

Commonwealth v. Bob, or Robert (1826)

Section 1: Case Summary

Synopsis

John Clarke, a wealthy white plantation owner, had his house broken into and large portions of meat stolen. He was not sure, but he testified that it occurred on or about Saturday, February 4, 1826 (unsure of the exact date, he referenced a different event, that he discovered the theft the day before a fox hunt in the neighborhood); he noticed that his basement was broken into. After looking inside, he noticed that 16 pieces of salt pork and 2 pieces of salt beef were missing. After searching for the stolen meat about 8 or 10 days, he finally found 2 pieces that resembled it with an enslaved man named Burgess. Burgess explained that he got the meat from an enslaved woman named Mima. Clarke went to see Mima on February 18th and asked where she got the meat. Mima told him that she got it from an enslaved man named Bob who, in turn, had told her that he had gotten it from a cellar attached to the house occupied by a Mr. Stith.

A warrant was issued for Bob on February 23rd. He was arrested on February 24, 1826, by Prince William County Sheriff Ewell and brought into custody of the Brentsville jailer John Merchant; the trial was set for March 20, 1826.

Significance of the Case

According to law (1786 act directing the method of trying Slaves charged with treason or felony), felonies for slaves were punishable by death, which included burglary and other property crimes. Enslaved individuals accused of theft were tried in local county courts, and if convicted, would likely face an execution by hanging on the courthouse grounds within 30 days of conviction.

By Virginia law, enslaved people could not testify in defense of themselves in court; yet enslaved individuals could be called by the prosecution and compelled to testify against other slaves (Virginia Code, Chpt. 103, Sec. 33): On the trial of a slave the court may take for evidence the confession of the offender, the oath of one or more credible witnesses, or such testimony of negroes or mulattoes, bond or free, or with pregnant circumstances as to them shall seem convincing.

Commonwealth v. Bob, or Robert (1826)

Key Facts

- 18 pieces of meat were supposedly stolen from John Clarke's cellar on Saturday, February 4th, 1826; Clarke insists it happened A DAY BEFORE the neighborhood fox hunt (Sunday, February 5th.)
- Clarke discovered 2 pieces of meat that 'resembled' his meat at enslaved man Burgess' house.
- Burgess said he got it from enslaved woman Mima.
- Mima got it from Bob, her enslaved husband.
- Bob stated he got it from Mr. Stith's cellar.
- Bob was arrested on February 24th, 1826.
- Testimony by numerous witnesses say the fox hunt was on January 21st, not February 5th, thus throwing Clarke's entire memory-based testimony in doubt.

Section 2: The Historical Characters

Witness 1 & 4: John Clark – You are a white man who had your house broken into and meat stolen. You investigated on your own among the slaves in the area, who pointed you a man named Bob, enslaved by your neighbor James Tyler.

Witness 2: Burgess – You are an enslaved man owned by James Ewell and are acting as a witness for the prosecution. You received two pieces of meat from Mima, who you know is the wife of the accused Bob. Mima told you that if you hid the meat, she would give you one piece to keep. You hid the meat in the upstairs area of your house.

Witness 3: Mima – You are an enslaved woman owned by James Ewell and the wife of Bob. You are a witness on behalf of the prosecutor. Your husband Bob visits you about once every 2 weeks. One day he brought you some meat. You haven't seen him since. You were afraid the meat was stolen and attempted to conceal it with Burgess' help.

Witness 5: William Florence – You are a white man. You are a neighbor of John Clark and remembered fox chase mentioned by him as taking place during the 3rd Saturday in January.

Commonwealth v. Bob, or Robert (1826)

Witness 6: Cuthbert Scott – You are a white man. You are a neighbor of John Clark and remembered fox hunt mentioned by him as taking place during the 3rd Saturday in January (21st).

Sheriff: Charles Ewell – You are the Sherriff of Prince William County. You are to ensure that the Courthouse remains quite and orderly while the trial is being conducted.

Clerk of Court: John Williams – 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, 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.

William Warden – A local constable, a court-appointed police officer.

John Merchant – The jailer. The jailer was appointed and lived with his family in the jail. Jailers in the 1820's were paid by charging prisoners fees.

Chief Magistrate & Magistrate(s) – Appointed by the governor, and not required to have any legal training, magistrates were wealthy male planters, slave owners and likely to also be successful merchants. For a felony case like this, the court would “require at least 8 magistrates” to preside. (Program needs only 1 magistrate.)

- Chief Magistrate: Charles U. Meng
- Subordinate Magistrates: John Hooe, Joseph Ewell, Griffin Seith, and 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.

Bob, also known as Robert – The accused, an enslaved man owned by James Tyler. You are forced to live separately from your wife Mima, who you see only every two weeks.

Commonwealth v. Bob, or Robert (1826)

Section 3: The Court Proceedings

Chief Magistrate Meng:

Sheriff Ewell, bring the court to order

Sheriff Charles Ewell:

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 John Williams:

To Your Honors, the Commonwealth of Virginia brings suit against Bob, a slave, for the felony of burglary on February 4th, in the year one thousand eight hundred and twenty-six, the fiftieth year of the Commonwealth.

Chief Magistrate 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 and be informed that a certain slave named Bob or Robert, late of the county of Prince William, the property of one Richard B. Tyler of the county aforesaid, on the fourth day of February in the year one-thousand eight-hundred and twenty-six, being a person of wicked mind and corrupt disposition did at night about the hour of midnight with force and arms enter the mansion house of one John M. Clarke.

There he did feloniously and burglariously steal and carry away the goods, property of the said John M. Clarke, to wit: sixteen pieces of salted pork and two pieces of salted beef of the value of twenty dollars. That this was done against the peace and dignity of the Commonwealth and against the force of the general assembly of Virginia, such case is made and provided.

I have five witnesses to call your honor(s).

Commonwealth v. Bob, or Robert (1826)

Witness #1 - John Clark:

COC John Williams:

The Commonwealth calls as witness John Clark. Raise your right hand and swear this oath.

COC John Williams:

The evidence which you shall give in the case now depending between the Commonwealth of Virginia and Bob, also known as Robert, defendant, shall be the truth, the whole truth, and nothing but the truth.

John Clark:

The evidence which I shall give in the case now depending between the Commonwealth of Virginia and Bob, also known as Robert, defendant, shall be the truth, the whole truth, and nothing but the truth.

CA John Gibson:

Mr. Clark, how did you realize your house had been broken into?

John Clark:

I noticed the cellar doors were broken open.

CA John Gibson:

What was stolen?

John Clark:

18 pieces of salt pork and beef.

CA John Gibson:

In your estimate how much was this meat worth, Mr. Clark?

John Clark:

About \$20 all told.

CA John Gibson:

In your estimation, when was the meat stolen?

John Clark:

It must have been the night of February 4th, I remember, because it was the day before we held the fox hunt.

Commonwealth v. Bob, or Robert (1826)

CA John Gibson:

You're sure of that date? February 4th?

John Clark:

Yes. As sure as I can be.

CA John Gibson:

What did you do next?

John Clark:

I searched myself for 8 or 10 days, with the help of my overseer, before filing a report with Justice of the Peace Hunton.

CA John Gibson:

How did you come to locate the missing meat?

John Clark:

When I searched the cabin of one of James Ewell's slaves, a man named Burgess I found two pieces of pork the right size and look as those that were stolen. A shoulder and a jowl.

CA John Gibson:

And you suspected he was the thief?

John Clark:

Yes. But he said it wasn't him. He said he had been given the meat by Mima, another of Ewell's slaves.

CA John Gibson:

What did you do next?

John Clark:

I went on to question Mima. She said her man Bob had brought it to her the week before. Then I went to Ewell and had a warrant sworn against him.

CA John Gibson:

I am finished with this witness, your honor.

Commonwealth v. Bob, or Robert (1826)

Witness #2 - Burgess:

COC John Williams:

The Commonwealth calls as witness Burgess. You shall make true answer to such questions as shall be asked you, relative to the matter before the court.

Burgess:

I will.

CA John Gibson:

Burgess, did you encounter Mr. John Clark on February 14th?

Burgess:

Yes, I did. About then.

CA John Gibson:

And at that time did you have two pieces of salt pork with you?

Burgess:

Yes, I did.

CA John Gibson:

How did you acquire that meat?

Burgess:

I got it from Mima.

CA John Gibson:

She just gave it to you?

Burgess:

No, she wanted me to hide a part of some meat she had from the folks searching. A shoulder and a jowl. If I did, I could keep the jowl. Mr. Clark stopped me on the way home and took it.

CA John Gibson:

Did Mima tell you how she had received it?

Burgess:

She said Bob brought it to her a while back, but she wanted to be rid of part of it now that Mr. Clark was searching for his meat.

Commonwealth v. Bob, or Robert (1826)

CA John Gibson:

I am finished with this witness your honor.

Witness #3 - Mima:

COC John Williams:

The Commonwealth calls as witness Mima. You shall make true answer to such questions as shall be asked you, relative to the matter before the court.

Mima:

Yes

CA John Gibson:

How do you know the accused?

Mima:

Bob is my husband.

CA John Gibson:

How often do you see him?

Mima:

About every two weeks usually. Mr. Tyler gives him leave to come visit me on Sundays.

CA John Gibson:

How did you get the meat, including the portion you gave to Burgess?

Mima:

Bob brought it to me. About six pieces of salt pork on the first Sunday in February. Then he brought me more the next time too.

CA John Gibson:

Let the record show that would be January 29th and February 12th. Did you find it suspicious that he suddenly had all this meat?

Mima:

Some. Well, yes. I did, I guess. I was afraid he hadn't come by it honestly. Mr. Stith's house was broken into last year, when there wasn't anybody in it...

Commonwealth v. Bob, or Robert (1826)

CA John Gibson:

Let the record show that the house formerly occupied by Mr. Stith has been occupied by Mr. Clark since the beginning of this year, 1826. What did you do with the meat?

Mima:

Hid it under the straw in Mr. Ewell's barn. But a dog got some of it, and they were still searching. Constable Warden and Mr. Clark. So I gave a shoulder and jowl to Burgess, because I didn't think they would search his place.

CA John Gibson:

I am finished with this witness your honor.

Witness #4 – John Clark:

CA John Gibson:

I'd like to recall Mr. John Clark to the stand. Mr. Clark, are you certain that your cellar was broken into on February 4th?

John Clark

That's what I generally recollect. I picked a date that seemed right. William Florence and Cuthbert Scott would know for sure, they both rode in it.

CA John Gibson

Had you repaired the cellar doors from when they had been forced when Mr. Stith had lived in your house?

John Clark

I had ordered one of my men to do it.

CA John Gibson:

What was the full account of salt pork taken from you?

John Clark

Well... I think it was mostly middlings... A shoulder. And I think two jowls.

CA John Gibson

You think? Like you think the lock was repaired and the fox hunt was on February 4th? Your honor, I am finished with the witness.

Commonwealth v. Bob, or Robert (1826)

Witness #5 - William Florence:

COC John Williams:

The Commonwealth calls as witness William Florence. Raise your right hand and swear this oath.

COC John Williams:

The evidence which you shall give in the case now depending between the Commonwealth of Virginia and Bob, also known as Robert, defendant, shall be the truth, the whole truth, and nothing but the truth.

William Florence:

The evidence which I shall give in the case now depending between the Commonwealth of Virginia and Bob, also known as Robert, defendant, shall be the truth, the whole truth, and nothing but the truth.

CA John Gibson:

Mr. Florence, do you recall the exact date of the fox hunt?

William Florence

Same time it is every year. Third Saturday in January. Which was the 21st this year. I lodged with my friend Cuthbert Scott for the event as usual.

CA John Gibson:

Thank you, Mr. Florence. I am finished with this witness your honor.

Witness #6 - Cuthbert Scott:

COC John Williams:

The Commonwealth calls as witness Cuthbert Scott. Raise your right hand and swear this oath.

COC John Williams:

The evidence which you shall give in the case now depending between the Commonwealth of Virginia and Bob, also known as Robert, defendant, shall be the truth, the whole truth, and nothing but the truth.

Cuthbert Scott:

Commonwealth v. Bob, or Robert (1826)

The evidence which I shall give in the case now depending between the Commonwealth of Virginia and Bob, also known as Robert, defendant, shall be the truth, the whole truth, and nothing but the truth.

CA John Gibson:

Mr. Scott, do you recall the date of the fox hunt this year?

Cuthbert Scott:

Oh yes, yes. We had a full house that weekend for the event! It's in my diary. January 21st, the third Saturday.

CA John Gibson:

If your cellar was broken into, how long would it take you to notice?

Cuthbert Scott:

If the cook didn't report it, or the overseer, probably not until mid-morning the next day. Assuming it happened at night. Most burglaries do.

CA John Gibson:

Thank you, Mr. Scott. I am finished with the witness, your honor. I have some doubts about the soundness of the information presented, but, the Commonwealth rests its case.

Justice Meng:

Very well. The jury is now so ordered to deliberate in their chambers, considering all the facts presented.

Section 5: Deliberation

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

- **EMPHASIZE** that the jury should only convict Bob if they have **EVIDENCE BEYOND REASONABLE DOUBT** as to his guilt.
- Bob is a slave. Because a slave stole something, this is a capital offense, and the sentence could be death. (This would not be the punishment for white citizens... it would not be a felony, but might just a civil trial)
- It is worth pointing out Bob did not testify on his own behalf
- Try to have the Jurors discuss the **convoluted timeframes**: the ambiguity of the timing, and Clark's estimate of Feb 4th versus the fox

Commonwealth v. Bob, or Robert (1826)

hunt's actual date of January 21st, when exactly the search started, when Bob brought the meat, and how long it took Clark to investigate.

Back in court, have the jury foreperson give the answer in writing to the magistrate to announce the verdict.

After discussion you can announce the historical verdict:

On March 7, 1826, Bob or Robert was "found not guilty, and thereof is acquitted." He did not go free, as he remained a slave, but he was not jailed or executed.