

**STATE OF MICHIGAN
IN THE COURT OF APPEALS**

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

KATHERINE LINDSEY HENRY,
Defendant-Appellant.

Court of Appeals No. ___ - _____
Circuit Court No. 21-64004-AR
Lower Court No. 20-3569-SM

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KATHERINE L. HENRY (P71954)
Defendant In Pro Per-Appellant
[REDACTED], MI 49426
(redacted per MCR 1.109)

**MOTION FOR IMMEDIATE CONSIDERATION
OF APPELLANT’S APPLICATION FOR LEAVE
TO APPEAL BASED ON LACK OF SUBJECT MATTER JURISDICTION**

Defendant-Appellant, Katherine L. Henry (P71954), in pro per, moves for immediate consideration under MCR 7.211(C)(6) and MCR 7.205(F):

1. Henry is charged with Trespassing on property open to the general public under MCL 750.552.
2. Henry filed a motion to dismiss the complaint, which the trial court denied.
3. The court held at Henry’s motion to dismiss hearing that the accused in a criminal case is *never* allowed to raise potentially dispositive legal issues, and that their only due process comes in the form of a jury trial. The trial court ruled that the accused may *never*: file a motion to dismiss on the basis the prosecutor failed to sufficiently state a violation of law, because the complaint should be dismissed as a matter of law, or because the court lacks subject matter jurisdiction over the case. This ruling is clearly inaccurate.
4. Henry filed an interlocutory application for leave to appeal from the trial court’s legally incorrect ruling, which the circuit court denied on 4/6/21.
5. Henry also filed an appeal in the circuit court on several *procedural* due process violations on 4/7/21. These violations include the trial court’s denial of: Henry’s assistance of counsel at the 2/4/21 motion hearing, her right to *public* hearings (at the arraignment, 2/4/21 motion hearing, 4/8/21 motion hearing, and upcoming 4/23/21 settlement conference, and 4/28/21 jury trial), her right to reasonable requests for disability accommodations (at the 2/4/21 motion hearing, 2/9/21 pretrial conference, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, 4/23/21 settlement conference, and 4/28/21 jury trial), her right to in-person hearings (at the 2/9/21 pretrial conference, 4/8/21 motion hearing, and upcoming 4/22/21 motion hearing, 4/23/21

settlement conference, and 4/28/21 jury trial), her right to redact her personal identifying information per MCR 1.109, her right to mandatory discovery under MCR 6.610(E) and 6.201, and more.

6. Henry's trial is scheduled for 4/28/21, with the settlement conference scheduled for 4/23/21.
7. The trial court lacks subject matter jurisdiction over the underlying charges because Henry is charged with trespassing on government property *open to the general public*, which is blatantly unconstitutional and is not, nor can it ever be, a crime. *Food Employees v Logan Valley Plaza*, 391 US 308, 321 (1968); *Brown v Louisiana*, 383 US 131, 141 (1966).
8. Undisputed facts also show Henry was only on the property in her capacity as an attorney, and thus, a public official (M Crim JI 22.19; MCL 600.901), which deprived the court of jurisdiction over this misdemeanor trespass charge under MCL 600.1825(3).
9. Henry was charged with Trespass because she allegedly violated a local parking regulation by parking on township property for work related to circulating a constitutional amendment petition. See, *Prosecutor's Response*, App 159, 162. Engaging in that very petition work is protected core political speech, *Meyer v Grant*, 486 US 414, 421-22 (1988), that divests subject matter jurisdiction through US Am I; Const 1963, art I, §§ 3, 5; Const 1963, art XII, § 2; and MCL 750.543z.
10. Also, a district court also has *no* subject matter jurisdiction to enforce township *resolutions*, but rather only township *ordinances* and charters. MCL 42.20; MCL 41.183; MCL 761.1(c); MCL 761.1(o)(i); MCL 600.8311; Michigan Judicial Institute (MJ), *District Court Magistrate Manual - Revised Edition* (2021) at 1-21; see also, p 33-34 of Application for Leave.
11. Furthermore, charging someone with a *crime*, with possible jail time and a criminal record, for a *singular* alleged parking violation is express, conflict, and field preempted by several portions of the Michigan Vehicle Code, Control of Traffic in Parking Areas act, and the Uniform Traffic Code, including, but not limited to, MCL 257.672-.675d; MCL 257.951(1); MCL 257.942; MCL 257.605; MCL 257.606; and MCL 257.943, which completely voids all subject matter jurisdiction for such charges.
12. Also, charging Henry with a *crime*, with possible jail time and a criminal record, for a *singular* alleged parking violation, which is clearly a civil infraction at most under the aforementioned laws, and increases to vehicle impoundment or immobilization *after 6 unanswered* parking tickets, inexplicably violates Henry's 8th Amendment protections against cruel and unusual punishment. Moreover, even *if* this were an enforceable parking regulation, a "violation" would only provide the court subject matter jurisdiction over Henry's *car*, not her *person*. However, criminal trespass clearly only exists when a *person* intentionally remains on property of another without legal authority after someone with legal authority to remove them has told them to leave. Thus, the court has no subject matter jurisdiction in this case.
13. Being unconstitutionally vague and overbroad, with no *compelling* state interest, and being implemented in a way that is *not narrowly tailored* to the interest, the resolution was *not* able to provide the township clerk authority to remove Henry from the township's *public* parking lot, thus the court has no subject matter jurisdiction over the ensuing charges.

14. The resolution also attempts to specifically regulate use of township property outside the polls on *Election Day*, and as such, is express, conflict, and field preempted by the Michigan Constitution and Michigan *Election Law*, and is therefore, unable to provide the clerk with authority to remove Henry from the property, thus divesting the court of subject matter jurisdiction over charges based on the same.
15. If the reviewing court doesn't act now, Henry will be unable to present a *complete* defense (an opportunity *guaranteed* by the Constitution¹), as she is being precluded by the trial court from raising any *legal* defenses she has to the charge, including lack of subject matter jurisdiction. Further, unless this Court decides Henry's interlocutory appeal before the trial date, Henry will be irreparably harmed by going to trial on unsupported charges.
16. A "judgment of conviction pronounced by a court without jurisdiction is void" and a "judge of the United States . . . should be alert to examine the facts for himself when if true as alleged they make the trial absolutely void." *Johnson v Zerbst*, 304 US 458, 468 (1938).
17. And no matter how you look at it, "the state never had the power to proceed against her in the first place,"² so the "very initiation of the proceedings against [Henry] thus operated to deny [her] due process of law." *Blackledge v Perry*, 417 US 21, 30-31 (1974).
18. Indeed, it is the court's duty to recognize when it has no authority to proceed.³ But since the trial court fails to acknowledge its lack of subject matter jurisdiction here, with it being the judiciary's duty to enter permanent injunctive relief for these due process violations, *this court* must act now.⁴
19. In fact, when government officials violate the Constitution, it "does not permit judges to look the other way; [rather, they] must call foul when the constitutional lines are crossed."⁵
20. Henry must not be forced "to endure the personal strain, public embarrassment, and expense of a criminal trial"⁶ when the "practical result" of a successful challenge to subject matter jurisdiction "is to prevent a trial from taking place at all, rather than to prescribe procedural rules that govern the conduct of a trial."⁷
21. Henry can certainly raise subject matter jurisdiction at any time, but surely before an unjust trial, otherwise, "the injury itself would have already been sustained." *Torres* at 71. The "embarrassment, expense, and ordeal of living in a continued state of anxiety created by the [] trial" cannot be erased afterward on appeal, so she can only avoid these substantial harms to her personal life, legal work, and political efforts "by seeking an immediate appeal." *Id.*

¹ *Holmes v South Carolina*, 547 US 319, 324 (2006), citing *Crane v Kentucky*, 476 US 683, 690 (1986);

People v Unger, 749 NW 2d 272, 300 (Mich App 2008), citing *People v Kurr*, 253 Mich App 317, 326 (2002).

² *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976).

³ MJ1, *Criminal Proceedings Benchbook*, Vol 1, Rev Ed, § 2.2; quoting *People v Clement*, 254 Mich App 387, 394 (2002); *Johnson* at 442.

⁴ *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).

⁵ *In re Certified Questions*, __ Mich __, __ (2020) (Docket No. 161492), slip op at 41 (citations omitted).

⁶ *People v Torres*, 452 Mich 43, 61 (1996), quoting *Abney v US*, 431 US 651, 661 (1977).

⁷ *Johnson* at 442; *Blackledge v Perry*, 417 US 21, 30 (1974).

22. Working on these appeals literally every single day, all day long, since February 5th, Henry could not possibly have finished writing these substantive *and* procedural due process appeals any earlier.
23. These appeals took since February 5th to draft based on the multitude of reasons the trial court lacks subject matter jurisdiction, and the unbelievable manner in which it ruled those accused of misdemeanors may *never* raise any potentially dispositive pretrial legal issues.
24. Furthermore, the trial court's actions continue to violate Henry's constitutional and statutory rights, leaving Henry fighting an uphill battle just to receive fair and open access to the court. Thus, the trial court's egregious lack of adherence to constitutionally required procedures has led to a multifaceted appeal, the likes of which Henry never thought she'd ever have to assemble.
25. So now that the jury trial date is fast approaching, and the trial court denied Henry's motion to stay proceedings pending appeal on April 6th, this court must consider Henry's instant Application for Leave to Appeal on an immediate basis.
26. Indeed, Henry would suffer irreparable harm if she was forced to endure a criminal trial where the court has no subject matter jurisdiction, especially since "it is the *duty of courts* to see that the constitutional rights of the defendant in a criminal case shall not be violated."⁸

Henry requests that this Court look past the alleged *prohibiting parking* argument, recognizing this case for the *Constitutional Catastrophe* it is, and, therefore, grant her motion for immediate consideration and grant Henry's interlocutory application for leave to appeal on or before the date of the settlement conference (4/23/21), ordering the trial court to dismiss the case with prejudice. In the alternative, she requests an order staying the proceedings under MCR 7.209(A)(2) while both *substantive* and *procedural* due process appeals are pending in the court of appeals and circuit court, respectively. Per MCR 7.209(A)(3), the trial court's order denying Henry's request for stay pending appeal is included in Appellant's Appendix, App 216. The same court rule also requires a copy of the trial court's opinion and a copy of the transcript of the hearing on the motion to be included herein, but the trial court issued no opinion on the matter, and the order was issued without a hearing, two days prior to the date set for the hearing, so there is no transcript.

Respectfully Submitted: April 9, 2021

/s/ Katherine L. Henry
Katherine L. Henry (P71954)
Defendant In Pro Per

⁸ *People v Murray*, 89 Mich 276, 285 (1891) (emphasis added), citing *Hill v People*, 16 Mich 351, 357 (1868).