

**IN THE SUPREME COURT OF FLORIDA**

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**Case No. SC2024-1179**

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**RUSTY MILLER, et al.,**

**Petitioner(s),**

**v.**

**STATE OF FLORIDA,**

**Respondent(s).**

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**EMERGENCY MOTION TO REMAND WITH INSTRUCTIONS**

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**Lower Tribunal Case No.: 6D2024-1378; 482022CF000688000AOX**

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Respectfully requests that this Court remand the underlying case, *Lynch v. State of Florida*, Case No. 482022CF000688000AOX, to the Orange County Circuit Court, with instructions to consider and rule upon the attached Motion to Dismiss.

### **Grounds for Emergency Relief**

1. **Imminent Harm:** Kelli Lynch, the defendant in the underlying case, is scheduled to be sentenced on [Date]. Without immediate intervention by this Court, Ms. Lynch will be incarcerated before her motion to dismiss can be heard, potentially resulting in irreparable harm.
2. **Violation of Due Process:** The series of judicial and prosecutorial actions detailed in the attached motion to dismiss have compromised Ms. Lynch's right to a fair trial under the Due Process Clause of the Fourteenth Amendment.
3. **Unique Circumstances:** The facts of this case present a unique situation where the defendant is unable to file her motion to dismiss due to the impending sentencing and the actions of her current attorney.
4. **Court Manipulation:** The defendant alleges that the court itself may have been involved in manipulating the proceedings, including jury instructions and the verdict. This manipulation has compromised the fairness of the trial and the integrity of the judicial process.
5. **Difficulty in Obtaining Representation:** Ms. Lynch has faced significant challenges in finding legal representation that will effectively address the issues raised in her case. Multiple attorneys have declined to take the case due to concerns about their own reputations with the court.

### **Request for Remand**

Therefore, in light of the imminent harm, the violation of Ms. Lynch's due process rights, the allegations of court manipulation, and the difficulty in obtaining effective representation, this Court is respectfully requested to remand the underlying case to the Orange County Circuit Court with the following instructions:

1. **Consider the Attached Motion to Dismiss:** The lower court should consider and rule upon the attached Motion to Dismiss, which was drafted by Ms. Lynch herself and outlines the grounds for dismissal based on judicial and prosecutorial misconduct, ineffective assistance of counsel, and potential court manipulation.
2. **Expedite Proceedings:** The lower court should prioritize the hearing and determination of the motion to dismiss, given the urgency of the matter.
3. **Appoint Effective Counsel:** The lower court should appoint an attorney who is willing and able to represent Ms. Lynch effectively and who is not beholden to the court or the prosecution.
4. **Recusal of Judge Madrigal III:** Judge Madrigal III should be recused from the case due to his apparent bias and his failure to recuse himself despite clear grounds for doing so, as required by Florida and U.S. case law.

## **Conclusion**

Justice requires that Kelli Lynch have the opportunity to have her motion to dismiss heard before her sentencing. This Court's intervention is necessary to prevent irreparable harm, to uphold the principles of due process, to address the serious allegations of court manipulation, and to ensure that Ms. Lynch has access to effective legal representation.

WHEREFORE, for the reasons set forth above and in the interest of justice, the Petitioner respectfully requests that this Honorable Court grant the motion sought in this Emergency Motion to Remand with Instructions.

**Rusty Miller**

**Petitioner**

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## **CERTIFICATE OF SERVICE AND COMPLIANCE**

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion has been furnished via electronic mail to all parties listed below on this Sep 24, 2024. Honorable Judge Diego Madrigal III, [12orange@ninthcircuit.org](mailto:12orange@ninthcircuit.org); State Attorney Richard Walsh, [division12@sao9.org](mailto:division12@sao9.org); Allen Holland, [allenholland@bellsouth.net](mailto:allenholland@bellsouth.net); Jonathan Mills, [floridalaw2009@gmail.com](mailto:floridalaw2009@gmail.com); Amanda Kazzi, [amanda@kazzilaw.com](mailto:amanda@kazzilaw.com); Gary Schwartz, [gschwartz@rc5state.com](mailto:gschwartz@rc5state.com), on this 6th day of September, 2024.

**Rusty Miller**

**Co-Petitioner in Writ of Mandamus**

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**Basis for Rusty Miller Filing on Behalf of Kelli Lynch**

- **Co-Petitioner Status:** Rusty Miller and Kelli Lynch were co-petitioners in the underlying case and the attached Writ of Mandamus, pursuant to Fla. R. App. P. 9.360(b), suggesting a shared interest and legal standing in the matter.
- **Kelli Lynch's Incarceration:** Kelli Lynch's current incarceration prevents her from physically signing and filing this motion.
- **Rule 9.420(a)(2), Fla. R. App. P.:** This rule allows for certain presumptions regarding the filing date of documents filed by incarcerated individuals. We request that the Court presume timely filing based on the Certificate of Service.

**IN THE NINTH JUDICIAL CIRCUIT  
OF FLORIDA, ORANGE COUNTY**

**STATE OF FLORIDA,**

**v.**

**Case No. 48-2022-CF-00688 AO**

**KELLI LYNCH,  
RUSTY MILLER,**

**MOTION TO DISMISS**

**Pursuant to Florida Rules of Criminal Procedure 3.190(c), the defendant, Kelli Renee Lynch, respectfully moves this Court to dismiss the charges against her.**

**Grounds for Dismissal**

**Judicial Misconduct:**

**1. Ex Parte Communications with the Prosecution:**

- **Violation of Due Process:** Judge Diego Madrigal III's ex parte communications with the state attorney regarding the re-filing of the drug trafficking charge, conducted in a manner incomprehensible to Ms. Lynch, constitute a clear violation of due process. [This aligns with the principles established in \*Alcorn v. State\*, where judicial actions undermining the defendant's understanding and participation in legal proceedings were scrutinized<sup>1</sup>.](#)

**2. Suppression of Exculpatory Evidence:**

- **Brady Violation:** The court's failure to consider Ms. Lynch's valid prescription, which could have negated the drug trafficking charge, potentially violates the due process standards set forth in **Brady v. Maryland**. [This case mandates the disclosure of exculpatory evidence by the prosecution<sup>2</sup>. Additionally, this suppression could be seen as a violation of due process as outlined in \*Giglio v. United States\*<sup>2</sup>.](#)

**3. Prejudicial Statements Against the Defendant and Her Associate:**

- **Creation of a Biased Environment:** Judge Madrigal's prejudicial statements against Ms. Lynch and her associate, Rusty Miller, may have fostered a biased environment, adversely affecting Ms. Lynch's

case. [This mirrors concerns in Anderson v. State, where judicial comments and actions were evaluated for their impact on the fairness of the trial](#)<sup>3</sup>.

- Furthermore, falsely accusing Miller of crimes and disclosing his personal information constitutes a severe breach of constitutional rights.

#### 4. Attempts to Coerce a Plea Deal:

- **Coercion and Manipulation:** The court's actions, including threats of harsher sentences and manipulation of legal procedures, may have coerced Ms. Lynch into accepting a plea deal. [This is reminiscent of the issues addressed in Alcorn v. State, where the court examined the implications of judicial and prosecutorial conduct on plea decisions](#)<sup>1</sup>.

#### 5. Interference with the Defendant's Right to Counsel:

- **Sixth Amendment Violation:** Judge Madrigal's interference with Ms. Lynch's ability to choose and effectively communicate with her attorneys potentially violates her Sixth Amendment rights. [This is consistent with the reasoning in Alcorn v. State, which underscores the importance of effective legal representation during critical stages of the criminal process](#)<sup>1</sup>.

#### 6. Violation of the Defendant's Right to a Fair Trial:

- **Cumulative Effect of Judicial Actions:** The cumulative effect of Judge Madrigal's actions may have created a biased environment, preventing Ms. Lynch from receiving a fair trial. [This aligns with the principles discussed in Anderson v. State, where the fairness of the trial was evaluated based on the totality of judicial conduct](#)<sup>3</sup>.

### Prosecutorial Misconduct:

#### 1. Suppression of Exculpatory Evidence:

- **Brady Violation:** The failure to consider Ms. Lynch's valid prescription constitutes a potential **Brady v. Maryland** violation. [This case mandates the disclosure of exculpatory evidence by the prosecution](#)<sup>2</sup>.

#### 2. Using Invalid Charges as Leverage in Plea Negotiations:

- **Coercive Tactics:** Re-filing the drug trafficking charge after obtaining knowledge of the exculpatory evidence could be seen as using invalid charges as leverage in plea negotiations. [This practice is problematic as it may coerce defendants into accepting plea deals under duress, which is contrary to the principles outlined in United States v. Jackson](#)<sup>4</sup>.

#### 3. Potential Vindictive Prosecution:

- **Vindictiveness:** The prosecution's actions in re-filing the charge despite having knowledge of the exculpatory evidence may suggest vindictiveness. In **Fischer v. Debrincat**, the court addressed the issue of malicious prosecution, emphasizing that actions taken with malice or without probable cause can constitute prosecutorial misconduct. Similarly, vindictive prosecution undermines the fairness of the judicial process and violates the defendant's rights.

### Ineffective Assistance of Counsel:

### 1. Deficient Performance by Counsel:

- **Failure to Address Serious Issues:** The defendant, Ms. Lynch, has been unable to obtain effective legal representation due to her appointed attorneys' failure to address the serious issues in her case. [This aligns with the principles established in \*Alcorn v. State\*, where the court held that counsel's performance is deficient if it falls below an objective standard of reasonableness and fails to address critical aspects of the defense<sup>1</sup>.](#)

### 2. Potential Collusion with the Court:

- **Conflict of Interest:** The potential collusion between Ms. Lynch's attorneys and the court further exacerbates the deficiency in representation. [In \*Strickland v. Washington\*, the court emphasized that conflicts of interest and collusion can severely undermine the effectiveness of counsel, thereby violating the defendant's Sixth Amendment rights<sup>5</sup>.](#)

### 3. Prejudice Resulting from Counsel's Performance:

- **Establishing Prejudice:** To establish ineffective assistance of counsel, the defendant must demonstrate that the counsel's deficient performance prejudiced her defense. This requires showing that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. [This standard was articulated in \*Strickland v. Washington\* and further applied in \*Alcorn v. State\*<sup>15</sup>.](#)

### 4. Impact on Fair Trial:

- **Undermining Confidence in the Outcome:** The attorneys' failure to address the underlying issues and their potential collusion with the court have prejudiced Ms. Lynch's case, undermining confidence in the outcome of the trial. [This mirrors the reasoning in \*Bell v. State\*, where the court held that ineffective assistance of counsel claims must demonstrate that the deficient performance affected the fairness and reliability of the proceeding<sup>6</sup>.](#)

### Conclusion

The defendant respectfully requests that this Court dismiss the charges against her due to the egregious misconduct of the court, the prosecution, and her appointed attorneys. The defendant's constitutional rights have been violated, and she is unable to obtain a fair trial under these circumstances.

**Additionally, the defendant respectfully requests that Judge Diego Madrigal III be recused from this case due to his apparent bias and his failure to recuse himself despite clear grounds for doing so.**

Judge Madrigal's actions have demonstrated a clear conflict of interest and a lack of impartiality, as evidenced by the ex parte communications, suppression of evidence, and prejudicial statements. These actions have created a biased environment that has prejudiced Ms. Lynch's rights.

The defendant believes that a new judge is necessary to ensure a fair and impartial trial.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion

has been furnished via electronic mail to all parties listed below on this Sep 24, 2024. Honorable Judge Diego Madrigal III, 12orange@ninthcircuit.org; State Attorney Richard Walsh, division12@sao9.org; Allen Holland, allenholland@bellsouth.net; Jonathan Mills, floridalaw2009@gmail.com; Amanda Kazzi, amanda@kazzilaw.com; Gary Schwartz, gschwartz@rc5state.com, on this 6th day of September, 2024.

**Rusty Miller**

**Co-Petitioner in Writ of Mandamus**

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