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COURT OF APPEALS

STATE OF NEW YORK

PEOPLE, EX REL. EVANS D. PRIESTON,
on behalf of KENEL BEAUBRUN,

Respondent,

-against-

NO. 90

NASSAU COUNTY SHERIFF'S DEPARTMENT,

Appellant.

20 Eagle Street
Albany, New York
October 23, 2019

Before:

CHIEF JUDGE JANET DIFIORE
ASSOCIATE JUDGE JENNY RIVERA
ASSOCIATE JUDGE LESLIE E. STEIN
ASSOCIATE JUDGE EUGENE M. FAHEY
ASSOCIATE JUDGE MICHAEL J. GARCIA
ASSOCIATE JUDGE ROWAN D. WILSON
ASSOCIATE JUDGE PAUL FEINMAN

Appearances:

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Karen Schiffmiller
Official Court Transcriber



1 CHIEF JUDGE DIFIORE: The next appeal on this
2 afternoon's calendar is appeal number 90, People ex rel.
3 Prieston v. Nassau County Sheriff's Department.

4 Good afternoon, Counsel.

5 MS. RABINOWITZ: Good afternoon. May I proceed?

6 CHIEF JUDGE DIFIORE: You may.

7 MS. RABINOWITZ: May it please the court, my name
8 is Sarah Rabinowitz, and I represent the appellant, the
9 Nassau County Sheriff's Department. First may I reserve
10 two minutes for rebuttal?

11 CHIEF JUDGE DIFIORE: You may.

12 MS. RABINOWITZ: Your Honors, as this court is
13 aware, this case is about judicial discretion, and it
14 really comes down to a question of who should have the last
15 word on whether a bail bond package contravenes public
16 policy: the criminal justice system, whose primary
17 interest in setting bail is to secure a defendant's return
18 to court, or a for-profit industry, which stands to make a
19 profit, regardless of whether the defendant returns to
20 court or not.

21 Amici for petitioner really tries to frame the
22 issue here, that this is all about appellant throwing an
23 obstacle in front of indigent defendants to prevent them
24 from achieving pre-trial release. That is not at all what
25 this is about. A judge having discretion at a bail source



1 hear - - - hearing to determine whether the bond agent is
2 reliable, the value and - - - and sufficiency of any
3 security offered, and whether any feature of the bond
4 package contravenes public policy, does not equal indigent
5 defendants have to sit in jail.

6 Amic - - - as Amici argues, many of the bond
7 packages presented by indigent defendants do pass muster
8 under CPL 520.30. It is not an extremely high bar to
9 reach, and judges are sympathetic to indigency arguments,
10 but those arguments are appropriate for the bail source
11 hearings, not here, where the question is as to the scope
12 of the court's authority at those hearings, and the
13 legislative intent behind the pertinent statutes.

14 Nor would it drastically change the scope of
15 these hearings, or significantly increase the amount of
16 bond packages disapproved. If - - - if this court were to
17 determine that the Supreme Court here acted within its
18 discretion when it disapproved this bond package - - -

19 JUDGE GARCIA: Do you think the court can
20 challenge the bond company's assessment numbers? Like, oh,
21 the property's not really worth 250,000 dollars.

22 MS. RABINOWITZ: Well, Your Honor, that's - - -
23 that's not what the court did here. They - - - the - - -

24 JUDGE GARCIA: But why is that different?

25 MS. RABINOWITZ: What's different is that here



1 the court looked at the nature of the collateral, in the
2 sense that, did the indemnitors here really have enough to
3 lose to incentivize the defendant to return to court. But
4 it - - - that's very different from the insurance company's
5 calculus as to the risk it - - - the - - - the company's
6 willing to take - - -

7 JUDGE GARCIA: Let's say a company comes in and
8 says the property's worth 250,000, and the judge is
9 inquiring, maybe it's worth 150 and you own it. So isn't
10 that kind of go to what the value is, the same way your
11 equity would?

12 MS. RABINOWITZ: Well, Your Honor, but that's not
13 what the Supreme Court did here.

14 JUDGE GARCIA: Okay.

15 MS. RABINOWITZ: The - - - the bond agent
16 testified that the pro - - - testified very clearly about
17 what the equity was in each piece of property, and the
18 Supreme Court determined, and it would - - - acted fully
19 within the ambit of its statutorily imposed discretion in
20 doing this, that not only that the - - - that the value was
21 insufficient, but that the nature of the collateral was
22 insufficient.

23 The Supreme Court also didn't - - -

24 JUDGE WILSON: Well, what is it - - - what is it
25 you point to exactly for the nature as opposed to the



1 sufficiency of the amount?

2 MS. RABINOWITZ: Well, Your Honor, the Supreme
3 Court questioned - - - there was strong evidence here that,
4 first of all, a big part of this collateral, which was the
5 codefendant, John Beaubrun's house, was - - - there was
6 strong evidence that it was the product of ill-gotten
7 gains.

8 JUDGE WILSON: Where is the evidence in the
9 record of this case for that? I see that the judge said
10 that, but I didn't see anything in the record that - - -
11 that - - - that suggested it.

12 MS. RABINOWITZ: Your Honor, in - - - in the
13 search warrant affidavits, which were before the judge
14 here, the - - - it - - - it was all lined out in - - - in
15 those affidavits, and the judge did state in his ruling,
16 that there was strong evidence - - - or I should say, that
17 it was alleged that a large-scale drug transaction occurred
18 in the driveway of this property. And it was all laid out
19 in the search warrant affidavits that there was a - - - a -
20 - -

21 JUDGE WILSON: But a drug transaction occurring
22 in the - - - in the driveway of the property is different
23 from the house being acquired by the fruits of illegal
24 activity, right?

25 MS. RABINOWITZ: Your Honor - - -



1 JUDGE WILSON: It's a forfeiture versus a "where
2 did the funds come from" issue.

3 MS. RABINOWITZ: Your Honor, I'm sorry to be
4 repetitive, but in the search - - - search warrant
5 affidavits, it's - - - it specifically stated that two
6 kilos of drugs were seen changing hands in - - - in this -
7 - - in the driveway of this property. As well, there was a
8 2011 - - -

9 JUDGE WILSON: But why does that go to whether
10 the source of the funds to buy the house came from a drug
11 transaction. The house had been owned for twenty years?

12 MS. RABINOWITZ: Well, Your Honor, the - - - the
13 - - - this property and there was evidence of this, it had
14 a rich history, stretching back, having to do with large-
15 scale drug transactions. In 2011, in a Queens case, both
16 petitioner and his cousin, John Beaubrun, had been
17 convicted of drug possession, weapon possession, that were
18 found in this house. So of course, there's never really
19 going to be evidence, in the sense that at the - - - at the
20 closing on a property. It's not as if there's - - -

21 JUDGE FEINMAN: The argument that only actually
22 matters if you're restricted to only looking at whether or
23 not this - - - is this - - - you know, the criminal
24 activity as the source of the funds. And - - - and I'm not
25 sure that the statute restricts it that way.



1 MS. RABINOWITZ: It - - - it does - - - it does -
2 - - it does not, Your Honor. There's very broad language -
3 - -

4 JUDGE FEINMAN: Okay.

5 MS. RABINOWITZ: - - - that any - - - that the
6 court has a statutory mandate to analyze whether any
7 feature of the undertake - - - taking - - -

8 JUDGE FEINMAN: Is there anything that you see in
9 the statute that distinguishes between insurance company,
10 bail bonds, versus cash bond?

11 MS. RABINOWITZ: Absolutely, Your Honor.
12 Although there is a public policy component when conducting
13 a bail source hearing as to either of them - - -

14 JUDGE FAHEY: And that's - - - that's the key
15 point here, isn't it? Is that the public policy component
16 really defines the difference here. One, it's - - - it's
17 fine for an insurance company or a bail-bond company to
18 say, we've made a business decision here that we're going
19 to get repaid.

20 It's another thing to say, their business
21 decision, though, has nothing to do with insuring that a
22 particular defendant shows up. They're - - - they're
23 calculating the business decision by a profit motive, which
24 is appropriate, but it has nothing to do with fulfilling
25 the court's public purpose. And the court is allowed to



1 look to that public purpose, which is that, whoever's
2 accused shows up.

3 Isn't that really what this is about?

4 MS. RABINOWITZ: That is what this is about, Your
5 Honor. And the - - - back to your question, the - - - the
6 difference between - - - there - - - there is a threshold
7 requirement for a court to conduct a bail source hearing as
8 to cash bail. That is not there when - - - when conducting
9 the inquiry into insurance company bail bonds. And that is
10 that upon application by the district attorney, there - - -
11 the court must have reasonable cause to believe that the
12 person posting a cash bail is either not in rightful
13 possession of that money, or that the money is the product
14 of ill-gotten gains.

15 I think it's very sig - - -

16 JUDGE FAHEY: See - - - see there's - - - there's
17 really two questions. Is it - - - is it - - - is there - -
18 - is the collateral sufficient to ensure that the defendant
19 will return to court, not is the collateral sufficient for
20 them to be able to make the percentage of six percent or
21 whatever it has to be charged, and some future date to pay
22 back the - - - the bail bond company. The court doesn't
23 care if the bail bond company gets paid back or not. What
24 they care about is whether or not he'll show up. If the
25 collateral's insufficient to do that, then there's a



1 legitimate thing for the court to look at. That's the way
2 I understand the judge's question.

3 MS. RABINOWITZ: Well, absolutely, Your Honor.
4 It's - - - it's an entirely different calculus. The - - -
5 insurance company's one and only goal is to make a profit,
6 and generally that is achieved as soon as the company
7 collects a nonrefundable premium on the bond, but that is
8 not the job of the bail set in the court at the bail source
9 hearing.

10 JUDGE FAHEY: Do you know in this case if - - -
11 if after the forfeiture, there - - - there was actually
12 paid out on to the city or - - -

13 MS. RABINOWITZ: I'm sorry, Your Honor?

14 JUDGE FAHEY: Do we know if the forfeiture was
15 paid out on? Because I know it has happened that a number
16 of them have not been paid out on.

17 MS. RABINOWITZ: Well - - - well, Your Honor, I
18 don't believe there - - - there actually was a forfeiture
19 in this case.

20 JUDGE FAHEY: Oh, okay.

21 MS. RABINOWITZ: But that is true, that at - - -
22 that it's a common and often unpunished practice for
23 forfeitures to go unpaid, and there are several reasons for
24 that. It's - - - the district attorney's office is tasked
25 with collecting on the forfeiture, and very often it



1 expends more time and resources going after that money,
2 than the money itself, and there's always the remedy of
3 remission, that - - - which is a common remedy, often used
4 under 540.30, and the insurance companies can even
5 negotiate with the court and the prosecutor to lower the
6 amount of money to - - - to satisfy the judgment.

7 It - - - it show - - - it actually shows
8 remarkable vision on the part of the legislature in light
9 of what had been described as unscrupulous practices,
10 predatory practices by the insurance company industry in
11 issuing these bail bonds. This court in 2017 in Gevorkyan
12 declared a legal one such practice of retaining premiums
13 even - - - even after a bail application has been denied.

14 There's a well-documented history in the bail
15 bond industry of pre - - - presenting bond packages with
16 little or no collateral. That sounds familiar in this
17 case. And then - - - and then lie - - - even lying in
18 court papers about the amount of collateral.

19 And in light of all of this, the same people who
20 have called for the reforms in the bail laws are - - - are
21 also the people who have called for more regulation and
22 more transparency and more scrutiny on the bail bond
23 industry. People like the Governor, people like former
24 Chief Judge Lippman, and - - -

25 JUDGE RIVERA: But to be clear, the - - - the way



1 you're - - - you're analyzing, or - - - or advocating for
2 construction of the rule in what - - - what a judge should
3 do is that based on what is presented at the hearing - - -
4 affidavits, testimony, whatever - - - that based on that
5 information, that that's where the judge decides whether or
6 not I'm persuaded that what is being put up for the bail
7 will be enough to ensure or, at least, increase the
8 likelihood of the appearance at court proceedings.

9 MS. RABINOWITZ: Your Honor - - -

10 JUDGE RIVERA: You're not saying the judge has to
11 sit there and say, as I think Judge Garcia was - - - was
12 trying to ask you about - - - I - - - I see you say it's
13 worth 200,000, but I just don't think so. I know that
14 neighborhood and it can't possibly sell for more than
15 100,000. You're - - - you're not arguing that's what - - -

16 MS. RABINOWITZ: No, not - - -

17 JUDGE RIVERA: - - - a judge should be doing.

18 MS. RABINOWITZ: - - - not at all.

19 JUDGE RIVERA: You're saying the judge going
20 from, you say, it's 200,000; let me see what else is in the
21 evidence, whether or not I think that this may be enough.

22 MS. RABINOWITZ: Absolutely, Your Honor, but that
23 is not what appellant is - - - is requesting at all. And
24 that - - - that calls up a significant distin - - -
25 distinction between this case and Savage. In Savage, the



1 bail set in court made it no - - - just set - - - stated
2 without further elaboration that the collateral was
3 insufficient. And so as a result - - - and that was the
4 sole purpose for the dis - - - basis for the disapproval of
5 the bond package.

6 JUDGE FAHEY: So what are you asking then? Are
7 you asking that the court - - - for a rule that says, the
8 court can only question the business judgment rule of an
9 issuing company if the court finds that there's a potential
10 violation of public policy? In other words, if the
11 defendant will not be brought back by what I see here.

12 MS. RABINOWITZ: Yes, Your Honor. Well,
13 appellant - - -

14 JUDGE FAHEY: Is that the kind of rule you're
15 asking for?

16 MS. RABINOWITZ: Appellant is asking for this
17 court to confirm or validate the clear intent of the
18 legislature, that there is a statutory mandate under
19 510.32(a), and under 520.30 for the court to conduct this
20 public policy analysis, as to the overarching reason for
21 all bail, and which continues into the bail source hearing,
22 securing a defendant's court attendance. And - - - and
23 appellant is al - - -

24 JUDGE STEIN: Did the court properly consider
25 testimony that it had heard the day before or that it was



1 aware of - - - of one of the owners of the property saying
2 - - - a codefendant, I believe - - - saying that he was - -
3 - he was, in fact, indigent and he was underwater, and he
4 had - - - he had no means for - - - for counsel?

5 MS. RABINOWITZ: I - - - I think the court did
6 properly consider that - - - that, and that was
7 particularly significant as to the Supreme Court's ruling,
8 that it - - - it didn't - - - it - - - that it did not find
9 the bond agent reliable. He - - - he - - - the - - - Andre
10 Hunter, the bond agent, testified on the stand, that he was
11 not aware of when he put together this bond package that
12 codefendant John Beaubrun was indigent and underwater, as
13 he stated. And the - - - and Judge Schwartz specifically
14 stated in his ruling that he did not credit Andre Hunter's
15 testimony as to his - - - in particular, his investigation
16 of this Rosedale property.

17 And that really wa - - - that - - - it - - - I
18 would like to take a moment to highlight how well reasoned
19 and detailed this ruling was. I - - - I believe that this
20 is exactly the kind of 520.30 ruling that the legislature
21 contemplated when it enacted 520.30, in the sense that I'm
22 sure - - - it cannot be that the legislature intended to
23 have rubberstamped approvals of bond packages, many of
24 which could be illusory. Judge - - - it was as if Judge
25 Schwartz really was going through a checklist of 520.30,



1 and went through each independent basis, for disapproval of
2 this bond package, which went to the nature and the value.

3 And I see my time is expired. In closing, Your
4 Honors, appellant really only asks this court to validate
5 the clear intent of the legislature, that the business
6 judgment of a - - - of an insurance company is no
7 substitute for judicial scrutiny as to whether a bond
8 package contravenes public policy. Thank you.

9 CHIEF JUDGE DIFIORE: Thank you, Counsel.

10 Counsel?

11 MR. PRIESTON: Thank you, Your Honor. I'm Evans
12 Prieston. I've kind of - - - I represent the respondent,
13 Mr. Beaubrun, who's made nineteen appearances since his
14 bail has been posted.

15 Your Honor, the - - - the court sets bail. The
16 court has nine choices. The court then has a right under
17 certain circumstances to decide whether or not it wants to
18 look at the collateral; the People make the motion. In
19 this case, Savage has said that the insurance company makes
20 a business decision, based on the collateral. Bail is a
21 form that's paid through insurance, just like everyone who
22 has insurance on their house pays a small part every year,
23 and it's a - - - it's the law of large numbers.

24 The bail bond business doesn't stay in business
25 if people don't go to court. In New York County, for



1 instance, you get a judgment within 120 days, and if that
2 bail is not paid off in New York County, nobody for that
3 company can post bail again in New York.

4 JUDGE RIVERA: Yeah, but the - - - the question I
5 don't think is the one that you're - - - you're trying to
6 get to. The question isn't whether or not you can justify
7 your conclusion that there's enough there for you to put
8 your money and name behind it - - - behind the bail, but
9 rather whether or not the court has an independent
10 obligation and duty under the statute - - -

11 MR. PRIESTON: I think - - -

12 JUDGE RIVERA: - - - to decide for itself - - -

13 MR. PRIESTON: I think - - -

14 JUDGE RIVERA: - - - whether - - - excuse me - -
15 - whether or not the bail package is of the kind that will
16 put the pressure and encourage the defendant to appear in
17 court - - -

18 MR. PRIESTON: Inevitably - - - inevitably, Your
19 Honor, all bail is less than the full value of the bail
20 when it comes to a bond, and the courts know that.
21 Indigent families gather, collected friends, and they come
22 before - - -

23 JUDGE GARCIA: Right, but I think Judge Rivera's
24 point is, doesn't the court have a role in saying, is it
25 enough?



1 MR. PRIESTON: Well, I think the court has - - -

2 JUDGE GARCIA: Whatever the percentage is.

3 MR. PRIESTON: I think the court in - - - in - -
4 - in examining the - - - the background character and
5 nature of the indemnitors does that. They look at those
6 kinds of people, and they say, yes, we think the nature of
7 these people, the income of these people, in that process.
8 Yes, they do take a role, and I think it's only reasonable.
9 Otherwise - - - but there is a - - - there is another
10 weight here that the insurance companies would not be in
11 business very long, if they didn't have a business
12 judgment.

13 And - - - and what the appellant is asking is,
14 well, once we don't like that the fact that - - - they want
15 a second look, and the policy is, if - - - if you make
16 these steps, then we have to accept to some level, because
17 when the court sets a bail, it knows inherently, it's
18 taking less than the full amount of bail.

19 JUDGE RIVERA: But then the statute would read
20 that way. I mean, the statute doesn't read that a judge
21 has no role.

22 MR. PRIESTON: No.

23 JUDGE RIVERA: And that - - - that's the problem
24 with my argument. The judge has a role, and the judge - -
25 - right, the legislature from the statutory language



1 doesn't seem to intend for the judge not to have some role
2 in determining whether or not, indeed, they're persuaded
3 that the package is enough, the defendant will, indeed,
4 return for appearances.

5 MR. PRIESTON: The - - - the - - -

6 JUDGE RIVERA: Or the - - - the likelihood is
7 very great that they would.

8 MR. PRIESTON: The difficult but I - - -
9 obviously the court has a role to make sure that the law
10 has not been violated - - -

11 JUDGE RIVERA: Yes.

12 MR. PRIESTON: - - - and that public policy is -
13 - -

14 JUDGE FAHEY: But can - - - can I stop you for
15 one second? The - - - the problem with - - - with the law
16 as it stands now, in a business judgment rule, is that the
17 business judgment of a private insurance company is
18 determinative of the validity of the underlying collateral.

19 And that's - - - and that does not satisfy, on
20 its face, public policy, because public policy is not for
21 you to make a good business judgment, but for the court to
22 be assured that a defendant will show up in court. And
23 those are two different things. And if they conflict,
24 you're going to follow your business judgment, because
25 that's what you're in business for. You're right about



1 that. Everybody understands that. We need you.

2 But the other side of it is, is that - - - that
3 does not satisfy the public policy concerns.

4 MR. PRIESTON: I - - - I - - -

5 JUDGE FAHEY: So how - - - what do you propose -
6 - - what process do you propose that would satisfy the
7 public policy arguments to - - - to look at your underlying
8 business judgment? If it's not this hearing, how else will
9 we do it?

10 MR. PRIESTON: Well, I think the court - - - I
11 think the court can set a rule to ask the indemnitor, and
12 it's done every day, when the bail bondsman swears in
13 before the court, the court - - - the bondsman will come
14 before the court and say, what are you putting up. And
15 there will be a colloquy between the bondsman and the
16 court. It happens every day. And the court will say, you
17 know what? The car is not enough, or the mother isn't - -
18 -

19 JUDGE WILSON: But what does the - - -

20 MR. PRIESTON: - - - she's on welfare.

21 JUDGE WILSON: What does the "not enough" mean?
22 Does it mean not enough amount of money or does it mean not
23 enough of a tie to the defendant? And let me give you an
24 example that one of my law clerks gave me, that I'm having
25 a tough time with. Let's see if you can do better than I.



1 Suppose I'm arrested; bail's set at a half a
2 million dollars. And what I do is I start a Kickstarter
3 campaign, and I get 1,000 people to contribute small
4 amounts of money to make that. I take that whole amount of
5 money, which is more than the 500,000 dollars. I put it
6 into an escrow, give it to a bail bond agent, with a - - -
7 let's say, a letter of credit or something like that. So
8 you're absolutely guaranteed you're going to get your
9 money.

10 And let's say that all these people who are
11 contributing, they're not criminals; they're - - - there's
12 no nefarious way that they got their money. It's all
13 legitimate money and it's sitting right there. Couldn't
14 the court say, but wait a minute; Judge Wilson has got no
15 tie to this money at all. And despite the fact that the
16 bail-bond company is going to be made whole, this is not
17 sufficient. He's not going to come to court; he's going to
18 skip.

19 MR. PRIESTON: You know, the courts do that, and
20 they do that - - - they do that in cases where members of
21 churches will come in and they'll say, we would like to
22 help a parishioner.

23 JUDGE WILSON: So why isn't that what the court
24 did here?

25 MR. PRIESTON: Well, I think the - - - the



1 difference in here is I think the People here know the
2 defendant. There are twenty relatives here who came
3 forward. I think the difference here is the fact there - -
4 - it's more of an economic issue in this case, then it
5 really is about whether or not these people are going to
6 stand by this person and collectively put together - - -

7 JUDGE STEIN: Well, aside - - - aside from the
8 fact that there were some other, you know, ancillary things
9 going on in this particular case, it seems to me that,
10 again, that is what the court did. By looking at the
11 individual people that were coming into support the
12 defendant, and looking to see do - - - really, do any of
13 them have enough skin in the game, so that they could be
14 hurt badly enough that - - - that the defendant, in - - -
15 in trying to protect them would be incentivized to return
16 to court?

17 MR. PRIESTON: I think the court in this case - -
18 - per - - - perhaps if the court were more explicit in
19 saying I don't trust these people to pay, I think that the
20 - - - in the business judgment in this case is the fact
21 that these people are connected. They've - - - they've
22 satisfied 520.30, that they're - - - that they're the kind
23 of people that will pay. And to a certain extent, bondsman
24 count on that. And if they didn't do it - - - I mean, two
25 percent of bonds fail.



1 JUDGE STEIN: Do they have a - - - they have a
2 whole profit and loss analysis here. First of all, they
3 don't look at each case individually. They're looking - -
4 - any insurance company, right, is looking at its - - - you
5 know, its payouts, and what it takes in as premiums. So
6 there's a whole weighing and balancing there, that differs,
7 it seems to me, a lot from the individualized analysis that
8 the court has to do about this defendant.

9 So they may be willing to take a different kind
10 of risk that they're going to get paid back, if the de - -
11 - defendant doesn't show up, than a court is willing to do
12 in terms of our system of justice if the defendant doesn't
13 show up.

14 MR. PRIESTON: I - - - I think - - - if - - - I
15 think to - - - it helps defendants, because when they - - -
16 because every judge has a different threshold today. There
17 are certain judges that take five percent. There are
18 certain judges that take ten percent. And so there's a
19 different threshold.

20 And I think part of this, the value of the
21 business judgment rule is when the court sets a bail bond
22 bail, to some extent, they're aware, unless public policies
23 contravene where there's no ties, where there are not
24 somebody that comes under the factors set in 520.30, that
25 it really is a more predictable result, which I think is



1 also important to people, that there is a predictable
2 result, and if - - - both to the court, to the defendants,
3 and to defendants' families.

4 And I think because we have a large number of
5 poor people in the criminal justice system, you're going to
6 have - - - if - - - if it's truly so personal to the court,
7 and the comfort level just to the court, I think that's not
8 helpful to defendants, and it doesn't facilitate a
9 predictable result in - - - in these cases, as well.

10 JUDGE RIVERA: But of course - - - the
11 legislature understood that when it - - - when it carves
12 out a role for the judge. Otherwise, the rule would be if
13 you can find a bail company that'll give you bail, that's
14 good enough.

15 MR. PRIESTON: Well, I - - -

16 JUDGE RIVERA: There'd be no need for the
17 hearing. I mean, the way you've described it, that really
18 devolves to there's never a role for the judge and there's
19 no hearing.

20 MR. PRIESTON: Well - - -

21 JUDGE RIVERA: But that's clearly not what the
22 legislature - - -

23 MR. PRIESTON: Well, the - - -

24 JUDGE RIVERA: - - - chose.

25 MR. PRIESTON: Right, but there clearly - - -



1 there was always - - - I - - - it's hard to have a perfect
2 system, but in the court - - -

3 JUDGE RIVERA: True.

4 MR. PRIESTON: - - - but in - - - in - - - when
5 the - - - when defendants stand up and they say what we're
6 doing, I think the - - - in balancing this, I think you
7 have to give more discretion perhaps to the judgment of a
8 company, because most people aren't going to have the
9 money.

10 JUDGE RIVERA: But again, that - - -

11 MR. PRIESTON: Know that.

12 JUDGE RIVERA: You may think that's better
13 policy. You may think that's - - - that in practice, that
14 makes sense. But it's hard to read the statute in that
15 way, and that perhaps is a reason that the legislature may
16 want to reconsider the language.

17 MR. PRIESTON: We know that there's a whole new
18 bail law in existence next - - - next year.

19 JUDGE RIVERA: Correct.

20 MR. PRIESTON: And - - - and - - -

21 JUDGE RIVERA: Correct.

22 MR. PRIESTON: - - - they didn't touch this
23 subject matter unfortunately - - -

24 JUDGE RIVERA: Right.

25 MR. PRIESTON: - - - so we're here. Thank you.



1 CHIEF JUDGE DIFIORE: Thank you, Counsel.

2 MS. RABINOWITZ: Your Honor, it's true that we
3 will have all new - - - many new bail laws going into
4 effect in a few months, and I think it is very significant
5 that the legislature did not touch CPL 520.30. It is clear
6 that all - - -

7 JUDGE RIVERA: But it did allow for charities.

8 MS. RABINOWITZ: Ab - - - absolutely, Your Honor.

9 JUDGE RIVERA: And that sounds like - - - not
10 quite the Kickstarter, but it's - - - it's kind of along
11 the same lines of what Judge Wilson - - -

12 MS. RABINOWITZ: Your - - - Your Honor - - -

13 JUDGE RIVERA: - - - suggested before.

14 MS. RABINOWITZ: - - - you're referring to the
15 Charitable Bail Act?

16 JUDGE RIVERA: Yes, yes.

17 MS. RABINOWITZ: Well, addressing that, Your
18 Honor, comparing - - - and amici for petitioner focused on
19 this a great deal. Comparing the legislative intent behind
20 the Charitable Bail Act, and that - - - and the intent
21 behind CPL 520.30 is really comparing apples and oranges.

22 Just the way the Charitable Bail Act is drafted,
23 the significant limitations on the defendants who are able
24 to be helped under that act. We're talking about
25 defendants who are low-level defendants with - - - at - - -



1 the way the law is now, it's only - - - it only applies to
2 misdemeanors. There's a 2,000-dollar bail cap. These are
3 not defendants who pose a high risk of flight. So it's
4 clear that the intent behind the Charitable Bail Act was to
5 help defendants who could not afford to pay 500 dollars of
6 bail, 1,000 dollars, even 2,000 dollars.

7 JUDGE RIVERA: Who might not find a company who
8 would - - - who would - - - who would give them the bail,
9 right?

10 MS. RABINOWITZ: Well - - - well, Your Honor,
11 even - - - even if they did find a company, the - - - the
12 nonprofit organizations that - - - that do post bail under
13 the Charitable Bail Act, unlike the for-profit industry of
14 the insurance company bail bonds, these are organizations
15 that really - - - it has been documented - - - carefully
16 vet the defendants that they help.

17 In that sense, their interests align with the
18 state's. It's - - - it's about - - -

19 JUDGE RIVERA: But that was his argument, that
20 the - - - they too are very careful, because they want to
21 make money. They don't want someone not to show up, or
22 they're going to lose money.

23 MS. RABINOWITZ: Well, Your Honor, as - - - as
24 I've said before, there are many factors that reduce the
25 risk of losing money, even if a defendant does abscond.



1 And - - -

2 JUDGE RIVERA: I thought your point on the
3 Charitable Bail Act was - - - I thought this what you were
4 saying; perhaps I misunderstood you - - - that you're
5 talking about a group of defendants that are very low risk.

6 MS. RABINOWITZ: Absolutely.

7 JUDGE RIVERA: And that's what perhaps - - -

8 JUDGE GARCIA: Counsel, I - - -

9 JUDGE RIVERA: - - - is something that
10 distinguishes it.

11 JUDGE GARCIA: - - - I - - - I see your light is
12 on, but I have a question. In cash bail, under this
13 statute, when someone comes in with cash bail, are there
14 limitations - - - it's a difficult statute to read - - -
15 but are there limitations in what has to be a threshold
16 showing before the judge can inquire into cash bail?

17 MS. RABINOWITZ: Your Honor, that threshold
18 showing that I talked about before, I really - - - I really
19 think that that is so significant, because I think it
20 highlights the legislature's intent here, that there should
21 be a difference between cash bail and insurance company
22 bail bonds, in light of the well - - - well - - -

23 JUDGE GARCIA: But the way I read it then is, if
24 I come in with 250,000 cash bail that I've raised, in order
25 to have an inquiry into that, there has to be some showing



1 first, a preliminary showing, that there's suspect source
2 or - - - so in Judge Wilson's hypothetical, where it's
3 essentially cash bail coming in, would there still need to
4 be that threshold showing or no?

5 MS. RABINOWITZ: There - - - there would have - -
6 - under the statute, Your Honor, the wording - - - plain
7 wording of the statute, there would have to be that
8 threshold showing. And I think that that's there because
9 the legislature in - - - in - - - in furtherance of the
10 state's interests in promoting pre-trial release, the
11 legislature did want to limit the court's discretion, to
12 some degree, as to cash bail - - -

13 JUDGE GARCIA: So let's say - - -

14 MS. RABINOWITZ: - - - but not - - -

15 JUDGE GARCIA: - - - if the church gives me
16 100,000 dollars cash bail, under this statute, does there
17 have to be a showing that money is suspect, before the
18 judge can weigh whether it's sufficient or whether there's
19 a policy reason to reject it?

20 MS. RABINOWITZ: By the plain reading of the
21 statute, Your Honor, there does. Upon - - - even after the
22 district attorney's application, there has - - - the - - -
23 the court must have reasonable cause to believe that either
24 the person posting bail is not in rightful possession of
25 the money, or that it's the product of ill-gotten gains.



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But again - - -

JUDGE FEINMAN: Of course, this is not about the cash bail situation here, right? So we can leave that for another day.

MS. RABINOWITZ: Well, Your Honor, the reason - - - the reason I was emphasizing it, is because I really think it highlights the legislature's intent for 520.30 to be a further regulation on the bail bond industry. And that judges should not be forced to compel - - - to defer to it.

If there are no further questions, I'll rely on appellant's brief. Thank you.

CHIEF JUDGE DIFIORE: Thank you, Counsel.

(Court is adjourned)



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

I, Karen Schiffmiller, certify that the foregoing transcript of proceedings in the Court of Appeals of People ex rel. Evans D. Prieston o/b/o Kenel Beaubrun v. Nassau County Sheriff's Department, No. 90 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.



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