

Commonwealth v. Burgess (1824)

November 1, 1824

Witness #1 – William Henderson

- You are one of the locals in Dumfries at about 9am that “separated” the defendant (Joseph Burgess) and deceased (Charles Gollyhorn) after their fight.
- You did not know Burgess before this incident.

After being sworn in, answer the questions asked by Commonwealth Attorney; read your information printed in **BOLD**:

- Where were you on the morning of June 7th around the time of 9am?*
About that time, I was in Dumfries running errands, as my custom on Tuesdays, this time to the tinsmith’s shop in the marketplace.
- Once in town, what did you see as you approached the marketplace?*
I heard people shouting, a general disturbance... I turned a corner and saw two men arguing and threatening each other. Three others were trying to keep them apart.
- What happened next?*
I tried to restrain one of the men... I grabbed him and pulled him away from the other. It took two of us to drag him across the street. He was threatening us the whole way.
- Do you see the man you restrained in the courtroom today?*
I do. There. [point at Burgess.] **That day I didn’t know his name. But now I know he goes by Joseph Burgess.**

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Witness #1 – William Henderson (continued)

Answer questions asked by the Defense Attorney; read your information printed in **BOLD**:

- a. *So, you say you heard a loud altercation, and you rushed over to see what was happening. And there was a lot of people gathered around trying to separate the two men. Could you tell who was involved in the fight?*
It was indeed quite the brawl. But we succeeded in separating the two men, after a few blows and kicks. I could not tell who started the fight. But once we got them separated, I clearly saw one was Burgess as he stormed off shouting.
- b. *You heard a loud altercation and that after a few blows, my client walked off the scene cursing? Could you tell what he was saying?*
I could not fully understand what was said during the event, all of us were shouting. But I think he was cursing Charles Gollyhorn, who was the other man throwing punches, but I cannot be sure.
- c. *No specific threats of violence or the like against Gollyhorn?*
I cannot be sure. He was threatening everyone more or less, right then.
- d. *That didn't strike you as dangerous?*
No. He seemed drunk.
- e. *Thank you, Mr. Henderson. No more questions, your honor.*
(You may take a seat)

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Witness #2 – James Nelson

- You saw and spoke with Burgess as he walked by the tavern at 2pm, and again after he had obtained the knife.
- You have met Burgess a few times before.

After being sworn in, answer the questions asked by Commonwealth Attorney; read your information printed in **BOLD**:

- a. *Please tell the Court what you were doing in Dumfries town in the afternoon on June 7th of his year?*

Yes sir. I was in town to do some business, and I decide to take lunch at the tavern. When I exited the tavern around 2pm, I had an encounter that struck me as very odd.

- b. *Did this happen in the tavern?*

No. I had finished with my lunch. As I stepped outside, I collided with a man I have hired for odd jobs before named Burgess.

- c. *Do you see that man here today?*

Yes. [Point or gesture at Burgess]

- d. *Let the record show the witness indicated the defendant. You said the encounter was peculiar. Why is that?*

Well, the proper thing to do when you run into someone is to apologize. Instead, Burgess, was out of his head with anger. He was muttering that he was going to “kill that man” who had injured him. He then stormed off leaving me in shock.

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Witness #2 – James Nelson (continued)

Answer questions asked by the Defense Attorney; read your information printed in **BOLD**:

a. *How was Burgess as a hired hand?*

Alright. He worked hard and I had little complaint with him. He drank, but then who of that sort doesn't?

b. *Was there anything different about his appearance than you're used to?*

It looked like he had been in a terrible fight. Almost as if he had been kicked in the face. He was scratched up in a few places, and on his cheek there was a gash from which the skin had been peeled away about the size of a Spanish dollar.

c. *Would you consider this a substantial wound?*

It was a frightful wound. I cannot say who did it, but if someone had dealt that kind of blow to me, I would be mad as well.

d. *Was this out of character from what you knew of Joseph Burgess?*

Not particularly. He could bluster and carry on foully when he was mad.

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Witness #3 – Mrs. Wilberg

- You are a butcher's wife who gave Burgess the knife.

After being sworn in, answer the questions asked by Commonwealth Attorney; read your information printed in **BOLD**:

- Mrs. Wilberg, can you tell me where you were on the afternoon of June 7th?*
Yes, I was at home cleaning up after lunch. I was in the kitchen with my husband, George, who had just come in to eat.
- Was there anyone else present?*
No. But there was someone outside calling for me. Shouting my name... loud enough to wake the dead, so I rushed to the door!
- Did you recognize who it was?*
Not at first. I went to the door and looked out. It was Joseph. He had done work for my father, and then for my husband George.
- Is that man here now?*
That is him. [Witness points at Burgess] That is the same man. I didn't know his last name, I always called him Joseph.
- What did this man, Mr. Burgess, want that he called you out with such urgency from your dinner?*
He said my father had sent him after George's good butchering knife. He'd brought it home in his apron from the shop, and I supposed father needed it for something or other.
- What did you do then?*
I told George, who said I had better send it back. Then brought it out to Joseph.
- Did Mr. Burgess say anything to you at that time?*
Nothing out of the ordinary, he just thanked me for the knife and then rushed off. I figured to get back to father.
- Did he mention at any time Charles Gollyhorn, or speak in a threatening manner when with you?*
No! If he had, I would not have given him the knife.

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Witness #3 – Mrs. Wilberg (continued)

Answer questions asked by the Defense Attorney; read your information printed in **BOLD**:

- a. How would you consider the work Mr. Burgess did for your family?
I don't really know, he mostly did work for George, my husband, and my father. Odd jobs and things.
- b. Surely you had opportunity to form an opinion of him, if you would entrust him with a knife?
I trust my father's judgement. I guess I didn't think anything of it. If we did not trust him, why would we keep hiring him?
- c. Did he seem in his right mind?
I would not know.
- d. Allow me to rephrase that; did he seem agitated?
Perhaps a bit flushed. He did not seem drunk to me. Now that I think about it, he did seem a bit excited? I thought it was because of the rush my father was in and he had been told to hurry.

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Witness #4 – Lucien Ames:

- You are a young man who works at a store that Burgess asked to use the grinding wheel to sharpen a knife he had.

After being sworn in, answer the questions asked by Commonwealth Attorney; read your information printed in **BOLD**:

- Mr. Ames, do you recall where you were the afternoon of June 7th?*
Mr. Beal's store. I work the counter there in the afternoons, after I'm finished with my chores at home.
- Did you happen to have any unusual customers that day?*
Joe Burgess came in with a knife, which is pretty unusual. He came up to me and asked to sharpen the knife he had. Said he was out to kill the, uh, fellow who'd beat him up in the street.
- Is the man that came in that day that you know as Joe Burgess here?*
Yes, he's there. That's him. [points at Burgess]
- What sort of knife did Burgess have with him?*
A good-sized butcher's knife. It had Mr. Wilberg's mark on the hilt. I would have asked him how he got it but... he was pretty mad, I let him at the wheel and backed off to the other end of the counter until he was done. He worked at the blade a minute or so and then left.

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Witness #4 – Lucien Ames (continued)

Answer questions asked by the Defense Attorney; read your information printed in **BOLD**:

a. *Mr. Ames how well do you know Mr. Burgess.*

Fairly well I'd say. We've worked together in the past. On Mr. Tebbs' house and the church. My father had wanted me to try bricklaying. I knew him well enough.

b. *You said he was 'pretty mad', did he say what was troubling him?*

He wouldn't stop talking about it. Said he was going to get Charlie Gollyhorn for what he'd done to him in a fight they'd had.

c. *Did he sound serious to you?*

Well... It is hard to say with Joe. He was always one to anger quickly and is always arguing with somebody. But I'd never seen him stab anyone. I just thought he wanted to scare Charlie after getting his face cut up like that.

d. *Did you see where he went from the store?*

No, I, uh, told him he had better go home and sleep it off it before he did something he'd regret. I thought that's where he might have gone, but I didn't look to see where he went. Another customer was walking in.

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Witness #5 – George Best

- You are a baker who saw Burgess walk onto a back street down from the store and “heard loud threats of vengeance against the deceased and declaring his intention to kill him.”

After being sworn in, answer the questions asked by Commonwealth Attorney; read your information printed in **BOLD**:

- Mr. Best can you tell the court where you were the morning of June 7th?*
I was in the same place I am every weekday morning. Behind my shop checking on the ovens to see how things were shaping up.
- You were in the rear of your establishment then, outside?*
That would be where the ovens are, yes sir.
- Of course. Now, the rear of your lot looks out on a cross street and some rooming houses as I understand it. How is your view of the street?*
Alright enough. There is a bit of a fence to keep curious people and animals out of the yard but it isn't tall. I could see it well enough above, say, your waist.
- Do you see anyone in this court room today that was in the alley with a knife that day?*
There was a man asleep on the porch of Leadbetter's rooming house. And that fellow right there, with a knife. [Point to Joseph Burgess]
- What sort of knife was it, Mr. Best?*
A butcher's knife.
- What did he do with that knife?*
Well, he charged down the street yelling about someone who had cheated him, that sort of thing. He yelled and pointed the knife at a man on the porch. The man got up and this other man Burgess said, 'I'm here to kill you Gollyhorn', and the fellow on the porch said, 'I don't reckon anyone wants to kill me', then Burgess just stuck him.

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Witness #5 – George Best (continued)

g. *Stuck him?*

Yes, stabbed him right in the chest. The fellow who was stabbed groaned and said, 'You stabbed me'. Then he tried to run, but he only made it about twenty steps before falling over. I didn't see him move after that.

h. *Did you see where Mr. Burgess went?*

I lost sight of him when I was trying to find the constable. He had gone off towards the south on the highway.

Answer questions asked by the Defense Attorney; read your information printed in **BOLD**:

a. Were you familiar with the man on the porch?

We weren't close. His father and my father were, but he died before I was born. In the Revolution. They were both named Charles Gollyhorn.

b. What did you know of his character?

I do not like to speak ill of the dead. He worked hard, and he enjoyed his games and his drink. I'm told he was well liked by his employers.

c. Mr. Best. You said your fence was waist high? How well could you see the porch of the rooming house?

I saw most of the fight. I stood up in surprise when Burgess got up on the steps.

d. You could see well enough to be sure Mr. Gollyhorn didn't have a weapon?

If he did, he dropped it awful fast.

e. Could you tell if Mr. Gollyhorn said anything other than what you have already told the court? Even if you'd rather not repeat the phrasing, as it were.

No, not really. If he did, he didn't shout it like that fellow Burgess did.

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Sheriff Philip Alexander

- You are the Sheriff of Prince William County. You are to ensure that the courthouse remains quite and orderly while the trial is being conducted. When the Chief Magistrate prompts you that the trial is to begin you are to say the following in a loud voice so that everyone can hear you:

Read the text in **BOLD**:

All rise! Oyez, oyez, oyez, silence is commanded in the court while the honorable chief justice is sitting, upon pain of imprisonment. All manner of persons that have anything to do at this court draw near and give your attendance, and if anyone have any plaint to enter or suit to prosecute, let him come forth, and they shall be heard.

God save the Commonwealth of Virginia!

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Clerk of the Court, Philip D. Dawe

- You are the Clerk of the Court for Prince William County. It is your job to note and record everything that is said in the trial. At the start of the trial, after the Sheriff has brought the courtroom to order, you are to stand and say loudly so that the entire Courthouse can hear you:

Read the text in **BOLD**:

To Your Honors, the Commonwealth of Virginia brings suit against Joseph Burgess, a laborer by trade, for the felony of first-degree murder of one Charles Gollyhorn on Tuesday, June 7th, in the year one thousand eight hundred and twenty-four.

Before each witness testifies, you will administer the oath as follows. The witness can repeat after you, or say I do/I will:

The evidence which you shall give in the case now depending between the Commonwealth of Virginia and Joseph Burgess, defendant, shall be the truth, the whole truth, and nothing but the truth.

When the Commonwealth's Attorney is finished with a witness you say the following:

Your witness, Mr. Mcrae.

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Chief Magistrate, Charles Meng

- A minimum of three and up to 9 magistrates would be needed to conduct court business on court days in 1820's. Appointed for life by the governor, magistrates would be wealthy & influential white men from the county, without needing formal legal training.
- Chief Magistrate: Charles U. Meng.
- Subordinate Magistrates: John Hooe, J. (John/Joseph?) Ewell, Griffin Seith, Charles Hunton.

Read the text in **BOLD**:

At the beginning of the trial, the Chief Magistrate addresses the courtroom:

Sheriff Alexander, you will bring the court to order.

When the clerk has finished reading the charges, the Chief Magistrate will direct the Commonwealth's Attorney to begin:

Mr. Gibson, you may begin your opening remarks.

Between each witness, the Commonwealth's Attorney will say, "I am finished with this witness your honor." And you will say:

Your witness, Mr. Macrae.

At the end of the trial, when the defense rests by saying "*the defense rests its case*" the Chief Magistrate again addresses the courtroom:

The jury is now so ordered to deliberate in their chambers.