

Story of Killing 74 Years Ago Told by Charles A. Fowler

[The author was about eighty-three years old at the time of this writing.]

I wonder how many are living today who were in Burlington the first Monday in April, 1866? It was on that day that Weaver shot Merchant - but more about that later, as I will first try to tell you what led to the killing.

The characters in this story were Ephraim Weaver and Cyrus [Silas] Merchant. Hereafter they will be called Weaver and Merchant.

What I am going to tell you now is what I have heard. It seems that Merchant was the Captain of a troop of soldiers who visited the farm where Weaver lived with his mother who was [a] widow. The soldiers' business there was to get horses for the army, and of course they just took them and paid nothing.

Well as the story goes, Weaver's mother went out to the barn and said, "Please don't take my old riding horse." Merchant knocked her down with his old army gun. Weaver, who was a boy at the time tried to help his mother and Merchant gave him a beating, and left him for dead. But he did not die, and when he revived he said he would kill Merchant the first time he met him. However he did not get him the first time, for they met at Uncle Gus Weaver's Mill on Gunpowder right after the war in 1866, but did not know each other, and Gus and his son Joe Weaver managed to keep them separated until they had their meal and flour and left the mill.

Now don't get names mixed, for Ephraim Weaver also had a son named Joe and he is living today, and later in this story will be told the information I obtained from him, and all who are acquainted with him will not be in doubt as to its truth, for he is one of the solid citizens of old Boone County.

Now, if these are the facts, and I have no reason to doubt them, Merchant was brutal, and I think most any man would make up his mind as Weaver did that day. I can't say [say as] to the time this took place, but sometime between [18]61 and '66, but as I told you in the beginning the killing was on County Court day, the first Monday in April, 1866.

Frank Kirkpatrick and myself were there in the street watching the fine horses, for that was the day horsemen from all over Boone and other counties brought their fine stallions to the county seat. I would estimate that 20 to 25 of them were there on that day. The shooting took place immediately after dinner. As I remember, there were fifteen to eighteen hundred people in town when the first shot was fired. I was standing with my chum when a man came up behind us, gently pushed us aside as he passed. Now if I remember, I think he said, "Stand aside please." Of course we did not know what was going to happen, or no doubt, I for one, would have carried the mail right then.

I want to tell you now, that we were between 8 and 9 years old, and both barefooted, so you will know we were fixed to make time when the first shot was fired. Weaver walked on about twenty or thirty feet and he either knelled [kneeled] on one knee or squatted down behind his man and fired. They tell me he fired two more shots after he fell, but if he did I failed to hear them for I was long gone.

There were no houses on the square where the bank stands except the old County Clerk's office. I missed that by inches and also big Jim Calvert's house which stood where the drive to the County garage now is located, and then I had clear sailing from there home, about a quarter of a

mile as the crow flies and I made it in nothing flat. At that time I lived where Courtney Kelly now resides. Frank Kirkpatrick never could tell me how he reached home but I think he flew.

As soon as I could get my breath, I told my father what had happened and he came right over to town and I came with him. Merchant had been moved over into the old courthouse yard under a tree on the west side. I remember he wore a coonskin cap and that cap was under his head. I saw blood or brains all over back of his head, and the cap blood[y]. They carried him up into one of the upstairs rooms in the building where Conner's Restaurant is now located, and I think he lived about five hours. There was lots of excitement there for a time, but I was gone before it began.

Weaver was arrested and was denied bond and turned over to the jailer. He was tried at the April term of the Circuit Court which started April 9th and continued six or more days in order to try this case. His trial began April 24th and was completed April 30th. He was charged with willful murder, but the verdict of the jury was "not guilty."

The following men served on the jury: Leonard Lassing, foreman, Wm. W. Rogers, Henry Presser, Milton Wilhoit, Leo W. Craig, Edward Northcutt, James Fry, John Powers, James West, Henry Fry and J. W. Kennedy.

John L. Scott was prosecuting attorney but I don't know who represented Weaver. A. G. Winston was Circuit Clerk, Leo R. Loder, Dr. B. F. Stevenson, James Calvert and A. W. Winston were witnesses for the Commonwealth. Alonzo Garner was foreman of the grand jury that indicted Weaver.

I will now tell what I think cleared Weaver. Merchant had dinner that day at the home of Archibald Thompson with several other men, and according to the evidence said at the table that he understood Weaver was to be in town that day and said, "If he is, one of us will have to die before night." He was right for he only lived about five hours.

Joe Weaver, son of the man who did the shooting told me that his father did not know Merchant, and inquired of three or four men before he found a man who knew him - that man was Mid McManama. He also said he told him that he squatted down to keep from shooting into the buildings and to keep from killing or injuring anyone else. Joe also told me that he has the old Colt revolver that was used on that day, and it has two shells still left in the cylinder, as it was a five-shot gun. The gun was loaded with caps and balls.

He and others have told me that there are bloody finger prints on a post in that old barn on his grandmother's farm, showing where the Weaver boy pulled himself up after Merchant and his soldiers had left.

Now I want to clear myself, for if it had not been for so many people insisting that I write this article, the public would not have been bothered with this account. I hope I have told you nearly what happened, but if I have missed anything, I hope you will pardon me. I hope the printer will not fall out with me when he tries to copy this, for I can neither see, hear, or write like I could 40 or 50 years ago.

My memory cuts some figure, for I almost forgot to tell you that the old jail, at that time, stood between Mr. Cy Cowen's house and the Belleview Road, and the old courthouse was built in 1817, and the brick pillars in 1823.

C. A. FOLWER

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