

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

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

KATHERINE LINDSEY HENRY,
Defendant-Appellant.

_____/

MYRENE KAY KOCH (P62570)
Attorney for Plaintiff-Appellee
113 Chestnut Street, Allegan, MI 49010
269-673-0280
prosecutor@allegancounty.org

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

**APPELLANT’S MCR 7.205(G)(1) STATEMENT
RESPONDING TO CIRCUIT COURT’S FINDING
THAT APPELLANT FILED APPEAL LATE**

Defendant-Appellant, Katherine L. Henry (P71954), in pro per, makes this statement pursuant to MCR 7.205(G)(1):

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 on 2/5/21.
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. There was *no* opinion issued by the circuit court, rather just a one-sentence order stating “Appellant’s Application for Leave to Appeal is DENIED due to lack of compliance with MCR 7.105(A).
5. MCR 7.105(A) states an appeal of this nature must be filed within “21 days” and the 21 days was up 2/26/21. However, the rule also allows appeals within “the time allowed by statute after entry of the judgment, order, or decision appealed.” MCL 600.308 provides jurisdiction to the court of appeals for an “interlocutory order from the circuit court . . . as determined by supreme court rule,” and substantive due process may be raised at any time under MCR 2.116(C)(4).

Henry's instant application to appeal is based on the substantive due process issue of the trial court's lack of subject matter jurisdiction.

6. The township's *Election Day* resolution is also preempted by Michigan Election Law, and purporting to regulate parking it is preempted by the Michigan Vehicle Code, Control of Traffic in Parking Areas act and the Uniform Traffic Code. It's illegal to enforce mere resolutions, to prosecute Henry for conduct presumptively protected by the first amendment, or to arrest Henry while serving as an attorney (a public officer). So, the court has no subject matter jurisdiction over such actions. Moreover, the court has no subject matter jurisdiction over a trespass charge on property open to the public, because there is no such crime. In the alleged parking violations, the court has no subject matter jurisdiction over Henry's person, but only her car; and since there is no criminal trespass by parking, the court lacks subject matter jurisdiction over the charge. So, for many reasons, "the charge is brought under an inapplicable statute," and the court lacks subject matter jurisdiction.¹
7. So, while the typical appeal period is the 21 days noted in MCR 7.105(A), "[d]efects in subject-matter jurisdiction cannot be waived and may be raised *at any time*." *People v Erwin*, 212 Mich App 55, 64 (1995) (emphasis added); *People v Richards*, 205 Mich App 438, 444 (1994). Further, "the court is [even] required to recognize that it lacks subject matter jurisdiction, 'regardless of whether the parties raised the issue.'"²
8. 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." *People v Torres*, 452 Mich 43, 61, 71 (1996). The "embarrassment, expense, and ordeal of living in a continued state of anxiety created by the [] trial" can't 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.*
9. Indeed, "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). And no matter how you look at it, "the state never had the power to proceed against her in the first place."³
10. Further, Henry must not be forced "to endure the personal strain, public embarrassment, and expense of a criminal trial"⁴ 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."⁵
11. Henry's trial is scheduled for 4/28/21, and she has the right to raise the issue of subject matter jurisdiction at any time, even *after* the trial, so certainly by raising the issue *before* trial, Henry

¹ *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976), *Blackledge v Perry*, 417 US 21 (1974), *People v Parney*, 74 Mich App 173 (1977).

² MJI, *Criminal Proceedings Benchbook*, Vol 1, Rev Ed, § 2.2; quoting *People v Clement*, 254 Mich App 387, 394 (2002); *Johnson* at 442; *Erwin* at 64.

³ *People v Beckner*, 92 Mich App 166, 169 (1979), citing *People v Johnson*, 396 Mich 424, 439-444 (1976).

⁴ *Torres* at 61, quoting *Abney v US*, 431 US 651, 661 (1977).

⁵ *Johnson* at 442; *Blackledge v Perry*, 417 US 21, 30 (1974).

is within the required timeframe for this appeal.

12. The trial court denied Henry's motion to dismiss by an order dated February 5th. Last week, Henry submitted a substantive due process appeal based on the court's lack of subject matter jurisdiction in this case that took from February 5th to March 31st to draft, based on the multitude of reasons the trial court lacks subject matter jurisdiction, and the unbelievable manner in which it ruled that the accused in misdemeanors may *never* raise any potentially dispositive pretrial legal issues.
13. The legal research and writing for *all* of these substantive and procedural due process issues has taken Henry literally every single day since February 5th - seven days a week, on average 20 hours each day. Henry's husband has also been working every day to assist with the research and writing of these appeals, and their family has suffered significantly. Henry does not have paid staff, ICLE, WestLaw, LexisNexis, or other similar services, as she does all her work for the people of Michigan on a donation basis, receiving no hourly or flat fees for such services, and that has also added significant time to the completion of these appeals.
14. 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.
15. Indeed, 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. (Videos of these court hearings can be provided, should this court find them helpful in determination of this case.)
16. 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. 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, the court of appeals must consider Henry's instant Application for Leave to Appeal on an immediate basis.

So, in other words, Henry was not limited to the typical 21-day time period for this subject matter jurisdiction appeal. Also, the sheer magnitude of the legal issues raised by the ongoing actions of the deputies, prosecuting attorneys, and trial court provide more than ample good cause for why this

appeal was filed 33 days after the typical appeal deadline.

Respectfully Submitted: April 9, 2021

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

RECEIVED by MCOA 4/9/2021 3:06:41 AM