

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss

SUPERIOR COURT  
DOCKET NO. 2012-1160

COMMONWEALTH OF  
MASSACHUSETTS

V.

BRANDON WINSTON

**DEFENDANT'S MOTION *IN LIMINE* TO EXCLUDE ALLEGATIONS THAT HE  
DRUGGED MS. [REDACTED] AND MS. WILLINGHAM**

Defendant Brandon Winston moves the Court to exclude any explicit or implicit allegations that he gave Kamilah Willingham and/or [REDACTED] any drugs without their knowledge. These allegations are entirely speculative, as there is no evidence to support them, and are therefore not competent evidence and not based on personal knowledge. Moreover, the unfair prejudice that would stem from these allegations substantially outweighs their probative value, if any. The Court should prevent their introduction into evidence.

**Background**

Defendant Brandon Winston is charged with two counts of Indecent Assault and Battery on a person over 14, namely, of the alleged victim, [REDACTED]. Mr. Winston is a student at Harvard Law School ("HLS"), where he was a classmate and friend of Kamilah Willingham, who is Ms. [REDACTED] high school friend. On January 14, 2011, Mr. Winston, Ms. Willingham, and Ms. [REDACTED] got together at Ms. Willingham's apartment and later went to a nearby nightclub. All three consumed alcohol that evening and Ms. Willingham and Mr. Winston also consumed cocaine that Ms. Willingham provided. Mr. Winston is accused of

touching Ms. [REDACTED] breast and vagina without consent that night after they returned from the nightclub.

Three months after the incident, just before Ms. Willingham graduated from law school, she filed a complaint with HLS against Mr. Winston for sexual harassment. Mr. Winston went through the HLS disciplinary process and gave a statement to an investigator and consented to its recording, while Ms. Willingham, as complainant, refused to have her statement recorded. During these proceedings, Ms. Willingham reported that she had researched GHB and thought that what she was feeling was similar to the effects of the drug. (D. Mahoney GJ Ex. 3, pp. HLS000504-505, attached hereto as Exhibit 1.) She also recounted that she believed that Mr. Winston spiked her drink and Ms. [REDACTED]'s drink because the effects of the alcohol that night were allegedly unlike that she experienced at any other time when she had drunk alcohol. (Exhibit 1, pp. HLS000489-490.) Similarly, Ms. [REDACTED], who also refused to have her statement recorded, told the HLS investigator that she was "absolutely convinced" that Mr. Winston put something in her drink, but that she could not prove it because she was not tested before any substances would have left her system. (Exhibit 1, p. HLS00024.)

The HLS Administrative Board found against Mr. Winston and he appealed. After nearly 14 months, Mr. Winston was eventually cleared of all wrongdoing by the HLS faculty and permitted to resume his law school career.

A few months later, the Middlesex County District Attorney's Office presented 6 charges to the grand jury involving both Ms. Willingham and Ms. [REDACTED]. During the grand jury presentation, Ms. Willingham testified that after drinking from a drink that Mr. Winston bought for her, Ms. [REDACTED] was "just acting really erratic . . . kind of like bumping into people and getting a little more aggressive than she usually is." She added that "it surprised [her] that [Ms.

[REDACTED] seemed kind of wasted because that was like nothing compared to [their] usual nights out.” (K. Willingham GJ Testimony, pp. 16-18, attached hereto as Exhibit 2.) She also described herself getting sick in the cab ride back to her apartment, noting that she was “really nauseous . . . everything went darker, and [she] felt super sweaty.” (Exhibit 2, pg. 29.) She described this experience as similar to when she had had a heatstroke while living in Los Angeles. (Exhibit 2, pp. 28-29.)

At the conclusion of the prosecutor’s presentation, the grand jury found no true bills as to 4 charges, including all charges involving Ms. Willingham, and indicted Mr. Winston on the two aforementioned counts involving Ms. [REDACTED].

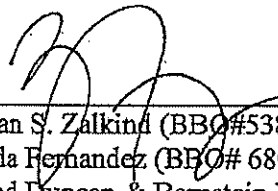
#### **Argument**

The Court should exclude any allegations that Mr. Winston may have put something in either Ms. Willingham or Ms. [REDACTED] drinks. “A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter.” Mass. G. Evid. § 602. The foundation required for the testimony of a lay witness is “the ability to perceive, recall, and recount information within the witness’s personal knowledge.” Commonwealth v. Cintron, 435 Mass. 509, 521 (2001). Neither Ms. Willingham nor Ms. [REDACTED] perceived anything that would indicate that Mr. Winston put drugs in their drinks. There is no physical evidence of drugging, there are no toxicology or medical reports, and there is no eyewitness evidence. Their allegations are mere speculation based on the alleged effects from the alcohol they drank and are therefore irrelevant and not competent evidence.

Moreover, even if there were any probative value to Ms. Willingham’s and Ms. [REDACTED]’s conjectures, these allegations, whether explicit or implicit would be unfairly prejudicial. “Relevant evidence may be excluded if its probative value is substantially

outweighed by the danger of unfair prejudice, confusion of the issues, [or] misleading the jury . . .” Mass. G. Evid. § 403. Allowing Ms. Willingham and Ms. [REDACTED] to surmise about Mr. Winston spiking their drinks will be unfairly prejudicial to Mr. Winston as it will plant an unfounded allegation in the jurors’ minds and cause confusion. The Court must exclude any indirect or express allegations that Mr. Winston put drugs in Ms. Willingham and Ms. [REDACTED]’s drinks without their knowledge.

Respectfully submitted,  
BRANDON WINSTON  
By his attorneys,



Norman S. Zalkind (BBO#538880)  
Zoraida Fernandez (BBO# 680770)  
Zalkind Duncan & Bernstein LLP  
65A Atlantic Ave.  
Boston, MA 02110  
[nzalkind@zalkindlaw.com](mailto:nzalkind@zalkindlaw.com)  
[zfernandez@zalkindlaw.com](mailto:zfernandez@zalkindlaw.com)

February 3, 2015

CERTIFICATE OF SERVICE

I, Zoraida Fernandez, hereby certify that I have, this day, February 3, 2015, caused a copy of the foregoing to be served upon a representative of the Middlesex County District Attorney’s Office by hand.

