

**IN THE DISTRICT COURT OF APPEAL
SIXTH DISTRICT OF FLORIDA**

**STATE OF FLORIDA,
RICHARD WALSH**

**HONERABLE JUDGE MADRIGAL III,
Respondents.**

v. **Case# 6D2024-1378**
Original Case No. 48-2022-CF-00688 AO

**KELLI LYNCH,
DEFENDANT**

**RUSTY MILLER,
NON-PARTY,
Petitioners.**

**APPENDIX TO THE PETENTION/ TRANSCRIPTS
February 23, 2024 Status Hearing Part 1**

**Judge Diego Madrigal III
State Attorney Richard Walsh
Trial Attorney Gary Schwartz**

1 **Judge Madrigal:** Mr. Walsh, we've got Mr. Schwartz.
2 Where's miss Lynch?

3

4 **Court Reporter:** State of Florida versus Kelly Lynch.
5 Case number 2022 CF 688A state.

6

7 **State Atty Walsh:** Richard Walsh, the state of Florida.

8

9 **Court Reporter:** Defense.

10

11 **Atty Schwartz:** Gary Schwartz, for Ms. Lynch, your honor
12 she's not here. She did call me. She's been ill. I
13 haven't spoken to her last night. She basically said
14 because of her illness, she overslept. She can be here
15 in about. Well, at that time, she said it's a half hour
16 drive.

17

18 **Judge Madrigal:** Issue a capias no bond. It's- it's
19 time. Mr. Schwartz, you know-you know-

20

21 **Atty Schwartz:** (Laughs) I know-.

22

23 **Judge Madrigal:** -It's time.

24

25 **Atty Schwartz:** (Laughs) -how you feel about it this
26 case.

27

1 **Judge Madrigal:** Issue a capias no bond. Are you ready
2 for trial on Monday?

3

4 **Atty Schwartz:** I was already going to ask for a
5 continuance, judge, but. So. But, I mean, I'll, I don't
6 know we'll see what happens. With regards to the capias
7 being executed.

8

9 **Judge Madrigal:** File a motion to.

10

11 **Atty Schwartz:** Okay. Understood.

12

13 **Judge Madrigal:** Issue a capias. She was told to be
14 here. She was supposed to be here last week. She's
15 supposed to be here many times. She's supposed to.
16 She's already supposed to be in DOC.

17

18 **Atty Schwartz:** -Well,

19

20 **Judge Madrigal:** She hadn't changed her mind, but Rusty,
21 her buddy. Rusty.

22

23 **Atty Schwartz:** Judge!

24

25 **Judge Madrigal:** (Laughs) Thinks he's a lawyer, filing
26 stuff in my court file.

27

1 **Atty Schwartz:** (Laughs) I actually do have something to
2 say in the Rusty thing. If you want me to address that,
3 I can say it. But I don't have.

4

5 **Judge Madrigal:** (Laughs) He's filing motions on this
6 case.

7

8 **Atty Schwartz:** Well, the only thing, the only thing. I
9 do want to say on Miss Lynchs behalf is two things. One
10 is that I was in contact with her all day yesterday,
11 and she did. She was calling on his outside, speaking
12 with Mr. Walsh. So. I mean, she is in communication
13 with me. The other thing is, is in regards to having.
14 You're right. She was supposed to be here last week,
15 but but you know, she was hospitalized last week.

16

17 **Judge Madrigal:** (Child Like Voice) She says!

18

19 **Atty Schwartz:** What's that?

20

21 **Judge Madrigal:** (Child like voice) She says she was!

22

23 **Judge Madrigal:** Well, I mean- I confirmed with the
24 hospital myself!

25

26 **Atty Schwartz:** You confirmed? But- okay, so I'll let
27 her know!

28

29 **Judge Madrigal:** Well, what's the state's position?

1

2 **State Atty Walsh:** On?

3

4 **Judge Madrigal:** Position on Capias?

5

6 **State Atty Walsh:** That- that's- up to the court. You
7 ordered her to be here. We all know that.

8

9 **Judge Madrigal:** Yeah.

10

11 **Atty Schwartz:** So there's no way I can prevail upon the
12 court to perhaps allow her another extra hour to get
13 here or so, 45 minutes.

14

15 **Judge Madrigal:** You see everybody else sitting here?
16 Well, they've been waiting and they were on time.

17

18 **Atty Schwartz:** Understood.

19

20 **Judge Madrigal:** She was ordered to be. They weren't
21 even ordered to be here. They're just here on their own
22 free will. Sort of. Some people were subpoenaed. But
23 she was ordered to be here, and she's not. If she comes
24 and she wants to sit in the back and wait, I may
25 consider. But then that's disrespectful of your time,
26 because you're gonna have to wait, too.

27

28 **Atty Schwartz:** Understood. Your honor.

1

2 **Judge Madrigal:** I'm a big Gary Schwartz fan, and I want
3 his time respected. (laughs)

4

5 **Atty Schwartz:** Thank you. Judge. Okay, man. Just
6 approach for a ancillary question.

7

8 **Judge Madrigal:** Sure.

9

10 **Atty Schwartz:** (can not transcribe what was said)

11

12 **Judge Madrigal:** I just want to make clear I am in no
13 way irritated or annoyed by you. I think you are being
14 put in an unfair position by your client, and and and I
15 recognize that you have a you have a lot of goodwill
16 with me. You've always been professional. So my
17 annoyance is in no way a reflection on you. And I'm
18 going to say, like, Miss Lynch, I just want to get her
19 to trial. She might be not guilty. And then she gets to
20 walk out and she doesn't have to show up ever again.
21 But she's been avoiding getting this case to conclusion
22 for almost a year now. For almost a year now. I
23 understand that.

24

25 **Atty Schwartz:** Because- of what I was going to ask is
26 being the situation with this Rusty issue? My
27 preference is that the client -issue the capias and
28 have them go get her [Writ of Bodily attachment].

29

1 **Judge Madrigal:** Oh, I don't like that at all. I don't
2 like that at all. Yeah. I mean, you can tell. I mean, I
3 said in open court, they don't go to her house and get
4 her, I'll tell you that, because otherwise I wish they
5 would. I wish they would.

6

7 **Atty Schwartz:** I would prefer because of this issue,
8 issue a capias and get her over here.

9

10 **Judge Madrigal:** If she gets here. There's a very high
11 probability I would recall the case.

12

13 **Atty Schwartz:** (can not make out what was said)

14

15 **Judge Madrigal:** Yeah, there's a very high. Let me say
16 it this way. There's never been an instance where
17 somebody got here and I did not recall the capias.

18

19 **State Atty Walsh:** I could be available like in an hour.

20

21 **Judge Madrigal:** Yeah. I mean, what are we going to do
22 with her? She's ready for trial. She's wants to
23 continue, and she has-

24

25 **Atty Schwartz:** So I'm going to ask this in the
26 situation when your getting accused for certain
27 procedures not being done so I'm going to partner with
28 Mr. Walsh

29

1 **Judge Madrigal:** No, no, I got, you.

2

3 **Atty Schwartz:** Know, yeah, I wasn't the one who didn't
4 do them.

5

6 **Judge Madrigal:** Yeah.

7

8 **Atty Schwartz:** This is the one where the depositions were set
9 back in May.

10

11 **Judge Madrigal:** No, no I know this piece very well.

12

13 **Atty Schwartz:** So that that was that was the reason was
14 requesting more time.

15

16 **Judge Madrigal:** One of the one of the reasons is- i
17 understand about, like, having to take the depositions and
18 3850s and all that good stuff. I get it, but if a
19 client has a lawyer, takes a plea, then drops off, then
20 you get appointed, then you start working on it, then
21 you drop off and she gets another lawyer, and then that
22 lawyer is on the case for 30 days, and then they
23 withdraw, and then you're back on it. At a certain
24 point, an attorney- or a client shouldn't be able to
25 claim ineffective assistance of for their the reason
26 that their lawyer is not being able to- You're in a
27 little bit of a different position because you're court
28 appointed. In which case, like, it's not like you took
29 on this case voluntarily knowing the status of it. So
30 you get a little more leeway. But I want to explain
31 this to her that she cannot continue to. I mean, for

1 all I know, she's going to go hire somebody else, and
2 then you won't be on it again now. At a certain point,
3 we got to get it done.

4

5 **Atty Schwartz:** All right.

6

7 **Judge Madrigal:** And I want to make clear I'm not going
8 to like, take it out on. She's not going to get a
9 harsher sentence because of this. But there is
10 certainly if she's convicted. But there's certainly a
11 lot of frustration in getting it to that point. I mean,
12 she had a very good plea deal. She doesn't want it,
13 which tells me she thinks she's innocent. So if she
14 thinks she's innocent, why not go to trial and clear
15 her name completely? Right. I mean, I mean, that's I
16 mean, but I'm a logical thinker. So logically, I would
17 think if I had a really good deal and I did it, why on
18 earth would I not accept that deal? And would I try to?
19 And there's min mans on this case. Why on earth would I
20 try to risk going to jail or prison for longer?
21 Logically, it would tell me she thinks she's innocent.
22 So she's innocent. Then let's. Yeah, let's get it done.
23 And I'll tell her that. But like, I don't want her to
24 think or anybody think I'm not going to be, like,
25 harsher if she's convicted because of how she's handled
26 the case. I think that's fine. But the frustrating part
27 is, I know we have elder. We don't have elderly
28 witnesses. They're out of state witnesses. Right?
29 Texas, Texas. We have people who have to be flown in. I
30 mean, it's it's a burden. That's caused by her.

31

32 **State Atty Walsh:** (Unclear what is being said)

33

1 **Judge Madrigal:** I think the likelihood that we go next
2 week is small.

3

4 **State Atty Walsh:** Oh, okay.

5

6 **Judge Madrigal:** Yeah. Yeah. If it's a private attorney,
7 you know what you're getting yourself into when you
8 take on the case? If it's a court appointed attorney.
9 They. He didn't have a choice.

10

11 **State Atty Walsh:** Why dont we set it for June because
12 I'm going to go on a couple weeks of vacation.

13

14 **Judge Madrigal:** Me too.

15

16 **Judge Madrigal:** I mean, do you guys. Let's wait till
17 she gets here and then we'll address it, okay? But I
18 think I think a continuance is likely, given his
19 circumstances. Yeah.

20

21 **State Atty Walsh:** Yeah. Sure.

22

23 **Judge Madrigal:** Sure. Do you want to just. You can go
24 to Drunken Monkey if you want to, and then we'll call
25 you back.

26

27 **Judge Madrigal:** All right.

28

1 **State Atty Walsh:** Is there anything. We need to put on
2 the record.

3

4 **State Atty Walsh:** Before we break or we're good?

5

6 **Judge Madrigal:** There's still a piece in place. If Miss
7 Lynch comes here, I'll consider a recalling it.

8

9 **State Atty Walsh:** Thank you.

10

11 **Judge Madrigal:** Thank you.

12

13 **Atty Schwartz:** Thanks, you your honor.

14

15 **Judge Madrigal:** So don't process it. (whispers to
16 Clerk)

17

18