

Commonwealth vs Charles Burton
Prince William County Court
January Term 1886

Second Bill of Exception

On the trial of this cause the defendant by his attorney, excepted to the opinion of the court given against him on the trial aforesaid and tendered his Bill of Exceptions which was received signed and sealed by the court and ordered to be made part of the record in said case, and is un these words, to wit:

Be it remembered that upon the trial of this cause after the jury had returned their verdict the defendant by counsel made these several motions, viz:

1st a motion for a venire facias _____

2nd a motion in arrest of judgment

3rd a motion for a new trial and in support of the said three several motions presented the record in this case and the evidence in this case which is as follows;

Testimony of Henry J. Jonas, first witness for the Commonwealth – My house was broken into October 1st at the window. Burton was in my place until 7.30 o'clock and spent about \$1.20. When I left I locked up. The next morning I saw the window stick lying on the floor and the money drawer gone with \$35.35 and a check. I missed Burton when he went away on the train. He owed me a little bill and said that Mellon hadn't paid him all. I didn't see him again afterwards until he was arrested. I got a warrant for him at Alexandria. I followed him down and had him arrested. The window stick was knocked down and the window raised. The money drawer was found in a hole in an outhouse nearby. Burton was well acquainted about these. A jug of whiskey was also stolen. The money stolen was a ten dollar bill; a five dollar bill and silver to \$15 or \$16. Burton generally had some money when he came to my place but usually spent it. The check was wrapped up in an envelope and paper. The check was found on Saturday afternoon lying between the platform and store

Cross Examination

I live 250 yards from the Bar Room. I left there about 8.30 o'clock and shut up at that time. I went back in the morning at 6.30 o'clock. Mr. Bettis lives next door. He was not at home that night.

There is only one room in the building. I know that I had in the drawer \$35.35 because I set down every day what I sell. I did not count the money that night. If nobody stole it during the day it was there that night. It is my custom to take it away with me but I did not that night. I saw the ten dollar bill that night before I went home. The check was there too.

Check shown witness and identified. Check is in the following words and figures, to wit;
No Alexandria, Va. Sept. 30, 1885 – The First National Bank of Alexandria, Va. Pay to the order of H. J. Jonas ----Twenty Nine ----- 68/100 cents. John P. Rice

I did not come down to Brentsville next morning. The check was taken with the money. I notified the bank not to pay the check. I thought he might take it to the bank to be cashed. The check was found four or five yards from the bar room door by Mr. Ardell. He showed me where he found it. There were so many weeds around and close by the platform it might have been hid there. I did not see any of the money after Burton's arrest.

Second Witness for the Commonwealth; - Spotswood Spindle: I was at Nokesville the night the house was broken open. Saw Burton there and had conversation with him. He said he had a contract with Mr. Mellon and said he had so little coming to him. He spoke about the amount. He said all he had from Mr. Mellon was \$1.00 and had to borrow \$150. He showed me his money. I saw him count it over; it was \$1.35 or \$1.40. I wished to know where he was going but he didn't know. He went around to Mr. Jonas'. He told Jonas that Mr. Mellon hadn't paid him all, but so help him, and just then the train came along and I didn't hear any more. He didn't say for certain when he was going but he thought he would locate around Bristoe if he could get a job.

Cross Examination

The train was due there before dark. He left on that train, some time about 6 o'clock.

Third Witness for the Commonwealth - George Davis: I was living at Manassas at that time. I saw Burton on the morning after the occurrence. I was in bed when he first came there and roused me up. He said he wanted to get shaved and make the next train. I dyed his moustache and shaved him and he went to sleep in the chair. I roused him up and he said he had walked all the way from Bristoe. He rattled money in his pocket and paid me thirty five cents and gave my boy ten cents. He had a pint bottle of whiskey and he gave me that.

Cross Examination

I did not see any more money than the forty five cents. He said he always had plenty.

Fourth Witness for the Commonwealth - J. Schnieder of Alexandria: Benton was in my place on Friday morning between 9 and 10 o'clock. He took breakfast and paid me with a ten dollar bill. I gave him the change. Burton then changed a five dollar bill for me for a gentleman and gave the change in silver. He also had other bills lying before him on the counter.

Fifth Witness for the Commonwealth – F. P. Weeks, constable, I went to Alexandria for Burton. Got the key.

Sixth Witness for the Commonwealth – John S. Tyler, small piece of iron shown witness. I asked Burton what he made it for and he said he made it for a lance. I saw it tried on the doors about the court house and it unlocked some of them.

Cross Examination

I did not have in my possession nor show the instrument when I ask Burton about the thing. I saw the key or piece of iron in the presence of Burton at the trial of the case.

The Testimony for the Defence

Witness for the defence – John Mellon: Burton worked for me (90 months, a week or two off maybe. I agreed with him at ten dollars a month for 9 months. I think I paid him \$9 a month. - \$1. Off for was _____. I thought he was not extravagant – if he was I didn't know where he spent it – not in clothes. He was under the influence of liquor about three times at my place. I don't know whether he had any money when he went away from me or not. I only know of one dollar,

when he went away. I don't know when he spent his money. Mr. Nicol was paid by me for Burton \$8.75; Fourteen 75/100 dollars went for clothes, Ten dollars at Manassas and Jim Baggott two and 08/100 dollars – that I paid myself, and I think I may have bought three or four pounds of tobacco at forth five cents a pound. I was down at Nokesville on Saturday after the check was found. Was not there when it was picked up.

Cross Examination

I did not think he had any money when he left. I paid him one dollar. I don't know that the boy never had any money. I don't know of any other bills he had except these I've mentioned. About a week or on Saturday before I gave him five dollars and he went to Bristoe and got boots and some shirts. I don't think I ever gave him an order on Jonas for whiskey.

The foregoing is a correct abstract of the testimony of witnesses in the case of the Commonwealth against Burton.

The court having considered the said three several motions and overruled each of them, the defendant by counsel excepted of this ruling and opinion of the court and tendered this his Bill of exceptions and prayed that the same might be signed sealed and –welled and made part of the record in this case, which is done accordingly.

Wm. E. Lipscomb (seal)
Judge Prince Wm. Co. court

Prince William County to wit:

In the county court for the said county the jurors of the Commonwealth of Virginia in and for the body of the county of Prince William and now attending the said court upon their oaths present that Charles Burton on the 1st day of October 1885 in the night time of that day in the county aforesaid a certain store house not adjoining to and occupied with the dwelling house of one Henry J. Jonas there situate in the night time feloniously did break and enter with intent the goods and chattels of the said Henry J. Jonas in the said store house, then and there being, feloniously to steal take and carry away and thirty-five dollars and 35 cents in silver coin and United States bank notes of the value of \$35.35 of the goods and chattels and property of the said Henry J. Jonas in his said store house then and there being found, then and there feloniously did steal take and carry away against the peace and dignity of the Commonwealth of Virginia.

E. E. Meredith
Attorney for the Commonwealth

We the jury find the prisoner guilty as charged in the indictment and fix his term of confinement in the penitentiary at two years.

J. F. Wheat - Foreman