

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

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

Court of Appeals No. 357134
Circuit Court No. 21-64029-AR
Lower Court No. 20-3569-SM

KATHERINE LINDSEY HENRY,
Defendant-Appellant.

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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
OF *PROCEDURAL* DUE PROCESS VIOLATIONS**

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

1. On 11/3/20, Henry was charged with Trespassing on property open to the general public under MCL 750.552, the arrest and prosecution for which has no legal basis and violates several state statutes and constitutional provisions.
2. Henry, therefore, filed a motion to dismiss the complaint, which the trial court denied. Henry filed an interlocutory application for leave to appeal the trial court’s legally incorrect ruling, which was denied by the circuit court on 4/6/21. Henry appealed those *substantive* due process violations to the Court of Appeals on 4/9/21, and this court denied the application as nonurgent on 5/3/21.
3. In addition to the trial court’s complete lack of subject matter jurisdiction that creates the grounds for the *substantive* due process appeal, the trial court and prosecutor’s actions during each stage of this case also continually violate several distinct *procedural* due process protections for Henry. This includes the manner in which the 5 court proceedings in district court have been handled. Thus, Henry also now seeks leave to appeal several *procedural* due process violations, all of them being interlocutory in nature.
4. Henry’s trial was scheduled for 4/28/21, with the settlement conference scheduled for 4/23/21. On 4/23/21, the court issued another Notice to Appear for a 7/16/21 Settlement Conference and 7/21/21 Jury Trial by Zoom, in violation of various Michigan Supreme Court Administrative

Orders, Michigan Court Rules, state law, and the US and Michigan Constitutions.

5. Unless this Court decides this interlocutory appeal before that date, Henry will be irreparably harmed by being forced to have all of her court appearances, including the jury trial, by Zoom, which violates her right to a public trial, her right to confrontation, her right to be physically present with the jury, and her right to reasonable disability accommodations.
6. At the 2/4/21 motion hearing, Henry was completely denied the assistance of counsel, and reasonable requests for disability accommodation. She was denied the opportunity to lip read during that hearing, as the judge and prosecuting attorney had masks on the entire time, and the judge remained behind a thick plexiglass wall. The trial court claimed to offer Henry a hearing assisted device, but did not tell her what kind of device it was, nor did he show it to her. Furthermore, when Henry told the judge that hearing devices do not adequately compensate for her hearing disability, he just ignored her, saying he was “making a reasonable accommodation.” The circuit court affirmed, effectively ruling that *individual* determinations regarding disability accommodations no longer need to be made, contrary to state and federal law and Michigan Supreme Court directives.
7. As a result of that determination by the trial court, Henry did not hear much of what was said by the judge and prosecuting attorney in the hearing. At one point, Henry said at the motion hearing “I couldn’t actually hear the words the prosecuting attorney was saying.” Tr Mtn Hrg February 4, 2021, App 47. Additionally, at the 2/9/21 Pretrial Conference, the court refused to honor the prior-approved disability accommodations for Henry that were indicated on the Notice to Appear (and Register of Actions). Despite Henry’s repeated pleas to the district court for reasonable disability accommodations, the court has blatantly ignored those requests into the 4/8/21 and 4/22/21 motion hearings and in the manner it has the settlement conference and jury trial scheduled to take place. The court makes these denials without even acknowledging Henry’s requests for reasonable disability accommodations in any *written* order, let alone with explanations for the denials, as required by state and federal law and Michigan Supreme Court directives.
8. At the 2/4/21 motion hearing, Henry was denied a public hearing. Members of the public, her husband, and her attorney were all blocked from entering the courtroom by the deputy, upon the judge’s orders. The register of actions, which wasn’t shared with Henry until *after* the hearing, actually states that no one will be let into the hearing besides Henry. This violates Henry’s constitutional and statutory (MCL 600.1420) rights to public hearings.
9. The media was also kept out of the 2/4/21 hearing, and was not allowed to tap into the court’s video feed, either. Media filled out a request for a copy of the DVD of the hearing, under First Amendment freedom of the press, but when the judge approved the copy of the DVD, he granted it with a gag order, so the media cannot share it with anyone.
10. The trial judge also granted Henry’s request for a copy of the DVD with unreasonable restrictions, emphasizing that she will be found in contempt of court if she shares the DVD of the hearing with anyone. This is despite Henry’s request clearly stating she wanted the DVD to prepare for her defense, but also to use it to educate the people about what happened in the hearing, explaining the process for the thousands of people who follow Henry’s videos on YouTube, Facebook and other social media.

11. The trial court also denied Henry's request to redact her personal identifying information (PII), pursuant to MCR 1.109. The longer her personal identifying information is available to the public, the more her privacy is destroyed, and the greater the risk she has for her identity to be stolen.
12. The trial court also denied Henry an in-person motion hearing on her Motion to Compel Discovery, only allowing her to participate by Zoom. Especially with the construction happening in the court during the zoom hearing, and the judge refusing to show his face on camera during the two April motion hearings, this procedure denied Henry reasonable disability accommodations, as well as a hearing open to the public.
13. Henry was denied the assistance of counsel at the 2/4/21 motion hearing, and this denial now operates as a jurisdictional bar to the case continuing against Henry.¹ Moreover, 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).
14. Henry must not be forced "to endure the personal strain, public embarrassment, and expense of a criminal trial"² when the "practical result" of a successful challenge to this lack of jurisdiction "is to prevent a trial from taking place at all, rather than to prescribe procedural rules that govern the conduct of a trial."³ This personal strain, public embarrassment, expense of criminal proceedings has spanned more than 6 months already, with an additional 2.5 months now scheduled.
15. Further, Henry's family is relocating to Florida, and these proceedings (and the court's bond order) inhibit this move for Henry. Her sister, brother in law, niece and nephews already moved there this Spring. Henry and her husband have been planning their May/June 2021 move to Florida (now that their three older kids, as of this month, are out of high school) for several years now. Not only is this the best time for them to sell their home here, but the Florida weather greatly alleviate the symptoms Henry experiences daily with her arthritis and degenerative disc disease, which get unbearably painful at times.
16. Henry can raise this lack of jurisdiction at any time, and 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" 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.*
17. Indeed, 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."⁴
18. The trial court denied Henry's motion to dismiss by order on 2/5/21. On 3/31/21, Henry submitted a *substantive* due process appeal based on the court's lack of subject matter jurisdiction in this case that took from 2/5/21 through 3/31/21 to draft.

¹ *People v Carpentier*, 446 Mich 19, 28 (1994).

² *People v Torres*, 452 Mich 43, 61 (1996), quoting *Abney v US*, 431 US 651, 661 (1977).

³ *Johnson* at 442; *Blackledge v Perry*, 417 US 21, 30 (1974).

⁴ *In re Certified Questions*, __ Mich __, __ (2020) (Docket No. 161492), slip op at 41 (citations omitted).

19. 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.
20. The legal research and writing for *all* of these substantive and procedural due process issues has taken Henry literally an average of 20 hours each day, every single day from 2/5/21 through 4/26/21 - seven days a week, with a little less hours on the days since. 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 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.
21. Working on these issues literally every single day, since February 5th, Henry could not possibly have finished writing the appeals any earlier. The trial court denied Henry's motion to stay proceedings pending appeal on 4/6/21. The court then sua sponte delayed the trial date by 3 months due to COVID despite already delaying her arraignment by 2 months and her motion to dismiss hearing for 1 additional month after that.
22. Each of these *procedural* due process issues raised on appeal herein are raised timely, as the court has a continuing obligation to hold hearings publicly and with reasonable disability accommodations. Further, the denial of the public hearings, the denial of counsel, and the denial of in person hearings are structural errors that *require* reversal, even if not appealed until *after* the trial.
23. Moreover, the denial of counsel operates as a jurisdictional bar to this case continuing against Henry, *Carpentier* at 28, and it's **the court's duty** to recognize when it has no authority to proceed. The trial court fails to acknowledge its lack of jurisdiction here, so, as *it's the court's duty to enter permanent injunctive relief for these due process violations, this court must act now*.⁵
24. Moreover, this lack of jurisdiction may be raised at any time, and cannot be waived. Indeed, Henry would suffer irreparable harm if she was forced to endure a criminal trial where the court has no jurisdiction, especially since the court has such a duty to enter permanent injunctive relief against this constitutional violation. *MI Coalition* at 219.
25. Also, because Henry requested the court's order denying PII redaction to be issued in a *written* order, but the court has refused thus far to put the denial in a written order, the 21 day appeal period has not yet begun on this issue. However, with the sensitive nature of the information involved, Henry is not precluded from seeking appellate relief on this issue while waiting for the trial court to issue a written order that may never come.

⁵ *MI Coalition of State Empl Unions v Civil Serv Com'n*, 465 Mich 212, 219 (2001).

26. If the reviewing court doesn't act now, Henry will remain unable to present a complete defense (an opportunity *guaranteed* by the Constitution⁶), as she will continue being cut off from communication during the proceedings, and denied access to any discovery.
27. So far, Henry has been prohibited from assembling / presenting a full defense. In addition to being denied the ability to raise her *legal* defenses (lack of subject matter jurisdiction, etc.), and the ability to participate fully in the proceedings (denied her assistance of counsel and reasonable disability accommodations, etc.), she is also being denied the ability to assemble / present a full *factual* defense. The complaint is legally deficient in describing the alleged illegal actions, the prosecutor's pleadings have failed to even allege, let alone support, a material dispute of fact, and the prosecutor fails to provide discovery as required by court order and the recently updated Michigan Court Rules.
28. For many involved (deputies, prosecuting attorneys, judges, etc.), statements have been made to the effect of it being just another case, another day of just doing their job. Well, this is *not* just another "case" or just typical work that must be done. This is Henry's *life*, her *wellbeing*, her *livelihood*, and her *physical health*. The protections provided by the Constitution do *not* allow this to happen to Henry, nor anyone else. This egregious behavior *must be stopped now*.

Therefore, Henry requests this Court to grant her motion for immediate consideration and issue its ruling on this *procedural* interlocutory application for leave to appeal on or before the last day of May 2021. If this court is going to view this situation as non-emergent as it did with the substantive due process issues raised in Henry's earlier appeal, then she needs enough time to get the application for leave in front of the Michigan Supreme Court before any further trial court proceedings take place, and before her rights to resume a normal life and move with her family (as planned) are trampled any further. In the alternative, she requests an order staying the proceedings under MCR 7.209 while both *substantive* and *procedural* due process appeals are pending in the Court of Appeals and Michigan Supreme Court.

Respectfully Submitted: May 12, 2021

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

⁶ *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).