

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

**SUPERIOR COURT DEPARTMENT
OF THE TRIAL COURT**

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COMMONWEALTH OF MASSACHUSETTS,

Plaintiff

v.

BRANDON WINSTON,

Defendant

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DOCKET NO. MICR2012-1160
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**JURY TRIAL - DAY 8
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:
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Attorney Zoraida Fernandez
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Woburn, Massachusetts
Courtroom 630
Thursday, March 5, 2015

Christina O'Neill, Official Court Reporter
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Exhibits

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1 (In court without jury at 9:10 a.m. All parties
2 present.)

3 THE CLERK: Good morning, your Honor.

4 Case on trial. The parties are present. All
5 jurors are in, but they're not in the courtroom at this
6 time, your Honor.

7 THE COURT: Thank you, Mr. Doherty.

8 Good morning.

9 MS. TAGLIARENI: Good morning.

10 Well, as I'm sure you all recall, at the end of
11 yesterday we got a second note indicating an impasse.
12 I indicated it was my inclination to give the Tuey-
13 Rodriguez charge first thing this morning. I'm still
14 of that mind. The jurors have deliberated a little bit
15 over eleven hours on a case that took less time to try
16 in terms of the evidence, and so I do think that
17 they've engaged in due and thorough deliberation.

18 Any comments or thoughts of counsel?

19 MS. TAGLIARENI: No. I agree; I think it's
20 appropriate to give Tuey-Rodriguez at this time.

21 THE COURT: Okay. Mr. Zalkind?

22 MR. ZALKIND: I also agree.

23 THE COURT: Okay.

24 So you may bring the jury in.

25 (In court with jury at 9:12 a.m.)

1 THE CLERK: Good morning, your Honor.

2 Case on trial. All parties are present, all
3 the jurors are present.

4 THE COURT: Thank you, Mr. Doherty.

5 Good morning, ladies and gentlemen of the jury
6 and Mr. Alternate.

7 First, I'll ask my standard question for you,
8 whether anybody's had any difficulty following any of
9 my instructions. If so, you may raise your hand and
10 I'll see you at sidebar, or you may inform a court
11 officer.

12 Not seeing any hands, I'll continue

13 Based on your last communication to me, or
14 based upon your communications to me, ladies and
15 gentlemen of the jury, at this time I'm required to
16 give you the following instruction.

17 Our Constitution and laws provide that in a
18 criminal case the principle way for deciding questions
19 of fact is by the verdict of a jury. In most cases,
20 perhaps strictly speaking in all cases, absolute
21 certainty cannot be attained nor is it expected. The
22 verdict to which a juror agrees must be his or her own,
23 the result of her own convictions, and not a mere
24 acquiescence in the conclusion of his fellow jurors.
25 Yet, in order to bring twelve minds to a unanimous

1 result, you must examine the questions submitted to you
2 with candor and with a proper regard and deference and
3 respect to the opinions of each other.

4 You should consider that it is desirable that
5 the case be decided and that you have been selected in
6 the same manner and from the same source from which any
7 future jury would be. There's no reason to suppose
8 that this case will ever be submitted to twelve persons
9 more intelligent, more impartial or more competent to
10 decide it, or that more or clearer evidence will be
11 produced. And with this in mind, it is your duty to
12 decide the case if you can do so conscientiously.

13 In order to make a decision more attainable,
14 the law imposes the burden of proof on one party or the
15 other in all cases. In the present case, a criminal
16 case, the burden is on the Commonwealth to establish
17 every element of the crime charged beyond a reasonable
18 doubt. If you are left in doubt of any element of the
19 crime, the defendant is entitled to the benefit of the
20 doubt and must be acquitted.

21 However, in conferring together you ought to
22 pay proper respect to each other's opinions and listen
23 with an open mind to each other's arguments. Thus,
24 where there is disagreement, jurors for acquittal
25 should consider whether a doubt in their own minds is a

1 reasonable one if it makes no impression on the minds
2 of others who are equally honest, equally intelligent
3 and who have heard the same evidence with the same
4 intention and with an equal desire to arrive at the
5 truth and who have taken the same oath as jurors.

6 On the other hand, jurors for conviction ought
7 seriously to ask themselves whether they may not
8 reasonably doubt the correctness of a judgment that is
9 not concurred in by other members of the jury and
10 whether they should distrust the weight or adequacy of
11 evidence that fails to convince the minds of fellow
12 jurors.

13 I now ask you to return to your deliberations
14 with these thoughts in mind. Thank you.

15 **(Jury exits to resume deliberations at 9:15 a.m.)**

16 THE COURT: We are in recess.

17 **(Recess at 9:16 a.m.)**

18 **(In court with jury at 2:55 p.m.)**

19 THE COURT OFFICER: Would the deliberating
20 jurors and defendant please remain standing. All
21 others, please be seated.

22 THE CLERK: Your Honor, may I inquire?

23 THE COURT: Please.

24 THE CLERK: Mr. Foreman, has your jury agreed
25 upon its verdict, sir?

1 MR. FOREMAN: Yes, we have.

2 THE CLERK: Mr. McDonough, may I have those at
3 this time, please, sir.

4 *(Verdict slips handed up to the Court.)*

5 THE CLERK: May they be recorded, your Honor?

6 THE COURT: Yes.

7 THE CLERK: Mr. Foreman, as to Indictment No.
8 2012-1160-001, charging the defendant, Brandon Winston,
9 with indecent assault and battery on a person over 14,
10 what say you, Mr. Foreman, is the defendant guilty or
11 not guilty?

12 MR. FOREMAN: Not guilty.

13 THE CLERK: So say you, Mr. Foreman?

14 MR. FOREMAN: Yes.

15 THE CLERK: So say all members of the panel?

16 THE JURORS: Yes.

17 THE CLERK: As to Indictment 002, charging the
18 defendant with indecent assault and battery on a person
19 over 14, what say you, Mr. Foreman, is the defendant
20 guilty or not guilty?

21 MR. FOREMAN: Guilty, lesser-included offense,
22 assault and battery.

23 THE CLERK: So say you, Mr. Foreman?

24 MR. FOREMAN: Yes.

25 THE CLERK: So say all members of this panel?

1 THE JURORS: Yes.

2 THE CLERK: Members of the jury, you will
3 harken to your verdicts as recorded by the Court.

4 Mr. Winston, you may be seated.

5 Jurors, you may seated.

6 THE COURT: All right. The verdict may be
7 recorded.

8 And, ladies and gentlemen, I want to thank you
9 for your difficult service in this case. You are about
10 to be discharged. And I would simply ask that you
11 collect in the jury room one final time, just so I can
12 personally thank you for your service and answer any
13 questions you may have about the case that I can
14 answer, or about the process, or any constructive or
15 other criticism you may have about the way we do things
16 here. It's not my intention to question you about
17 anything to do with your verdict or your deliberations,
18 however.

19 So, you are discharged. You are relieved from
20 all of my instructions regarding discussing any aspect
21 of this case. You're free to discuss it with anyone
22 you want. And thank you on behalf of the Commonwealth
23 and the Court. You are discharged. And I'll see you
24 momentarily.

25 **(Jury exits at 2:57 p.m.)**

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

3 THE COURT: Yes.

4 THE CLERK: Mr. Winston, as to Indictment No.
5 001, after a verdict of not guilty, you are discharged
6 and can go without day insofar as this indictment is
7 concerned.

8 Your Honor, as to 002. Commonwealth?

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

15 THE CLERK: Second call.

16 MS. TAGLIARENI: Thank you.

17 **(Recess at 3:00 p.m.)**

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

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

23 Commonwealth?

24 MS. TAGLIARENI: Thank you.

25 Your Honor, the Commonwealth would be asking

1 for a two-year probationary period, with the condition
2 that the defendant have no contact, stay away from the
3 victim in this case, [REDACTED]

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

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

25 I would suggest that a straight probationary

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

6 THE COURT: Thank you.

7 Mr. Zalkind.

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

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

1 thing completely out of control.

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

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

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

20 And I most respectfully ask, he should receive
21 a very, very minimal sentence with no supervision, your
22 Honor. There's no reason he shouldn't be able to go on
23 with his life. His life up until the time this
24 occurred was just flawless, and then afterwards for
25 four years, over four years that he's faced this

1 charge.

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

6 And that's all we have to say.

7 THE COURT: All right. Thank you.

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

11 MR. ZALKIND: Thank you.

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

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

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

17 THE COURT: Thank you.

18 And I have considered the recommendations of
19 both parties and considered the totality of the
20 circumstances and evidence in the case. As defense
21 counsel points out, this was not a sexual assault that
22 Mr. Winston was convicted of. He is convicted of, as
23 we sometimes say, simple assault and battery. He has,
24 I assume, it's been represented, no criminal record
25 whatsoever and, until these circumstances arose, had

1 been a model citizen and student with some promise.

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

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

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

17 Probationary supervision fee is applicable
18 towards you, and a Victim/Witness fee is applicable
19 towards you.

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

25 THE CLERK: Further conditions, there'll be no

1 contact with the victims and the witnesses in this
2 matter.

3 Do you so recognize and agree to this, sir, in
4 open court?

5 THE DEFENDANT: Yes.

6 THE CLERK: So recognized and agreed, your
7 Honor.

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

10 MR. ZALKIND: Thank you.

11 MS. TAGLIARENI: Thank you.

12 THE CLERK: Recess, your Honor.

13

14 **(Matter concluded 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 16 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.

Christina O'Neill
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Date

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