Commonwealth v. Burgess (1824)

Section 1: Case Summary

Synopsis

On Tuesday, June 7th, 1824, when a quarrel between two men became deadly. At about 9am, **Joseph Burgess** and **Charles Gollyhorn** were seen together in the streets of Dumfries in an squaring up to fight, but before either can land a blow, they were separated. This was a continuation of a conflict the night before at a party, where Gollyhorn knocked Burgess out.

Burgess was later seen, around 2pm, near the home of butcher George Wilberg where he procured a knife and told a witness that he planned to kill the man that had injured him. Burgess, who clearly had a wound on the side of his face, walked to another shop and expressed his need to sharpen the knife in his determination to kill the perpetrator. Finding Gollyhorn napping on the steps of his rooming house, Burgess roused him and stabbed him in the chest multiple times with the butcher's knife. Gollyhorn managed to walk away but only made it twenty or so steps before falling to the ground dead.

Arraigned on July 5, 1824, Burgess went on trial for murder in the first degree on November 1, 1824. Found guilty and sentenced to hang, his lawyer George McRae filed an appeal due to errors in the arraignment. His execution was stayed (postponed) until July 1825 but the appeal was ultimately denied. Joseph Burgess was hanged at Brentsville on July 8, 1825.

Significance of the Case

This was the first murder trial conducted at Brentsville, two years after the court moved to its new home in 1822. It is a good illustration of how the court system works even with an "open and shut" case, including the appeals process in the aftermath. While it may have seemed "obvious" that Burgess was guilty of murder, Virginia law of the time allowed for a wide interpretation of self-defense when "striving for the wall," (*New Virginia Justice 2nd Edition,* pg. 288)[1] or having been first assaulted, that arguably should have brought him before the court for manslaughter. Burgess was an outsider while Gollyhorn was a member of the community, and the community responded accordingly.

[1] https://archive.org/details/newvirginiajust00henigoog/page/n3/mode/2up

Key Facts

- Burgess made no attempt to hide this murderous intent, as is evident from the number of witnesses to the event and how many people he told directly of his intended actions.
- Burgess walked back and forth through busy town streets for most of a day preparing for his assault.
- He and Gollyhorn had fought before.
- Burgess stabbed Gollyhorn through the chest multiple times with a borrowed butcher's knife, mortally wounding him.
- In a later review of the charge of first-degree murder during the appeal, the judgement was decided upon the fact that the murder took place several hours after the initial interaction, thus proving Burgess' premeditative state.

Section 2: The Historical Characters

Joseph Burgess – Defendant, a transient Irish immigrant laborer, accused of killing Charles Gollyhorn.

Charles Gollyhorn – Deceased. Allegedly murdered by Joseph Burgess. A local laborer, son of a Prince William County Revolutionary War hero.

Witness 1: William Henderson – A Dumfries local who, at about 9am that morning, "separated" the defendant (Joseph Burgess) and deceased (Charles Gollyhorn) after their fight.

Witness 2: James Nelson – Person who saw and spoke with Burgess as he walked by the tavern at 2pm, and again after he had obtained the knife. A casual acquaintance of Burgess.

Witness 3: Mrs. Wilberg – The butcher's wife who provided Burgess with a knife upon a supposed request by "her father," another butcher.

Witness 4: Lucien Ames – A young man who works at a store that Burgess asked to use the grinding wheel to sharpen a knife he had.

Witness 5: George Best – 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."

Sheriff Philip Alexander – Served as the Sherriff of Prince William County from 1822 to 1824. He is charged with ensuring that the Courthouse remains quiet and orderly while the trial is being conducted.

Clerk of Court Philip D. Dawe – You were appointed the Clerk of the Court for Prince William County from 1813 to 1832. It is your job to note and record everything that is said in the trial. At the start of the trial, you are to stand and loudly announce the current court case.

Commonwealth Attorney John Gibson – The Commonwealth Attorney for Prince William County is an elected official, typically a prosecutor and trained lawyer.

Defense Counsel George W. Macrae – Representing Joseph Burgess.

Abraham Mellon – The Jailer (served 1823-24). He is appointed by the county sheriff and lives with his family in the jail building. Escort the prisoner from jail to courthouse and help the sheriff keep order.

Chief Magistrate & Magistrate(s) – 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, not necessarily with formal legal training. Chief Magistrate: Charles U. Meng; Subordinate Magistrates: John Hooe, James Ewell, Griffin Seith, Charles Hunton.

The Jury – Citizens of Prince William County. Historically would have been white men over the age of 21 with sufficient property to qualify to vote.

Section 3: The Court Proceedings (Script)

Chief Magistrate:
Sheriff Alexander, you will bring the court to order.

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Sheriff Philip Alexander:
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!

Clerk of Court Philip D. Dawe:
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, the forty-eighth year of the Commonwealth.

Chief Justice Meng:
Mr. Gibson, you may begin your opening remarks.

Commonwealth Attorney John Gibson:
The Commonwealth of Virginia, as aforesaid, giveth the court further to understand that a certain Joseph Burgess late of the town of Dumfries, in the county of Prince William, on the seventh day of June in the year one-thousand eight hundred and twenty-four being a person of wicked mind and corrupt disposition, did in light of day about the hour of two o'clock commit the felony of homicide.

There situated feloniously and murderously he violently assailed the late Charles Gollyhorn by thrusting a knife into the breast of the deceased and there endeavored to commit murder of the first degree against the peace and dignity of the Commonwealth and against the force of the general assembly of Virginia.

Defense Attorney George W. Macrae:
I have the honor of representing Joseph Burgess, a laborer by trade, late of the town of Dumfries, who on the seventh day of June last was himself assaulted by one Charles Gollyhorn in the said town of Dumfries. Such a villainous act was perpetrated against my client that he was not of sound mind and body, forcing him to defend his honor. The excitement this event created has added poisoned the general public opinion against my client, but

the court will see that Joseph Burgess was not the only one to blame for these unfortunate events.

Witness #1 – William Henderson:

COC Philip Dawe:
The Commonwealth calls as witness William Henderson. Raise your right hand and swear this oath.

COC Philip Dawe:
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.

William Henderson:
The evidence which I 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.

CA John Gibson:
Where were you on the morning of June 7th around the time of 9am?

William Henderson:
About that time, I was in Dumfries running errands, as my custom on Tuesdays, this time to the tinsmith's shop in the marketplace.

CA John Gibson:
Once in town, what did you see as you approached the marketplace?

William Henderson:
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.

CA John Gibson:
What happened next?

William Henderson:
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.

CA John Gibson:
Do you see the man you restrained in the courtroom today?

William Henderson:
I do. There. *[He points at Burgess.]* That day I didn't know his name. But now I know he goes by Joseph Burgess.

CA John Gibson:
Let the record show the witness pointed to the defendant, Joseph Burgess. I am finished with this witness your honor.

Justice Meng:
Your witness, Mr. Macrae.

[Defense counsel cross-examines the witness]

DC George Macrae:
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?

William Henderson:
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 curses.

DC George Macrae:
You heard a loud altercation and that after a few blows, my client walked off the scene cursing? Could you tell what was he saying?

William Henderson:

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.

DC George Macrae:
No specific threats of violence or the like against Gollyhorn?

William Henderson:
I cannot be sure. He was threatening everyone more or less, right then.

DC George Macrae
That didn't strike you as dangerous?

William Henderson:
No. He seemed drunk.

DC George Macrae:
Thank you, Mr. Henderson. No more questions, your honor.

Witness #2 – James Nelson:

COC Philip Dawe:
The Commonwealth calls as witness James Nelson. Raise your right hand and swear this oath.

COC Philip Dawe:
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.

James Nelson:
The evidence which I 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.

CA John Gibson:
Please tell the Court what were you doing in Dumfries town in the afternoon on June 7th of his year?

James Nelson:
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.

CA John Gibson:
Did this happen in the tavern?

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

CA John Gibson:
Do you see that man here today? *[The Witness gestures in Joseph's direction.]* Let the record show the witness motioned to the defendant. You said the encounter was peculiar. Why is that?

James Nelson:
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.

CA John Gibson:
I am finished with this witness your honor.

Justice Meng:
Your witness, Mr. Macrae.

[Defense counsel cross-examines the witness]

DC George Macrae:
How was Burgess as a hired hand?

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

DC George Macrae:

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

James Nelson:
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.

DC George Macrae:
Would you consider this a substantial wound?

James Nelson:
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.

DC George Macrae:
Was this out of character from what you knew of Joseph Burgess?

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

DC George Macrae:
The defense is done with this witness your honor.

<u>Witness #3 – Mrs. Wilberg: Butcher's wife who gave Burgess the knife.</u>

COC Philip Dawe:
The Commonwealth calls as witness Mrs. Martha Wilberg. Raise your right hand and swear this oath.

COC Philip Dawe:
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.

Martha Wilberg:

The evidence which I 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.

CA John Gibson:
Mrs. Wilberg, can you tell me where you were on the afternoon of June 7th?

Martha Wilberg:
Yes, I was at home cleaning up after lunch. I was in the kitchen when my husband, George, who had just come in to eat.

CA John Gibson:
Was there anyone else present?

Martha Wilberg:
No. But there was someone outside calling for me. Shouting my name… loud enough to wake the dead, so I rushed to the door!

CA John Gibson: Did you recognize who it was?

Martha Wilberg:
Not at first. I went to the door and looked out. It was Joseph. I recognized him for he had done work for my father, and then for my husband George.

CA John Gibson:
Is that man here now?

Martha Wilberg:
That is him. [witness points at Burgess] That is the same man. I didn't know his last name, I always called him Joseph.

CA John Gibson:
What did this man, Mr. Burgess, want that he called you out with such urgency during dinner?

Martha Wilberg:
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.

CA John Gibson:
It didn't seem odd he would send Mr. Burgess.

Martha Wilberg:
A little, but as I said, he had worked for us before doing many an odd job and I figured my father might have been in a rush considering that George had come home for dinner and would not return for some time.

CA John Gibson: What did you do then?

Martha Wilberg:
I told George, who said I had better send it back. Then brought it out to Joseph.

CA John Gibson:
Did Mr. Burgess say anything to you at that time?

Martha Wilberg:
Nothing out of the ordinary, he just thanked me for the knife and then rushed off. I figured to get back to father.

CA John Gibson:
Did he talk about, or threaten, Charles Gollyhorn when you spoke to him?

Martha Wilberg:
No! If I had, I would not have given him the knife.

CA John Gibson:
I am finished with this witness your honor.

Justice Meng:
Your witness, Mr. Macrae.

DC George Macrae:
How would you consider the work Mr. Burgess did for your family?

Martha Wilberg:

I don't really know, he mostly did work for George, my husband, and my father. Odd jobs and things.

DC George Macrae:
Surely you had opportunity to form an opinion of him, if you would entrust him with a knife?

Martha Wilberg:
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?

DC George Macrae:
Did he seem in his right mind?

Martha Wilberg:
I would not know.

DC George Macrae:
Allow me to rephrase that; did he seem agitated?

Martha Wilberg:
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.

DC George Macrae:
Thank you, madam, I have no further questions.

<u>Witness #4 – Lucien Ames:</u>

COC Philip Dawe:
The Commonwealth calls as witness Lucien Ames. Raise your right hand and swear this oath.

COC Philip Dawe:
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.

Lucien Ames:
The evidence which I 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.

CA John Gibson:
Mr. Ames, do you recall where you were the afternoon of June 7th?

Lucien Ames:
Mr. Beal's store. I work the counter there in the afternoons, after I'm finished with my chores at home.

CA John Gibson:
Did you happen to have any unusual customers that day?

Lucien Ames:
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.

CA John Gibson:
Is the man that came in that day that you know as Joe Burgess here?

Lucien Ames:
Yes, he's there. That's him. [points at Burgess]

CA John Gibson:
What sort of knife did Burgess have with him?

Lucien Ames:
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.

CA John Gibson:
Thank you, Mr. Ames.

Justice Meng:
Your witness, Mr. Macrae.

DC George Macrae:
Mr. Ames how well do you know Mr. Burgess.

Lucien Ames:
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.

DC George Macrae:
You said he was 'pretty mad', did he say what was troubling him?

Lucien Ames:
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.

DC George Macrae:
Did he sound serious to you?

Lucien Ames:
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.

DC George Macrae:
Did you see where he went from the store?

Lucien Ames:
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.

DC George Macrae:
I see. No more questions for the witness, your honor.

<u>Witness #5 – George Best:</u>

COC Philip Dawe:
The Commonwealth calls as witness George Best. Raise your right hand and swear this oath.

COC Philip Dawe:
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.

George Best:
The evidence which I 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.

CA John Gibson:
Mr. Best can you tell the court where you were the morning of June 7th?

George Best:
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.

CA John Gibson:
You were in the rear of your establishment then, outside?

George Best:
That would be where the ovens are, yes sir.

CA John Gibson:
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?

George Best:
Alright enough. There is a bit of a fence to keep curious people and animals out of the yard but it isn't that tall. I could see it well enough above, say, your waist.

CA John Gibson:
Was there anyone in the alley that morning?

George Best:
There was a man asleep on the porch of Leadbetter's rooming house. And that fellow right there, with a knife. [Points to Joseph Burgess]

CA John Gibson:
What sort of knife was it, Mr. Best?

George Best:
A butcher's knife.

CA John Gibson:
What did he do with that knife, Mr. Best?

George Best:
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.

CA John Gibson:
Stuck him?

George Best:
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.

CA John Gibson:
Did you see where Mr. Burgess went?

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

CA John Gibson:
If there's no objections, I'd like to cite the grand jury testimony of Deputy John A. Stangell for clarification? Deputy Stangell reported that he located the

defendant in his rooming house, located two miles from town on the road indicated by the witness at the place he was domiciled.

COC Philip Dawe:
Thank you. Your witness Mr. Macrae.

DC George Mcrae
Were you familiar with the man on the porch?

George Best
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.

DC George Mcrae
What did you know of his character?

George Best
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.

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

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

DC George Macrae:
You could see well enough to be sure Mr. Gollyhorn didn't have a weapon?

George Best:
If he did, he dropped it awful fast.

DC George Macrae:
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.

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

DC George Macrae:
I see. I am finished with the witness, your honor.

Justice Meng:
Very well. The jury is now so ordered to deliberate in their chambers.

Section 5: Deliberation

In the "jury room" you may want to focus on:

- **EMPHASIZE** that the jury should only convict Joseph Burgess if they have **EVIDENCE BEYOND REASONABLE DOUBT** as to his guilt.
- Murder in Virginia at the time was defined as, "...when a man of sound memory, and of the age of discretion, unlawfully killeth any person under the commonwealth's peace, with malice forethought."
- Burgess did not make much if any effort to conceal his actions or words. People did not take his threats seriously.
- What was his character?
- He was possibly intoxicated. Did that effect "sound memory" or mind?
- Manslaughter was defined as, "By manslaughter is to be understood such killing of a man, as happened either on a sudden quarrel, or in the commission of an unlawful act, without any deliberate intention of doing any mischief at all."
- "As, if the two meet together, and (in a fight), the one kill the other this is manslaughter and felony. And so it is, if they had upon that sudden occasion gone into the field and fought, and the one had killed the other, this had been but manslaughter, and no murder; because all that followed was but a continuance of the first sudden occasion, and the blood never was cooled til the blow was given."
- If a blow was struck first against a man, it could be considered manslaughter if he killed his attacker.
- Was this quarrel sudden? Was it preventable?

After discussion you can announce the historical verdict:

> **On this Tuesday, November 1, 1824, Joseph Burgess is found guilty of murder in the first degree and is sentenced to be hanged on December 10, 1824. Owing to an appeal by Mr.**

Macrae, his execution was stayed while the General Court considered his appeal. It was decided that the county Sheriff had made an error in handling testimony from witnesses against Burgess before the trial, but it did not warrant a new trial. He was hanged on July 8, 1825 at Brentsville.