

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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**CLOSING ARGUMENTS EXCERPTED FROM JURY TRIAL - DAY 6
BEFORE THE HONORABLE MAYNARD KIRPALANI**

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Woburn, Massachusetts
Courtroom 630
Tuesday, March 3, 2015

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1 (Proceedings. All parties present.)

2 MR. ZALKIND: Thank you, ladies and gentlemen.
3 This is the one chance that I've got to talk to you.
4 And you should know from the outset that, on the facts,
5 you are supreme. And if I say something that doesn't
6 match your collective memory, your memory is what
7 counts, and I don't mean to deceive you in any way.

8 If I say something about the law and it
9 conflicts with what Judge Kirpalani tells you, then you
10 have to listen to Judge Kirpalani. He's going to
11 instruct you on the law.

12 At the end of this case -- you'll go through a
13 lot of instructions regarding it -- but at the end of
14 the case, you'll have to make a determination whether
15 the prosecution has proved to you beyond a reasonable
16 doubt that Mr. Winston committed these offenses. If
17 they prove it to you beyond a reasonable doubt, to a
18 moral certainty, then your duty is to convict. If you
19 come out of this process 'He probably did it,' 'He
20 might have done it,' 'He could have done it,' you'd
21 have to acquit. That's what the law is, as the Judge
22 will instruct you. In America, we're different than
23 other places. And this has gone on for, really,
24 hundreds of years.

25 One of the big issues, and I'm sure you

1 recognize this, is going to be the credibility of the
2 witnesses that you heard, because there's very little
3 documentary evidence. You have the stipulation and you
4 have some photographs and things, but. So you have to
5 decide what you believe and don't believe, and what
6 seems logical and common sense.

7 Now, this group of people, this group here, in
8 Middlesex County you have a very diverse group and
9 extremely intelligent people. You're different ages,
10 and you come from different parts of Middlesex County.
11 And we have a nurse, and we have a doctor, and we have
12 scientists, and we have librarians, we have people that
13 worked in the Defense industry, we have people from the
14 non-profit sector. We have a broad cross section of
15 jurors. You are as intelligent as we could experience
16 in this county.

17 And what really happened, let me try to go over
18 it. So, we have Mr. Winston, a very bright, well-
19 brought-up young man that finally gets to one of the
20 best law schools in the world, at Harvard Law School.
21 And shortly after he gets there, he takes a course.
22 One of the interests he has is in music. And he tells
23 you he's picked by Kamilah Willingham to be in a group
24 and do this. And this is un-contradicted, basically,
25 exactly how they get together in this group. That's

1 pretty irrelevant.

2 And we know that they worked together for two
3 semesters, a long time. And a few weeks into their
4 friendship and their working relationship, they have a
5 very brief romantic experience. And at that point in
6 time there's a little difference in what they say
7 happened. They're both in Kamilah Willingham's
8 apartment, and her roommate Andreea is there.
9 Everybody agrees to that. And Kamilah wants you to
10 believe she was sort of pushing him away, she was
11 laughing at him, she was being stern to him. He's
12 saying no, Andreea was interfering with him -- and
13 Kamilah agrees to that, really -- 'and we went in the
14 bedroom, we made out, and I left.'

15 No, this doesn't mean that much to you in and
16 of itself, but it reflects later on. Would this
17 person, Kamilah Willingham, would she, after that, till
18 have a working, school relationship, would she have him
19 alone in that apartment after she had that experience
20 where she's claiming she's rejecting him at that house?
21 You might say, Well, that's not a big deal, they were
22 friends, they got to be friends.

23 So we know they had this good friendship, they
24 both agree. They went to coffee shops, they went to
25 her house. And then it basically stops. The summer

1 comes. She has a boyfriend, and we know at some point
2 that Mr. Winston has a girlfriend.

3 And suddenly it starts again, and they go to
4 these clubs, to the House of Blues. You're going to
5 see the picture, you've seen it already, you see the
6 way -- pictures speak a lot. She seems pretty happy
7 being there with Mr. Winston.

8 And they both agree that nothing happens. They
9 go home.

10 And then another time it happens at Ryle's.
11 And at Ryle's, [REDACTED] [REDACTED] comes. And everybody
12 says the same thing: there's no interest between any of
13 these people in any romantic way, they're just
14 listening to music, and that's the end of it.

15 And we know that they're good friends. They
16 talk about *Infinite Jest*, which is a book that Mr.
17 Winston was reading and that Kamilah Willingham was
18 very knowledgeable about, that she took a course at
19 Pomona College with this professor who ended up
20 committing suicide. And this is serious stuff in their
21 lives.

22 And Kamilah is talking about going to Las
23 Vegas. And they're talking about Thanksgiving. Just
24 the kinds of things that friends talk about.

25 And then Kamilah goes to Africa. And she

1 starts to show more interest in him. She'd never done
2 this before, but she sends him an attractive picture of
3 herself. And she calls him. She'd never done that
4 before. And that, in and of itself, still it's like a
5 friendship, that people do.

6 And then, come January, she starts to want to
7 see him, at night. You know, 'Where are you?' And he
8 is very polite to her and says, 'I'm with a friend
9 that's having surgery. I'm out at Howling at the
10 Moon,' which is another establishment he's going to
11 with somebody else.

12 And she's showing more and more interest, to
13 the point that at one o'clock in the morning she asks
14 him to come over. Nothing wrong with that, by the way.
15 There's no crime in that. But is she not showing
16 interest in him? She wants him to go out with her on
17 her birthday. Is that just your law school friend?

18 And at some point he comes over her house. He
19 says he's not interested in having a romantic -- he
20 finds her attractive, she's quite attractive. And he
21 goes over the house. And there, they're having a good
22 time. They're drinking.

23 Now, alcohol is going to be one of the things
24 that you have to think about in this case, because it's
25 not just alcohol with [REDACTED] [REDACTED] but it's alcohol

1 with Kamilah and with Brandon and the effect that it
2 has, and the effect it has on all their own
3 perceptions. And you'll get an instruction on that,
4 about the alcohol in this case.

5 And so they're at the apartment, having a good
6 time, and another friend of Kamilah's comes over.
7 They're looking at pictures. And Kamilah brings out
8 cocaine. She is a risk taker. She's exposing cocaine
9 to law students. She's willing to do things that other
10 people don't do. This is Harvard Law students, and
11 she's giving out cocaine.

12 And [REDACTED] according to Mr. Winston, [REDACTED]
13 refused the cocaine. That's a small apartment. She
14 wouldn't have seen it? Lines of cocaine out on the
15 table, she wouldn't have seen it?

16 And [REDACTED] wanted to have that night there with
17 Kamilah. She wanted to have her own night there with
18 Kamilah. We know there's some kind of sexuality that's
19 going on between Kamilah both with her roommate Andreea
20 and [REDACTED] We don't quite know what it is, but we know
21 that's in the background.

22 And they drink there. They're all drinking.

23 Now, you're gonna see some of the level of
24 drinking by looking at the video that's sent to
25 Kamilah's mother. And just look at their faces. And

1 they're talking, and they use the word, drunk, 'We're
2 not drunk, we're not drunk.' That's why they're
3 talking about drunk; because they are drunk. And
4 they're drinking and having a great time.

5 And [REDACTED] says two or three drinks at the most.
6 Brandon says he had three or four drinks, and Kamilah
7 was drinking before he got there. And we know there's
8 also, besides the hard liquor or the Baileys, there's
9 beer that's brought in. We have Brandon Winston on the
10 bed with a beer with the clothes. It's a picture the
11 prosecution put in.

12 And so in this -- they're having a happy time.
13 Mr. Winston, he still, he doesn't think anything's
14 gonna happen between him and [REDACTED] or him and Kamilah.
15 He's just having a good time.

16 And he's working hard. Harvard Law School is a
17 very hard, intense place. And, you know, this is a
18 Friday night. And after a couple of hours of drinking,
19 they all go over to the Middlesex Lounge.

20 Now, there's a little fact that happens on this
21 ride over for you to consider, and that's that Kamilah
22 Willingham says that [REDACTED] is fine. [REDACTED] says she's
23 already getting sick in the car.

24 So they go over to Middlesex. And what does
25 Brandon Winston do? He does what is pretty logical.

1 He's interested in having a good time, he's not
2 interested in romancing Kamilah Willingham. He has no
3 reason to think they're interested in him in that way.

4 So what does he do? He's a very generous guy.
5 They drive back -- this is not a rich family. He
6 drives back and he pays for the cab when they come back
7 later on. He puts up a tab. And he thinks it's, like,
8 what he was saying to Ms. [REDACTED] it's, like, a little
9 over a hundred dollars. He paid \$165 for alcohol. He
10 remembers having six drinks that night.

11 And what happens at Middlesex? Well, we know
12 they're all drinking. We know they're all getting
13 drunk. And I'll get back to [REDACTED] later, but [REDACTED] says
14 she doesn't remember anything. She doesn't remember
15 falling down, she doesn't remember going out in the
16 cold, she doesn't remember dancing, she doesn't
17 remember kissing. So we're not getting any information
18 from her, but we know that she's upright. We know that
19 she's dancing.

20 And, in fact, Kamilah Willingham wants to avoid
21 the dancing with Brandon, but she swears to tell the
22 truth before the grand jury and says that [REDACTED] and
23 Brandon are leaning against each other, they're
24 dancing. And you'll hear a little instruction from the
25 Judge about grand jury testimony.

1 And we know they're dancing. And according to
2 Kamilah, she's darting all over the place, she talking
3 to people. She says, 'I never seen her like this. I
4 never seen her like this.' She doesn't do anything;
5 she goes and she makes out with this guy Ziggy. Do you
6 think maybe she didn't think she was so bad? These two
7 go out drinking all the time. That's what ██████ said.
8 And Kamilah said that's when she uses her cocaine.

9 So they're on the dance floor. And she doesn't
10 get Brandon to help her get her, or get ██████ to help
11 her own friend from law school (sic) to get ██████ out of
12 the place. Maybe she didn't think she was so bad.
13 Maybe it was really like she usually is.

14 And what do we hear from Brandon Winston about
15 what happens on that dance floor? He was surprised.
16 In the middle of the night -- he's a handsome guy. He
17 doesn't have any problem meeting women. And suddenly
18 ██████ who he thought was attractive, starts to make out
19 with him on the dance floor, puts her arms around his
20 neck. This is very sexual dancing with her for an
21 hour, kisses that go on for five minutes. He's excited
22 by her. He's turned on by her. They're both
23 approximately the same age. This is what young people
24 do.

25 And the evening goes on. And he's not saying

1 that she's, oh, she's totally perfect and she's totally
2 sober, but she's functioning. She's walking. She gets
3 her own coat. She walks outside. And back when they
4 get outside, they get outside, why do you think
5 pictures were taken? Do you take pictures of your
6 friend if you've never seen your friend this bad
7 before? You're gonna take her pictures? She's taking
8 pictures with Brandon, her friend, Kamilah's friend,
9 and [REDACTED] her friend.

10 And they look like they're together. He has
11 his arm around her. Does he say he helps her zip up
12 her coat? Sure. Is there something that's wrong with
13 that? They're all drunk. They're all drinking.

14 And then while they're here, Kamilah says she's
15 got to walk up the street to get a cab, it's cold.
16 When the establishment closes, there's a big crowd out
17 on Mass. Ave. And what does [REDACTED] do? She walks up
18 along the street, and Brandon knows that. Brandon
19 knows that when he's in that club, she's kissing and
20 making out with him, she's drunk, he's drunk.

21 And then he asks Kamilah if he can stay over.
22 He has to go over there anyway; he's got his bag from
23 school. And Kamilah admits that his bag is over there.
24 He left his case at the apartment.

25 And there's only one way for him to get in the

1 apartment, and that's to buzz himself in. In other
2 words, he has to get somebody to let him in. And
3 Kamilah says, 'Oh, I give this out to all the law
4 students. I give this out.' ████████ her close friend
5 for over a decade, she doesn't have the pass key to get
6 into that building? Who -- what young woman is going
7 to give out her security code to come into that
8 building?

9 And he's outside, outside of that building, for
10 three, four, five minutes. He has to pay the cab, he
11 has to go over to the ATM at the Bank of America. He
12 has to get the money out. He has to go back because he
13 leaves his license. He has to cross the street.

14 And what does he see the two of them do?
15 Remember, you have to think about what's in his mind,
16 because that's one of the questions that the Judge is
17 going to instruct you on.

18 He sees the two of them walking across the
19 street, ████████ behind Kamilah. But Kamilah says they ran
20 across the street arm in arm. We heard that from
21 Kamilah.

22 And then he goes to this apartment. He says he
23 runs up the stairs. Sure, he wants to be with ████████
24 He's excited by her. He wants to continue this cool
25 experience.

1 There's nothing wrong with that. This is what
2 adults do all the time in consensual relationships.

3 And he says when he gets to the top of the
4 stairs, he doesn't see them there. But when he was
5 questioned by Sally, he would say on many things, "I
6 don't remember." Even with the condom, he's not a
7 hundred percent sure. Because he was drunk.

8 What does Kamilah say? She says this friend of
9 hers says to her, "Why the fuck is he here?" That is
10 in clear English. If she's so out of it, so out of
11 control at that point? And she also says that [REDACTED]
12 takes the key from her because she can't put it in the
13 door.

14 Now, did any of that happen, or did it happen
15 exactly that way? We don't know that. But we know
16 that's what she's saying, that's the evidence before
17 you, ladies and gentlemen.

18 Now, Mr. Winston goes in. And by the way, at
19 the club, when she's asked on redirect examination,
20 Kamilah, about Why didn't you do something with [REDACTED]
21 being so drunk, she said she became obstinate. I think
22 there's another word that she used. I'll find it.

23 Annoyed. Is this the -- of somebody that's so
24 out of control, that's so drunk that she's not
25 functioning? She's says that she's obstinate and

1 annoyed. And she can say these words, including swear
2 words, at the top of the stairs? And she can run
3 across the street? And she can take the key and try to
4 open the door?

5 Now, Mr. Winston, he admits he goes into the
6 corridor where the buzzer is, near Kamilah's room, and
7 he's looking for [REDACTED] That's what he's looking for.
8 Of course he is. [REDACTED] showed him that she's super
9 interested in him.

10 And he goes, and he lies down on the bed. And
11 remember, he's a little drunk and unsteady at that
12 point, too. And he's says, you know, basically, she's
13 lying there. He wakes her up or gets her up and he
14 says, 'Get up.' She sits up, they start to make out,
15 they kissed mutually, just like on the dance floor.
16 She puts her arms around him, he puts his arms around
17 her. He tries to take off her shirt. We don't have
18 any ripped shirts here. He asks her to lift up, she
19 lifts up. He takes off the shirt, he tries to unbuckle
20 the bra and he can't. He falls asleep because he's
21 drunk.

22 And we find the bra is entangled in her arm in
23 the morning because we hear that from Kamilah, that
24 there's a bra entangled in her.

25 So now we have him -- he's asleep. He's

1 asleep. And he's woken. And there's two different
2 stories that go on as to what happens when he gets
3 woken up. According to Kamilah -- and she downplays it
4 to you, and then we have to show her the grand jury
5 minutes to bring her back to what she's claiming --
6 she's basically claiming this man is attacking her,
7 that he's sexually abusing her.

8 There's no charges with Kamilah. Just remember
9 that. There never has been and there aren't.

10 And she says he's attacking her, he's mounting
11 her, he's rubbing her. She has to pull his hair. She
12 has to slap his hand.

13 And then suddenly she sees [REDACTED] who has not
14 got a top on. Which is not unusual when people go to
15 bed, whether they're drunk or not, whether they have
16 tops on. And she starts having discussion with him?
17 Does that have the ring of truth with you?

18 She says that during that conversation she asks
19 Brandon Winston whether or not he took her shirt off,
20 or who took her shirt off. Something about her shirt
21 coming off. But later on she asks, when he goes into
22 her bedroom when he's leaving, then everybody agrees
23 then she asks him, 'Why is her shirt off? Who took her
24 shirt off?' And Brandon says, 'I did,' like there's
25 nothing wrong with it.

1 She's lying up there talking about what
2 happened in the bedroom, this bizarre thing of talking
3 about your friend, instead of screaming and yelling and
4 scratching, 'Get out of here, Brandon.'

5 He says he's gonna go sleep on the couch
6 because he rejected her. They started making love, and
7 he rejected her. She'd been thinking about this for
8 months. He rejects her.

9 And he says, 'Did I do something wrong,' and
10 said, 'I'll go sleep on the couch.' And she says, 'No,
11 sleep in Andreea's room.'

12 And at first she tells you on direct
13 examination, she doesn't quite say that that's the way
14 it happened. But on the grand jury, when she's sworn
15 under oath, she agrees with what Brandon said.

16 Now, in the middle of the night Kamilah
17 Willingham says that she goes into Brandon's room. I
18 want you to think about this, ladies and gentlemen.
19 Your own experience. Because you're extremely
20 intelligent and extremely educated, this group that we
21 have here. Do you really believe that if a woman was
22 attacked the way Kamilah was attacked, she would risk
23 going into the bedroom with a man that was attacking,
24 with a friend that was supposedly unconscious in the
25 other room? Do you think she would come into that room

1 and start to have a rational talk with this man that
2 was, you know, horrible to her?

3 She goes into the other room. And she doesn't
4 like the answers. He basically said, '█████ and I
5 hooked up, she was awake, and I fell asleep.' And he
6 tells the same story that he's telling you.

7 And then Brandon, there's things that
8 supposedly happen, him supposedly taking off her shoes.
9 He doesn't remember this. Could it have happened?
10 He's drunk. He can't tell you. Could it have
11 happened? 'I didn't put my hand down in her vaginal
12 area.' But could it have happened? When you're drunk?

13 And what are the signs, why did Brandon think
14 that █████ would consent with him? He's dancing with
15 her in this romantic way a few minutes before, and she
16 was responding to him. You know, maybe if he wasn't
17 drunk he would probably say, 'Hey, she's out of it now,
18 I can't,' but, you know, the two of them were like the
19 same.

20 There's nothing wrong with that. That's
21 consent.

22 And did he actually touch her? So you're going
23 to have to decide beyond a reasonable doubt first of
24 all is did he touch her in the vaginal area, beyond a
25 reasonable doubt? And if he touched her, was it

1 consensual? Because if you come to believe -- and they
2 have the burden of proving beyond a reasonable doubt
3 that he did touch her. And they have to prove beyond a
4 reasonable doubt that she didn't consent. And you'll
5 get the instructions from the Judge.

6 And so the next day Brandon leaves. This was a
7 cool experience. And Kamilah supposedly was brutally
8 attacked by Brandon is talking about [REDACTED] Why in the
9 world would she be talking about [REDACTED]

10 And she says in the bedroom Brandon was
11 touching her breasts and cupping her breasts. And yet,
12 to the grand jury, 'I think his hand was over there.'
13 Does that give you a doubt, ladies and gentlemen?

14 So then the text messages start. And Brandon
15 starts off the messages very friendly, asking about the
16 video, continuing the friendship with Kamilah, which is
17 what he says, he wants to continue, he's feeling a
18 little bad that he rejected her. He tells Sally [REDACTED]
19 that later.

20 And she starts this offense towards him.
21 Starts getting aggressive and asking him, 'Why the P in
22 the V'? Why even mention that? Was there anything --
23 at that point there was no condom supposedly found.
24 This condom, which is just like giving out the cocaine,
25 it is so bad, what she did with that. And I'll get to

1 that in a minute.

2 But you don't even have any condom when she
3 starts these texts and she's talking about the 'P in
4 the V.' Why?

5 And he reacts to it. He said, 'Nothing more,
6 no. Nothing more than.'

7 And he makes statements, and he's saying, 'I
8 want to pacify her, I want to stop this.' She's saying
9 at some point it's a shit storm, she's saying [REDACTED]
10 needs therapy.

11 This is his friend. At that point he doesn't
12 think he's before a criminal court. There's no police
13 that were called in the middle of the night, which is
14 what people do when they're raped and attacked. And
15 why the P in the V with [REDACTED] Why be disturbed about
16 this? This isn't just a kid; this is a grown woman
17 that is extremely educated. Extremely. It's the
18 hardest school in the country to get into.

19 And you'll see the way he reacts to this.
20 He'll say, you know, 'I'm reckless, I shouldn't have
21 done this,' and then he said, 'But I didn't do
22 anything.' It's all over, there's these contradictions
23 in there because he wanted to appease her, he wanted to
24 stop the anger of his friend. He didn't want this to
25 go on. It's not who he is.

1 It's the way he went to St. John's College.
2 The people were in small groups, just listening to
3 everybody's position.

4 So you'll hear about those texts.

5 And then suddenly -- and Kamilah's getting
6 angrier and angrier, 'No way I can explain this to
7 ██████ Explain what to ██████ And she says, 'I got
8 this condom. I haven't had sex since November. I find
9 it at the top of the wastebasket.'

10 She's been home from Africa for two weeks. You
11 don't know when you've had sex that it's at the top of
12 the wastebasket?

13 She's willing to do anything, get him to talk
14 about anything. She's angry. She wants him to be in
15 pain. She says he's shaking, he's teary-eyed.

16 And he was shaking, because he thinks, 'Ooh,
17 did I do something? This is rape, now. What did I do?
18 I'll give you a hair sample.'

19 And it took us -- and you're gonna have the
20 stipulation with you that I read to you. And you're
21 gonna see the sequence. The State Police took the
22 condom, they analyzed it, they found it wasn't ██████
23 ██████ it was Kamilah Willingham, and it was an
24 unknown male. And it's not until recently that unknown
25 male is not Brandon Winston. And she's willing to do

1 this.

2 And now you've got to say to yourself, well,
3 what about [REDACTED] What about [REDACTED] Well, first of all,
4 about [REDACTED] she gives you really no information because
5 she says, 'As soon as I get to Middlesex, I don't
6 remember a thing. I don't remember anything, not until
7 late the next day.' But that's not the point, because
8 nobody says that she's unconscious at Middlesex.
9 Nobody says she's not dancing at Middlesex. Nobody
10 says she's not drinking at Middlesex. Nobody says
11 she's not walking at Middlesex. Nobody says she's not
12 getting her coat or putting on her coat, or walking for
13 a cab, or going across the street, or going up the
14 steep stairs that are at the beginning of the apartment
15 that's an exhibit in here.

16 And we're hearing that she's talking about
17 Brandon. And we're hearing that she's trying to put a
18 key into a door. And we're hearing that she's getting
19 up and talking to him. And by the way, nobody other
20 than Brandon is in that position with her on the bed.
21 Nobody sees Brandon doing anything with [REDACTED] except
22 Kamilah says, after she's brutally attacked, that he's
23 touching her breasts, and differing with the grand
24 jury.

25 And you have [REDACTED] This is her close friend

1 from high school. And we know that they're conspiring
2 after he left, the two of them, they're there with the
3 texts. [REDACTED] is not freaking out.

4 And [REDACTED] what did she do? She had to know
5 that Kamilah was interested in Brandon. These are
6 close friends. They see each other, they go drinking
7 all the time. [REDACTED] stays over Kamilah's house. They
8 were just in Africa for over two weeks together,
9 sleeping in the same tent. And she may be in love with
10 Kamilah.

11 It's very easy to say, 'I have no memory.'
12 Then there's no cross examination. There's nothing I
13 can ask her. I can't even ask her, Did you feel your
14 leg when you fell down, did you feel the cold when you
15 went outside. She says, 'I have no memory.' So
16 there's nothing you can do with it. It doesn't add to
17 your fund of knowledge.

18 It's what Brandon saw himself; what would he, a
19 normal person that's drinking that much, think whether
20 or not she could give consent. And you have to decide
21 that. Does it give you a doubt that she sat up, that
22 she kissed him like in the Middlesex, that she was
23 kissing him and dancing with him at the Middlesex?
24 They're all saying that they're drunk.

25 And he took the witness stand. You heard him

1 on direct, you heard him on cross. You have to look at
2 his demeanor. You looked at the demeanor of Kamilah
3 Willingham.

4 Did he appear to be honest to you? This is a
5 man that comes out of a strong family, a Marine Corps
6 officer, a firefighter in New York during the last
7 twenty-something years. A mother that's a math
8 teacher. One teacher after another in his family.
9 He's in Harvard Law School, completing his third year
10 and is taken out for this, based really on Kamilah
11 Willingham's getting back at him.

12 Now, I might have forgotten things when I
13 talked to you. I'm sure you'll think of things. I
14 want to just take a look at my notes and see.

15 *(Pause.)*

16 He's not going to have a perfect memory of
17 events that happened that night. If he had a perfect
18 memory, you'd say he wasn't drinking.

19 And how does Kamilah have memory of so many
20 details if she's saying she was really sick and
21 drinking that night, she threw up? She's gonna give
22 you all these details. Is she believable? Would you
23 trust her in something so serious? You have to decide
24 that. I don't decide that. The prosecution doesn't
25 decide that. That's what you decide.

1 I think I've probably told you all I can tell
2 you. I thank you very much for your patience and for
3 listening to me. Thank you very much.

4 I'd submit to you at the end of the case you
5 should find Mr. Winston not guilty. And the
6 prosecution, we submit, has not proved to you beyond a
7 reasonable doubt that he committed either of these two
8 very, very serious offenses. You should know that
9 these are serious felonies. Thank you.

10 THE COURT: Thank you, Mr. Zalkind.

11 MR. ZALKIND: Thank you, your Honor.

12 THE COURT: Ms. Tagliareni.

13 MS. TAGLIARENI: Thank you.

14 [REDACTED] was in absolutely no position
15 to consent to any sexual touching in the early-morning
16 hours of January 15th, 2011, and the defendant knew
17 that. What he wanted from her that night was sexual
18 gratification, and nothing was going to stop him from
19 getting that. He knew that [REDACTED] was out of it. In his
20 own words, he explained how out of it she is: in his
21 words to Sally [REDACTED] in his words in text messages and
22 instant messages to Kamilah Willingham in the days that
23 followed that night.

24 Kamilah Willingham wasn't out to destroy him.
25 She wasn't after him that night. She knows exactly

1 what she saw when she was in her bed in the early-
2 morning hours of January 15th, 2011. She saw the
3 defendant reach over and touch [REDACTED] breasts and cup
4 them. There was light coming from the common hallway
5 outside of her window. The defendant himself told
6 Sally [REDACTED] on Page 142 of that transcript, that there
7 was light coming from outside of the room.

8 That's why she pushed the defendant's hands
9 away from [REDACTED] Because she saw that he was sexually
10 touching her, touching her breasts at that time. She
11 knew that [REDACTED] was completely out of it. [REDACTED] was
12 actually asleep at that point.

13 She told him at that point, asked him, why her
14 shirt was off, if he took her shirt off. She was
15 trying to figure out what happened here. Because when
16 she fell asleep in that bed, [REDACTED] clothes were on
17 and, yes, the defendant was there, but they all passed
18 out, after the defendant had tried to arrange them.
19 And what Kamilah Willingham told you was that when the
20 defendant was moving [REDACTED] [REDACTED] she wasn't awake.

21 So when Kamilah Willingham woke up and the
22 defendant was kissing her, and she felt [REDACTED] naked
23 back and saw the defendant touching her breasts, she
24 wanted to figure out what was going on. So, yes, she
25 told him, 'Go sleep in Andreea's room.' Because the

1 defendant was a friend of hers. She needed to figure
2 out what someone that she thought was a friend was
3 doing to her other friend. She wanted to get to the
4 bottom of it. So that's why she didn't kick him out at
5 that point. She was trying to figure out what was
6 going on.

7 She went and got a bottle of water and tried to
8 wake up [REDACTED] tried to talk to her, even held that cold
9 bottle against her back, and she still wasn't waking
10 up. And when she did, she wasn't making any sense,
11 talking about how she had to go take the bus.

12 She was trying to figure out if the defendant
13 had done anything more than what she had just seen.
14 And in the days that followed, she learned that he did.
15 Not only did he touch her breasts, but he touched her
16 vagina, her vaginal area, telling Kamilah 'a finger in
17 the v, no more than what you and I were doing.' And
18 Kamilah Willingham told you that when she woke up and
19 the defendant was kissing her, his hands were in her
20 tights and he was touching her. So Kamilah knew at
21 that point that not only had he touched her breasts,
22 but he touched [REDACTED] vagina, as well.

23 Now, this isn't a TV show, like *Law and Order*
24 or *CSI*. There are no writers and no scripts for the
25 witnesses to memorize. The witnesses are real people,

1 and this is real life. And the testimony comes from
2 those real people. There are no scripts for them to
3 memorize.

4 A change in memory doesn't necessarily mean
5 that something isn't true. Memories change over time,
6 but the truth doesn't. And different people with
7 different perspectives have different memories based on
8 their different perspectives.

9 In this case if you believe Kamilah Willingham
10 when she told you that she saw the defendant touched
11 [REDACTED] [REDACTED] breasts, you have proof beyond a
12 reasonable doubt that the defendant is guilty of that
13 charge. Testimony is evidence if you believe it. And
14 her testimony alone is proof beyond a reasonable doubt
15 that he's guilty of that charge. You also have Kamilah
16 Willingham's testimony about how his hands were in
17 Kamilah Willingham's pants, along with his text the
18 next day saying that what he did to [REDACTED] was no more
19 than what he had done to Kamilah, some minor touching,
20 a finger in the v.

21 So why should you believe Kamilah Willingham?
22 It's your job as jurors to assess the credibility of
23 every witness that came in here and testified. You can
24 believe all of what a witness says, none of what the
25 witness says, or parts of it. And you should use

1 different tools in order to assess every witness. Look
2 at the manner in which they testified, the conduct of
3 the witness when they testified.

4 Think about Kamilah Willingham when she
5 testified last week. You have several hours of her
6 testimony to consider. Did she appear that she was
7 perpetuating a cold, calculating fabrication or did she
8 appear as someone who woke up, was confused by what she
9 saw someone that she thought was her friend doing to
10 another friend of hers? So in that early morning and
11 the days to follow, she was trying to figure out what
12 was going on.

13 The defense attorney would have you believe
14 that Kamilah Willingham is a woman scorned and that she
15 made up this sexual assault of [REDACTED] [REDACTED] in order
16 to get back at the defendant, and that she was jealous
17 of what was going on between [REDACTED] and the defendant on
18 that night.

19 He would also have you believe that she brought
20 up this condom because she was trying to destroy the
21 defendant. The condom is completely irrelevant to this
22 case. It is completely irrelevant to whether or not
23 the defendant touched the breasts and vaginal area of

24 [REDACTED] [REDACTED]

25 He would have you believe that this Harvard

1 Law-educated woman wouldn't know that the condom, when
2 it would be tested, would eventually come back to not
3 belonging, having no DNA belonging to the defendant.
4 Because she didn't have a need to plant on that condom.
5 She was trying to figure out if the defendant did
6 anything besides what she saw, him touching her
7 breasts.

8 And when she found the condom, she thought it
9 might have something else to do with it. Well, it
10 didn't. Plain and simple.

11 She didn't use that condom to get information
12 out of the defendant. She didn't even tell him about
13 the condom until three days later, on January 18th,
14 2011, when she met him at the Cambridge Common. At
15 that point he had already told Kamilah what he did to
16 [REDACTED] 'Finger in the v,' 'No more touching than what
17 you and I were doing.' He'd already admitted that he
18 had touched [REDACTED] vaginal area. He didn't say
19 anything beyond that. In fact, when she told him about
20 the condom, he denied it, said it wasn't his. And he
21 was right.

22 She wasn't out to destroy him. The defendant
23 himself told you yesterday on direct examination that
24 Kamilah Willingham told him on January 18th at the
25 Cambridge Common that when she went to the police, she

1 didn't even tell the police the defendant's name. If
2 she was so out to get him and so out to destroy him,
3 why wouldn't she give the police his name at that time?
4 She just wanted to know what happened to her friend
5 when she was in no position to consent to anything.

6 She wasn't after the defendant that night. She
7 didn't want to be with him. Yes, she had been texting
8 him in November and December, because they were
9 friends. She brought him back a gift from Africa. She
10 sent him an e-mail that had a video chat from Africa,
11 because they were friends.

12 The defendant himself, in his own words to
13 Sally ██████ talks about how he was with ██████ Kamilah
14 was with other guys, she was dancing with one guy.
15 Then he goes on to say she was making out with other
16 guys all over the place in Middlesex.

17 She wasn't showing any interest in Brandon
18 Winston on that night. She took those photographs
19 because it was fun. He's making a silly face in one of
20 them.

21 She has no motive to lie here. She's not out
22 to destroy the defendant. She wasn't out to get him
23 that night. She admitted to you that she brought out
24 cocaine and that she and the defendant and ██████ ██████
25 used that cocaine. She didn't enter into any

1 agreements with the prosecution about the cocaine.

2 She's the one that reported what happened that night.

3 If she wanted to keep the cocaine a secret, she

4 wouldn't have told any of it.

5 She's not charged with anything about the

6 cocaine and neither is the defendant.

7 The defendant told you that Kamilah wanted to

8 get rid of [REDACTED] He says that on Page 131 of that

9 transcript of his interview with Sally [REDACTED] in June of

10 2011. And the defense attorney would have you believe

11 that Kamilah concocted this sinister plan to say that

12 [REDACTED] had been sexually assaulted because she really

13 wanted to be with the defendant.

14 And the defendant told you that Kamilah wanted

15 to get rid of [REDACTED] Well, if that were true, she had

16 the perfect excuse. According to the defendant and the

17 defense attorney, when Kamilah sees [REDACTED] with Brandon,

18 she has the perfect excuse to get rid of [REDACTED] from her

19 life, 'That's the man I wanted to be with, our

20 friendship is done.' The defendant's own words refute

21 that. Again, him saying that she was going around

22 making out with guys at the Middlesex.

23 She was never into him that night. She'd

24 invited him over because they were friends. And they

25 all went out as a group of friends.

1 He goes on to say to Sally [REDACTED] on Page 134,
2 that "Kamilah didn't want [REDACTED] upset with her." But
3 this is after he says that Kamilah wants to get rid of
4 [REDACTED] from her life.

5 He's trying to have an excuse for everything,
6 but there's no excusing what he did. What he did to
7 [REDACTED] [REDACTED] was criminal.

8 Kamilah was concerned about what she saw the
9 defendant doing to [REDACTED] because she knew that they
10 weren't making out at the bar. She knew how out of it
11 [REDACTED] was at the bar. According to Kamilah, the
12 defendant was helpful with [REDACTED] at the bar, guiding her
13 around, propping her up, even taking her to the
14 bathroom at one point. Kamilah knew how out of it [REDACTED]
15 was.

16 The last thing that [REDACTED] remembers on that
17 night is walking into the Middlesex and being handed a
18 drink, and she doesn't remember anything until the next
19 morning because she was completely incapacitated
20 starting from when she was at the Middlesex bar and
21 continuing all night. According to Kamilah, she was
22 stumbling around. She fell down at one point, had to
23 be helped up.

24 When she came home to Kamilah's apartment, she
25 passed out on the bed in the apartment immediately.

1 When the defendant was moving [REDACTED] around, she wasn't
2 awake.

3 You have this picture, Exhibit 2, of [REDACTED]
4 [REDACTED] Look at this picture. She can't even zip
5 up her coat. That's how out of it she was.

6 You have what [REDACTED] told you about how she has
7 no memory. You have what Kamilah told you about [REDACTED]
8 state. But you also have what the defendant told Sally
9 [REDACTED] Look at the transcript of that recording that's
10 also in evidence. The defendant corroborates how out
11 of it [REDACTED] [REDACTED] was when they were going back to
12 and when they were at that apartment. On Page 9 he
13 says that he had to "shake her to arouse her," and she
14 responded with, "she barely responded, just with, like,
15 ahh, sort of a groggy answer."

16 Page 44, when referring to [REDACTED] condition in
17 the cab at the end of the night, he said, "I think she
18 was just kind of out of it."

19 Page 73, when asked if he spoke with [REDACTED] after
20 they were in bed, he said, "That was me basically
21 jostling her, and her kind of like just groaning."

22 Page 78, "I remember laying there and, like,
23 speaking into her ear and, like, shaking her on the
24 shoulder. And I was, like, '[REDACTED] sit up.' She
25 tried to sit up, and I remember, like, holding her back

1 while she sat up.

2 Page 79, "She was definitely out of it," when
3 talking about when they were back at the apartment.

4 Page 80, when talking about ██████ in the cab,
5 "█████ couldn't speak words. I guess it was just
6 gibberish."

7 That's not someone who is in any position to
8 consent to any kind of sexual touching.

9 When they were back in that apartment, ██████
10 ██████ was incapable of freely giving her consent.
11 And the defendant knew that or reasonably should have
12 known that. When he took off her clothes and he
13 touched her, she was in no position to consent. And in
14 his own words, "She was definitely out of it."

15 But this is not a situation where everyone was
16 so drunk that no one knew what was going on. The
17 defendant knew exactly what was going on. The
18 defendant had the wherewithal to leave his license with
19 the cab driver while he went to the ATM. He went to
20 the ATM. He put his card in, he used his pin number,
21 he got money out. He went back to the cab driver, paid
22 the cab driver, walked across the street, got into that
23 apartment building, went up five flights of stairs,
24 walked into the apartment, found ██████ went into bed
25 with her in Kamilah's room. He knew exactly what he

1 was doing.

2 You have the defendant's words, but you also
3 have those instant messages and those text messages
4 starting in the afternoon of January 15th. On January
5 15th, 2011 the defendant is the person who brought up
6 finger in the vagina. That wasn't an estimation of the
7 level of intimacy that was going on like he tried to
8 tell Sally [REDACTED] in June of 2011. That's not a
9 response to, Did you put your penis in her vagina?

10 The defendant yesterday, on direct examination,
11 even said that. He said that the simple answer would
12 be no. But that's not what he said. He's the one that
13 brings up finger in the vagina. Because that's exactly
14 what he did to her; he touched [REDACTED] [REDACTED]
15 vaginal area when she was in no position to consent.

16 He also said to Kamilah in those text messages,
17 "The same thing you and I were doing, some minor
18 touches." And you have what Kamilah told you about his
19 hand was in her tights.

20 The instant message on January 17th, 2011, when
21 Kamilah Willingham asked him "And her bra and her
22 jeans?" He replied, "Yes." Because he took her jeans
23 off and he touched her. He admits that he was
24 reckless.

25 Kamilah goes on to ask, "When is it ever okay

1 to initiate something when she's asleep?" His response
2 is, "Never. I went too far."

3 And then he starts to cover at that point;
4 that's when his cover-up starts. He goes on to say,
5 "Well, when she wouldn't wake up, I stopped. Nothing
6 really happened."

7 But she had her jeans on when she hit the bed,
8 and he took them off, and he touched her.

9 He also said in that instant message that when
10 Kamilah asks him and says, "█████ passed out the moment
11 we got into the apartment," he doesn't challenge that.
12 But five months later when he's talking to Sally ██████
13 he has an answer for that. He tries to explain how she
14 woke up after he jostled her.

15 He has an excuse for everything. 'Oh, Kamilah
16 was upset because ██████ was after her, because something
17 had happened in Africa.' Kamilah told you that when
18 she talked to the defendant at the Cambridge Common
19 prior to this night, she confided in him that she and
20 ██████ had kind of annoyed each other after traveling for
21 a little while, not that ██████ had made any sexual
22 advances. You saw ██████ reaction when she was asked
23 if she was interested in Kamilah at all sexually and
24 her denial of that.

25 The defendant even makes an excuse that on that

1 prior encounter that he had with Kamilah, 'Oh, there
2 was something also going on between Kamilah and
3 Andreea,' her roommate.

4 He has an excuse for everything. His excuses
5 start in those instant messages on January 17th, 2011,
6 and they continue in his statement to Sally [REDACTED] in
7 June of 2011 and his testimony this week.

8 You also have to assess the credibility of the
9 defendant when he testified yesterday on direct
10 examination and this morning on cross examination. How
11 did he appear on direct examination, as opposed to
12 cross examination? Did he appear rehearsed on direct
13 examination, with the perfect memory as to what
14 happened that night, four years later at this time?
15 And contrast that with the questions this morning when
16 he was on cross examination, where he didn't know what
17 the next question would be.

18 He wants you to believe that [REDACTED] [REDACTED]
19 just came up to him in the Middlesex bar, wrapped her
20 arms around him, started making out with him, that they
21 were whispering in each other's ear. But he doesn't
22 remember what they were talking about?

23 You saw [REDACTED] You saw how short she is and how
24 tall the defendant is. Even with heels on, does it
25 make sense that she would walk right up to him, wrap

1 her arms around him and start kissing him?

2 █████ told you that when she got there on there
3 on the night of the 14th and saw that the defendant was
4 there, she was annoyed by that, because she thought
5 that she and Kamilah were going to have a fun girls'
6 night. But then he wants you to believe that a couple
7 of hours later she's changed her mind, walks right up
8 to him and starts making up with him, all while Kamilah
9 was right next to them. But Kamilah told you she never
10 saw that. All she saw that they were dancing together
11 as a group at times and that the defendant was being
12 helpful with █████ because she was so out of it.

13 Compare the defendant's testimony yesterday and
14 today with those texts and those instant messages and
15 his statement to Sally █████ in June of 2011. In that
16 statement he admits that he rubbed █████ crotch. On
17 Page 104 of that transcript, "I'm feeling everywhere on
18 her and I'm sort of, like, rubbing her crotch."

19 Page 107, he goes on to say that he doesn't
20 think █████ would have minded, when talking about
21 putting a finger in the vagina.

22 Page 146, he says that he can't deny that he
23 didn't put his hand over and touch █████ referring to
24 the middle of the night when Kamilah saw the defendant
25 touching the breast of █████ █████

1 The defense attorney wants you to believe that
2 Kamilah Willingham is some kind of mastermind who
3 orchestrated this entire thing, that she contrived and
4 manipulated this. But why would she say then that at
5 about seven o'clock in the morning she went down to get
6 a sandwich and left the defendant and [REDACTED]
7 in that apartment at that time? Why would she say that
8 Brandon Winston was being helpful with [REDACTED] at the
9 Middlesex bar? Because those are things that happened.
10 At seven o'clock in the morning she was still trying to
11 figure out what was going on. Still trying to figure
12 out what she saw about the defendant, someone that she
13 thought was her friend, trying to figure out if he did
14 anything else to [REDACTED] besides what she had
15 seen. She didn't even want to tell her friend's name
16 to the police at first.

17 The defendant is the one who was in control
18 here. He is the one that took advantage of [REDACTED]
19 [REDACTED] when she was in that state. He knew exactly
20 what he was doing. He used her for his own sexual
21 gratification, and when he touched her breasts and he
22 touched her vaginal area when she was in position to
23 consent, he went too far. And when he did that, he
24 committed two counts of indecent assault and battery.

25 He knew exactly what he was doing. This wasn't

1 an accident; this was intentional. He had the
2 wherewithal at that time; he knew exactly what was
3 going on. He thought this was a totally cool
4 experience. But there was nothing cool about what he
5 did to [REDACTED] [REDACTED]

6 You have all of the evidence that you need to
7 convict the defendant of two counts of indecent assault
8 and battery. It's at this time that the Commonwealth
9 requests that you return the only true and just verdict
10 and find the defendant guilty as charged. Thank you.

11
12 *(Balance of proceedings not transcribed at this*
13 *time.)*

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CERTIFICATION

I, Christina O'Neill, Official Court Reporter, do hereby certify that the foregoing, Pages 1 through 42 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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Date

Commonwealth v. Winston
Closing Arguments

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