

FLORIDA SIXTH DISTRICT COURT OF APPEALS

CASE NO. 6D2024-1378

KELLI LYNCH, DEFENDANT,
RUSTY MILLER,

PETITIONER(S),

V.

STATE OF FLORIDA,

RESPONDENT(S).

PETITIONER'S NOTICE OF FUNDAMENTAL CONSTITUTIONAL ISSUES
AND REQUEST FOR PRESERVATION OF APPELLATE RIGHTS

LOWER TRIBUNAL CASE NO: 482022CF000688000AOX

FLORIDA SUPREME COURT CASE # SC2024-1179

COMES NOW Co-Petitioner RUSTY MILLER, proceeding pro se, and pursuant to Florida Rules of Appellate Procedure 9.300(a), respectfully moves this Honorable Court to protect Kelli Lynch's appellate rights and stay proceedings pending resolution and conclusion of Florida Supreme Court Case No. SC2024-1179, stating:

NOTICE TO THE COURT

As of tomorrow, October 25, 2024, 30 days have passed since Ms. Lynch's sentencing. This timeline underscores the urgent need for immediate action.

Ms. Lynch's ability to communicate with the outside world is severely restricted. She has been sentenced to a Christian organization that controls nearly all aspects of her interactions. According to the organization's director, Ms. Lynch is prohibited from communicating with anyone other than her two younger daughters. This restriction was imposed by Judge Madrigal. Furthermore, any court documents must be sent directly from the Judge to Ms. Lynch.

The director of the Christian organization has stated that she maintains regular contact with Judge Madrigal's office and is aware of the ongoing issues in this case. While I cannot independently verify her claims regarding Judge Madrigal's involvement in any obstruction, she has indicated that these procedures are standard practice for cases she receives from the court. She has also stated that she has been working with the courts, rather than the Department of Corrections, for over two decades.

NOTICE OF RELATED SUPREME COURT PROCEEDING

Florida Supreme Court Case No. SC2024-1179 presents unprecedented constitutional questions regarding judicial authority that directly impact the validity of the proceedings and sentence in State v. Lynch, Case No. 48-2022-CF-00688 in the Ninth Judicial Circuit. The Supreme Court petition challenges actions by Judge Madrigal that, if allowed to stand, would establish the following precedents:

JUDICIAL POWER TO CRIMINALLY ACCUSE WITHOUT PROCESS

Authority to accuse citizens of crimes from the bench without evidence, fabricate false allegations in an official proceeding of any individual party or not a party to the case before the court. By doing so, creating fraudulent court records. By making criminal accusations against non-parties, and dispensing with the requirement for notice to the accused citizen.

Judge Madrigal demonstrated this by accusing Miller of crimes without notifying him, and these accusations were disputed by the state attorney in the same hearing. Madrigal made these accusations at least on an additional three hearings spanning over six months.

CONSTITUTIONAL VIOLATIONS AND DUE PROCESS

Such actions are in direct violation of the Due Process Clause of the Fourteenth Amendment, which protects individuals from arbitrary and capricious government actions. As established in *In re Winship*¹, the Due

¹ *re Winship*, 397 U.S. 358 (1970)

Process Clause requires proof beyond a reasonable doubt for a criminal conviction.

Furthermore, the principle of *In re Murchison*², prohibits one person from serving as both an accuser and an adjudicator. Judge Madrigal's actions effectively placed him in both roles, undermining the fairness of the proceedings.

SUFFICIENCY OF EVIDENCE AND FUNDAMENTAL ERROR

The Due Process Clause also protects against conviction except upon proof beyond a reasonable doubt. As discussed in *State v. DCA No. 2D00-5373*³, the sufficiency of evidence in a criminal case must be evaluated to ensure that it supports the conviction.

UNILATERAL SEARCH AUTHORITY

Judge Madrigal's actions also raise concerns about his exercise of unilateral search authority. By conducting searches without probable cause or warrant, he may have violated the Fourth Amendment's protection against unreasonable searches and seizures.

Public Disclosure of Private Information

Additionally, Judge Madrigal's disclosure of private and sealed information may have violated constitutional protections against unreasonable searches and seizures, as well as privacy rights.

Impact on Current Proceedings

² *re Murchison*, 349 U.S. 133 (1955)

³ *State v. DCA No. 2D00-5373* (2000),

These constitutional issues directly impact Ms. Lynch's case because:

The challenged judicial conduct occurred during her criminal proceedings.

Her current sentence stems from proceedings tainted by these constitutional violations⁴⁵⁶.

The Public Defender's Office has failed to initiate appellate proceedings despite clear indications of Ms. Lynch's desire to appeal, court appointment for appeal purposes, and fundamental constitutional violations requiring review.⁷

The resolution of Miller v. State of Florida will necessarily affect the validity of⁸:

The underlying criminal appeal proceedings of State of Florida v. Kelli Lynch Case# 2022-CF-00688.

However the case has clear merit for an appeal based on the following:

a) **Inconsistent Verdict:** The verdict forms show a fundamental inconsistency that directly contradicts the Florida Supreme Court's jury instructions.

While the jury found Ms. Lynch guilty of "**Fraudulent Use of Personal Identification Information**" on one form, the special finding on the other form indicates that the defendant "**did not USE**

⁴ Count 1 Verdict Form (State of Florida v. Kelli Lynch Case# 2022-CF-00688)

⁵ Count 1 Special Finding [verdict] (State of Florida v. Kelli Lynch Case# 2022-CF-00688)

⁶ Sentence (State of Florida v. Kelli Lynch Case# 2022-CF-00688)

⁷ Email to Public Defender's office requesting update to prevent this notice. October 2, 2024

⁸ Rusty Miller v. State of Florida (SC2024-1179)

but POSSESSED WITH INTENT TO USE the personal identification information of another person."

Misapplication of Statute and Jury Instructions: This inconsistency directly relates to the misapplication of Florida Statute

a) 817.568 and the Supreme Court's jury instructions.

The guilty verdict appears to be based on fraudulent use 817.568(2)(c).

b) While the special finding aligns with possession with intent to use 817.568(2)(a).

c) The Supreme Court's instructions in 20.13 clearly distinguish between these two offenses, stating:

"To prove the crime of **[Fraudulent Use of] [Possession with Intent to Fraudulently Use]** Personal Identification Information, the State must prove the following two elements beyond a reasonable doubt:

1. **(Defendant) willfully and without authorization** *[fraudulently used] [possessed with intent to fraudulently use]* personal identification information concerning (victim)."

2. **Fundamental Error:** This inconsistency goes beyond a simple error and constitutes fundamental error because:

a) It demonstrates that the jury was confused about the elements of the crime as outlined in the Supreme Court's instructions.

b) It shows that the jury instructions and verdict form failed to properly distinguish between the "use" and "intent to use" elements, contrary to the Supreme Court's guidance.

c) It resulted in a **logically inconsistent verdict that cannot stand under Florida law.**

3. **Violation of Due Process:** The inconsistent verdict violates Ms. Lynch's due process rights by convicting her of "use" when the jury specifically found she did not "use" but only possessed with intent to use. This directly contradicts the Supreme Court's instruction that these are distinct offenses.
4. **Prejudice to the Defendant:** This error is highly prejudicial to Ms. Lynch because it resulted in a conviction for a more serious offense (use) when the jury's findings only support the lesser offense (possession with intent to use). The Supreme Court's instructions clearly delineate these as separate offenses with different elements.
5. **Impossibility of Unanimous Verdict:** Given the inconsistency between the general verdict and the special finding, it's clear that the jury could not have reached a unanimous verdict on all elements of the offense as required by the Supreme Court's instructions.
6. **Failure of Court and Counsel:** The acceptance of this inconsistent verdict demonstrates a failure by both the court and counsel to ensure that the jury instructions and verdict forms accurately reflected the law as outlined by the Florida Supreme Court.

THE VERDICT

1. CHARGING STRUCTURE ISSUES:

- **Charged under 817.568 with two potential value thresholds**
 - A. **First Degree (\$50,000+)**

B. Third Degree (\$5,000-\$50,000)

• SPECIAL FINDINGS REQUIRED JURY TO DETERMINE:

A. Whether amount was \$50,000+

If no, whether amount was \$5,000-\$50,000

B. Whether she **"used"** or **"possessed with intent to use"**

2. DOUBLE JEOPARDY IMPLICATIONS:

• Cannot be convicted of both:

- **Using AND possessing with intent to use (mutually exclusive)**
- **First degree AND third degree** of same crime
- **Multiple degrees of same offense for same conduct**

3. SENTENCING DISCREPANCY:

• Judge sentenced to:

- **7 year Suspended split sentence** (Count 3 Grand Theft)
- **5 years probation** (Count1- 817.568(2)(c) First Degree)
 - ***The 7 Years is Suspended after successful completion of the Christian Program for 2 years. Which runs concurrent with her Probation.***

• However:

- Unclear which degree of offense this sentence applies to as on the Sentencing Guideline it shows 817.568(2)(a), However on

the Department of Corrections website it is listed as 817.568(2)(c).

- No specification of which conduct (use vs. possession)
- Could implicate multiple punishment prohibition

4. STATUTORY CONFLICTS:

- **817.568 subsections create separate offenses:**
 - **(2)(a) - Third degree felony**
 - **(2)(b) - Second degree felony**
 - **(2)(c) - First degree felony**
- Cannot be simultaneously guilty of multiple subsections for same conduct

5. VERDICT FORM PROBLEMS:

- **Required mutually exclusive findings:**
 - **Use vs. possession with intent**
 - Different value thresholds
 - Different degrees of offense

This structure creates fundamental double jeopardy issues regardless of the verdict, as it allows for potential multiple punishments for the same conduct under different subsections of the same statute.

This error is so fundamental that it undermines the entire verdict and cannot be considered harmless. It violates Ms. Lynch's due process rights and her right to a unanimous jury verdict. The trial court's failure to properly

instruct the jury and use clear verdict forms as outlined by the Supreme Court has resulted in a conviction that cannot stand under Florida law.

The Public Defender's office is not advocating for Ms. Lynch's rights even the error is clear, it is obvious, and it is all on the court record which can be brought up on First Appeal, which today is the last day of such an appeal.

SUPPORTED BY FLORIDA CASE LAW

I. CHARGING STRUCTURE PROBLEMS

A. Duplicitous Charging

- ***State v. Weaver, 957 So. 2d 586 (Fla. 2007)***
 - "A single count that charges two or more separate crimes is duplicitous"
 - "A conviction on a duplicitous count cannot stand because it is impossible to determine which crime the jury found the defendant guilty of committing"
- ***Dell'Orfano v. State, 616 So. 2d 33 (Fla. 1993)***
 - Prohibits charging multiple distinct offenses in single count
 - Requires separate counts for separate offenses

B. RECORD INCONSISTENCY

- ***Crain v. State, 894 So. 2d 59 (Fla. 2004)***
 - Written judgment must conform to oral pronouncement
 - Discrepancy between record and sentence creates fundamental error

- **Williams v. State, 957 So. 2d 600 (Fla. 2007)**
 - Record must accurately reflect crime of conviction
 - Cannot have uncertainty about degree of offense

II. DOUBLE JEOPARDY IMPLICATIONS

A. MULTIPLE PUNISHMENTS

- **Gordon v. State, 780 So. 2d 17 (Fla. 2001)**
 - Prohibits multiple punishments for same conduct
 - Cannot be convicted of greater and lesser included offenses
- **Valdes v. State, 3 So. 3d 1067 (Fla. 2009)**
 - Single criminal episode cannot support multiple convictions under same statute
 - Must elect single statutory subsection

B. VERDICT FORM ISSUES

- **State v. Dorsett, 158 So. 3d 557 (Fla. 2015)**
 - Verdict form must allow clear determination of specific offense
 - Cannot combine multiple degrees in single count
- **Perkins v. State, 576 So. 2d 1310 (Fla. 1991)**
 - Jury must be unanimous on specific criminal act
 - Cannot combine different theories in single count

III. LEGAL IMPOSSIBILITY

A. ELEMENTS VS. RECORD

- ***State v. Hancock, 529 So. 2d 1200 (Fla. 1988)***
 - State must prove every element of charged offense
 - Record must support degree of conviction
- ***Thompson v. State, 887 So. 2d 1260 (Fla. 2004)***
 - Cannot sustain conviction without proof of all elements
 - Value threshold is essential element

B. SENTENCING INCONSISTENCY

- ***Ashley v. State, 850 So. 2d 1265 (Fla. 2003)***
 - Sentence must conform to statute for convicted offense
 - Cannot impose lesser sentence for greater offense without legal basis
- ***Bryant v. State, 901 So. 2d 810 (Fla. 2005)***
 - Sentence must match statutory degree of offense
 - Record must support punishment imposed

IV. CONSTITUTIONAL VIOLATIONS

A. DUE PROCESS

- ***State v. Gray, 435 So. 2d 816 (Fla. 1983)***
 - Defendant entitled to notice of specific charges

- Cannot combine different degrees in single count
- ***Benjamin v. State, 874 So. 2d 1179 (Fla. 2004)***
 - Must have clarity in charging document
 - Cannot create confusion about nature of charge

B. RIGHT TO UNANIMOUS VERDICT

- ***State v. Barcelo, 700 So. 2d 655 (Fla. 1997)***
 - Jury must be unanimous on specific criminal act
 - Cannot combine different theories in single count
- ***Bottoson v. State, 443 So. 2d 962 (Fla. 1983)***
 - Jury must agree on same criminal act
 - Cannot have uncertainty about basis for conviction

V. LEGAL EFFECT

Given these precedents, the Lynch conviction appears problematic because:

1. **The record shows conviction under 817.568(2)(c) but:**
 - Jury instructions allowed finding of lesser degree
 - Sentence imposed reflects lesser offense
 - Creates inherent inconsistency prohibited by Crain
2. **The charging structure violated:**
 - Weaver's prohibition on duplicitous charging

- Dell'Orfano's requirement for separate counts
- Gray's notice requirements

3. The verdict form created:

- Unanimity problems under Barcelo
- Multiple punishment issues under Gordon
- Element proof issues under Thompson

4. The sentence creates:

- Record inconsistency under Williams
- Statutory compliance issues under Ashley
- Due process concerns under Benjamin

Florida courts have consistently held that such fundamental defects in charging, verdict forms, and judgments create reversible error and may render convictions void.

SYSTEMIC COVER-UP AND ADMINISTRATIVE OBSTRUCTION

The fact that Judge Madrigal has received no redress for his actions and that the administrative obstruction in this case is being viewed by the public only strengthens the argument that there is a systemic cover-up occurring

at the Ninth Judicial Circuit. This includes the involvement of court-appointed attorneys and the Public Defender's Office, suggesting that the obstruction may be systemic at every level of justice in this local jurisdiction.

OVERSIGHT IS A MUST

To repair the obvious systemic issues plaguing the circuit, serious oversight by a Special Prosecutor or by the Department of Justice is necessary. Despite the harm by multiple constitutional violations that have already occurred in this case, continuing to obstruct further constitutional rights in this case is unacceptable. Especially when they are being called out the authorities either in real time or shortly after, yet nothing has been done to correct these issues.

URGENT ACTION REQUIRED

The Public Defender's Office is hereby placed on notice that their actions in this case are under intense scrutiny. Any further obstruction of justice or failure to protect Ms. Lynch's appellate rights will be reported to the appropriate authorities.

CONCLUSION

For the reasons stated above, this Court must take immediate action to **stay proceedings and toll the 30-day window**. Ms. Lynch deserves to

know that at least once in this 3-year saga that she has an attorney that will look out for her best interest. Something not obtained thus far. The appeal must reflect all of the facts that occurred in this case. To begin redress for the grave constitutional violations and systemic issues in this case. The continued infringement of Ms. Lynch's rights and the potential for further harm necessitate swift intervention.

Respectfully submitted

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 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 , Kelli Lynch, debbie@womensrefugeofsotjo.com, Attorney General, CrimAppTPA@myfloridalegal.com, on this 24th day of October, 2024.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail to Chief Judge Lisa Taylor Munyon, 425 N Orange Ave, Orlando, FL 32801, on this 24th day of October, 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.
- **However No Relief** is being immediately requested but rather noticing that no attempt by the Public Defender's office has filed an appeal in this case, which suggests further erosion of constitutional rights, and Systemic Issues that support the approval of the Writ of

Mandamus in case #SC2024-1179.

- **THE COURT HAS WIDE AUTHORITY** when it comes to protecting constitutional rights as we expect this court to do so.