STATE OF NEW YORK
ERIE COUNTY SUPREME COURT

THE PEOPLE OF THE STATE OF NEW YORK

v.

[redacted]

Indictment No. [redacted]

MEMORANDUM OF LAW

[redacted]

Hon. [redacted]

ADA Ryan D. Haggerty
Erie County District Attorney's Office
25 Delaware Ave.
Buffalo, NY 14202

The defendant is charged in this indictment with murder in the second degree (Penal Law § 125.25[1]). On [redacted], a hearing was held on her challenge to the admissibility of her statements at Sisters Hospital and the physical evidence recovered at her residence. This memorandum of law is submitted in support of the motion to preclude the statements, as well as the observations and opinions of the medical personnel, and suppress the physical evidence.

In the early morning hours of [redacted], [redacted] police officers and emergency medical technicians (EMTs) responded to a 911 call of a young woman in need of medical attention at [redacted]. They arrived to find the defendant sitting on the toilet, in distress from a suspected miscarriage. She was taken to the hospital (H1, 34-35, 45; numbers in parentheses preceded by "H1" refer to pages of the transcript from the first day of the hearing).

At Sisters Hospital, the defendant was treated by Dr. [redacted], an OB/GYN. Dr. [redacted] initially suspected a miscarriage, but after seeing the size of the defendant's uterus and the umbilical cord, she believed that the baby may have been viable. When she asked what happened, the defendant said, "something came out of me." Dr. [redacted] asked if she had a baby, and the defendant said yes. Dr. [redacted] asked where the baby was, and the defendant said, "I put it in the trash." Under the belief that the baby could still be saved, Dr. [redacted] told a secretary to have someone sent to the house (H1, 6-13).

The defendant was also treated by [redacted], a registered nurse in the Labor and Delivery Unit. She told [redacted] that she delivered a baby while on the toilet. When [redacted] asked

where the baby was, the defendant said that she thought the baby was in the trash (H1, 22-24).

The police and EMTs, including EMT [redacted], returned to [redacted] this time looking for the baby. Outside, they encountered two individuals, one of whom ([redacted]) [redacted] understood to be the homeowner. [redacted] if she could go inside and look. There was no answer, so she repeated the question. [redacted] yes. [redacted] said that if no one had been present to give consent, she and the officers were planning on gaining entry and conducting the search anyway. She and the others went inside and found a baby, deceased, in a trash can in the basement (H2, 5-8, 11; numbers in parentheses preceded by "H2" refer to pages of the transcript from the second day of the hearing).

Thereafter, Detective [redacted] obtained a search warrant for [redacted]. When the police returned to execute the warrant later in the day, they recovered scissors in the bathroom and bloody rags in the basement (H2, 13-15).

All statements of the defendant at Sisters Hospital, as well as all observations and opinions of the medical personnel, are inadmissible at trial.

Unless the patient waives the privilege, a physician or nurse "shall not be allowed to disclose any information which [she] acquired in attending a patient in a professional capacity, and which was necessary to enable [her] to act in that capacity" (CPLR 4504[a]). "The privilege applies not only to information communicated orally by the patient, but also to information obtained from observation of the patient's appearance and symptoms,

unless the facts observed would be obvious to laymen" (*Dillenbeck v. Hess*, 73 NY2d 278, 284 [1989]).

All of the statements referenced during the hearing are protected by CPLR 4504(a). Even assuming that they were properly disclosed as an emergency measure or under the mandated reporter law, they are inadmissible at trial, as are the observations and opinions of Dr. [redacted]

Unless otherwise provided by law, "the rules of evidence applicable to civil cases are, where appropriate, also applicable to criminal proceedings" (CPL 60.10). In the trial context, CPLR 4504(a) operates as a rule of evidence precluding the use of statements protected by the physician-patient privilege. Interpreting the predecessor statutes to CPL 60.10 and CPLR 4504(a), the Court of Appeals held the statements of the defendant to her physician, as well as the opinion he based on those statements and his observations, inadmissible at trial (*People v. Murphy*, 101 NY 126, 130-132 [1886]).

Denying the admission of this evidence is necessary to honor the three core purposes of the physician-patient privilege law, which are (i) to maximize "unfettered patient communication with medical professionals, so that any potential embarrassment arising from public disclosure will not deter people from seeking medical help and securing adequate diagnosis and treatment"; (ii) to encourage "medical professionals to be candid in recording confidential information in patient medical records, and thereby [avert] a choice between their legal duty to testify and their professional obligation to honor their patients' confidences"; and (iii) to protect "patients' reasonable privacy expectations

against disclosure of sensitive personal information" (*Matter of Grand Jury Investigation in N.Y. County*, 98 NY2d 525, 529 [2002]).

The evidence should be precluded.

The prosecution failed to establish that the warrantless entry into and search of the defendant's residence was justified.

"It is a basic principle of Fourth Amendment law that warrantless entries [into] and searches of the home are presumptively unreasonable" (*People v. Scott*, 59 Misc3d 688, 696 [Sup Ct, Bronx County 2018], *citing Payton v. New York*, 445 US 573 [1980]). There are exceptions to the general warrant requirement, including consent and the emergency doctrine, but the prosecution has the burden of proving one of the exceptions (*People v. Ibarguen*, 37 NY3d 1107, 1113 [2021]).

Under the emergency doctrine, the police are not required to obtain a search warrant if they have "reasonable grounds to believe that there is an emergency at hand and an immediate need for their assistance for the protection of life or property" (*People v. Hidalgo-Hernandez*, 200 AD3d 1681 [4th Dept. 2021]). The search must not be primarily motivated by an intent to arrest and seize evidence, and there must be some reasonable basis, approximating probable cause, to associate the emergency with the place to be searched (*id.*).

Through Dr. [redacted] testimony, the prosecution established a reasonable possibility that the baby was born alive. But they did not establish another essential fact: a reasonable possibility that, at the point of the warrantless entry and search, the baby

was still alive. Missing from the testimony was any time frame for how long a baby could have survived after the umbilical cord was cut, or how much time passed between the birth and the entry and search. As such, they cannot rely on the emergency doctrine.

The prosecution bears a heavy burden of establishing the voluntariness of a consent to search (*People v. Gonzalez*, 39 NY2d 122, 128 [1976]). The factors to be considered and weighed are whether the consenter (i) was in custody at the time of the consent, (ii) was prior experience with the police, (iii) was evasive or uncooperative prior to the consent, and (iv) was advised of his right to refuse consent (*id.*).

Although the consent was obtained by EMT [redacted] she was working with the police, so her actions are subject to the Fourth Amendment. [redacted] was not in custody at the time of his consent, but the other three factors weigh against a finding of voluntariness. There was no evidence that he had prior experience with the police. He was not immediately cooperative; he did not answer the first time he was asked for consent. And he was not advised of his right to refuse consent. Based on EMT [redacted] testimony, it was apparent that she and the police intended to gain entry and search no matter what. As such, the prosecution cannot rely on consent.

As the probable cause for the search warrant was based on observations made during the search, all evidence recovered during the search must be suppressed as fruit of the poisonous tree (*People v. Cirrincione*, 207 AD2d 1031, 1032 [4th Dept. 1994]).

All observations made and evidence recovered at 2421 Eggert Road -- including the baby, the scissors, and the bloody rags -- should be suppressed.

The defendant asserts her constitutional right to a speedy trial.

Although CPL 30.30 does not apply to this indictment, the defendant still has a constitutional right to a speedy trial (US Const Amend VI). It has now been over 27 months since the alleged murder and over 15 months since the indictment, and the prosecution has yet to file and serve a certificate of compliance or statement of readiness. Although defendant is not moving to dismiss at this point, she is asserting her constitutional right to a speedy trial (*Barker v. Wingo*, 407 US 514, 528 [1972]).

For the reasons stated above, the defendant's motion should be granted, along with any further relief the Court deems proper.

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[redacted]

DATED: [redacted]
Buffalo, NY