19-P-462 Appeals Court

COMMONWEALTH vs. TERRY A. MUSSARI.

No. 19-P-462.

Norfolk. March 17, 2020. - June 11, 2020.

Present: Sacks, Ditkoff, & Englander, JJ.

Prostitution. Deriving Support from Prostitution. Entrapment. Practice, Criminal, Presumptions and burden of proof, Instructions to jury. Evidence, Presumptions and burden of proof.

Indictments found and returned in the Superior Court Department on April 2, 2012.

The cases were tried before Gregg J. Pasquale, J.

Dana Alan Curhan for the defendant.
Jennifer K. Zalnasky, Assistant Attorney General, for the Commonwealth.

SACKS, J. After an undercover investigation, the defendant, Terry A. Mussari, was indicted on numerous charges arising out of her operation of three day spas. With respect to each spa, she was charged with deriving support from prostitution, G. L. c. 272, § 7; keeping a house of

prostitution, G. L. c. 272, § 24; and maintaining a place of prostitution, G. L. c. 272, § 6. After a jury trial, she was convicted of two counts of deriving, two counts of keeping, and one count of maintaining, but was acquitted of the remaining prostitution-related charges.[1] On appeal, she argues that (1) there was insufficient evidence to disprove her defense of entrapment, and (2) the judge erroneously lowered the Commonwealth's burden of proof by instructing that the jury could infer the defendant's knowledge of prostitution at the spas based on her "willful blindness" to those activities. We are unpersuaded by either argument and therefore affirm the convictions.

Background. We recite the facts that the jury could have found, reserving certain details for later discussion. In April 2011, State Trooper Michael Cowin began an undercover investigation into three spas operated by the defendant: Aria Day Spa (Aria), Spa Bellissimo, and Sparkle Spa. As part of the investigation, Cowin attempted to schedule a bachelor party at the Aria. He did so through several telephone conversations

[1] She was also charged with and found guilty of three counts each of failure to pay minimum wage, G. L. c. 151, § 19; and failure to give a paystub, G. L. c. 149, § 148. She does not challenge these convictions on appeal, and so we do not discuss them further.

with the defendant and an in-person visit to the Aria, where he and the defendant discussed most of the details.[2]

In the first conversation, Cowin and the defendant discussed holding a private, after-hours party for about eleven men on a particular date in October 2011. In their next conversation, the defendant volunteered that "everyone can get massages, Swedish and full body massages." She indicated that instead of the Aria's usual charge of eighty dollars per person, she would charge Cowin a "group rate" of sixty dollars per person. This was only a "door fee," and she did not get involved in the "gratuity," which was a matter "between [the client] and the therapist." Cowin asked if he could visit the Aria to see the facilities and discuss details, and the defendant readily agreed.

When they met at the Aria, the defendant asked whether Cowin was looking for "a date kind of thing, like an escort kind of thing." Cowin indicated that his friends wanted "to hang out," and the defendant stated that she did not "really know what you're talking about and how the girls are going to get paid for that." Cowin stated that he and his friends did not "want to be haggling with people, or, you know, worrying about how much we got to pay. . . . [T]hey want to just pay

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[2] All conversations but the first one were recorded, and the recordings were admitted in evidence and played for the jury.

everything up front." The defendant asked, "Tip and everything?" Cowin agreed. The defendant asked, "What are they looking for," to which Cowin replied, "They want to have fun." The defendant asked, "Full body? Full body massage?" Cowin replied, "[T]hey want the full."

The defendant then asked, "They looking for sex?" Cowin replied, "Yeah, well, I mean, they all want to get taken care of, and have fun, you know." The defendant responded, "Right, okay. Right." She then clarified that "they don't want to deal with haggling in the room?" Cowin agreed, saying he did not want any of his friends saying afterwards that "the girl I was with . . . didn't know what I was talking about." The defendant replied, "So you want it set up? . . . Right, okay." Cowin said he would collect money from his friends and then pay the entire amount in advance, which the defendant said was "fine."

The defendant stated that each woman would want to receive a tip of eighty dollars. She stated, "I have eleven girls, easy, yeah. . . . And I'm picking the girls too, because I know who's -- believe me, I know." Cowin requested two women for the groom, to which the defendant replied, "Yeah, that's easy. I'll get you a dirty dozen." After further discussion of the total amount that Cowin would pay, the defendant assured him that there would be "no haggling" and agreed that "they'll know what

to do. Everybody will know . . . that it's all taken care of . . . . I'm going to lay it all out for them."

Cowin asked, "We talking like the full, everything?" The defendant said, "I can't really get into that . . . and I'm not sure all your boys are about that." Cowin assured her that "everybody wants to know that . . . that's the option . . . if they like the girl." The defendant responded, "I just know that everybody . . . is happy. I don't know to what extent, that kind of thing." Cowin sought to clarify that there would be "nobody that's going to be in a room and clam up and say . . . oh, all I do is rub their shoulders." The defendant stated, "No, no, no. No, no, no, no, no, no, no. The girls that I have, they've been with me for years and I know." She added that she did not "really want to get involved" in "tell[ing] them what to do." But she agreed with Cowin that "if they like the guy," then "it just happen[s]. Yeah, that's right." Cowin then sought and received from the defendant an additional assurance that "nobody's going to go in and say all I'm doing is a massage."

On the date set for the party, Cowin arrived alone at the Aria, met with the defendant, and paid her the amount due. After telling her that the other men were having dinner and would be arriving shortly, Cowin was taken into a room for his massage. A woman entered and asked Cowin to take off his

clothes. He removed all but his boxer shorts, and he asked what he would get for the eighty-dollar tip he had paid up front; she answered, "[A] massage and a hand job." She asked Cowin if he "wanted to have somebody else for full service," and he replied that he did. She then left the room and told the defendant that Cowin was asking for "full service," whereupon the defendant sent another woman into the room. This woman told Cowin that the usual tip for "everything" was more than eighty dollars, but she ultimately agreed to have sexual intercourse for the eighty-dollar tip he had already paid. The woman told Cowin to take off his boxer shorts, and she also began taking her clothes off.[3] Shortly thereafter, other troopers entered and began making arrests. Condoms were observed in other massage rooms.

At trial, seven women who worked at the Aria or the Spa Bellissimo, and who were at the bachelor party to work, testified about prior occasions on which they had performed sexual acts with massage clients.[4] They were paid small amounts

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[3] By this point, Cowin, who had a transmitter in his clothes that allowed troopers waiting outside the Aria to hear his conversations, had begun to repeat the word "beautiful," which was the signal for the troopers to enter. This system failed, so Cowin stalled by insisting on taking a shower.

[4] There was little testimony about sexual activity at the defendant's third spa, Sparkle Spa. The defendant was acquitted of the three prostitution-related charges involving that spa. She was also acquitted of maintaining a place of prostitution at the Spa Bellissimo.

by the defendant and received tips directly from clients, with the size of the tip varying according to whether and what types of sex acts were performed. Those acts sometimes included intercourse, which the women also referred to as "full service," or "everything."

The defendant had instructed one woman to "[m]ake the money in the rooms," and had referred to herself as "the bitch that sells you." When that woman expressed concern about activities in the rooms having gone beyond "just the . . . giving [of] erotic massages" (which she defined as including a "handjob"), the defendant told her "that maybe it's just not the line of work for [her] anymore." Another woman testified that the defendant had on occasion heard the women talking about sexual services being offered in the massage rooms; in response, "she would make it clear that that's not supposed to go on here but whatever happens in the rooms she can't control."

Discussion. We begin by reviewing the elements of the prostitution-related charges of which the defendant was convicted. We then discuss the defendant's claims that there was insufficient evidence to disprove her defense of entrapment and that the judge erred in giving a willful blindness instruction.

1. Elements of prostitution-related offenses. General Laws c. 272, § 7, concerning the crime of deriving support from prostitution, provides:

> "Whoever, knowing a person to be a prostitute, shall live or derive support or maintenance, in whole or in part, from the earnings or proceeds of his prostitution, from moneys loaned, advanced to or charged against him by any keeper or manager or inmate of a house or other place where prostitution is practiced or allowed, or shall share in such earnings, proceeds or moneys, shall be punished."

"[A] prostitute [is] defined as 'one who permits common indiscriminate sexual activity for hire.'" Commonwealth v. Matos, 78 Mass. App. Ct. 578, 585 (2011), quoting Commonwealth v. King, 374 Mass. 5, 12 (1977). The judge so instructed the jury here, adding "that the terms 'prostitution' and 'sexual activity' . . . do not require a finding that any individual had a purpose of engaging in sexual intercourse, that is, penile-vaginal intercourse, but instead rests on a common understanding of the meaning of the word 'prostitution.'" See Matos, supra at 585.

General Laws c. 272, § 24, concerning the crime of keeping a house of prostitution, provides: "Whoever keeps a house of ill fame which is resorted to for prostitution or lewdness shall be punished." The judge instructed the jury that for this offense, too, they should apply the common understanding of the word "prostitution," which does not require intercourse.

Finally, G. L. c. 272, § 6, concerning the crime of maintaining a place of prostitution, provides: "Whoever, being the owner of a place or having or assisting in the management or control thereof induces or knowingly suffers a person to resort to or be in or upon such place, for the purpose of unlawfully having sexual intercourse for money or other financial gain, shall be punished." The judge instructed the jury that for this offense, the Commonwealth "must prove that the sexual intercourse was penile-vaginal intercourse; other types of sexual activity do not qualify." See Commonwealth v. Purdy, 459 Mass. 442, 455 (2011).

2. Entrapment. The defendant argues that there was insufficient evidence to disprove her defense of entrapment, and so her motions for required findings of not guilty should have been allowed. "An entrapment defense is, at bottom, a claim by the defendant that he or she ordinarily would not have committed the charged crime had officers not enticed him or her to do so." Commonwealth v. Denton, 477 Mass. 248, 250 (2017). "There are two elements of the entrapment defense: (1) that the defendant was induced by a government agent or one acting at his direction and (2) that the defendant lacked predisposition to engage in the criminal conduct of which he is accused" (quotation omitted). Commonwealth v. Madigan, 449 Mass. 702, 707 (2007). The defendant has the initial burden of producing some evidence

of inducement by the government; although the threshold for doing so is low, showing mere solicitation is not enough. Id. at 707-708. But once the defendant has sufficiently raised the defense, "[t]he burden then shifts to the Commonwealth 'to prove beyond a reasonable doubt that (1) there was no government inducement or (2) the defendant was predisposed to commit the crime.'" Id. at 707, quoting Commonwealth v. Penta, 32 Mass. App. Ct. 36, 47 (1992), S.C., 423 Mass. 546 (1996). See Commonwealth v. Buswell, 468 Mass. 92, 106 (2014); Commonwealth v. Podgurski, 81 Mass. App. Ct. 175, 182 (2012); Commonwealth v. Urena, 42 Mass. App. Ct. 20, 21 (1997).[5] "Predisposition may . . . be found upon proof that the accused [was] ready and willing to commit the crime whenever the opportunity might be afforded" (quotation omitted).[6] Commonwealth v. Doyle, 67 Mass. App. Ct. 846, 851 (2006).

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[5] Other cases have referred to the Commonwealth's burden solely as that of proving predisposition, without mentioning the Commonwealth's ability to defeat the defense by disproving inducement. See Commonwealth v. Miller, 361 Mass. 644, 652 (1972). Cases relying on Miller for this proposition include Commonwealth v. Mello, 453 Mass. 760, 762 n.2 (2009); Commonwealth v. Koulouris, 406 Mass. 281, 284 (1989); Commonwealth v. Shuman, 391 Mass. 345, 351 (1984); Commonwealth v. Dingle, 73 Mass. App. Ct. 274, 283–284 (2008); and Commonwealth v. Lawrence, 69 Mass. App. Ct. 596, 602 (2007).

[6] "The fact that government agents merely furnish opportunities or facilities for committing the offence does not defeat prosecution. Artifice and stratagem may be employed to catch those engaged in criminal enterprises." Miller, 361 Mass. at 651. "Also, the issue presented when the defense of

Before reviewing the sufficiency of the evidence of predisposition, we note that the jury could have found it unnecessary even to consider entrapment. The only possible basis for that defense was Cowin's discussions with the defendant to arrange a bachelor party on a particular date in October 2011. The indictments, however, charged the defendant with prostitution-related offenses not merely on that one date, but on divers dates during the six-year period ending on that date.[7] As to the offenses of which the defendant was found guilty, she does not challenge the sufficiency of the evidence that they occurred on dates before the party, and we have no doubt that the evidence in that regard was sufficient.

In any event, viewed under the familiar standard of Commonwealth v. Latimore, 378 Mass. 671, 677-678 (1979), the Commonwealth's evidence was more than sufficient for the jury to find beyond a reasonable doubt that the defendant, with respect to the date of the party, was predisposed to commit the prostitution-related crimes of which she was convicted. It was the defendant who first explicitly broached the topic of sexual

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entrapment is asserted is not whether the particular offense was brought about by the government agent, but rather whether the government agent brought about the defendant's predisposition to crime." Shuman, 391 Mass. at 351.

[7] The judge instructed the jury accordingly and gave a specific unanimity instruction.

activity, asking Cowin whether he and his friends were "looking for sex." When Cowin replied that they all wanted to "get taken care of, and have fun," the defendant responded, "Right, okay. Right." Cowin testified, and the recordings confirmed, that the defendant did not say there were no sexual services offered at the Aria, nor did she seem surprised or upset when Cowin confirmed his interest in such services. The defendant assured Cowin, "I'm picking the girls too, because I know who's -- believe me, I know." She characterized the twelve women she would supply for the party as "a dirty dozen." She characterized the premassage socializing between the women and Cowin's friends as "foreplay." She advised Cowin not to plan any postmassage activities at the Aria, because, based on her twenty years of experience, "I've watched guys and when the deed is done, they're out." She repeatedly and emphatically assured Cowin that none of the women would balk at performing activities beyond a massage, saying, "The girls that I have, they've been with me for years and I know." All seven women who were at the bachelor party to work also testified that they had provided sexual services to the spas' massage clients in the past.

Finally, on the night of the party, when the first woman left Cowin's room and told the defendant that Cowin wanted "full service" -- a term that numerous women testified meant sexual intercourse -- the defendant sent another woman into the room,

who agreed to have intercourse with Cowin.[8] To be sure, in her discussions with Cowin, the defendant was careful never to discuss explicitly or agree upon exactly which sexual services would be provided. But there was ample evidence that, from the outset, she was ready and willing to knowingly furnish women who would provide some sexual services, in a spa that she operated, in exchange for payments to them and to her.

The defendant argues that the Commonwealth failed to disprove what she terms "indicia of entrapment," such as "aggressive persuasion, coercive encouragement, lengthy negotiations, pleading or arguing with the defendant, repeated or persistent solicitation, persuasion, importuning, and playing on sympathy or other emotion." These factors have most often been described as "indicia of inducement," on which the defendant must make a threshold showing in order to raise an entrapment defense. See Madigan, 449 Mass. at 708; Commonwealth

[8] This disposes of the defendant's argument that the evidence showed she "simply agreed to provide whatever Cowin wanted, but without the intent or ability to follow through with the services he had requested." Similarly, although the defendant claims that she did not follow through on her promise to Cowin to tell the women that the tips had been paid in advance and tell them what was expected of them, one woman testified that the defendant told her the tips were paid up front, and two women testified that the defendant told them to make sure that the men were "happy."

v. Tracey, 416 Mass. 528, 536 (1993).[9] But, however the factors are labeled, once the defense is raised, the Commonwealth need not disprove inducement. The Commonwealth may, in the alternative, defeat the defense by proving beyond a reasonable doubt that the defendant was predisposed to commit the crime.[10] See Madigan, 449 Mass. at 707, and cases cited, supra at __. In either case, the Commonwealth does not have the additional burden, as the defendant suggests, of disproving each of the various types of conduct that might be relevant to those issues.

Here, moreover, the defendant did not request an instruction that the Commonwealth disprove inducement or its various indicia. Nor did the judge instruct the jury on this

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[9] See also, e.g., Commonwealth v. Shaughessy, 455 Mass. 346, 354 (2009); Mello, 453 Mass. at 763 n.3; Podgurski, 81 Mass. App. Ct. at 183 n.14; Commonwealth v. Encarnacion, 38 Mass. App. Ct. 972, 973 (1995).

[10] "Inducement and predisposition are separate, though interrelated and mutually dependent, prongs of the entrapment doctrine." Doyle, 67 Mass. App. Ct. at 853 n.12. The District Court's model instruction provides that the Commonwealth may disprove entrapment "either by proving that there was no inducement by a government agent or someone acting at the request of a government agent, or by proving that the defendant was predisposed to commit the crime." Instruction 9.140 of the Criminal Model Jury Instructions for Use in the District Court (2009). In contrast, the Superior Court's model instruction does not refer to the Commonwealth disproving inducement, but provides only that "the Commonwealth must prove beyond a reasonable doubt the predisposition of the defendant to commit this crime." Massachusetts Superior Court Criminal Practice Jury Instruction § 5.3 (Mass. Continuing Legal Educ. 2013). The District Court instruction better captures the governing law.

means by which the Commonwealth could defeat the entrapment defense; instead, following the Superior Court model instruction, the judge instructed that the Commonwealth was required to prove predisposition beyond a reasonable doubt. See note 10, supra. The defendant has not argued that this instruction was in error. Indeed, it benefited her, by depriving the Commonwealth of an alternative means of defeating the entrapment defense. Therefore, we need not consider whether the Commonwealth disproved the indicia of inducement.[11]

3. Willful blindness instruction. The defendant challenges the judge's instruction that the jury could infer the required element of knowledge if they found that the defendant had willfully blinded herself to what was occurring at her spas. As the judge properly instructed the jury, two of the prostitution-related offenses required proof beyond a reasonable doubt of the defendant's knowledge. Specifically, deriving support from prostitution required proof that the defendant knew the person from whom she derived support was a prostitute, G. L. c. 272, § 7, and maintaining a place of prostitution required proof that the defendant induced or knowingly allowed the person

[11] We add that we see few if any of these indicia in Cowin's statements or conduct. The bulk of his discussions occurred during a single conversation with the defendant at the Aria, and it was she who, early in that conversation, asked if Cowin and his friends were "looking for sex."

to be on the defendant's premises for the purpose of unlawfully having sexual intercourse for money.[12] G. L. c. 272, § 6. The judge then gave the familiar instruction on proof of knowledge, stating in pertinent part:

> "[I]t is obviously impossible to look directly into a person's mind, but in our everyday affairs we often look to the action of others in order to decide what their state of mind is. In this case you may examine the defendant's actions and words and all of the surrounding circumstances to help you determine the extent of . . . the defendant's knowledge at the time."

Then, over the defendant's objection, the judge instructed on willful blindness:

> "Let me tell you about, ladies and gentlemen, in following up on knowledge, the concept of willful blindness. If the Commonwealth has proved to you beyond a reasonable doubt that the defendant deliberately closed her eyes or took deliberate and affirmative steps to avoid learning as to what would have been obvious to her, then under such circumstances you may infer the element of knowledge. So a finding beyond a reasonable doubt by you jurors of an intent of the defendant to deliberately avoid knowledge would permit the jury to infer such knowledge. Stated another way, a defendant's knowledge of a particular fact may be inferred from a deliberate or intentional ignorance or deliberate or intentional blindness to the existence of that fact. However, let me be clear that neither negligence, error nor mistake constitutes a proper basis for a finding of knowledge."

This language largely tracked the instruction given in Commonwealth v. Mimless, 53 Mass. App. Ct. 534, 545 n.9 (2002). The defendant argues that there was insufficient evidence to

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[12] The defendant does not argue that proof of knowledge is required for the offense of keeping a house of prostitution. G. L. c. 272, § 24. We express no view on that issue.

warrant this instruction, that it permitted a conviction based on reckless rather than intentional conduct, and that it lowered the Commonwealth's burden of proof. We are not persuaded.

"A willful blindness instruction is appropriate when (1) a defendant claims a lack of knowledge, (2) the facts suggest a conscious course of deliberate ignorance, and (3) the instruction, taken as a whole, cannot be misunderstood [by a juror] as mandating an inference of knowledge" (quotation omitted). Mimless, 53 Mass. App. Ct. at 544. See Commonwealth v. Hyde, 88 Mass. App. Ct. 761, 769 & n.9 (2015).

The defendant first argues that there was no evidence that she "claim[ed] a lack of knowledge" so as to warrant the instruction. Mimless, 53 Mass. App. Ct. at 544. She asserts that because she "never took the stand or otherwise denied that she knew what was going on in the rooms," but merely "put the Commonwealth to its proof on the issue of her knowledge," the instruction should not have been given. But nothing in Mimless suggests that the instruction may be given only if the defendant either testifies to a lack of knowledge or has made out-of-court statements that explicitly disclaim knowledge. Id. at 544-545. Cf. United States v. Parker, 872 F.3d 1, 14 (1st Cir. 2017), cert. denied, 138 S. Ct. 936 (2018) (first part of test for willful blindness instruction "does not depend on a showing of an explicit denial of guilty knowledge out of the defendant's

own mouth -- what matters is whether a practical evaluation of the record reveals that the defense was pitched in that direction" [quotation omitted]).[13]

In any event, the evidence here included the defendant's out-of-court statements explicitly disclaiming knowledge. When Cowin asked whether the women would furnish a "rub and tug" or "the full, everything," the defendant replied: "Well, I don't know. . . . I can't really get into that. . . . There's too many ifs and it's kind of awkward, and I don't really get . . . into it with them like that." She added: "The girls that I have, they've been with me for years and I know. . . . But as far as like me getting down and tell them what to do, that's a whole other issue that I don't really want to get involved in. . . . I just know that everybody . . . is happy. I don't know to what extent, that kind of thing."

The defendant next argues that the instruction, in stating that "neither negligence, error nor mistake constitutes a proper basis for a finding of knowledge," erroneously failed to add that neither could such a finding be based on "recklessness."

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[13] In his opening statement, defense counsel said the evidence would show that on the night of the party, when the first woman came out of Cowin's room reporting that he wanted "full service" and then another woman went into the room, the defendant had "nothing to do with this. She's not standing there. She's not listening to it. She's not directing. . . . This is stuff that happens that she is not even involved with."

This objection to the specific wording of the instruction was not preserved.[14] And even if it was error to omit the word "recklessness" from the instruction -- a question we do not decide[15] -- there was no substantial risk of a miscarriage of justice. The instruction stated five times that willful

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[14] The defendant objected to the willful blindness instruction being given, but at no time did she ask that, if it were to be given, recklessness specifically be excluded as a basis for finding knowledge.

[15] The instruction in Mimless did not expressly exclude recklessness. See 53 Mass. App. Ct. at 545 n.9. The defendant points out that, since that decision, the United States Supreme Court has addressed the concept of willful blindness in a patent infringement case, in a discussion that touched on recklessness. See Global-Tech Appliances, Inc. v. SEB S.A., 563 U.S. 754 (2011). The Court summarized the basic requirements of the concept of willful blindness, as developed in criminal cases by the Federal Circuit Courts of Appeal, as follows: "(1) [T]he defendant must subjectively believe that there is a high probability that a fact exists and (2) the defendant must take deliberate actions to avoid learning of that fact." Id. at 769. The Court then observed: "We think these requirements give willful blindness an appropriately limited scope that surpasses recklessness and negligence." Id. The Court did not, however, suggest that any statement of the willful blindness standard must, as a matter of Federal law, expressly exclude recklessness. Id. The defendant here also cites a later Federal decision that, citing Global-Tech, approved a jury instruction that, among other things, specifically stated that recklessness was insufficient. United States v. Jinwright, 683 F.3d 471, 479–480 (4th Cir. 2012), cert. denied, 568 U.S. 1093 (2013). That decision did not, however, indicate that such language was required, let alone in a manner that would bind us as a matter of Federal law. Cf. Pattern Crim. Jury Instr. 1st Cir. § 2.14 (1998) ("[M]ere negligence or mistake in failing to learn the fact is not sufficient. There must be a deliberate effort to remain ignorant of the fact"); United States v. Martinez-Lantigua, 857 F.3d 453, 458 (1st Cir. 2017) (same). But none of this is to suggest that it would be error to include such language in future willful blindness instructions.

blindness required "deliberate" action and three times that it required "intentional" action; the judge then added that "neither negligence, error nor mistake" was enough. There was little chance the jury thought that reckless conduct would suffice. And there was ample evidence that the defendant deliberately ignored the continuing prostitution on her premises. The defendant had told the women working for her that sexual activities were "not supposed to go on here but whatever happens in the rooms she can't control." Similarly, she told a woman concerned that activities in the rooms were going beyond "erotic massages," i.e., "handjobs," that "maybe it's just not the line of work for [her] anymore."

Finally, the defendant contends that the willful blindness instruction lowered the Commonwealth's burden of proof, so as to allow conviction on something less than actual knowledge. We do not agree. The instruction merely permitted the jury to infer actual knowledge from the defendant's actions and words showing willful blindness. This was one application of the familiar general principle that (as the judge instructed), because "it is obviously impossible to look directly into a person's mind," the jury could "examine the defendant's actions and words and all of the surrounding circumstances to help [them] determine the extent of . . . the defendant's knowledge."

The willful blindness instruction here told the jury that they could "infer the element of knowledge" if there was proof "beyond a reasonable doubt that the defendant deliberately closed her eyes or took deliberate and affirmative steps to avoid learning as to what would have been obvious to her." The instruction then repeated, twice, that proof of willful blindness permitted an inference of knowledge. Nothing in the instruction suggested that proof of willful blindness could substitute for proof of knowledge.[16] Instead, proof of willful blindness was merely part of one permissible way to prove knowledge, and the instructions as a whole left no doubt that proof of knowledge was required to find the defendant guilty.

Judgments affirmed.

[16] Cf. Commonwealth v. Proia, 92 Mass. App. Ct. 824, 835 (2018) (prosecutor's closing argument suggesting that defendant had been willfully blind to drugs in her apartment, considered together with evidence and argument of defendant's actual knowledge, did not improperly indicate to jury that "willful blindness" was sufficient to satisfy knowledge element of crime).