interacting with Alexee, conferred with police before entering Alexee's room, and then confronted her as part of a unified law enforcement contingent, prioritizing a police interrogation over the medivac transfer that Dr. Vaskas knew could be necessary to save Alexee's life.

Although the *Miranda* rule typically applies only to government actors, courts have also clarified that "government agents may not circumvent [constitutional protections] by acting through private citizens." *United States v. Smythe*, 84 F.3d 1240, 1242-43 (10th Cir. 1996). To determine whether a private person is acting as an agent of law enforcement so as to trigger applicable constitutional protections, New Mexico applies a two-part test. *See State v. Santiago*, 2009-NMSC-045, ¶ 18, 147 N.M. 76. The Court considers first "whether the government knew of and acquiesced in the intrusive conduct," and second whether the person acted with the intent "to assist law enforcement efforts or to further his [or her] own ends." *Id.* ¶ 18

[10] Dr. Vaskas was not the only one to abandon her role as a medical provider in favor of adopting that of a police investigator. The Charge Nurse, without having met, let alone treated, Alexee, assumed the role of investigative helper, being the first to share with police his unsubstantiated theory that Alexee entered the restroom secretly aware of, and with the intent to, harm her pregnancy. **[Def. Ex. H, Body Cam. X6031529F at 1:16]**

(quoting *United States v. Smythe*, 84 F.3d 1240, 1242-43 (10th Cir. 1996)) (internal quotation marks omitted).[11] Dr. Vaskas' actions satisfy both prongs of the *Santiago* test, and the district court correctly held that, at the time she confronted Alexee, Dr. Vaskas was not acting as a healthcare provider but instead as a collaborator with, and an instrumentality of, APD.

a) The Police Were Aware of and Acquiesced in Dr. Vaskas' Interrogation of Alexee

To satisfy *Santiago*'s first prong—government knowledge and acquiescence—the record must include "some evidence" of "government participation in" or "affirmative encouragement" of the intrusive conduct. *Id.* ¶ 20. Here, the record is replete with evidence that the officers not only participated in Dr. Vaskas' interrogation but affirmatively coordinated with her to do so. At the time of the confrontation, officers had already decided Alexee was a suspect in a potential homicide. Indeed, moments before agreeing with Dr. Vaskas to confront Alexee as a collective body, the officers took a statement from the Charge Nurse, who told them that Alexee "killed the kid" and was "gonna lie" when confronted.[12] **[Def. Ex.**

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[11] While the *Santiago* factors are generally applied within the context of the Fourth Amendment, New Mexico courts have also applied them within the context of *Miranda*. *See, e.g.*, *State v. Antonio T.*, 2013-NMCA-035, ¶ 21, 298 P.3d 484, *rev'd on other grounds by State v. Antonio T.*, 2015-NMSC-019, 352 P.3d 1172.

[12] While the Charge Nurse played an outsized role in the initial steps of the investigation, he was not a member of Alexee's treatment team, and therefore did not witness or have direct contact with Alexee until he joined forces with the interrogation team. **[Def. Ex. A, Medical Records; *see also* Def. Ex. H, Body Cam.**

H, Body Cam. X6031529F at 1:16; 1:48] The officers were active participants in the confrontation, thus satisfying the first prong of *Santiago*.

b) Dr. Vaskas Abandoned her Role as a Physician in Favor of Advancing the Interests of Law Enforcement

In determining whether the conduct of an otherwise private actor satisfies the second *Santiago* prong, "[t]he paramount consideration is whether the private actor had an independent motivation for conducting the search or seizure beyond assisting law enforcement." *Id.* ¶ 24. This factor thus requires a showing that Dr. Vaskas had no independent reason to interrogate Alexee in the presence of law enforcement, and that she was instead motivated primarily by an intent to assist police in their investigation. *See id.* ¶ 18. Dr. Vaskas spoke to police at length in the Hospital and later in a separate interview. **[Def. Ex. H, Body Cam. X6031529F; Axon Body Cam. X6031747N]** At no point did Dr. Vaskas ever articulate an "independent" motivation for her refusal to speak to her patient outside of police presence. **[*See id.*]** Instead, her conversations with police repeat an affirmative willingness and desire to assist and work with them. **[Def. Ex. H, Body Cam. X6031529F at 2:35; Axon Body Cam. X6031747N at 7:30, 11:55; *see also* RP 157 ¶ 7]**

As a physician charged with caring for her patient, Dr. Vaskas' "own ends" should have been to prioritize Alexee's obstetric emergency, active hemorrhaging,

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X6031529F at 5:08) (introducing himself after police confirmed detention as the charge nurse)]

and need for a medivac transfer, while maintaining her patient-confidentiality, behaviors that medical ethics and protocols mandate.[13] Instead, Dr. Vaskas—who *knew* Alexee was pregnant, and who saw Alexee presenting with symptoms of impending labor and delivery as well as pregnancy complications—abandoned her obligations to provide her medical care, and chose instead to align herself with a police investigation.[14] Having abdicated her obligations as a physician, Dr. Vaskas instead acted as an agent of police.

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[13] The American College of Emergency Medicine Physicians ("ACEP") guidelines emphasize the importance of patient care over collusion with law enforcement, advising that physicians may *only* share patient information with law enforcement when 1) the patient consents to that release; 2) the law mandates it; or 3) law enforcement presents a subpoena or court order. Jeremy R. Simon et al., *Law Enforcement Information Gathering in the Emergency Department: Legal and Ethical Background and Practical Approaches*, 4(2) J. Am. Coll. Emerg. Physicians Open e12914 (2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9972077/; *see also Patient-Physician Relationships: Code of Medical Ethics Opinion 1.1.1*, Am. Med. Ass'n, https://code-medical-ethics.ama-assn.org/ethics-opinions/patient-physician-relationships; *Privacy in Health Care: Code of Medical Ethics Opinion 3.1.1*, Am. Med. Ass'n, https://code-medical-ethics.ama-assn.org/ethics-opinions/privacy-health-care.

[14] Relatedly, Dr. Vaskas breached her duty to inform Alexee of critical information about her condition, which New Mexico recognizes as a legal obligation. *Keithley v. St. Joseph's Hosp.*, 1984-NMCA-104, ¶ 15, 102 N.M. 565 ("New Mexico follows the rule that where a fiduciary duty or confidential relationship exists, as between a physician and a patient, a duty arises to disclose all material information concerning the patient's treatment."). Medical staff failed to inform Alexee of her pregnancy, depriving her of the right to intelligently approach her condition. "It is not for the medical profession to establish a criterion for the dissemination of information to the patient based upon what the doctors feel the patient should be told." *Lambert v. Park*, 597 F.2d 236, 239 n.7 (10th Cir. 1979). As with the right to confidentiality, this right belongs entirely to the patient. *Id.*

The State's arguments that law enforcement was merely present for security purposes, not investigation, are without merit. No plausible reason can justify the need for two armed officers to "secure" the bedside of a high school student who lay hemorrhaging after a traumatic labor and delivery; indeed, the State concedes that neither Alexee nor her mother posed any threat to medical staff. **[BIC 35]** The only plausible explanation for the police presence was to investigate Alexee, with Dr. Vaskas serving as the conduit. **[Def. Ex. H, Body Cam. X6031529F at 2:31]**

Even assuming, *arguendo*, that law enforcement was present "merely" for security, **[BIC 35]** Alexee's statements are still inadmissible. When an officer is present solely for security, the officer acts as "an agent of the physician," thereby preserving the physician-patient privilege. *See State v. Salas*, 408 P.3d 383, 394 (Wash. Ct. App. 2018). The State cannot have it both ways. Either Dr. Vaskas invited police into Alexee's room "merely as security" and for the sole purpose of medical treatment, in which case Alexee's medical privilege remains intact, *see* Part II *infra, or* she invited them there to confront Alexee as a suspect in a homicide, a circumstance that necessitates the application of *Miranda*. The facts support the latter.

The State's reliance on *People v. Salinas*, 182 Cal. Rptr. 683 (Ct. App. 1982), to support its contention that Dr. Vaskas sought police presence for her own physical safety is thus unavailing. **[BIC 25-26]** In *Salinas*, police brought the suspect to the

hospital for medical purposes, and, crucially, the physician had no prior coordination with law enforcement, did not request their presence, and did not intend to assist police, asking questions of the defendant solely for medical treatment. *Id.* at 689.[15] These facts are a far cry from those in the present case. Here, Dr. Vaskas not only *requested* police presence, but directed her staff to avoid speaking to Alexee *without* police present, despite the uncontroverted fact that Alexee posed no security risk. And, in this case, Dr. Vaskas initiated the interaction with an accusatory statement implicating Alexee in a crime. The State's argument fails,[16] and the Court should uphold the district court's finding that Dr. Vaskas acted as an instrument of police.

2. *Alexee Was Confined to Her Hospital Room and Not Free to Leave*

The State argues that Alexee was not in custody because she was not formally arrested, her "freedom of movement was not physically or overtly restricted by police," and her statements were made before police explicitly told her she was being detained. **[BIC 17-19]** These arguments fail. When determining whether an

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[15] Additionally, in *Salinas*, one person did provide the suspect with his rights under *Miranda*. *Id.* at 689.

[16] The State's claim that the trial court's conclusion on this point lacked evidentiary support is equally baseless. The court made extensive factual findings demonstrating that Dr. Vaskas acted as an agent of police, including that: Dr. Vaskas refused to speak to Alexee without law enforcement present; **[RP 157 ¶¶ 6–7]** Dr. Vaskas failed to advise or invoke Alexee's right to patient-confidentiality; **[*id.* at 158 ¶ 3]** and Officer Williams' report stated, "Sgt. Anaya and I walked into Alexee's room and informed Rose Rodriguez that a baby was found in the trash . . ." **[*Id.* 157 ¶ 9]**

individual is free to leave, courts consider several factors, including "the extent to which the defendant is confronted with evidence of guilt, the physical surroundings of the interrogation, the duration of the detention, and the degree of pressure applied to the defendant." *State v. Munoz*, 1998-NMSC-048, ¶ 40, 126 N.M. 535. Even a cursory review of these factors shows that a reasonable person in Alexee's situation would not have felt free to leave.

At the time of the police confrontation, Alexee was a 19-year-old high school cheerleader who, three hours earlier, had been unaware she was pregnant, had been given an array of mind-altering drugs[17] for pain, and had experienced a traumatic labor. When police entered Alexee's room with her physician, Alexee lay only in her hospital gown, bleeding profusely, and reporting the delivery of a stillborn alone in a hospital bathroom. The confrontation occurred in a small treatment room with several adult authority figures: a physician, a male charge nurse, and two armed male police officers, who blocked her only exit. **[Def. Ex. H, Body Cam. X6031529F at 3:02; RP 158 ¶¶ 13-14, 159 ¶ 5]** These authority figures had *already* initiated a

[17] Common adverse reactions to the medications Alexee was administered include dizziness, sedation, lightheadedness, and cognitive reactions like mental dulling, unusual thoughts, and confusion have also been noted. Joseph L. Riley, et al., *Cognitive-Affective and Somatic Side Effects of Morphine and Pentazocine: Side-Effect Profiles in Healthy Adults*, 11 Pain Medicine 2, 195–206 (Feb. 2010), https://academic.oup.com/painmedicine/article/11/2/195/1807067.

criminal investigation with Alexee as their only suspect in what they immediately deemed a homicide.[18]

The custodial nature of the encounter was underscored by the initiating words of the confrontation: "[w]e discovered a dead baby in the bathroom." **[Def. Ex. H, Body Cam. X6031529F at 3:09]** This unequivocal accusation of guilt, made by a collective force of authority figures, undoubtedly placed immense psychological pressure on Alexee by characterizing their finding as a criminal matter. Within minutes, Sergeant Anaya confirmed the custodial nature of the interaction with the definitive statement that Alexee was being "detained," was in police "custody," and was "not free to leave," after which point police *still* did not advise her of her rights. **[Def. Ex. H, Body Cam. X6031529F at 3:09, 6:08; Def. Ex. E, Sgt. Anaya Report**

[18] When asked, Alexee stated that she held the newborn she delivered, and that it did not breathe, move, or cry. **[RP 158 ¶ 11; Def. Ex. A, Medical Records at 41 of 93]** Alexee's account of stillbirth is further corroborated by the bleeding she experienced leading up to birth, the precipitous nature of her labor and delivery, and by Dr. Vaskas' determination not to attempt resuscitation of the deceased newborn only thirty minutes after Alexee left the bathroom, immediately pronouncing the newborn deceased at 2:28 a.m. **[RP 157 ¶ 5(v); Def. Ex. A, Medical Records at 24]** No one in the Hospital, however, considered the possibility that Alexee was, in fact, a high school student in the midst of an obstetric crisis who endured a stillbirth. Despite being one of the few people who actually knew Alexee was pregnant and could be in active labor, Dr. Vaskas admitted that she considered Alexee to be "duplicitous" from the moment of their first interaction **[Axon Body Cam. X6031747N at 7:30]** while the Charge Nurse, having never even spoken to Alexee, assured police Alexee would lie. **[Def. Ex. H, Body Cam. X6031529F at 1:21]** This characterization inevitably informed Dr. Vaskas' accusatory confrontation and the nature of Alexee's response to it.

("I entered the room where Alexee was, and I advised her she was being detained and not free to leave.")] From the moment Sergeant Anaya, Officer Williams, Dr. Vaskas, and the Charge Nurse entered her room, Alexee was not free to leave.

The State's reliance on factually inapposite cases does not change this conclusion. In *State v. Munoz*, 1998-NMSC-048, ¶ 5, and *United States v. Brave Heart*, 397 F.3d 1035, 1037 (8th Cir. 2005), **[BIC 18-19]** the defendants were *informed* that they were free to leave, which was not the case here. Instead, as soon as presented with the opportunity, Officer Williams confirmed that Alexee was *not* free to leave. **[RP 158 ¶ 13]** The State's cited caselaw fails, therefore, to provide meaningful guidance to the Court.

The State also unpersuasively cites to *Widmer*, 2018-NMCA-035, 419 P.3d 714, *rev'd on other grounds by State v. Widmer*, 2020-NMSC-007, 461 P.3d 88. **[BIC 17]** In *Widmer*, the appellate court held that the defendant *was* in custody when handcuffed and made to sit on a sidewalk, even without a confirmed arrest warrant. 2018-NMCA-035, ¶¶ 16–17. The court emphasized that physical restraint and restricted movement were key factors, not a confirmed arrest. *Id.* ¶ 17. These same factors apply here, where armed officers blocked Alexee's only exit from her small and now crowded treatment room while her physical state was deteriorating.

Contrary to the State's analysis, these factors created a restrictive environment equal to that in *Widmer*.

Equally unavailing is the State's reliance on *Salinas*, 182 Cal. Rptr. 683, for the proposition that police presence in a hospital does not constitute custody. **[BIC 19]** *Salinas*, however, stands for no such proposition. There, the court never even *considered* the question of whether the defendant was in custody once in the hospital, *id.* at 689–93, rendering the State's reference to *Salinas* in its custody argument utterly unhelpful to the Court. The State's reliance on *Berkemer v. McCarty*, 468 U.S. 420 (1984), is similarly misplaced. **[BIC 20]** In *Berkemer*, the U.S. Supreme Court held that a brief, public, roadside questioning during a traffic stop did not constitute custody due to its minimal isolation and lack of intimidation. *Id.* at 437–40. By contrast, Alexee's questioning was replete with both physical and psychological domineering pressure.

Finally, the State misapplies the reasoning in *People v. Davis*, 449 P.3d 732 (Colo. 2019), *United States v. Sullivan*, 138 F.3d 126 (4th Cir. 1998), and *State v. Cobb*, 789 S.E.2d 532, 538–39 (N.C. Ct. App. 2016). **[*See* BIC 18–19, 21–22]** In each of these cases, police questioning occurred in unquestionably neutral or familiar locations. In *Davis,* the defendant had a large degree of freedom of movement within his own home, and the conversation with police remained casual, with the accused at one point retrieving a football jersey to show-off to an officer. 449 P.3d at 740.

The same is true of *Cobb*, in which there was no evidence of police limiting the defendant's freedom of movement within his own home. 789 S.E.2d at 538–39. Similarly, in *Sullivan*, as in *Berkemer*, the routine questioning took place during a traffic stop. In that case the suspect was in full view of a public highway when asked if he had anything illegal in his car. 138 F.3d at 131–32. Alexee, in contrast, was in the private confines of a patient room, with two armed officers not only limiting her freedom of movement, but actively blocking her only exit. The State's arguments fail to show that a reasonable person in Alexee's position would have felt free to leave and should be rejected.

3. *A Reasonable Officer Should Have Recognized Dr. Vaskas' Statement as One Reasonably Likely to Elicit an Incriminating Response*

Interrogation need not consist of direct questioning but can include its "functional equivalent." *Widmer*, 2020-NMSC-007, ¶ 14. As the U.S. Supreme Court put it in *Rhode Island v. Innis*, any "practice that the police *should know* is reasonably likely to evoke an incriminating response from a suspect thus amounts to interrogation." 446 U.S. 291, 301 (1980) (emphasis added); *see also State v. Juarez*, 1995-NMCA-085, ¶ 8, 120 N.M. 499 ("Interrogation is not limited to express questioning. It can include other, less-assertive police methods that are reasonably likely to lead to incriminating information . . . "). Dr. Vaskas' flat statement—"[w]e discovered a dead baby in the bathroom"—is one any officer should have perceived

as reasonably likely to elicit an incriminating response. **[Def. Ex. H, Body Cam. X6031529F at 3:09]** This statement did not convey general information but served as an accusation of guilt, especially given the coercive atmosphere of armed officers and medical staff crowding a small treatment room and Dr. Vaskas' medical knowledge of Alexee's precipitous delivery. That accusation could only implicate Alexee, as she was the only one who lay bleeding from having just given birth.

This Court's reasoning in *State v. Ybarra*, 1990-NMSC-109, supports this interpretation. There, passive police presence during a nurse's questioning of a suspect was found to constitute a custodial interrogation because the police "took advantage" of the emergency room's inherently coercive atmosphere, "subjecting [the defendant] to circumstances which they knew or should have known were reasonably likely to elicit incriminating responses." *Id.* ¶ 15. Even passive or subtle police conduct can spark the need for *Miranda* warnings. *See Juarez*, 1995-NMCA-085, ¶ 8. Artesia police officers took advantage of the psychological coercion a teenager would inevitably feel in the face of three imposing authority figures, all of whom knew of her traumatic delivery and turned that fact into an accusation of wrongdoing rather than a medical concern.

The State attempts to refute this otherwise intuitive conclusion by unpersuasively relying on *Innis*, 446 U.S. 291. **[BIC 24]** In *Innis*, the defendant was arrested, read his *Miranda* rights, and requested an attorney. *Id.* at 294. During his

subsequent transport, officers casually discussed the potential danger of a missing gun, which the defendant overheard. *Id.* at 294–95. Unprompted, the defendant inserted himself into their conversation and led the officers to the weapon's location. *Id.* The Court found that the officers' remarks did not constitute interrogation or its functional equivalent because they were "nothing more than a dialogue between the two officers to which no response from the respondent was invited," and they could not have foreseen that it would provoke the defendant's interjection. *Id.* at 302–303. These facts are in stark contrast to those in Alexee's case. Unlike the "subtle compulsion" of *Innis*, *id.* at 303, there was nothing subtle or conversational about the group's entry into Alexee's room. Dr. Vaskas' statement was a clear, coercive action likely to elicit exactly the type of incriminating response against which *Miranda* protects.

Lastly, the State correctly, but ultimately unhelpfully, cites *Widmer*, 2020-NMSC-007, ¶¶ 18–20, for the proposition that routine questions, such as asking for identification, do not typically trigger *Miranda* protections. **[BIC 25]** This is irrelevant, as the issue here is not Sergeant Anaya's request for Alexee's driver's license, but the confrontational statement of her physician. While routine identification does not constitute interrogation, *Widmer* distinguished between routine inquiries and those directly related to the alleged commission of a crime. In *Widmer*, an officer's question about contraband *was* found likely to provoke an

incriminating response, constituting an interrogation. *Id.* ¶¶ 23–34. The statement "[w]e discovered a dead baby" is, likewise, an accusatory statement directly related to the elements of the crime under investigation and therefore, constitutes an interrogation under *Widmer*. **[Def. Ex. H, Body Cam. X6031529F at 3:09]**

4. *Alexee Never Waived Her* Miranda *Rights*

Alexee was subjected to custodial interrogation and as is undisputed, never received *Miranda* warnings. **[RP 158 ¶ 14]** The State must prove that Alexee waived the rights protected by *Miranda* and that any alleged waiver (1) resulted from "a free and deliberate choice rather than intimidation, coercion, or deception[;]" and (2) was "made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Moran v. Burbine*, 475 U.S. 412, 421 (1986). "Courts evaluate the totality of the circumstances" in determining whether the State has met its burden, considering factors such as the accused's "mental and physical condition, background, experience, and conduct . . . as well as the conduct of the police[.]" *Martinez*, 1999-NMSC-018, ¶ 14 (quoting *State v. Salazar*, 1997-NMSC-044, ¶ 62, 123 N.M. 778 (internal quotation marks omitted). In this case, no evaluation of waiver is necessary, as neither officer provided Alexee with the warnings and rights articulated under *Miranda*, and Alexee, therefore, remained completely unaware she had any rights to waive. *See Martinez*, 1999-NMSC-018, ¶ 13.

The trial court properly considered the totality of the circumstances, and properly applied the law to those facts. Viewing these facts in the light most favorable to the district court's ruling and applying every reasonable presumption against waiver, this Court should affirm the district court's findings.

II. THE TRIAL COURT CORRECTLY FOUND A VIOLATION OF THE PHYSICIAN-PATIENT PRIVILEGE

New Mexico has long upheld the fundamental principle of patient privacy, enshrined in Rule 11-504 NMRA, with roots dating back to the state's territorial period as early as 1880.[19] Rule 11-504(B) renders inadmissible "confidential communication[s] made for the purpose of diagnosis or treatment of [a] patient's physical, mental, or emotional condition" between "the patient and the patient's physician[.]" New Mexico courts have consistently recognized that protecting patient confidentiality fosters trust between patients and providers, and facilitates effective treatment. *See Albuquerque Rape Crisis Ctr. v. Blackmer*, 2005-NMSC-032, ¶ 15, 138 N.M. 398 (recognizing uninhibited communication serves public interest by facilitating "appropriate treatment"); *Lara v. City of Albuquerque*, 1999-NMCA-012, ¶ 12, 126 N.M. 455 (emphasizing public interest is served by facilitating "treatment," which "requires trust and confidence" so patients can fully

[19] Valerie Reighard, *Evidence: Protecting Privileged Information-A New Procedure for Resolving Claims of the Physician-Patient Privilege in New Mexico-Pina v. Espinoza*, 32 N.M. L. Rev. 453, 459 (2002); *see also* 1880 N.M. Laws ch. 12, § 7.

disclose facts to providers).[20] Dr. Vaskas' violated Alexee's right to medical privacy by discussing her medical condition *only* in the presence of law enforcement.

The district court's holding is grounded in the unassailable principle that patients must be able to disclose sensitive medical information fully and without fear that it will later be used against them in court. *See, e.g.*, *State v. Romero*, No. A-1-CA-37376, mem. op. (N.M. Ct. App. Mar. 25, 2010) (non-precedential) (affirming refusal to compel a defendant's privileged communications in a criminal case); *Reaves v. Bergsrud*, 1999-NMCA-075, ¶ 23, 127 N.M. 446 (upholding suppression of medical records in a medical malpractice case); *Villalobos v. Bd. of Cnty. Comm'rs of Doña Ana Cnty.*, 2014-NMCA-044, ¶¶ 17–19, 322 P.3d 439 (upholding

[20] These considerations are supported not only by New Mexico law, but also in its federal counterpart, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, 110 Stat. 1936. Like the New Mexico physician-patient privilege and NMSA 1978, Section 14-6-1 (1977), HIPAA reflects Congress' recognition that privacy is a fundamental right, essential to both individual autonomy and collective freedom. *See* Standards for Privacy of Individually Identifiable Health Information, 65 Fed. Reg. 82463, 82464 (Dec. 28, 200). HIPAA codifies our societal understanding that a "patient's ability to trust that the information shared will be protected and kept confidential[,]" and is vital to the delivery of effective medical care. *Id.* The district court's decision to suppress Alexee's statements was grounded in egregious violations of *Miranda*, Rule 11-504 NMRA, and NMSA Section 14-6-1. **[RP 158 ¶ 3, 159 ¶ 7]** HIPAA's underlying policy and codified privacy protections further underscore the failure of the Hospital and the police to safeguard Alexee's rights. However, contrary to the State's implication, this Court need not rely on HIPAA to uphold the trial court's suppression order. **[*See* BIC 36–38]** Rather, the statute highlights the multiple layers of protections Alexee was *supposed* to be afforded but that were uniformly ignored in an unlawful effort to help police circumvent Alexee's rights.

exclusion of medical records in a negligence action). The State's attempt to override the privilege relies on two unfounded claims: (1) that Alexee voluntarily waived her privilege; and (2) that mandatory reporting requirements create a blanket waiver of medical privacy. **[BIC 28; BIC 33]** Both arguments lack merit.

A. The Trial Court Did Not Abuse Its Discretion in Excluding Privileged Communications Under Rule 11-504(B)

This Court reviews the exclusion of evidence for an abuse of discretion and will reverse only in cases of clear abuse. *Progressive Cas. Ins. Co. v. Vigil*, 2018-NMSC-014, ¶ 13, 413 P.3d 850 (noting that an abuse of discretion occurs when a ruling is clearly against the logic and effect of the facts and circumstances of the case). To meet this burden, the State must demonstrate that the trial court's decision was "clearly untenable or not justified by reason." *State v. Otto*, 2007-NMSC-012, ¶ 9, 141 N.M. 443; *State v. Adams*, 2022-NMSC-008, ¶ 35, 503 P.3d 1130 (defining abuse of discretion as applying "an incorrect standard, incorrect substantive law, or its discretionary decision is premised on a misapprehension of the law.") (internal quotation marks & citation omitted). The district court did not abuse its discretion, but reasonably preserved Alexee's medical privacy by upholding protections guaranteed by law.

B. Mandatory Reporting Does Not Strip Patient Privacy Protections

The State repeatedly asserts the entirely unsupported, and ultimately dangerous, argument that the Hospital's perceived mandatory reporting obligation

of the deceased newborn to police nullified Alexee's medical privacy rights from that point forward. **[BIC 28–29]** The State's assertion that Alexee's patient confidentiality was inapplicable after the Hospital's reporting is supported by neither law nor relevant medical practice.[21] **[BIC 27]**

The State's interpretation of mandatory reporting under NMSA 1978, Section 32A-4-3 (2021) asks this Court to effectively rewrite the law—a power reserved solely for the legislature. *See State ex rel. Taylor v. Johnson*, 1998-NMSC-015, ¶ 21, 125 N.M. 343 ("We have said that only the legislative branch is constitutionally established to create substantive law.") (internal citation omitted) Such an interpretation would have disastrous implications for patient privacy and public health. *See* Jeremy R. Simon et al., *supra* note 13 (emphasizing the physician's fiduciary duty to confidentiality and patient care, and warning against the potential conflict that arises when law enforcement enters the emergency department). The State's attempted circumvention of the legislative process to dramatically expand

[21] The basis for the mandatory reporting trigger was, in itself, hastily crafted. Alexee arrived at the ED bleeding and complaining of severe lower back pain. Despite ED staff knowing she was pregnant, the administration of morphine, and despite Alexee exhibiting symptoms of well-known pregnancy complications, she was permitted by ED staff to use the bathroom alone and unattended. In less than nineteen minutes, Alexee gave birth in that bathroom. These facts did not provide the ED staff with "reasonable suspicion" of abuse but instead pointed to an easily diagnosed obstetric crisis and its subsequent adverse pregnancy outcome, a tragedy that should have been met with competent care and treatment instead of the weight of the criminal legal system. **[RP 154–158]**

Section 32A-4-3 would convert medical providers wholesale into evidence collectors for the entirety of their interactions with patients suspected of criminal wrongdoing.

Hospitals are sanctuaries of care, not extensions of their local police precinct. Adopting the State's position would mean that vulnerable pregnant patients would be chilled from seeking care for fear of having a potential tragedy met with a deprivation of dignity, denial of healthcare, and violation of patient privacy.[22] Such an abject change in the law would likely worsen maternal and infant health outcomes by discouraging timely medical intervention.[23] The Court should reject the State's

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[22] Maternal mortality remains a significant issue in the United States, with hundreds of women dying each year from pregnancy-related causes, due to various underlying conditions that result in patients seeking care in emergency departments. *See* Am. Coll. of Obstetricians and Gynecologists, *Commitment to Action: Eliminating Preventable Maternal Mortality* (Jan. 21, 2022), https://www.acog.org/news/news-articles/2022/01/commitment-to-action-eliminating-preventable-maternal-mortality#:~:text=Approximately%20700%20U.S.%20women%20die,recognizing%20and%20managing%20these%20emergencies. The American College of Obstetricians and Gynecologists emphasizes that "[p]olicies and practices that criminalize individuals during pregnancy and the postpartum period create fear of punishment that compromises [the physician-patient] relationship and prevents many pregnant people from seeking vital health services." Am. Coll. of Obstetricians and Gynecologists, *Opposition to Criminalization of Individuals During Pregnancy and the Postpartum Period* (July 2024), https://www.acog.org/clinical-information/policy-and-position-statements/statements-of-policy/2020/opposition-criminalization-of-individuals-pregnancy-and-postpartum-period#:~:text=Confidentiality%20and%20trust%20are%20at,or%20based%20on%20pregnancy%20outcomes.

[23] *See id.*

invitation to disrupt this harmony in favor of unfettered police access contrary to both the letter and spirit of Section 32A-4-3.

The State offers no legal authority to support its assertion that either Rule 11-504(D)(4) or Section 32A-4-3 permitted the broad intrusion into Alexee's medical privacy and merely posits the general proposition that rights have limits. **[BIC 29-32]** Section 32A-4-3, however, simply requires the reporting of a "matter" based on "reasonable suspicion." It does not grant healthcare providers the prospective right to a full-scale breach of confidentiality or to involve law enforcement in confidential patient conversations or treatment. It does not justify the intrusive presence of police in Alexee's hospital room during her diagnosis and treatment. And it does not endorse what the State characterizes as Alexee's "moral duty" to disclose her own medical trauma during a police investigation to police or hospital staff. **[BIC 31]**[24]

Indeed, the "limits" of a patient's right to privacy are not as the State describes them. As the New Mexico Court of Appeals emphasized in *Eckhardt v. Charter Hosp. of Albuquerque, Inc.*, even good faith compliance with mandatory reporting does not justify broader disclosures that violate the physician-patient privilege. 1998-NMCA-017, ¶ 24, 124 N.M. 549 ("our statutes and rules recognize no general

[24] Rather, the very case on which the State bases this argument, *State ex rel. Lutman v. Baker*, reinforces that the physician-patient privilege exists to *safeguard* patient privacy and does not condition medical treatment on cooperation with law enforcement during criminal investigations. 635 S.W.3d 548, 553 n. 7 (Mo. 2021). **[*See* BIC 32]**

exception covering all disclosures that are made in good faith"). In drawing the contours of patient confidentiality, *Eckhardt* clarifies that the duty to safeguard patient confidence is an expression of public policy that is only waived in specific statutory exceptions or by *voluntarily* signing a release of information. *Id.* ¶¶ 20, 21, 23. This balance between reporting what a provider has reasonable suspicion to believe is child abuse and maintaining patient confidentiality is similarly reflected in ACEP's policy statement on *Law Enforcement Information Gathering in the Emergency Department*, which directs emergency medicine physicians to prioritize patient care, seek informed consent, perform only tests with medical indication, and permit police recordings in the ED only with "the consent of all parties." *See* Jeremy R. Simon et al., *supra* note 13.

Finally, the State's reliance on *State v. Smith*, 2004-NMSC-032, ¶ 10, 136 N.M. 372, to argue for harmonizing statutes to avoid absurd or unreasonable results strains credulity. **[BIC 32]** There is no conflict between mandatory reporting obligations and Rule 11-504. To the extent that Section 32A-4-3(A) applies to the facts of the present case—a matter that is itself arguable considering that medical staff made no initial attempt to determine the circumstances surrounding the birth or whether the newborn was born alive—the Hospital's 911 call enabling police to initiate an investigation was sufficient to fulfill that obligation. The mandatory "report" is just that—a report to police of their finding and suspicion of abuse. That

report does not and should not include an invitation to listen as Alexee describes her active obstetric crisis; nor can it be used as a means to circumvent Alexee's fundamental right against self-incrimination. There is *no* statutory, medical, or moral duty for healthcare providers to take on the role of investigator, as Dr. Vaskas did. And there is no plausible argument that maintaining Alexee's confidentiality in care provided after that call would somehow lead to an "absurd" result.

Smith requires courts to consider statutory history, function, and the broader legal framework when interpreting laws. 2004-NMSC-032, ¶¶ 9–10. The legislative intent behind the physician-patient privilege aims to *protect* patient confidentiality, while defining a narrow exception to report suspected child abuse under Section 32A-4-3. These laws can and do coexist while preserving patient privacy, and the exclusion of unlawfully obtained evidence is not only consistent with, but necessary to preserve, this framework.

C. Alexee's Statements Are Privileged

Alexee's statements to Dr. Vaskas and the hospital staff that she gave birth to a newborn that did not breathe, move, or cry is protected under Rule 11-504. Such communications are privileged if: (1) the patient intended them to remain undisclosed; and (2) non-disclosure furthers the patient's interest. *State v. Roper*, 1996-NMCA-073, ¶ 11, 122 N.M. 126; *see also* Rule 11-504.

1. *Alexee Intended to Keep Her Communications Private*

A patient's consent to diagnosis or treatment implies an intent to keep communications confidential. *Roper*, 1996-NMCA-073, ¶¶ 8–13. Under Rule 11-504(B), communications "made for the purpose of diagnosis or treatment" are privileged. Alexee sought emergency medical care, and her communications with Dr. Vaskas were essential to getting that care. The forced presence of law enforcement, which Dr. Vaskas admitted was a condition of continued treatment, coerced Alexee into disclosing her precipitous labor and delivery in front of police, in order to be transferred for emergency treatment. Alexee's communications were made only after being prompted by her treating physician, with awareness of her continued bleeding and rapidly deteriorating condition. *See State v. Strauch*, 2015-NMSC-009, ¶ 43, 345 P.3d 317 **[cited by State at BIC 28]** (communications made for diagnosing and treating medical conditions remain privileged).

Just as the coerced presence of law enforcement does not automatically waive *Miranda* rights, nor does it waive the privilege under Rule 11-504. *See Roper*, 1996-NMCA-073 (consent to treatment implied intent to maintain confidentiality). The State fails to show Alexee consented to law enforcement presence or that she agreed to it as a condition of treatment.

2. *Non-Disclosure Furthers Alexee's Medical Treatment Interests*

Prosecutorial public policy goals "can be achieved without invading an individual's privacy and bodily integrity, which the [physician-patient] seeks to protect." *Roper*, 1996-NMCA-073, ¶ 18. And yet, throughout her ED visit, medical staff and law enforcement repeatedly violated Alexee's privacy. **[RP 158–160]** Police were allowed to remain in her room to listen to confidential information and witness invasive examinations, **[Def. Ex. H, Body Cam. X6031529F]** despite the fact that there was "no suggestion, let alone evidence, that Defendant posed a danger to the physician or other medical staff." **[BIC 35]** The preservation of Alexee's physician-patient privilege is essential to protect her privacy and bodily integrity even now, and to refute the practice of conditioning continued care on the coercive presence of law enforcement.

a) Alexee Did Not Waive the Physician-Patient Privilege

Although Dr. Vaskas could have invoked Alexee's privilege to protect her privacy, only Alexee, as the patient, held the privilege and thus had the authority to waive it. *See* Rule 11-504(B). The State presents no evidence that Alexee knowingly or expressly did so. **[RP 158]** As the trial court correctly found, Alexee was never even "afforded her right to invoke the physician-patient privilege[.]" **[*Id.*]** Additionally, the trial court correctly concluded that the presence of her mother—listed as her emergency contact—does not undermine Alexee's privilege during the

encounter. **[RP 158 ¶ 2]** This is because Ms. Rodriguez, as Alexee's mother and emergency contact, was present to *further* Alexee's care and protect her interests. Rule 11-504(C)(2) ("The privilege may be asserted on the patient's behalf by . . . any other person included in the communication to further the patient's interests").

Nor does the mere presence of law enforcement automatically nullify Alexee's privilege, as the State argues. **[*See* BIC 33–35]** Courts routinely hold that the presence of third parties, even officers, does not destroy privilege if the communication was intended to be confidential or—as the State repeatedly argues—where law enforcement is present "merely" as security. *See, e.g., People v. Decina*, 138 N.E.2d 799, 806–07 (N.Y. 1956) (declining to find waiver where patient was aware of the officer's presence, and the officer stood around the doorway of the hospital room and overheard the patient's conversation with the doctor); *People v. Singer*, 236 N.Y.S.2d 1012, 1014 (Co. Ct. 1962) (the presence of the arresting officer, another officer, and the complainant in the treatment room does not alter the privilege); *Salas*, 408 P.3d at 394 (privilege remains intact where an officer is a security presence for the medical team). Alexee's responses to direct prompts from her treating physician while she was desperately in need of urgent medical care as armed officers watched and listened does not amount to a voluntary waiver of patient confidentiality. **[RP 158, 159]**

b) The State's Cited Caselaw on Waiver Is Unavailing

As it does throughout its papers, the State relies on several inapposite or inapplicable cases to support its argument that Alexee somehow waived her privilege. The State's reliance on *State ex rel. Lutman v. Baker*, 635 S.W.3d 548 (Mo. 2021), and *State v. Gutierrez*, 2021-NMSC-008, 482 P.3d 700, do not support an argument of privilege waiver. **[BIC 32–33]** In *Lutman*, the court explained that waiver occurs either through an express waiver (*i.e.* by putting one's medical condition directly at issue), or an implied waiver, which requires "a clear, unequivocal purpose to divulge the confidential information." 635 S.W.3d at 552. It is undisputed that Alexee never expressly waived her privilege, and the State has failed to provide evidence of any purpose to support a contention of implied waiver.

Rather, the cases on which the State relies reaffirm that the intention to waive privilege must be apparent; brief, nondescript statements to "investigating police officers" will not suffice. *Id.* at 553. And just as a waiver must be apparent, so too must it be *voluntary*, with the patient either disclosing information on her own or consenting to that disclosure. *See Gutierrez*, 2021-NMSC-008, ¶ 41; Rule 11-511 NMRA. To support a claim of waiver, New Mexico courts require an affirmative, voluntary act for waiver, such as signing a release. *See State v. Gonzales*, 1996-NMCA-026, 121 N.M. 421 (finding that voluntarily signing a release of privileged information constitutes waiver of that information). And yet, Alexee took no such

actions, and the State fails to present any evidence to support a claim of implied waiver.

The State's comparisons to *People in Interest of R.G.*, 630 P.2d 89 (Colo. Ct. App. 1981), *State v. LaRoche*, 442 A.2d 602 (N.H. 1982), and *People v. Hartle*, 122 A.D.3d 1290 (N.Y. App. Div. 2014), are also unconvincing. **[BIC 33–34]** In *R.G.*, the court held that a minor's voluntary answer to a physician's question, where the child stated that he cut his finger on a knife, without any evidence of custodial interrogation or coercion, was admissible at trial. 630 P.2d at 93. These statements, in stark contrast to those in this case, while made in the presence of an officer, were not "in any way connected with the investigation of a crime" and were made to a physician who "knew nothing about the crime" alleged. *Id.* Alexee's statements, in contrast, were elicited by a physician aware of and involved in a criminal investigation that was, by that point, well underway. Additionally, these statements cannot be considered "voluntary," as Alexee made them under the pressure imposed by the presence of multiple law enforcement officers and authority figures who actively blocked her only means of exit.

The State's reliance on *LaRoche* is also unhelpful as that case involved disclosure to EMTs, who are not bound by patient confidentiality laws in New Hampshire, unlike physicians in New Mexico. 442 A.2d. at 603. Similarly inapposite is *Hartle*, where the defendant made "numerous statements" to multiple parties

before and after speaking with medical professionals, clearly not intending them to remain private. 122 A.D.3d at 1291. Unlike the defendant in *Hartle*, Alexee made her statements solely in response to Dr. Vaskas' prompt. The State also unpersuasively cites *People v. Gomez*, a New York trial court decision, where the court justified overriding physician-patient privilege due to the public health "epidemic" of controlled substance use. 556 N.Y.S.2d 961, 965 (Sup. Ct. 1990) **[BIC 36]**. No such public interest exists in this case. The public interest that *does* exist here supports protecting confidentiality, as Rule 11-504 was designed to encourage patients to seek care without fear of legal repercussions.

Finally, the State relies on *State v. Richardson*, 121 N.E.3d 730, 735–36 (Ohio Ct. App. 2018), where the court permitted disclosure under mandatory reporting laws—a decision influenced by Ohio's recognition of fetal personhood. *Id.* at 734 (citing R.C. 2901.01(B)(1)(c)(ii); R.C. 2901.01(B)). In *Richardson*, the court found that the defendant's failure to disclose her pregnancy provided "reasonable cause" to suspect foul play where she claimed the baby was stillborn, thus waiving her privilege on the basis that her *fetus* was a person. *See id.*

Unlike Ohio, New Mexico law follows the born alive rule, which defines a person as a neonate that breathes spontaneously or shows signs of life *after* birth. *See State v. Mondragon*, 2008-NMCA-157, ¶ 11, 145 N.M. 574 (confirming a person must be born alive to be a victim of child abuse); *State v. Willis*, 1982-NMCA-151,

¶ 10, 98 N.M. 771 (absent legislative instruction, refusing to extend the definition of "human being" to a viable fetus); NMSA 1978, § 30-3-7 (1985) (defining stillbirth as a fetus that, after complete expulsion from the mother, "does not breathe spontaneously or show any other evidence of life such as heart beat, pulsation of the umbilical cord or definite movement of voluntary muscles"). In accordance with New Mexico's law that prohibits mandatory reporting based on drug use during pregnancy, and thus prohibits prioritizing the criminalization of pregnant women's conduct over the provision of treatment, New Mexico protects pregnancy-related tragedies from automatically being scrutinized as criminal wrongdoing. *See* NMSA 1978, § 32A-4-3(G). This framework prioritizes patient privacy and underscores New Mexico's commitment to supporting the autonomy of pregnant women and their maternal and fetal health; a framework that supplies yet another basis for this Court to affirm the ruling of the district court.

CONCLUSION

The district court's suppression of Alexee Trevizo's statements comports with constitutional protections against self-incrimination and the physician-patient privilege. Upholding these protections is essential not only to preserving Alexee's rights, but to maintain trust in New Mexico's healthcare system for patients more broadly. For these reasons this Court should affirm the district court's order and reject the State's attempts to erode these essential protections.

Respectfully submitted,

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STATEMENT OF COMPLIANCE

As required by Rule 12-318(G), undersigned counsel certifies this brief was prepared in 14-point Times New Roman typeface using Microsoft Word, and the body of the brief contains 10,646 words.

/s/ *Gary C. Mitchell*
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CERTIFICATE OF SERVICE

I certify that, on October 28, 2024, I filed a true and correct copy of the foregoing Answer electronically through the Odyssey E-File & Serve System, on any parties of record by electronic means.

/s/ *Gary C. Mitchell*
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