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Supreme Court rules that teenager's emergency room statements cannot be used as evidence in prosecuting her for the death of her newborn

SANTA FE – The state Supreme Court ruled today a physician-patient confidentiality privilege remained in effect when an Artesia teenager made statements in the presence of police as a doctor confronted the then-high school senior about her dead newborn found in a hospital bathroom trashcan.

New Mexico's highest court unanimously affirmed an Eddy County district court's decision that there was no voluntary waiver of the privilege, and statements made by Alexee Trevizo to her treating physician cannot be used by prosecutors in a murder case against her for the baby's death in 2023.

The justices disagreed with the State's contention that any privilege had been waived because of the presence of police and Trevizo's mother in the hospital room when Dr. Heather Vaskas told the teenager about the dead baby. The doctor invited police into the teen's room.

"The State's argument urges us to adopt a per se rule that whenever a third person is present who is not necessary for care or treatment while a patient communicates with their doctor, a waiver of confidentiality takes place, regardless of who the person is or of the circumstances. We reject that argument as inconsistent with caselaw and the policy interests underlying the physician-patient privilege," the Court stated in an opinion written by Justice Michael E. Vigil.

The justices outlined several requirements for a valid waiver of the privilege to occur by the presence of a third-party. Among them is that the patient has "the mental and physical capacity to waive the privilege." The facts of the case "unequivocally demonstrate" Trevizo lacked that capacity because of her medical condition, the Court concluded.

Trevizo arrived "at the emergency room in excruciating pain, was administered numerous medications, including narcotics, at unknown doses, she gave birth, and she suffered ongoing life-threatening blood loss," the Court stated.

"Despite her unresolved medical crisis, Dr. Vaskas, without authorization, ambushed Defendant, bringing with her two armed officers who stood in the doorway of her hospital room, and disclosed her personal medical information to all persons in the room without warning," the

Court wrote. “Defendant was not given the opportunity to exclude anyone from the room before Dr. Vaskas discussed her condition in the presence of others. Considering this sudden unauthorized disclosure, coupled with Defendant’s compromised medical condition, under the totality of the circumstances, we cannot conclude that Defendant’s waiver of her physician-patient privilege was voluntary.”

In appealing the district court’s ruling, prosecutors additionally argued that there was no physician-patient privilege because doctors must by state statute report to law enforcement instances of possible child abuse, such as the newborn’s death. The Court disagreed, based on an analysis of state law and court rules of evidence concerning the physician-patient privilege.

“The purpose of the reporting requirement is to cause a law enforcement investigation to be initiated. Once the report is made, the physician’s duty ends, and the law enforcement duty to investigate immediately begins. Outside this narrow exception to report, all confidential communications between the patient and the physician remain privileged; they are not all automatically converted into unprivileged communication,” the Court wrote.

Trevizo went to Artesia General Hospital with her mother about midnight for treatment of severe lower back pain. She told Dr. Vaskas, an emergency department physician, she was not pregnant. Intravenous medications, including morphine, were administered and the doctor ordered a pregnancy test as a standard practice because of the teen’s symptoms. When the results came back positive, Trevizo was not informed she was pregnant until police were present in the room with the physician and the mother.

A little over an hour after treatment began, Trevizo asked to use a bathroom down the hall. The dead newborn was found by custodial staff summoned to clean up blood in the bathroom and hallway. Police were notified. Dr. Vaskas arranged for an emergency transfer to another hospital because of Trevizo’s condition, including severe bleeding after childbirth.

The doctor spoke to police before entering Trevizo’s room with two officers. She informed the teenager and her mother about the discovery of the dead newborn. Trevizo responded, “I’m sorry, it came out of me; I didn’t know what to do.” She also said she held the baby and there was “no movement, no breathing, nothing.”

The criminal case against Trevizo has remained pending while the State appealed the district court’s ruling to suppress evidence obtained in violation of the physician-patient privilege.

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To read the decision in *State v. Trevizo*, No. S-1-SC-40478, please visit the New Mexico Compilation Commission's website using the following link:

<https://nmonesource.com/nmos/nmsc/en/item/538465/index.do>