

CITY MAGISTRATES' COURT OF THE
CITY OF NEW YORK
BOROUGH OF MANHATTAN: SEVENTH DISTRICT

THE PEOPLE OF THE CITY OF NEW YORK,
on complaint of
OFFICER HARRY MORAN
vs.
WILLIAM C. FIELDS
Defendant

September 14th, 1928,
New York, N.Y.

Before:
HON. GEORGE SIMPSON,
City Magistrate.

Appearances:

MR. LEVY, Assistant District Attorney, For the People;

COUDERT BROTHERS, Attorneys for Defendant, By
F.C. BELLINGER, ESQ., Of counsel.

The Defendant is charged with violation of Section 949 of the Penal Law in that on September 13th, 1928, at 11:35 P.M., at 755 Seventh Avenue, the Earl Carroll Theatre, he did carry a bird in his pocket and took the same from his pocket and permitted the bird to fly upon the stage and cause said bird to fall to the floor so as to produce torture.

THE COURT: *(To Defendant)* You are entitled to an immediate examination, how do you plead?

(The Defendant pleads Not Guilty and Ready.)

OFFICER HARRY MORAN, having Shield Number 2, attached to the Humane Society, as Superintendent, 8 Perry Street, New York, called as a

witness on behalf of the People, having first been duly sworn, testified as follows:

BY THE COURT:

Q On the 13th day of September, 1928, Officer, did you see the Defendant?

A I did, your Honor.

Q What time was it?

A In the neighborhood of eleven and eleven-fifteen P.M.

Q Where did you see the Defendant?

A At the Earl Carroll Theatre, 755 Seventh Avenue.

Q What, if anything, did you observe with reference to the Defendant at that time and place

A I observed the Defendant take a bird from his pocket, known as a canary, and place it beneath the chin of a man who was on the stage, sitting in a chair. They released the bird, taking it from his pocket, and put it to the man's chin, and released the bird. The bird flew in the air, from the lights, he struck the scenery, fell to the floor and then struggled to get up from the floor and passed another part of the scenery, and went into an adjoining room from the stage. I then immediately left the theatre and went around to the stage entrance and seen Mr. Carroll, which Mr. Carroll knew who I was. I went there previous to that and showed my shield, to examine the bird. I asked to see the bird and was then shown this bird. He brought me there with Officer Jacobs of the Humane Society. We examined the bird and the bird was crowded down in a small cage which we have here as evidence.

Q Is this the cage and bird which was brought in by Officer Jacobs, which was wrapped up, as you see it (*indicating*)?

A Yes, your Honor.

THE COURT: The People offer that in evidence as Exhibit 1. (*Same thereupon received in evidence and considered as People's Exhibit 1, 9/14/28.*)

THE COURT: There is no question about this being the bird?

MR. BELLINGER: If your Honor please, I would like to ask Mr. Moran some questions.

THE COURT: Proceed.

CROSS-EXAMINATION BY MR. BELLINGER:

Q Last night, at the station house, you told the Police Lieutenant that it was a sparrow, did you not?

A No, I did not.

Q You did not say it was a sparrow?

A I said it was a canary. You tried to make me say it was a sparrow.

Q Didn't you originally tell the Police Lieutenant it was a sparrow, and then you changed it to a canary?

A I did not.

Q Did you observe this bird in action before last night, in Court?

A No, I did not.

Q Do you know anything about the care of the bird off the stage?

A No.

Q Have you any complaint about that?

A The care of this bird off the stage-not exactly this bird.

Q Is it not a fact in the police station, last night, you said, "The bird I saw hit the ceiling"?

A No.

Q Is it not a fact that your assistant, coming out of the stage, dropped the bird in the cage?

A Absolutely not . I can't tell that, because I was inside.

Q That is all. You could not tell?

A No.

Q Mr. Moran, couldn't you serve Mr. Fields with a summons instead of dragging him down to the police station and putting him under arrest?

A The Code reads, "summons or arrest, " and I placed him under arrest.

Q According to law, you could have given him a summons?

A Either a summons or arrest.

Q After you brought him down to the inside of the station, did you leave the premises immediately, or did you wait on the steps?

A I left the station house and got in a taxicab.

Q Did you leave immediately?

A I stood there probably two or three minutes waiting for Jacobs to go in and get a man I sent in.

Q While you were on the steps, what did you do?

A While I was on the steps of what?

Q Of the station house.

A I didn't do anything.

Q You posed for photographers?

A I came out and the newspaper people hollered to stop, and the crowd was gathering there, and I said, "One side," and I suppose they took pictures. I haven't got any of the pictures.

Q You stood there while they were taking the pictures?

A Coming out.

Q Didn't you complain somebody was standing in front of you so that the newspaper men could not get a good picture?

A No.

Q How long were you there posing for the newspaper men?

A I wasn't there a second, and the crowd was from thirty to forty people.

Q Where was Jacobs?

A I don't know.

Q Wasn't Jacobs beside you holding the bird up, trying to have the picture taken?

A I don't know.

Q What kind of photographs were taken, flash-light?

A I believe they were.

Q How far away were you from the flash-light?

A I should judge it was about ten or fifteen feet. I didn't know it until the light flashed.

Q Isn't it a fact that, Mr. Moran, you arranged for the newspapermen and cameramen to be there?

A No, sir, it is not.

MR. BELLINGER: That is all.

REDIRECT EXAMINATION BY THE COURT:

Q The bird evidently is dead now; when did the bird die?

A The bird died on the way from the station house to Dr. Stark's Veterinary Hospital .

Q What time was that?

A Ten minutes or a quarter to one.

Q Did you have it in your charge?

A It was in my charge, and Officer Jacobs's charge, on the way down. We saw the bird in the cage, and in the window of the taxicab we held the bird up. It was gasping, and we took it down, and we notified the taxi driver that the bird was dying. When we got to the hospital, the bird was dead. Before I left the station house, I told the attorney and all these gentlemen that this bird would die, that it was down and out.

MR. BELLINGER: I want to make it clear that Officer Moran testified he left the station house immediately, but for a second or two he happened to stand on the steps and didn't know whether Mr. Jacobs was beside him holding the bird, posing for photographers. He also denied saying that the bird fell, and he also admitted he could have served a summons on Mr. Fields instead of dragging him down to Court.

THE WITNESS: The law reads I can summons or arrest. The crime was committed in my presence, and therefore I placed him under arrest.

BY THE COURT:

Q Did you see the bird fall?

A I seen it -- yes, your Honor.

Q Where did it fall?

A It flew up to the back of the scenery in front of the stage, struck the rear of the scenery, as I was facing it, and fell to the floor.

RE CROSS EXAMINATION BY MR. BELLINGER:

Q What kind of pocket was it the bird was taken out of?

A Out of a coat pocket.

Q How large a pocket would you say it was?

A Quite a large pocket. I should judge, from where I was sitting-I should judge it was probably eight by twelve-inch pocket.

Q Do you understand birds pretty well, Mr. Moran?

A From what experience I have had, yes -- fifteen years.

Q The bird in a twelve-inch pocket, would that be the cause of the bird's death?

A I would not say that. The pocket is twelve inches wide; that is the width of the pocket, and it would probably be an inch across the pocket. It was no proper place to carry a bird.

Q Therefore, the death of the bird was due to the pocket as well as the scenery in front?

A I would not say that. I would like to have the bird analyzed. If there is anything brought up in a reference to that, to have a doctor testify as to the cause of the bird's death -- I would like to do that.

MR. BELLINGER: That is all.

OFFICER JACOB JACOBS, having Shield Number 32, attached to the Humane Society, as Agent, 8 Perry Street, New York, called as a witness on behalf of the People, having first been duly sworn, testified as follows:

BY THE COURT:

Q Did you accompany Officer Moran to the Earl Carroll Theatre last night, about eleven-twenty-five?

A Yes.

Q What did you observe?

A I observed the man take a bird out of his pocket and put it on an unknown man's beard, and the bird flew to the back of the stage, hit the scenery and fell to the floor.

Q Then you accompanied Officer Moran to the station house?

A Yes, sir.

Q Did you carry the bird, or did he?

A I carried it.

Q Did you have the paper around the cage, as you had it this morning, when you came in?

A I did not.

Q What time did you leave the station house?

A It was after twelve o'clock.

Q Then, what did you do with the bird; how long were you in the station house?

A About fifteen or twenty minutes.

Q About twelve-fifteen you started from the station house?

A Yes.

Q Where did you go?

A We took a taxicab, going to Dr. Stark's office in Fifth Avenue and 13th Street.

Q Did you stop to have your pictures taken and flash-light taken with the bird, as you started?

A As we came out with the bird, there was a crowd there, and we saw a flash-

Q Was there a flash-light taken with you and Mr. Moran?

A I didn't see the picture.

Q Was a bird in the picture?

A I can't say.

Q There was a flash-light taken?

A I was on the steps, and we were going out, and I seen a flash-light.

Q What time did you get in the cab, to go to Dr. Stark's office?

A About one-ten A.M. Dr. Stark was not there, but his caretaker was there.

Q What did you do with the bird?

A We took the bird down, and we saw the bird die.

Q When did the bird die?

A We noticed in the taxicab that the bird was hugging down to the ground, and we noticed it was gasping for air.

Q The bird was in the flash-light picture?

A I can't say.

Q There was nothing around the cage for the bird to get air, or from being photographed?

A That is right.

Q And, while in the cab, the bird apparently died?

A Yes, sir.

Q You do not know the cause of death, do you?

A No, sir.

THE COURT : That is all.

CROSS-EXAMINATION BY MR. BELLINGER :

Q Mr. Jacobs, is it not a fact that you were holding the bird up in this cage, in this manner (*indicating*), before the photographers, on the steps of the station house?

A I held it under my arm.

Q Did you hold it up any time, this way (*indicating*)?

A No, sir.

Q Are you sure you did not?

A I am pretty sure.

Q You had a flash-light of the bird and yourself taken on the steps of the station house?

A I don't know about that.

Q Did you see a flash?

A I did.

Q Was the cage in back of you, or in front of you?

A It was on one side where I seen the flash-light.

Q Was that the only flash you saw at the station house?

A Yes.

Q You did not have any other picture taken of the bird?

A No.

Q Is it not a fact you dropped the bird at the entrance of the Earl Carroll Theatre?

A They tried to take it out of my hand.

Q Did you drop it?

A No.

Q Did it fall?

A No, sir.

Q How big a beard was there on the unknown man's chin?

A About here (*indicating*).

Q About eight inches long?

A About that.

Q Are you a bird doctor?

A I am not.

Q Could you testify as to the cause of the bird's death?

A I can't say much.

Q The bird might have had ptomaine poisoning, so far as you knew?

A I don't know.

MR. BELLINGER: That is all.

I make a motion at this time to dismiss this complaint on the ground that the People have not proved that the bird's death was due to any injury which might have been inflicted by having the bird released on the stage of the Earl Carroll Theatre. They have not produced any evidence or other competent witness to show that the bird's death was due to its being struck on any part of its body, against the scenery.

THE COURT: I will reserve decision on the motion until the end of the entire case.

MR. BELLINGER: I ask that Mr. Fields be sworn.

WILLIAM C. FIELDS, called as a witness on his own behalf, having first been duly sworn, testified as follows:

BY THE COURT:

Q What is your name?

A William C. Fields.

Q Where do you live?

A Great Neck, Long Island.

DIRECT EXAMINATION BY MR. BELLINGER:

Q Mr. Fields, you heard Officer Jacobs and Officer Moran testify. I first asked Officer Moran if it was not a fact that in the station house his first charge against you was injuring a sparrow. Did you hear him make such a statement?

A I heard him make it twice.

Q You heard him change it?

A Yes.

Q Would you tell the Court exactly -- I want this coat -- (*Same handed to counsel*) -- Is this the coat, Mr. Fields, that you wore ill the play (*indicating*)?

A Yes, it is.

MR. BELLINGER: I would like to introduce this in evidence.

THE REFEREE: It will be considered as Defendant's Exhibit A. (*Same thereupon received in evidence and marked Defendant's Exhibit A, 9/14/28*).

Q Have you got the beard here that was on the unknown man's chin?

A No.

Q How long a beard would you say it was?

A The beard was this long (*indicating*), but the bird does not touch the beard. I held the bird, and the beard is there.

Q You do not place the bird in the beard?

A Just underneath the beard. Here is the beard, and here is the bird (*indicating*).

Q How long did you hold the bird in the pocket of this coat?

A While I took two steps. I reached for the bird in the cage here, and took two steps. I put my hand in this tremendous pocket to hide it from the audience. I was rather deceitful there.

Q Is it true last night, all during your performance, that this bird dashed itself against the scenery and then fell to the floor of the stage?

A It flew out in the audience and then flew back on the stage, and we picked it up.

Q You were watching it all the time?

A Yes.

Q How long have you had this bird?

A Ever since the show has been opened.

Q How many times would you say this bird has been flying about the stage of the Earl Carroll Theatre?

A I can't say. We have those birds and we just reach in and get one bird each night. They do not work every night.

Q Have any of those birds that you have had in this act-have any of them died prior to this bird?

A No, never.

Q Will you tell the Court what care is taken with these birds?

A There are four or five people that look after them. They get the proper seed. I don't know what that is. They get the proper apples, and they do not eat pears. They do not like them. They get all the seed and some delicacies that canary birds eat. Somebody told me about it, and they get it.

Q Perhaps that is the salad that Max, the restaurant man sends in from time to time?

A They get the salad every day, and apples, and this extra delicacy.

Q Mr. Fields, do you remember the scene in front of the station house last night, on the steps, where I asked Mr. Jacobs and Mr. Moran if they posed for the flash-light men?

A Yes.

Q Could you tell the Court what happened?

A They posed going in, for the flash-light, and then coming out, Mr. Moran had a lot of trouble because there was a drunk trying to shake hands with me, and he was getting in front of Mr. Moran and spoiling the picture. Mr. Moran was very much upset, and I had the drunk in front of me and tried to pull him.

Q Perhaps that might be the cause of Mr. Moran's animosity against you?

A It may be.

Q Mr. Fields, how near was the flash-light with reference to the bird?

A I imagine about nine or ten feet.

Q Did you notice a great deal of smoke coming from the flash-light machine?

A I could not see for a minute after, anyway.

Q Did it asphyxiate you temporarily?

A Almost.

Q Were you next to the bird?

A I was in the middle, and Mr. Jacobs had the bird this way (*indicating*), and Mr. Moran was on my left, and Jacobs was on the right.

Q You heard the officer testify that the bird gasped for air. By any chance, did you have to gasp for air yourself, after that flash-light?

A I did not feel any too good.

MR. BELLINGER: That is all.

CROSS-EXAMINATION BY OFFICER MORAN:

Q Do you recall speaking to me last night at the Earl Carroll Theatre?

A Sure.

Q That was up **in** your room?

A Yes.

Q Do you recall telling me how many birds you had, altogether?

A I don't remember telling you.

Q Do you remember telling me you had eight birds altogether?

A I never told you I had eight birds.

Q Do you remember my asking where were the other birds, there were only five birds?

A I told you I had six, and I gave the extra bird to Charlie Mack of Moran and Mack.

Q What became of the other two birds; you said you had eight birds.

A I didn't have eight. I only have six canary birds, and I will not lie about it.

OFFICER MORAN: In reference to the death of the bird, can we have the bird analyzed?

THE COURT: I will see what I will do, if I consider it necessary to have it analyzed in order to tell whether it suffered torture, or what it died from.

MR. BELLINGER: I ask that Mr. Cassidy be sworn.

EDWARD CASSIDY, called as a witness on behalf of the Defendant, having first been duly sworn, testified as follows:

BY THE COURT:

Q What is your name?

A Edward Cassidy.

Q Where do you live?

A Astoria, Long Island.

Q What is your occupation or business?

A Assistant Property Man in the Earl Carroll Theatre.

DIRECT EXAMINATION MR. BELLINGER:

Q Among your duties, does that involve the care of the canary buds used by Mr. Fields?

A Yes.

Q Will you tell the Court what you did for the comfort and care of the birds?

A The first thing I do at ten o'clock in the morning, is I give them food and fresh water and a big bowl of water to take a bath in. After they have their bath, I take the water out.

BY THE COURT:

Q This bird that is now dead received that kind of treatment?

A Yes. I expected that would be dead, from the remarks passed last night in West 47th Street.

Q Who made the remark; did any of these gentlemen present?

A One of the officers made the remark.

Q Which one?

A He said this bird would be dead in the morning.

Q Was it Officer Moran or Officer Jacobs?

A I don't know which one; and this officer also dropped the cage. (*Witness pointing to Officer Jacobs.*)

BY MR. BELLINGER:

Q Continue, please.

A Then I go up again at one o'clock. First, I go next door to Max's and get lettuce and about five o'clock in the evening, I get them apples, and I am there as late as one o'clock in the morning, feeding them.

BY THE COURT:

Q Have the five or six birds that you had been feeding with lettuce and apples and water-have they thrived; are they still alive?

A Yes, sir; that is the only bird we have lost so far.

Q And the other birds are in this same act?

A Yes.

Q And they are healthy?

A Yes, sir.

Q You found no wounds on any of them?

A No, sir. I have two of them home.

Q They sing?

A Yes, sir.

BY MR. BELLINGER:

Q Did you see the performance last night?

A Yes, sir.

Q Did you see the bird dash itself against the scenery?

A I never seen the bird hit against the scenery.

Q What did the bird do?

A They fly out in the audience and come back on the stage. I have yet to see one hit the scenery. The nearest I was seeing them to the scenery is six inches.

Q At the station house last night, did you hear Officer Moran make a charge against Mr. Fields for injuring a sparrow?

A Yes.

Q You heard him retract that and ask the Police Lieutenant to put it on the blotter?

A Yes, sir.

CROSS-EXAMINATION BY OFFICER MORAN:

Q You stated that you had two birds at home?

A Yes, sir.

Q Where did you get those birds?

A From Mr. Fields.

Q Two of those birds were used on this stage?

A Yes, sir.

Q Previous to this?

A Yes.

Q How many birds have you now at the theatre?

A Four. We had eight; and this dead one, is five.

Q What became of the other bird?

A Mr. Charles Mack has one, and I have two.

Q You heard Mr. Fields state there were only six?

A No, I didn't hear him. We had eight.

OFFICER MORAN That is all.

REDIRECT EXAMINATION BY MR. BELLINGER:

Q How many birds are used in the performance?

A In one performance?

Q How many birds are at the theatre?

A We had eight when we started.

Q How many are used there from night to night?

A We use the same ones most every night.

Q How many birds are in the theatre now?

A There is four.

Q And Me. Mack, of Moran and Mack, has one of them?

A Yes.

Q And here is another bird that is dead?

A Yes; and I have two.

RECROSS-EXAMINATION BY OFFICER MORAN:

Q What experience have you had with birds?

A In what way?

Q How long are you in the Earl Carroll Theatre?

A Between three and four years.

Q What other experience have you had with animals or with birds?

A My mother always had birds at home.

Q What kind of birds has she?

A Three canaries that she has now.

Q How long has she had those birds?

A She has had birds that I can remember, for the last thirty years.

Q These same three birds?

A Not the same. She has had birds for thirty years.

BY THE COURT:

Q Have you taken care of birds during that time?

A Yes, I have always attended them.

Q You have had more or less to do with canary birds and other birds?

A Yes, sir.

THE COURT: That is all.

MR. BELLINGER: I have another witness, your Honor.

DOUGLASS HOVER, called as a witness on behalf of the Defendant, having first been duly sworn, testified as follows:

DIRECT EXMINATION BY MR. BELLINGER:

At the station house last night when Officers Moran and Jacobs brought the charge against Mr. Fields, did officer Moran charge Mr. Fields with having injured a sparrow?

A Yes, sir.

Q Did he later retract that charge?

A After you called his attention to it.

Q Did you see any posing by Officer Jacobs on the steps of the station house, with the bird cage?

A Yes, I did.

Q How did he hold the bird cage?

A He held it right up in front of him.

Q How close was the apparatus for the flash-light?

A I would say about eight feet. We were up three steps, and about eight feet away.

Q Were you able to smell the smoke?

A Yes.

Q Was it thick or thin?

A It was quite thick. It was thicker than we ordinarily see.

Q Did anything unusual occur at the performance last night? Did the bird fly against the scenery or not?

A No, it did not.

MR. BELLINGER: That is all. If your Honor please, the evidence, as brought out by the witnesses for the defense is that Mr. Jacobs dropped the bird in the cage outside of the theatre, that he posed for flash-light photographers twice, that he held the cage up in his hand, that the smoke from the flash-light apparatus blew into Mr. Fields's face, and also the bird cage. Our evidence also shows that the bird last night flew out over the audience and returned to the stage, and we have also shown in our testimony that the bird had excellent care, and the People have not been able to prove that the death of the bird was due to anything that might have happened in the theatre. Therefore, I ask your Honor to dismiss this case.

THE COURT: The Defendant is charged with having carried the bird in his pocket, that he took the same from his pocket, permitted the bird to fly upon the stage of the Earl Carroll Theatre, and this bird struck the scenery, causing the bird to fall to the floor of the stage so as to produce torture.

There is not a scintilla of proof that the bird was tortured. On the contrary, from the experience of Mr. Fields with five or six birds in this very act, and the testimony of Mr. Cassidy who has been more or less for thirty years attending birds in his family and for his mother, and in this very theatre, having testified that he fed them and took care of them, the only bird that died is the bird before me. There is absolutely no proof that this bird suffered any torture or unjustifiable physical pain. There is not a scintilla of proof as to that.

We have a dead bird here before me in a cage. How did the bird die? On the testimony before me, I am satisfied that this bird did not strike the scenery at all. This bird flew out in the audience, as this bird and other birds have done in this theatre, according to the undisputed testimony, for many a night. The bird flew out in the audience and back to the stage. The bird did not suffer by being in this tremendously large-sized pocket which has been exhibited in this Court, by Mr. Fields, before me. Nor did the bird suffer by being brought in contact with a beard because it is denied by the man who held the bird, Mr. Fields, that he ever touched the beard. So that there is nothing in the act of Mr. Fields in taking the bird, holding it in his hand in this pocket while he took two steps, and then took the bird in his hand, placed the bird under the beard of some individual.

I am satisfied the bird flew out in the audience and flew back.

The best proof is the experience of these other birds, as testified to by the man in charge of them, and who has had more or less to do with birds for more than thirty years. He has testified what the other birds were fed with, and also this bird.

The bird was all right, I am satisfied, until he got into the hands of one or both of the officers. This was a case I am very frank to say, that if the proper discretion had been used, Officer Moran would not have taken a reputable citizen and placed him under arrest when he had the right to use a summons. . . . There is no danger of Mr. Fields running away and, in an act that is shown every night, there is every inducement to stay here. He made an unjustifiable arrest of a reputable citizen upon the theory that this bird was suffering torture and, before me, there is not a scintilla of evidence of the bird having suffered torture. Rather, on the contrary, after the bird was taken to the station house, it was there for a while, and it was taken out. It was in a flash-light photograph that was taken by these officers and placed, at the instance of some photographers for some paper, perhaps, and the bird suffered from the effect of the smoke of the flash-light, from the shock of the flash-there is no question in my mind-and died in the cage.

The bird did not die from any act on the part of this Defendant, William C. Fields, nor did the bird suffer any torture at his hands, whatsoever. Therefore, I find the Defendant not guilty, and he is acquitted.

(The bird and cage returned to the attorney for the Defendant.)