

Supreme Court of Florida

Case No. SC2024-1179

RUSTY MILLER, et al.,
Petitioner(s),

v.

STATE OF FLORIDA,
Respondent(s).

TRANSCRIPT OF PROCEEDINGS

Date: October 4, 2023 Part 2

Type of Hearing: Sentencing

State of Florida v. Kelli Lynch

Case #: 482022CF000688000AOX (Orange County)

Original Hearing Location: Orange County Courthouse

6C 425 N. Orange Avenue, Orlando, Florida 32801

Presiding Judge: HONORABLE DIEGO MADRIGAL III

Appearances:

For the State: RICHARD WALSH,

For the Defense: JONATHAN MILLS,

Defendant: KELLI LYNCH

Ninth Judicial Circuit: 482022CF000688000AOX

6th DCA: 6D2024-1378

1 **COURT REPORTER:** State of Florida versus Kelly Lynch.

2 2022 068880.

3 **MR. WALSH:** Richard Walsh for the State of Florida.

4 **COURT REPORTER:** Defense.

5 **COURT REPORTER:** Please raise your right hand to be
6 sworn. Do you solemnly swear or affirm the testimony
7 you shall give shall be the truth, the whole truth, and
8 nothing but the truth?

9 **THE DEFENDANT:** I do.

10 **THE COURT:** All right, so we are here for sentencing on
11 this case. Miss Lynch previously entered a plea on June
12 23rd of this year. Miss Lynch, prior to your arrival,
13 your attorney informed me that you may have had a
14 change of heart.

15 **THE DEFENDANT:** Yes.

16 **THE COURT:** Okay, so you no longer wish to plea. I mean,
17 you already pled. So-- your, um-- just a reminder of

1 what is at stake here. I believe the state was going to
2 nol. pros. one of the counts. Is that correct?

3 **MR. WALSH:** That is correct, Your Honor. The plea was to
4 a lesser included offense of count one, going from a
5 five year mandatory minimum to a three year mandatory
6 minimum. The state was then going to nol. pros. count
7 two, which carries a separate three year minimum
8 mandatory as part of the plea, or--

9 **THE DEFENDANT:** On concurrent or run consecutive.

10 **MR. WALSH:** Well that would-- we're nol. pros. it.

11 **THE COURT:** Oh nolle pros. Okay. I'm sorry.

12 **MR. WALSH:** Nolle pross. Count two. SO THAT'S THE
13 BENEFIT. And then she'd be pleading to count three and
14 four, which do not carry any minimum mandatory. Okay.

15 **THE COURT:** And then was the, uh so was it a three year
16 total sentence? Is that what was the--

1 **MR. WALSH:** Three-- yes. That was that would be what
2 she-- Well that-- It was an open court. But that's what
3 the state would be asking for would be the three years.
4 Uh, the scoresheet itself comes in at about 14.5
5 months. If you were to take out the mandatory
6 sentences.

7 **THE COURT:** Okay. The-- um, I just want to fully inform
8 you of what your-- uh-- I just want to fully inform
9 you, I suppose. Really, what I want to do. What you
10 score is not necessarily what I have to, um, impose.
11 You understand that what you face is, uh, two F1's. So
12 each of those, punishable by up to 30 years is what I
13 have on the information. Um, an F2, which is 15 years
14 and an F3. So that's 60-70. That's 80 years is what I
15 could impose on your case. Okay. I will tell you. And I
16 don't want you to feel pressured anyway. I just want to
17 inform you, uh, what the state is offering you is three
18 years. I could go up to 80. I cannot prejudge your
19 case. If you were to go to trial, you could be found
20 not guilty. You could be found not guilty, and you

1 don't get any punishment. Uh, if you're found guilty,
2 uh, I have no choice but to impose the minimum
3 mandatory if it's proven up. Um, but I'm not limited to
4 the minimum mandatory. I could do the 80 years if I
5 wanted to. I don't know what I'm going to hear. Uh, I
6 will tell you that one of the things that, uh, irks me
7 are victim cases. When somebody has been victimized,
8 when just innocent members of the public are
9 victimized, that's something I take into account and
10 put a great deal of weight into when imposing sentence.
11 Um, you can ask people in the courtroom of what it's
12 like, uh, when I impose sentence, uh, that I will hear
13 everything out. So I don't want you. I'm not saying I'm
14 going to give you 80 years. I don't want you to think
15 that at all. Um, in fact, I think it's probably
16 unlikely that I would give you anything close to that,
17 but I. I found the state attorney to be far kinder than
18 I am. Generally. Far kinder. So, um, if you'd like to
19 withdraw your plea, you can do so. You have a good
20 lawyer. He can file a motion. Um.

1 **MR. WALSH:** I'd like to be heard on that. I don't think
2 she just has the right to withdraw her claim.

3 **THE COURT:** I said he could file a motion.

4 **MR. WALSH:** Right. So we're here sentencing no motion
5 has been filed. The there's no grounds have been
6 indicated that are compelling. The rules specifically
7 require certain standards.

8 **THE COURT:** There's no rules at all. There's no reason
9 at all right now. For what you're saying.

10 **MR. WALSH:** But the rules require certain standards in
11 order to set aside a plea, none of which have been
12 complied with. The state wants to proceed with
13 sentencing.

14 **THE COURT:** Okay.

15 **MR. WALSH:** There certainly has been no indication that
16 something has arisen over the last few hours, other
17 than it being judgment time--

1 **THE COURT:** Mr. Walsh, let me ask you a question. Isn't
2 it true that somebody can withdraw their plea after
3 your sentence as well?

4 **MR. WALSH:** Yes, but there's a different set of
5 standards.

6 **THE COURT:** No, no, I just want to make sure I know the
7 answer to that question. I wanted to make sure.

8 **MR. WALSH:** Sure. But the issue isn't whether she can
9 file a motion. The issue is she has not filed a motion.
10 Therefore, the court, of course, can exercise its
11 discretion and postpone sentencing to a later date to
12 give her that opportunity, I can't argue.

13 **THE COURT:** Let me ask you this question. If we were to
14 impose sentence today, is the state going to nol. pros.
15 and seek the lesser included or.

16 **MR. WALSH:** Yes. If she's going to be sentenced today,
17 the state has a has an agreement and I would honor that
18 agreement--

1 **THE COURT:** She later on can withdraw her plea.

2 **MR. WALSH:** Oh-- she later on withdraws her plea. And if
3 that's allowed and the sentence is set aside, the plea
4 negotiations have been set aside. We could refile the
5 original.--

6 **THE COURT:** You would file an amended information at
7 that point and refile it.

8 **MR. WALSH:** We can refile the original. So-- so I mean,
9 she doesn't get the benefit of getting the reduced
10 charge and then seeing what happens. It's not a double
11 jeopardy issue. So yes we would be able to do that.

12 **THE COURT:** See I know I just want to make sure--
13 (Laughs)

14 **THE COURT:** Sure.

15 **MR. WALSH:** I understand there's a certain benefit to
16 being discussed out loud-- at this stage. And so that's
17 what I'm trying to do, as I think the court is, I also

1 have no illusions in Mr. Mills is not aware of what
2 we're saying.

3 **THE COURT:** Mr. Mills knows. Mr. Mills knows. And, uh.
4 Uh, Miss Lynch, do you understand what we're saying?

5 **THE DEFENDANT:** I do, um, I also understand that, like,
6 I wasn't I really didn't understand what I was signing
7 when I signed it. Um, I didn't have a chance to go over
8 it with my lawyer. Um,

9 **THE COURT:** You didn't know what it was?

10 **THE DEFENDANT:** What I was signing and everybody, you
11 know, I mean,

12 **THE COURT:** I wanted to play the audio for you of, uh,
13 when you signed it, I have it. I can pull it up.

14 **THE DEFENDANT:** I understand that.

15 **THE COURT:** You said you knew what you were signing.

16 **THE DEFENDANT:** I--

1 **THE COURT:** You Said you read it. You said you went over
2 it.

3 **THE DEFENDANT:** --was very nervous and I thought [was
4 going to get a reduction].

5 **THE COURT:** I'll play it for you.

6 **THE DEFENDANT:** I thought that my [lawyer told me it
7 would not be what i would get].

8 **THE COURT:** I'll play it for you. Don't worry.

9 **THE COURT:** It's why have have these.

10 **MR. MILLS:** I said that--

11 **THE COURT:** I know, I know because. You got some people
12 in the back who are shaking their heads. They weren't
13 even here. I don't think so. Play for everybody-- I'll
14 play it for everybody-- it's okay-- it solves a
15 problem-- I'm a problem solver-- It's like, uh, Vanilla
16 Ice-- You got a problem, I'll solve it.

17 **MR. WALSH:** (Whispers) Don't feel obligated.

1 **THE COURT:** What day was that, please?

2 **MR. WALSH:** June 23rd.

3 **THE COURT:** Anyway, Mr. Mills, what do you want to do?

4 **MR. MILLS:** I'm sorry, Your Honor--

5 **THE COURT:** Uh, what do you want to do?

6 **MR. MILLS:** Um. Judge, I would like to, um, set this
7 off, even if only for a couple of days, so that I could
8 speak with Miss Lynch a little bit. Um, I'm a little
9 concerned about her representation-- that to the court--
10 - that I did not-- um, essentially go over the plea
11 form with her, and she didn't understand it. I'm a
12 little concerned that that may create a conflict.

13 **THE COURT:** Um, I'm about to solve that problem. What
14 day was the plea?

15 (Recording played)

1 **THE COURT:** For some reason, nothing was recorded on
2 that tape, just a continuous recording. Do you guys
3 remember about what time that plea was?

4 **MR. WALSH:** I wouldn't know, I don't mark the times
5 down.

6 **THE COURT:** Let's see. The court minutes were done at.
7 Oh, it doesn't say a time on the court minutes. Do you
8 remember what time it was that Miss Lynch?

9 **THE DEFENDANT:** Um, miss, in the morning. Um, I mean,
10 I'm remember what I said. So I want to say 9 a.m..

11 **THE COURT:** It was according to my docket. It's on a
12 Friday. It says 8:30 in our computer system.

13 (Recording played)

14 **THE COURT:** I happen to have found it.

15 (Recording continued)

16 **THE COURT:** Before we go further, I just want to tell
17 you something. So a lot of it's really easy for people

1 to tell you to do something. Shake their head, say no,
2 make faces during this. They're not the ones who have
3 to go in front of a jury of their peers and potentially
4 face 80 years in prison. Real easy for people to give
5 you advice.

6 **THE DEFENDANT:** I understand that they're not.

7 **THE DEFENDANT:** The ones who have to serve the time.

8 (Recording continued)

9 **THE COURT:** We need to keep going?

10 (Recording continued)

11 **THE COURT:** You seem to indicate that you read
12 everything that you understood, everything that you
13 went over with your attorney, that he answered all your
14 questions and that you were satisfied with the
15 services, that nobody forced you into your plea. Nobody
16 promised you anything for your plea, that you're doing
17 it freely and voluntarily. I am concerned that as we
18 speak here right now, you are taking advice from

1 somebody who is not authorized to practice law in the
2 state of Florida. Who's telling you this is a bad idea?
3 I'm telling you, that's a bad idea. That's a bad idea.
4 Um, do you need time to talk to your lawyer?

5 **THE DEFENDANT:** Um. Yes.

6 **THE COURT:** Okay. So I'm going to start another hearing
7 and take about an hour, maybe a little less. Do you
8 have somewhere to be?

9 **MR. WALSH:** Uh.

10 **THE COURT:** I hate to make you stay.

11 **MR. WALSH:** Well, I would I would rather come back if
12 you tell me what time to be back, and I'll be back.

13 **THE COURT:** Um, how long is your. Or--

14 **MR. WALSH:** Do you want to just counsel here to text me
15 or email me.

1 **THE COURT:** Because I got pleas after their thing.
2 Anyway, after their case I got some pleas so you'll
3 have time to come back over.

4 **MR. MILLS:** Okay?

5 **THE COURT:** Okay.

6 **MR. WALSH:** So we're looking at about noon. Noon?

7 **THE COURT:** Around noon. Well before noon, obviously.
8 Well before noon. Okay. Thank you.

9 --End of Hearing--