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COURT OF APPEALS

STATE OF NEW YORK

MATTER OF GABRIELA A.,

Appellant.

No. 41

20 Eagle Street
Albany, New York 12207
February 13, 2014

Before:

CHIEF JUDGE JONATHAN LIPPMAN
ASSOCIATE JUDGE VICTORIA A. GRAFFEO
ASSOCIATE JUDGE SUSAN PHILLIPS READ
ASSOCIATE JUDGE ROBERT S. SMITH
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM

Appearances:

LINDA M. TRENTACOSTE, ESQ.
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Attorneys for Appellant
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Penina Wolicki
Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 41.

2 Counselor, you're aware that your advers -
3 - - I'm sorry. Go ahead. Maybe someone could - - -
4 There's some water spilled.

5 Counselor you're aware that your adversary
6 is submitting?

7 MS. TRENTACOSTE: Yes. Yes.

8 CHIEF JUDGE LIPPMAN: Okay. Go ahead,
9 proceed, counselor.

10 MS. TRENTACOSTE: Yes, Your Honor. May it
11 please the court, my name is Linda Trentacoste,
12 Associate County Attorney, on behalf of the
13 appellant, Westchester County Presentment Agency.

14 Before this honorable court is the issue of
15 the interpretation of and interplay between the PIN -
16 - - PINS behavior and juvenile delinquency behavior,
17 as set forth in the family court - - -

18 CHIEF JUDGE LIPPMAN: When does PINS
19 behavior roll over into JD behavior?

20 MS. TRENTACOSTE: When the child commits
21 and act which, if committed by an adult, constitutes
22 a crime, that's where the distinction lies. And
23 that's why the child, in the case, crossed that line.
24 There was - - - it is unquestionable that if an adult
25 had done what this child had done in the directly

1 confrontational, physical behavior with these
2 officers, that that would have constituted the crime
3 of obstruction of governmental administration - - -

4 JUDGE GRAFFEO: So - - - so where have the
5 Appellate Divisions gone wrong? Because they have
6 claimed these fall within the typical behavior of
7 PINS adolescents as opposed to actual juvenile
8 delinquency behavior.

9 MS. TRENTACOSTE: I think - - - I think the
10 problem comes in - - - in the focus on - - -
11 exclusively on the Appellate Division of the fact
12 that this child, as a PINS is deemed to be
13 incorrigible, ungovernable, and habitually
14 disobedient, beyond the lawful control of a parent or
15 - - -

16 JUDGE GRAFFEO: Well, that is - - -

17 MS. TRENTACOSTE: - - - person who is
18 responsible.

19 JUDGE GRAFFEO: - - - the definition of
20 PINS.

21 MS. TRENTACOSTE: Absolutely.

22 JUDGE GRAFFEO: So that's some of the - - -

23 MS. TRENTACOSTE: Absolutely.

24 JUDGE GRAFFEO: - - - characteristics that
25 these adolescents are going to have.

1 MS. TRENTACOSTE: And I think the normal
2 bootstrapping cases, which is what my adversary would
3 have argued against me, is the difference between
4 those situations and this is that those acts that
5 they're talking about for bootstrapping are not acts
6 which if committed by an adult will constitute a
7 crime. They're talking about acts of not obeying
8 curfew, of leaving - - -

9 CHIEF JUDGE LIPPMAN: Any crime? What's
10 the - - - what's the test?

11 MS. TRENTACOSTE: I'm sorry?

12 CHIEF JUDGE LIPPMAN: Any crime that would
13 have been an - - - a crime as an adult is enough?

14 MS. TRENTACOSTE: Well, I believe - - - I
15 believe that is the distinction we're trying to make
16 here, Your Honor, that once - - -

17 JUDGE SMITH: Are you - - -

18 MS. TRENTACOSTE: - - - it crosses - - -

19 JUDGE SMITH: - - - are you - - - you're
20 not quest - - - as I understand it, you don't
21 question the cases that say you can't bring a
22 juvenile delinquency proceeding against a PINS kid
23 who left a - - - who left a detention facility
24 against a court order. You can't - - -

25 MS. TRENTACOSTE: Right. Those are - - -

1 JUDGE SMITH: You can't return - - -

2 MS. TRENTACOSTE: - - - the contempt cases
3 that the family courts - - -

4 JUDGE SMITH: They're cont - - -

5 MS. TRENTACOSTE: - - - were - - -

6 JUDGE SMITH: - - - basically, they're
7 contempt and escape cases. Right?

8 MS. TRENTACOSTE: Exactly, Your Honor.

9 JUDGE SMITH: You say - - - you say the
10 bootstrapping doctrine is limited to contempt and
11 escape cases.

12 MS. TRENTACOSTE: And this case goes beyond
13 that, Your Honor.

14 JUDGE SMITH: We've never - - - we've never
15 accepted it even in those cases. It's strictly an
16 Appellate Division - - - yeah.

17 Do you - - - do you say we sh - - - do you
18 have a position as to whether we should or shouldn't
19 accept the bootstrapping doctrine at all?

20 MS. TRENTACOSTE: I think there are
21 concerns with us - - - with respect to that. This
22 one, though, clearly drew the line, which is why we
23 actually moved for leave to appeal to the Court of
24 Appeals on this one.

25 JUDGE ABDUS-SALAAM: What was the behavior,

1 exactly, that you say clearly drew the line?

2 MS. TRENTACOSTE: Well - - -

3 JUDGE ABDUS-SALAAM: Was it the handcuffing

4 - - -

5 MS. TRENTACOSTE: - - - in this partic - -

6 -

7 JUDGE ABDUS-SALAAM: Yes.

8 MS. TRENTACOSTE: - - - in this particular
9 case it was because it was directly confrontational
10 behavior with the peace officers.

11 Now, understandably, you know - - -

12 JUDGE ABDUS-SALAAM: If - - - if the - - -
13 if she had not had an open handcuff and just re - - -
14 you know, not wanted to be handcuffed - - - if there
15 wasn't an open handcuff involved, would you still say
16 that this was a crime?

17 MS. TRENTACOSTE: Well, then I think you're
18 going more along the lines of what - - - what they're
19 saying about the bootstrapping cases. I mean, how
20 far is it for you to be obstructing a governmental
21 author - - -

22 JUDGE ABDUS-SALAAM: Right.

23 MS. TRENTACOSTE: - - - administrator. To
24 some extent, if you disobey the order of a - - - of a
25 peace officer, a correction officer, a court officer,

1 they're telling you not to do something, and you
2 continue to do something, there are consequences with
3 that - - - with respect to an adult.

4 CHIEF JUDGE LIPPMAN: But is it - - - but
5 Judge Abdus-Salaam is asking, is that the key piece
6 that - - - is that the thread here, that you had the
7 open cuff that could be - - -

8 MS. TRENTACOSTE: Well, I - - -

9 CHIEF JUDGE LIPPMAN: - - - dangerous or a
10 threat to some kind of public safety?

11 MS. TRENTACOSTE: I think - - -

12 CHIEF JUDGE LIPPMAN: Is that the test? Is
13 it public safety?

14 MS. TRENTACOSTE: I think - - -

15 CHIEF JUDGE LIPPMAN: A threat to public
16 safety?

17 MS. TRENTACOSTE: I think it was more the
18 public safety, and the fact that these are peace
19 officers. It was clearly crossing the line. There
20 was a confrontation.

21 CHIEF JUDGE LIPPMAN: Yeah, but - - -

22 MS. TRENTACOSTE: Even if she hadn't
23 grabbed the open cuff, she was physically flailing
24 her arms and trying to prevent - - -

25 CHIEF JUDGE LIPPMAN: But there are

1 differences in testimony as to what she was doing and
2 not doing, right?

3 MS. TRENTACOSTE: No, actually, there was
4 agreement as to what she was doing. There was
5 absolutely no dispute - - -

6 CHIEF JUDGE LIPPMAN: On her part?

7 MS. TRENTACOSTE: - - - that she - - - on
8 her part as well. She absolutely admitted to - - -

9 CHIEF JUDGE LIPPMAN: What do you say the
10 agreement is as to what she was doing?

11 MS. TRENTACOSTE: That she had grabbed the
12 cuff. That she had - - - she had physically tried to
13 prevent the officers from - - - from - - -

14 JUDGE SMITH: There was - - -

15 MS. TRENTACOSTE: - - - bringing her back.

16 JUDGE SMITH: - - - there were some
17 differences in the details, weren't there. I mean,
18 she said she didn't stomp anybody?

19 MS. TRENTACOSTE: On the feet. Yes, that's
20 true. She said - - - she claimed she didn't stomp
21 anybody on the feet.

22 CHIEF JUDGE LIPPMAN: But she - - -

23 JUDGE RIVERA: Right. I'm sorry. Can you
24 clarify what you claim there's no disagreement on
25 with respect to her hand movement and the cuff?

1 MS. TRENTACOSTE: That is true. That one
2 of her cuffs - - - one of her hands had been cuffed.
3 She had been moving her arms about.

4 CHIEF JUDGE LIPPMAN: But she's a child.
5 What would you expect her to do?

6 MS. TRENTACOSTE: But that's not - - -
7 here, it's not - - - we're trying not to punish the
8 child. Both Articles 3 and Article 7 are merely - -
9 -

10 CHIEF JUDGE LIPPMAN: But if you're trying
11 not to punish, wouldn't it be better to let her go
12 through the PINS system?

13 MS. TRENTACOSTE: I don't think it's a
14 question of whether or not it's better to - - -

15 CHIEF JUDGE LIPPMAN: The question is, why
16 not? Why is this so important that this kid be
17 treated as a JD rather than a PINS, where all of this
18 emanates from basically PINS-type conduct?

19 MS. TRENTACOSTE: But - - -

20 CHIEF JUDGE LIPPMAN: What - - -

21 MS. TRENTACOSTE: But it's also - - -

22 CHIEF JUDGE LIPPMAN: - - - so what is it
23 that distinguishes - - - that she's crossed the line?

24 MS. TRENTACOSTE: Because this is - - -

25 CHIEF JUDGE LIPPMAN: She threatened public

1 safety?

2 MS. TRENTACOSTE: it's esca - - - it's
3 escalating here, Your Honor. It - - -

4 CHIEF JUDGE LIPPMAN: How so? How so?

5 MS. TRENTACOSTE: Because there are other
6 individuals - - -

7 CHIEF JUDGE LIPPMAN: The nature of her
8 resistance?

9 MS. TRENTACOSTE: - - - the nature of the
10 resistance, the fact that there were other
11 individuals involved, the fact that there are other
12 people, also, involved.

13 The mere fact that this occurred in a home
14 as opposed to out on the street or out somewhere
15 else, doesn't distinguish the fact that - - -

16 JUDGE SMITH: I thought - - -

17 MS. TRENTACOSTE: - - - these are officers
18 here.

19 JUDGE SMITH: - - - I thought - - - I'm
20 trying to get my hands on where you draw the line
21 here. I thought you were arguing a minute ago - - -
22 maybe I misunderstood - - - that the bootstrap cases
23 should just be limited to the escape and contempt
24 cases - - -

25 MS. TRENTACOSTE: Um-hum.

1 JUDGE SMITH: - - - and otherwise a JD is a
2 JD. I don't care - - -

3 MS. TRENTACOSTE: Um-hum. That's correct.

4 JUDGE SMITH: - - - whether it's in the
5 home or where.

6 MS. TRENTACOSTE: That's correct.

7 JUDGE GRAFFEO: What - - -

8 MS. TRENTACOSTE: So - - -

9 JUDGE GRAFFEO: - - - what's the difference
10 in the ramification between the two designations?
11 Because she could have up to a year placement as a
12 PIN.

13 MS. TRENTACOSTE: That's correct.

14 JUDGE GRAFFEO: Correct?

15 MS. TRENTACOSTE: Yes.

16 JUDGE GRAFFEO: If you - - - if you felt
17 she needed some kind of supervision beyond that that
18 her family could provide.

19 MS. TRENTACOSTE: That's correct. But even
20 with dealing with a juvenile delinquent, you're - - -
21 you're trying to also show them that certain behavior
22 is unacceptable, and that, you know, there are
23 different dispositional alternatives. They could
24 have given her an ACD; they could have given her
25 conditional discharge, which they did in this case.

1 JUDGE PIGOTT: Could they - - -

2 MS. TRENTACOSTE: They could place - - -

3 JUDGE PIGOTT: - - - could they have kicked
4 it down - - -

5 JUDGE GRAFFEO: Which is a lot less than
6 giving her placement, where she would have had more
7 guidance - - -

8 MS. TRENTACOSTE: And she was - - -

9 JUDGE GRAFFEO: - - - and counseling.

10 MS. TRENTACOSTE: Exactly. And she was
11 placed under the PINS. And despite the fact that she
12 was placed under the PINS, she hadn't served at all
13 in the facility, because she kept running away.

14 CHIEF JUDGE LIPPMAN: So how - - - how have
15 you helped the kid by making her JD, and play into
16 it, what Judge Graffeo just asked you, the
17 consequence to the child of what you're doing? How
18 are you helping the child?

19 MS. TRENTACOSTE: Well, I think that was
20 exactly it, Your Honor. I think the child - - - once
21 - - - once she was put into a facility in connection
22 with the JD, she was - - -

23 CHIEF JUDGE LIPPMAN: You want to put her
24 in a secure - - - secure facility?

25 MS. TRENTACOSTE: No, that's - - -

1 CHIEF JUDGE LIPPMAN: Is that the issue?

2 MS. TRENTACOSTE: - - - not - - - that's
3 not the point, Your Honor.

4 CHIEF JUDGE LIPPMAN: So what is the point?

5 MS. TRENTACOSTE: It's - - - the point is
6 to get the child the help she needed, and to - - -

7 THE COURT: You got - - -

8 MS. TRENTACOSTE: - - - understand - - -

9 CHIEF JUDGE LIPPMAN: - - - you got to make
10 her a JD to get her the help that she needs?

11 MS. TRENTACOSTE: Well, apparently in this
12 case, we did. Because once she - - - once she went
13 through this process, as difficult and as
14 traumatizing as it might have been for the child, but
15 mind you, she had also - - - there was also dramatic
16 incidents that were occurring with this child.

17 JUDGE SMITH: You're saying that there are
18 some kids for whom a little trauma will do them good?

19 MS. TRENTACOSTE: Absolutely, Your Honor.

20 JUDGE PIGOTT: Let's assume - - -

21 MS. TRENTACOSTE: And this is - - - rather
22 do this when they're young when they can learn, okay,
23 this behavior is unacceptable. But we're dealing
24 with - - -

25 CHIEF JUDGE LIPPMAN: The behavior is the

1 flailing about when they're trying to secure her?

2 MS. TRENTACOSTE: There's - - - and, you
3 know, physically having a confrontation with these
4 officers.

5 JUDGE PIGOTT: If you charge - - - if you
6 charge her as - - - under the juvenile delinquency
7 laws and the court were to disagree with you, can - -
8 - does it get kicked down to a PINS?

9 MS. TRENTACOSTE: It was already a PINS.

10 JUDGE PIGOTT: I understand. I'm speaking
11 globally. Now necessarily - - - we're all - - -
12 we're all talking about bootstrapping up.

13 MS. TRENTACOSTE: Yeah.

14 JUDGE PIGOTT: In other words, how about
15 bootstrapping down? In other words, let's assume you
16 file a JD, does the court have the ability to say - -
17 - not this one - - - I don't want you to talk about
18 this one necessarily - - -

19 MS. TRENTACOSTE: Okay.

20 JUDGE PIGOTT: - - - that this child who
21 you've charged as a Presentment Agency with being a
22 juvenile delinquent, I don't think so, but I do think
23 it's a person in need of supervision?

24 MS. TRENTACOSTE: Well, that - - - that has
25 happened. There have - - - there have been cases

1 even now that if we brought - - - we brought a
2 juvenile delinquency before the court, that they've
3 converted it to PINS and that they try to do
4 diversion and whatnot. Which - - -

5 JUDGE PIGOTT: Why - - - why should we get
6 excited about this, then? I mean, if the - - - if
7 the trial courts and the Appellate Divisions are
8 making those determinations, we shouldn't be trying
9 to stop them one way or the other, should we?

10 MS. TRENTACOSTE: I'm not - - - I think - -
11 - I think the problem here is that certain things are
12 not getting addressed. And to - - - to actually tell
13 the Presentment Agency well, you can't even bring a
14 charge on this kid because this - - - this child is a
15 PINS kid, whereas the same exact behavior by a child
16 who is not a PINS - - -

17 JUDGE PIGOTT: No, I asked you if you could
18 bring a JD and you said yes. And I said, and if the
19 - - - if the family court judge said you've brought a
20 juvenile delinquency petition - - -

21 MS. TRENTACOSTE: Um-hum.

22 JUDGE PIGOTT: - - - against this - - -
23 this person, but I don't think it is, and I - - - and
24 I want you to petition her or him as a PINS - - -

25 MS. TRENTACOSTE: Um-hum.

1 JUDGE PIGOTT: - - - that they have the
2 authority to do that. So if they have the authority
3 to do that - - -

4 MS. TRENTACOSTE: Um-hum.

5 JUDGE PIGOTT: - - - why should we get
6 involved in whether or not that happens or whether or
7 not the Appellate Division does it?

8 MS. TRENTACOSTE: Because here the family
9 court did - - - didn't do that. Here there was a
10 situation where the family court didn't feel that it
11 was appropriate to ignore the juvenile delinquency
12 behavior. Here the family court was trying to give
13 the child what they thought - - -

14 JUDGE PIGOTT: Okay, help me out, then,
15 because I'm - - -

16 MS. TRENTACOSTE: It's the Appellate
17 Division that - - -

18 JUDGE PIGOTT: - - - I - - - I - - -

19 MS. TRENTACOSTE: - - - changed that.

20 JUDGE PIGOTT: - - - I will stop.

21 MS. TRENTACOSTE: I'm sorry.

22 JUDGE PIGOTT: It's okay.

23 MS. TRENTACOSTE: I'm sorry. I guess I'm
24 not understanding.

25 CHIEF JUDGE LIPPMAN: Counselor, what did

1 the AD do wrong? What did the Appellate Division do
2 wrong?

3 MS. TRENTACOSTE: The Appellate Division
4 ignored the behavior - - - constituted juvenile
5 delinquency behavior, that there were sufficient
6 facts - - -

7 CHIEF JUDGE LIPPMAN: So they general - - -

8 MS. TRENTACOSTE: - - - in family court - -
9 -

10 CHIEF JUDGE LIPPMAN: So your - - - the
11 core of your argument is the general belief that this
12 was more like a JD is not enough. They didn't go
13 into enough focus on what the child actually did?

14 MS. TRENTACOSTE: Absolutely, Your Honor.

15 CHIEF JUDGE LIPPMAN: Okay, thanks
16 counselor.

17 MS. TRENTACOSTE: Thank you, Your Honors.
18 Have a great day.

19 (Court is adjourned)

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C E R T I F I C A T I O N

I, Penina Wolicki, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter of Gabriela A. v. , No. 41 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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Date: February 17, 2014