State of New York
Court of Appeals

To be argued Tuesday, September 8, 2020 (arguments begin at 2 pm)

No. 48 People v Edward Hardy

On January 25, 2015, Edward Hardy was arrested on charges of second-degree contempt and harassment based on allegations that he entered the home of his estranged wife in Queens "and began to yell and curse" at her in violation of a "stay away" order of protection that was to expire on September 9, 2015. In the misdemeanor complaint, the arresting officer said the incident occurred on "October 25, 2015." The officer dated the complaint "January 25, 2014."

At a plea proceeding in Criminal Court five days later, on January 30, 2015, defense counsel objected that the complaint was deficient because it alleged the crime occurred on "October 25, 2015," a date that was yet to occur and would come after the order of protection expired. The court said, "Well, that's clearly a typographical error which the People can move to amend at any time." The prosecutor moved to amend the date of occurrence to "January 25, 2015." The court granted the motion "since it's a matter as to date, time or place." At the same proceeding, Hardy waived his right to be prosecuted by information and pled guilty to second-degree criminal contempt in return for a sentence of 90 days in jail.

The Appellate Term for the 2nd, 11th & 13th Judicial Districts affirmed, finding the amended date was authorized under People v Easton (307 NY 336 [1954]). In Easton, the Court of Appeals upheld an order allowing a prosecutor to amend the date of a drunk driving incident alleged in an information from 1953 to 1952, saying that to "sustain the reversal of the conviction and hold impermissible an amendment made solely to correct an obvious typographical error in the information – a date not yet come – would be to exalt form over substance, to enthrone technicality purely for its own sake." Although Easton was decided before the Criminal Procedure Law was enacted, the Appellate Term held that, "notwithstanding the fact that CPL 100.45 does not authorize factual amendments of informations and complaints, the common-law rule of Easton still governs, and, thus, courts retain the inherent authority to permit factual amendments to these types of instruments pursuant to the guidelines set forth in Easton." It further found that amending the incident date from "October" to "January" in this case was permissible under Easton "since it caused 'no surprise or prejudice' ... but, rather, was designed to correct what was clearly a typographical error of which defendant should have been aware."

Hardy argues, "Because the plain language of [CPL 100.45] and the legislative history demonstrate the Legislature's intent to preclude factual amendment of informations and misdemeanor complaints, the prosecutor's amendment of the incident date here was impermissible and the accusatory instrument was facially insufficient." He says Easton "is no longer good law;" and "allowing unverified factual amendments to informations and misdemeanor complaints would defeat the purpose of the verification and reasonable cause requirements of the Criminal Procedure Law."

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For respondent: Queens Assistant District Attorney Edward D. Saslaw (718) 286-5882

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To be argued Tuesday, September 8, 2020 (arguments begin at 2 pm)

No. 49 Matter of Marian T. (Lauren R.)

Marian T., a woman with profound intellectual disabilities and extremely limited verbal ability, was 61 years old and had been living for 12 years in a licensed family care home in Worcester, Otsego County, when the married couple that operate the home, Lauren M. and Gregg H. (petitioners), commenced this proceeding to adopt her in 2015. Marian had no known living relatives. Surrogate's Court appointed Mental Hygiene Legal Service (MHLS) to represent Marian and ordered a psychological evaluation to determine her capacity to consent to the adoption. Two psychologists agreed her mental disabilities were profound and she was largely nonverbal, but they split on whether she understood what it meant to be adopted and had the capacity to consent. The court also appointed a guardian ad litem for Marian, who concluded the adoption was in her best interests and should be approved.

A key issue in the proceeding was whether Marian's consent was required by Domestic Relations Law § 111(1)(a), which provides that "consent to adoption shall be required ... [o]f the adoptive child, if over fourteen years of age, unless the judge or surrogate in his discretion dispenses with such consent." The petitioners argued that, because Marian was over the age of 14 and the adoption was in her best interests, the court could dispense with the need for her consent. MHLS argued the statute requires an adult's consent to be adopted and that, because Marian lacked the capacity to understand the consequences of adoption, she could not consent.

Surrogate's Court granted the adoption petition, finding it was "clearly" in Marian's best interests. "The court finds [petitioners] are absolutely sincere in their affection for Marian and their desire to care for her as a member of their family," it said, and the adoption would provide "stability and structure in her living arrangements." As for consent, it said "in light of the similarities between this situation and adult guardianship proceedings, the court finds that Marian's Guardian ad Litem had the implied authority to consent to the adoption on her behalf."

The Appellate Division, Third Department affirmed "for different reasons," saying the surrogate erred in finding the guardian had implied authority to consent. Based on the language of section 111(1)(a), it said, "because [Marian] is over the age of 14, the court had express statutory authority to dispense with her consent. This conclusion is well-grounded in sound statutory construction and avoids categorically prohibiting adoptions of those who are over the age of 14 but are incapable of giving consent, including an entire class of adoptees who are so severely disabled that they simply lack the ability to communicate such consent." In view of the surrogate's "thorough best interests analysis," Marian's "consent was properly dispensed with."

MHLS argues that, based on its legislative history, the statute "was meant to apply only to child adoptees between 14 and 17" and was "intended to give court's discretionary authority to dispense with the child adoptee's consent only in the limited circumstance where knowledge that the proposed adoptive parents are not the child's natural parents would harm the child." It argues the Appellate Division "failed to strictly construe" the statute and both lower courts erred "by failing to treat the question of consent as a threshold consideration before moving on to determine whether adoption is in [Marian's] best interests."

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For respondents Lauren R. et al (petitioners): Douglas A. Eldridge, Delmar (518) 475-0393