

**START**

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COURT OF GENERAL SESSIONS OF THE PEACE  
IN AND FOR THE COUNTY OF NEW YORK  
PART I.

#1507

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THE PEOPLE OF THE STATE OF NEW YORK

- against -

EDWARD NEAFSKY

Before

HON. JOSEPH F. MULQUHART, J.

And a Jury.

New York, Friday, May 5th, 1911.

THE DEFENDANT IS INDICTED FOR BURGLARY IN THE THIRD DEGREE,  
GRAND LARCENY IN THE SECOND DEGREE AND RECEIVING.  
INDICTMENT FILED MARCH 6th, 1911.

A p p e a r a n c e s :

JAMES A. DELFANTY, Esq., Assistant District Attorney,  
For The People.

K. HENRY ROTENBERG, Esq.,  
For the Defendant.

(A Jury is duly impaneled and sworn.)

Amos G. Russell,  
Official Stenographer.

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THE PEOPLE'S CASE

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(Mr. Delehanty opens the case to the Jury on behalf of The People.)  
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MAX RAFAEL, called as a witness on behalf of  
The People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. DELEHANTY.

Q What is your name? A Max Rafael.

Q Where do you live? A 476 Seventh Avenue.

BY THE COURT.

Q What is your business? A Ladies clothing store.

Q You have got a store there? A Yes, sir.

BY MR. DELEHANTY.

Q Where is your place of business? A 476 Seventh Avenue.

Q Do you live immediately over the store? A Yes, sir.

Q On the night of the 26th of February, did you occupy those same premises? A Yes, sir.

Q And did you have a show window in your store?  
A Yes, sir.

Q Was there any property in that window when you left the premises on the 26th of February? Did you have

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anything in your window? A Yes, sir.

Q What? A Well, there was quite some things in the window. There was a coat hanging there, and dresses on the model.

Q What sort of coat was this? A A fur coat.

Q What was its value? What was it worth?  
A Thirty-five dollars.

Q In what part of the window was this particular coat hanging? A Side window.

Q At the side light? A Yes, sir.

Q When you went away and looked up that night, was that side light intact - whole? A Yes, sir.

Q When was it you saw it last? A Around twelve o'clock at night.

Q That night? A Yes, sir.

Q When did you next see it? A Around two or three o'clock in the morning.

Q About two or three hours thereafter? A Yes.

Q What was its condition then? A The window has been cut out, a big hole cut out.

Q Was the coat there? A Not in the same place where it was when I left it.

Q Tell the Jury just what the ~~main~~ difference was between the position of the coat when you came down at three o'clock, or two o'clock? A When the Officer

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woke me up -

Q Don't tell anything about what the officer said to you. I just want you to say how you found the coat

when you came down stairs? A When I left -

BY THE COURT.

Q Did you find the coat? A I did, yes, sir.

Q In what condition? A The coat was laying down by the window.

BY MR. DISTRICT ATTORNEY.

Q Anywhere near this hole? A Near the hole, yes, sir.

MR. DISTRICT ATTORNEY: Your witness.

CROSS EXAMINATION BY MR. ROSENBERG.

Q Where was the coat when you went upstairs that night? A It was hanging up.

Q On a model? A No, sir, just on the nail.

Q On a nail? A There is an iron post in my window, and it was hanging on the iron post.

Q When you found it in the morning, it was as if it had dropped from the nail to the floor of the window?

A Yes, sir.

Q At the same place where the nail hung?

A Yes, sir.

Q You never saw the defendant in your life, did you?

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A No, sir.

Q Never talked to him? A No, sir.

Q You don't know who broke the window? A I don't know.

MR. ROSENBERG: That is all.

J O H N J . P O L E Y, called on a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DISTRICT ATTORNEY.

Q What is your name? A John J. Foley.

Q You are an officer of the police force of the City of New York? A Yes, sir.

Q Attached to what Precinct? A Twenty-second Precinct.

Q Officer, were you, on the 26th and 27th days of February, a member of the uniformed police force of the City? A Yes, sir.

Q Were you on duty the night of the 26th and the early morning of the 27th? A Yes, sir.

Q What was your tour of duty? A From two A. M. until eight A. M.

Q That was on the morning of the 27th? A In the morning, yes, sir.

Q Did you see this defendant, Edward Neafsey, that



morning ? A Yes, sir.

Q What hour was it ? A About three-fifteen A. M.

Q Where was your post that morning ? A Thirty-fifth Street, from Seventh Avenue to Ninth Avenue.

Q And where ~~was~~ did you see the defendant ? A Well, at three-fifteen A. M., I was standing at the north-west corner of Thirty-fifth Street and Seventh Avenue. I heard a smash of glass. ~~But~~ I couldn't locate where it was, so I went a couple of steps -

BY THE COURT.

Q Answer the question. Where did you see the defendant ? A In front of the doorway of 476 Seventh Avenue.

Q In the hallway ? A In the doorway.

Q What do you mean by "in the doorway" ? A The door leading to the clothing store.

BY MR. DELIBANTY.

Q Is that the store occupied by Mr. Rafael ?

A Yes, sir.

Q Did you go over that way ? A Yes.

Q Did you see what the defendant was doing ? A Well, I went up -

BY THE COURT.

Q What was he doing ? A He ran up from the doorway as I was coming up.

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Q You said you saw what he was doing ? A I said I seen him -

Q You saw what he was doing ? Now, what was he doing ? A Well, -

Q You don't know; is that so ? A I just heard the glass crash, and I seen this fellow run from there.

Q You don't know what he was doing ? A I don't know what he was doing.

Q You didn't see what he was doing ? A I didn't see what he was doing.

Q You said so. You understand the English language, don't you ? A Yes, sir.

Q Just describe that store. What kind of a place is it ? Is it a tenement house ? A It is a tenement house overhead.

Q And there is an entrance up to the tenement, is there ? A Yes, your Honor.

Q How many stores are there ? A Only one store.

Q And the entrance to the store is from the street, and there is also an entrance to the house ? A Yes, your Honor.

Q Where is this window ? A This window is on the south side of the hallway; it is a big window.

Q How many windows are there ? A There is only one window.

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Q Only one window? A Yes.

Q And the entrance to the store, is that between the doorway and the window, or is the window between the two doorways? A No, the two doorways are directly together.

Q And then the window is - A South of the doorway.

Q No, which doorway did you see this man standing in, if you saw him standing in any? A I seen him run from the door leading to the clothing store. It is a deep doorway.

BY MR. DETMERS.

Q Now, Officer, did you pursue him? A Yes, sir.

Q Catch him? A No, he out-distanced me that morning; he got away.

Q When did you next see him? A About three-twenty A. M., March first.

Q That is two days afterwards? A March first, three days afterwards.

Q And where did you see him this time? A I was standing at the north-west corner of Forty-first Street and Seventh Avenue.

Q Did you go up to him? A Yes.

Q Put him under arrest? A Yes, sir.

Q What was done then? A He was in Company with three other fellows, and at the time I placed him under

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arrest those fellows come out, and one of them assaulted me, threw me down on the street.

THE COURT: Strike that out. I had to throw one case out here yesterday on account of testimony concerning other crimes, you know.

Q Did you succeed in bringing the defendant to the station house at that time? A Yes, sir.

Q I understand that you put him under arrest, and took him right to the station house? A He was taken away from me at that time.

Q I want you to tell the jury just what happened? Did you get him after he got away from you? A Yes, I caught him afterwards.

THE COURT: How is that important, Mr. Delchanty?

MR. DELCHANTY: I just want to show the Jury the arrest.

THE COURT: All those things will bring in another crime, an assault on an officer, and I will have to direct an acquittal, if it is persisted in. If an officer attempted to arrest me to night, I should resist it. That is not any proof of guilt at all. That is well established. If others unlawfully assaulted the officer they should have been put under arrest.

BY THE COURT:

Q You did not arrest him that night? A Not that night. Not the night he broke the glass.

Q When did you arrest him? A About three-fifteen

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A. M., March first.

THE COURT: Strike out "the night he broke the glass".

BY MR. DELCHANTY.

Q Officer, you have stated on the third of March, about three-fifteen in the morning, you apprehended this defendant, and he got away from you? A Yes, sir.

Q Did you get him that same morning? A That same morning.

Q Did he get away from you again? A He got away from me again.

THE COURT: Now, Mr. Delchanty, I have ordered you not to go into those details, and if you persist in that I shall dismiss the case.

MR. DELCHANTY: I haven't proven he was arrested.

THE COURT: Well, prove that. The Jury will disregard every statement made by this Officer as to the attempted arrests of this defendant. There is no proof that this defendant has committed any crime, and a man, unless he has committed a crime, has a right to resist arrest. The mere fact that he ran away when an Officer attempted to arrest him is no proof that he committed this crime, and that is clear law, undoubted law, and it is very dangerous for the District Attorney to experiment with the law.

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Q Where did you arrest him? A In the hallway of 354 Seventh Avenue, three flights up; he was hiding in a bath tub, in the hallway.

Q Did you take him to the station house? A I took him to the station house.

THE COURT: Strike out the testimony "he was hiding in the hallway".

MR. DETMERY: Your witness.

CROSS EXAMINATION BY MR. ROSENBERG.

Q How far was the man that ran away the first time you saw him, the person whom you now say was the defendant? A About a hundred feet.

Q You were on the north-west corner of Seventh Avenue and that Street? Thirty-fifth Street? A Yes, sir.

Q And where is this store located? A 476 Seventh Avenue.

Q How far is the corner from the ~~store~~ store?  
A It is more than half a block.

Q Do you mean a hundred feet away? A Perhaps it was more.

Q Do you think the blocks up there are more than a hundred feet, or two hundred feet, long? A The Avenue blocks?

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Q Yes; between Thirty-fifth and Thirty-sixth Streets. Do you understand my question? A Yes; I don't know the exact distance.

Q About. That is all I want to know? A About a hundred feet, or one hundred and fifty feet.

Q How many houses separated you from where you stood and where you say the glass was broken? A The first house from the corner is 460, and this is 476, where the glass was broken.

Q Was it light, or dark? A It is light on the corner. It is very bright on the corner.

Q But this was one hundred and fifty feet from the corner? A I mean on the corner of Thirty-sixth Street, where he ran.

Q This was not on the corner where the store was broken into, was it? A Was it light there? There is a big light inside, in the store, and it reflects out. You can see it out in the sidewalk any time, it is bright there.

Q Then you were at least one hundred and fifty feet from the man when you saw him run; is that correct?

A One hundred ~~not~~ or one hundred and fifty.

Q And you saw him from the rear, from the back, didn't you? A Yes, I seen him turn around.

Q How long a time did you see him turn around the

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Thirty-sixth Street corner ? A How long a time ?

Q Yes, how long a time elapsed ? A Well, not very long.

BY THE COURT.

Q How long have you known this defendant ? A Well, I have known him since last November, your Honor.

Q How well have you known him ? A Well, I had him arrested -

Q How well have you known him ? A How well ?

Q Yes. Did you live in the same house with him ?

A No, your Honor, I never lived in the same house with him.

Q Did you live in the neighborhood where he works ?

A He is all the time around this neighborhood.

Q What neighborhood is your post ? A Seventh Avenue.

Q From what streets ? A Forty-seventh to Forty-second Streets.

Q On both sides of the street ? A The west side of the Avenue.

Q That is a pretty long post ? A Yes, sir.

Q And you have seen him on that post since last November ? A Yes, sir, he frequented that post ever since.

Q You have seen him frequently ? A Yes, sir.

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BY MR. ROSENBERG.

Q You knew, when you saw the person running away, that it was this defendant? A Yes, sir.

Q Now, did you report to your Sergeant in charge that night, or on your return to the station, that you saw this defendant on that night? Did you report it? A No.

Q Did you report the breaking of the window to your sergeant that night, or the next morning? A I didn't report it. The Officer on that post reported it. I was not on that post that morning. I was on Thirty-fifth Street.

Q Didn't you see the Officer before he made his report? A I was standing there.

BY THE COURT:

Q You did not tell - A I told him a description of the fellow, and gave him the name and everything.

Q He asked you if you reported it, and you said "no". Now, that is true? A The other Officer reported it, the Officer that was on that post that morning.

BY MR. ROSENBERG.

Q Is that Officer here? A No.

Q Has he ever been down with you in this case?

A Never.

Q What was that Officer's name? A John McManis.

Q What Precinct? A Twenty-second.

THE COURT: Any other evidence, Mr. Delahanty?

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MR. DELFANTY: No, sir.

THE COURT: The Jury is directed to render a verdict of not guilty. There is no evidence of burglary here, and there isn't sufficient identification.

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THE CLERK OF THE COURT: Now say you, gentlemen of the Jury, do you find the defendant guilty, or not guilty?

THE FOREMAN OF THE JURY: Not guilty.

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