

**COMMONWEALTH OF MASSACHUSETTS**

**MIDDLESEX, ss**

**SUPERIOR COURT DEPARTMENT  
OF THE TRIAL COURT**

\* \* \* \* \*  
**COMMONWEALTH OF MASSACHUSETTS,**  
  
**Plaintiff**  
  
**v.**  
  
**BRANDON WINSTON,**  
  
**Defendant**  
  
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**DOCKET NO. MICR2012-1160**  
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**SENTENCING HEARING  
BEFORE THE HONORABLE MAYNARD KIRPALANI**

**APPEARANCES:**

**For the Commonwealth:**

Middlesex County District Attorney's Office  
15 Commonwealth Avenue  
Woburn, Massachusetts 01801  
By: Assistant District Marisa Tagliareni  
Assistant District Attorney Emily Walsh

**For the Defendant:**

Attorney Norman S. Zalkind  
Attorney Zoraida Fernandez  
Zalkind, Duncan & Bernstein, LLP  
65 Atlantic Avenue  
Boston, Massachusetts 02110

Woburn, Massachusetts  
Courtroom 630  
Thursday, March 5, 2015

Christina O'Neill, Official Court Reporter  
(781) 939-2761

1 (In court without jury at 2:57 p.m. All parties  
2 present.)

3 THE CLERK: Your Honor, may the defendant be  
4 discharged on the not guilty verdict at this time?

5 THE COURT: Yes.

6 THE CLERK: Mr. Winston, as to Indictment No.  
7 001, after a verdict of not guilty, you are discharged  
8 and can go without day insofar as this indictment is  
9 concerned.

10 Your Honor, as to 002. Commonwealth?

11 MS. TAGLIARENI: Your Honor, I would move for  
12 sentencing at this time. I've just been handed a  
13 sentencing memorandum, though. I would just ask if we  
14 could take a short recess -- I know your Honor wants to  
15 speak to the jury -- and then do sentencing at that  
16 point.

17 THE CLERK: Second call.

18 MS. TAGLIARENI: Thank you.

19 (Recess at 3:00 p.m.)

20 (In court at 3:15 p.m.)

21 THE CLERK: Your Honor, the matter of  
22 Commonwealth v. Brandon Winston, on Indictment 002, the  
23 defendant has been found guilty of the lesser-included  
24 assault and battery.

25 Commonwealth?

1 MS. TAGLIARENI: Thank you.

2 Your Honor, the Commonwealth would be asking  
3 for a two-year probationary period, with the condition  
4 that the defendant have no contact, stay away from the  
5 victim in this case, [REDACTED] [REDACTED]

6 I did just have the opportunity, the  
7 victim/witness advocate had the opportunity, to speak  
8 with Ms. [REDACTED] She wanted the Court to know --  
9 she's obviously back in Maine at this point -- that  
10 this -- although I understand that the defendant wasn't  
11 convicted of the indecent assault and battery, he was  
12 still convicted of an assault and battery pertaining to  
13 the charge related to touching, the accusation of  
14 touching Ms. [REDACTED] breast.

15 Ms. [REDACTED] wanted the Court to know that  
16 this has affected her in ways that she doesn't even  
17 really realize yet. She has had anxiety following  
18 this, the experience of waking up without her clothes  
19 on, having no idea how they were removed. And then  
20 learning that it was Mr. Winston who in fact removed  
21 them, caused her to be confused and embarrassed. She  
22 knew that something had happened but she didn't know  
23 exactly what, and that has caused her to have issues  
24 with trusting people in every aspect of her life since  
25 then, and her confusion, embarrassment and lack of

1 trust in people for the last four years or so.

2 I would suggest that a straight probationary  
3 period of two years is appropriate in this case, given  
4 the defendant's conviction at this point and Ms.  
5 [REDACTED] feeling on the matter. And I would ask  
6 your Honor to impose a sentence at this time. Thank  
7 you.

8 THE COURT: Thank you.

9 Mr. Zalkind.

10 MR. ZALKIND: With all due respect, it's almost  
11 like having been trying a first degree murder case,  
12 where my client was charged with first degree murder  
13 and he was convicted of assault and battery by means of  
14 a dangerous weapon with no prior record, and the  
15 prosecutor in that case came up and clearly recognized  
16 that he wasn't convicted of the murder and that he  
17 should receive practically no sentence for the assault  
18 and battery that he was convicted of.

19 I think that the prosecution in this case has  
20 done a great job. It's a very difficult case. She was  
21 very skilled. But there was a great deal of  
22 conflicting evidence that came in, and if there's any  
23 harm to Ms. [REDACTED] that has nothing to do with  
24 this conviction, your Honor. He was not charged with  
25 touching her in any, any private areas. And if she has

1 problems, it has to come from Kamilah Willingham who  
2 caused these problems, because she accelerated this  
3 thing completely out of control.

4 This man has no prior record. Four years he's  
5 been facing first the Harvard charges and then these  
6 charges. He was put on bail and complied with every  
7 single condition or bail, whether he's in New York or  
8 New Mexico or California or here.

9 He hasn't been able to go back to law school.  
10 We don't know, with this conviction, whether he'll be  
11 able to go back to law school, your Honor.

12 I think that he's been punished enough. He  
13 should get three months of administrative probation.  
14 That is the reality of the conviction, your Honor. He  
15 was not convicted of indecent assault and battery and  
16 should not be sentenced on the basis of anything with  
17 an indecent assault and battery. And whatever the  
18 statement the prosecutor made -- and she's very skilled  
19 with the jury, a tough opponent -- this is not under  
20 the victim-impact statement, it doesn't come in under  
21 the victim-impact statement, your Honor.

22 And I most respectfully ask, he should receive  
23 a very, very minimal sentence with no supervision, your  
24 Honor. There's no reason he shouldn't be able to go on  
25 with his life. His life up until the time this

1 occurred was just flawless, and then afterwards for  
2 four years, over four years that he's faced this  
3 charge.

4           The pain to this family over this, this  
5 honorable family, and he is an honorable man in every  
6 possible way. And we should recognize that, your  
7 Honor.

8           And that's all we have to say.

9           THE COURT: All right. Thank you.

10           And I did receive, but not have had a chance to  
11 read, the defendant's sentencing memorandum. We'll  
12 take a short recess.

13           MR. ZALKIND: Thank you.

14           **(Recess at 3:20 p.m.)**

15           **(In court at 3:27 p.m.)**

16           THE CLERK: Dispositional portion of  
17 Commonwealth of Massachusetts v. Brandon Winston. The  
18 parties are present.

19           THE COURT: Thank you.

20           And I have considered the recommendations of  
21 both parties and considered the totality of the  
22 circumstances and evidence in the case. As defense  
23 counsel points out, this was not a sexual assault that  
24 Mr. Winston was convicted of. He is convicted of, as  
25 we sometimes say, simple assault and battery. He has,

1 I assume, it's been represented, no criminal record  
2 whatsoever and, until these circumstances arose, had  
3 been a model citizen and student with some promise.

4 No one is asking, obviously, for a committed  
5 sentence here, which is appropriate. But I certainly  
6 question the extent to which Mr. Winston ultimately  
7 needs supervised probation. Having said that, I do  
8 sentence him to 90 days of supervised probation,  
9 followed by a period of 180 days of administrative  
10 probation for the charge of assault and battery.

11 THE CLERK: Mr. Winston, it is ordered by the  
12 Court that you keep the peace and be of good behavior,  
13 unsupervised probation, for a period of 90 days, and  
14 after that, unsupervised probation -- excuse me, it is  
15 --

16 THE COURT: It's 90 days of supervised  
17 probation, and 180 days from and after that of  
18 unsupervised probation.

19 Probationary supervision fee is applicable  
20 towards you, and a Victim/Witness fee is applicable  
21 towards you.

22 THE COURT: I should add as special conditions  
23 that Mr. Winston is to have no contact, directly or  
24 indirectly, and is to stay away from both [REDACTED]  
25 [REDACTED] and Kamilah Willingham, the victim and

1 witness in this case.

2 THE CLERK: Further conditions, there'll be no  
3 contact with the victims and the witnesses in this  
4 matter.

5 Do you so recognize and agree to this, sir, in  
6 open court?

7 THE DEFENDANT: Yes.

8 THE CLERK: So recognized and agreed, your  
9 Honor.

10 I do not have a Probation officer. I'll have  
11 to send Mr. Winston down with counsel to see Probation.

12 MR. ZALKIND: Thank you.

13 MS. TAGLIARENI: Thank you.

14 THE CLERK: Recess, your Honor.

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16 **(Hearing concludes at 3:30 p.m.)**

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## CERTIFICATION

I, Christina O'Neill, Official Court Reporter, do hereby certify that the foregoing, Pages 1 through 9 inclusive, is a true and accurate transcription, to the best of my knowledge, skill and ability, from the record of the court proceedings in the above-entitled matter.

I, Christina O'Neill, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Administrative Format.

I, Christina O'Neill, further certify that I neither am counsel for, related to, nor employed by any of the parties to this action in which this hearing was taken, and further certify that I am not financially nor otherwise interested in the outcome of the action.

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Christina O'Neill

200 Trade Center Plaza, Room 616  
Woburn, Massachusetts 01801  
(781) 939-2761

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Date

Commonwealth v. Winston  
Sentencing

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