

PRELIMINARY INSTRUCTIONS

COURT'S JURY INSTRUCTION NO. 1.01 GENERAL: NATURE OF CASE; BURDEN OF PROOF; DUTY OF JURY; CAUTIONARY

Ladies and gentlemen of the jury: Here are some initial instructions about this case and your duties as jurors. During the trial, I will give you more instructions. And at the end of the trial, I will probably give you final instructions. Follow all my instructions.

I am the judge of the law and you are the judges of the facts. As judges of the facts, it's your duty to determine the truth from the evidence and the reasonable inferences arising from the evidence. In making your factual decisions, you must not engage in guess work or speculation.

As I explained during *voir dire*, this is a civil case brought by Genie Harrell against Independence County, Odus Fulmer, individually, and Greg Potts, individually. Harrell alleges wrongful discharge. Harrell claims she was fired because she's a woman. It's against the law for an employer to discriminate against an employee based on gender. Title VII forbids this, as does the Equal Protection Clause of the 14th Amendment. Harrell was one of two appraisers who worked for Fulmer, the former Tax Assessor for

Independence County. Potts was her immediate supervisor. As a part of her job, Harrell used a County vehicle to visit properties within the County and measure and appraise the property. Harrell was fired in July 2011. Fulmer and Potts say she was fired for long-term parking in remote areas. Harrell claims that she was fired because she is a woman and that she was treated less favorably than her male colleague, Kenny Mize, the other County appraiser. The County, Fulmer, and Potts deny that gender motivated the decision to fire Harrell.

Harrell's Title VII claim is against the County. To prevail on this claim, Harrell must prove by a preponderance of the evidence that her gender was a motivating factor in the firing decision. If she does, then the County has the burden to show that it would have made the same decision whether Harrell was a woman or a man.

"Motivating factor" means that gender played a role or a part in the decision to discharge, even when other factors may have also motivated the decision. Harrell's gender need not be the only reason.

Harrell's Equal Protection claims are against Fulmer, individually, and Potts, individually. To prevail on these claims, Harrell must prove by a

preponderance of the evidence that her gender was the determining factor in the firing decision. “Determining factor” means that Harrell would not have been fired but for her gender. Harrell’s gender need not be the only reason.

It will be your duty to decide from the evidence whether Harrell is entitled to a verdict against Independence County on her Title VII claim or against Fulmer or Potts, or both, on her constitutional claim.

This case should be considered and decided by you as a dispute between persons of equal worth. All persons stand equal before the law and are to be treated as equals.

From the evidence you will decide what the facts are. You are entitled to consider that evidence in the light of your own observations and experiences in the affairs of life. You will then apply those facts to the law that I give you in these and in my other instructions, and in that way reach your verdict. While you are the sole judges of the facts, you must follow the law, as stated in my instructions, whether you agree with it or not. In deciding what the facts are, you will have to decide what testimony you believe and what testimony you don’t believe. You may believe all of what a witness says, or only part of it, or none of it.

In deciding what testimony to believe, consider the witnesses' intelligence, their opportunity to have seen or heard the things they testify about, their memories, any motives they may have for testifying a certain way, their manner while testifying, whether they said something different at an earlier time, the general reasonableness of their testimony, and the extent to which their testimony is consistent with other evidence that you believe.

Do not allow sympathy or prejudice to influence you. The law demands of you a just verdict, unaffected by anything except the evidence, your common sense, and the law as I give it to you.

Don't take anything I may say or do during the trial as indicating what I think of the evidence or what I think your verdict should be.

COURT'S JURY INSTRUCTION NO. 1.02
EVIDENCE: LIMITATIONS

I have mentioned the word "evidence." "Evidence" includes the testimony of witnesses, the documents and other things received as exhibits, and any facts that have been stipulated – that is, agreed to by the parties.

Certain things are not evidence. I will list those things for you now:

1. Statements, arguments, questions, and comments by lawyers are not evidence.

2. Objections are not evidence. Lawyers have a right and sometimes a duty to object or to move that certain evidence that has already been received be stricken. If such an objection or such a motion to strike is made, it will be my duty, as judge, to rule on the matter and determine whether you jurors may take into consideration the challenged evidence. You are not to concern yourself with the reasons for the attorneys' objections or motions to strike or with the reasons for the Court's rulings. You also should not be influenced by the objection or the motion to strike.

If I sustain an objection to a question or an exhibit, you must ignore the question or the exhibit and must not try to guess what the information might

have been. Similarly, testimony and exhibits that I strike from the record, or tell you to disregard, are not evidence and must not be considered.

3. Anything you see or hear about this case outside the courtroom is not evidence. Furthermore, a particular item of evidence is sometimes received for a limited purpose only. That is, it can be used by you only for one particular purpose, and not for any other purpose. I will tell you when that occurs and instruct you on the purposes for which the item can and cannot be used.

4. Finally, some of you may have heard the terms “direct evidence” and “circumstantial evidence.” A fact is established by direct evidence when, for example, it is proved by witnesses who testifies to what he or she saw, heard, or experienced. A fact is established by circumstantial evidence when its existence can reasonably be inferred from other facts proved in the case. The law makes no distinction between the weight to be given to direct and circumstantial evidence.

COURT'S JURY INSTRUCTION NO. 1.03
BURDEN OF PROOF

The burden of proving a fact is placed upon the party whose claim or defense depends upon that fact. The party who has the burden of proving a fact must prove it by a preponderance of the evidence. To prove something by the “preponderance of the evidence” is to prove that it is more likely true than not true. It is determined by considering all of the evidence and deciding which evidence is more believable.

If, on any issue of fact in the case, the evidence is equally balanced, you cannot find that fact has been proved. The preponderance of the evidence is not necessarily established by the greater number of witnesses or exhibits a party has presented.

You may have heard of the term “proof beyond a reasonable doubt.” This is a stricter standard, which applies in criminal cases. It does not apply in civil cases like this one. You should, therefore, put it out of your minds.

COURT'S JURY INSTRUCTION NO. 1.04
BENCH CONFERENCES

During the trial it will be necessary for me to speak with the lawyers out of your hearing, either by having a bench conference here while you are present in the courtroom, or by calling a recess. Please understand that while you are waiting, we are working. The purpose of these conferences is to decide how certain evidence is to be treated under the Rules of Evidence, which govern the trial, and to avoid confusion and error. We will, of course, do what we can to keep the number and length of these conferences to a minimum.

COURT'S JURY INSTRUCTION NO. 1.05
NO TRANSCRIPT AVAILABLE/NOTE-TAKING

At the end of the trial you must make your decision based on what you recall of the evidence. You will not have a written transcript to consult. You must pay close attention to the testimony as it is given.

If you wish, however, you may take notes to help you remember what witnesses said. If you do take notes, please keep them to yourself until you and your fellow jurors go to the jury room to decide the case. And do not let note-taking distract you so that you do not hear other answers by the witness. The Clerk has provided each of you with a pad of paper and a pencil. At each recess, leave your notes in your chair.

When you leave at night, your notes will be secured and not read by anyone.

COURT'S JURY INSTRUCTION NO. 1.06
CONDUCT OF THE JURY

Finally, to insure fairness, you as jurors must obey the following rules:

First, don't talk among yourselves about this case, or about anyone involved with the case, until the end of the trial when you go to the jury room to deliberate and decide on your verdict.

Second, don't talk with anyone else about this case, or about anyone involved with it, until the trial has ended and you have been discharged as jurors.

Third, when you are outside the courtroom, do not let anyone tell you anything about the case, or about anyone involved with it. If someone does try to talk to you about the case during the trial, please report it to me immediately.

Fourth, during the trial, don't talk with or speak to any of the parties, lawyers or witnesses involved in this case – you should not even pass the time of day with any of them. It is important not only that you do justice in this case, but that you also give the appearance of doing justice. If a person from one side of the lawsuit sees you talking to a person from the other side – even

if it is simply to pass the time of day – an unwarranted and unnecessary suspicion about your fairness might arise. If any lawyer, party, or witness doesn't speak to you when you pass in the hall, ride the elevator, or the like, remember it is because they are not supposed to talk or visit with you.

Fifth, don't read any news stories, articles, or blogs about the case or about anyone involved with it, or listen to any radio or television reports about the case or about anyone involved with it.

Sixth, don't do any research or make any investigation about the case on your own about any matter involved in this case. By way of example, that means that you must not consult the Internet (e.g., Google or Wikipedia), a dictionary, textbook, encyclopedia, or talk with a person you consider knowledgeable. In fairness, you must only learn about this case from the evidence you receive here at the trial and apply those facts to the law as I give it to you.

Seventh, remember, cell phones are not permitted in the courtroom or in the jury room.

Eighth, keep an open mind during the trial about what the verdict should be. Keep an open mind until after you have heard all of the evidence.

Once the trial has been completed and you've retired to the jury room to decide the case, you and your fellow jurors are free to discuss the evidence among yourselves.

Ninth, remember that you are not to be influenced in any degree by any personal feelings or sympathy or prejudice for or against any of the parties or the attorneys in the case. Each party is entitled to the same fair and impartial consideration at your hands.

Tenth, no statement, remark, or ruling that I make or question that I might ask of a witness during the course of the trial is intended to indicate what I think about the facts of the case. You, as the jurors, are the sole judges of the facts of the case. You and you alone will have to decide on the believability and credibility of the witnesses and the weight and value of the evidence.

COURT'S JURY INSTRUCTION NO. 1.07
EXPANDED INSTRUCTION RE: JURY PROHIBITION ON
ELECTRONIC COMMUNICATIONS/RESEARCH

During the trial, while you are in the courthouse and after you leave for the day, do not provide any information to anyone by any means about this case. For example, do not talk face-to-face or use any electronic device or media, such as the telephone, a cell phone, a smart phone, Blackberry, iPad, computer, the Internet, any Internet service, any text or instant messaging service, any Internet chat room, blog, or website such as Facebook, Instagram, YouTube, or Twitter, to communicate to anyone any information about this case until I accept your verdict. Do not use the Internet to look up or research anything about the case.

Ask each juror: Juror No. —, on your oath, do you promise not to post anything about your jury service on any social media website such as Facebook, Twitter, Instagram, or the like during the trial? On your oath, do you promise not to use the Internet to look up anything about the case, the matters discussed, the lawyers, Harrell, Fulmer, Potts, Independence County, me, or the law?

Remember, you have taken an oath to follow the rules, and you must do so. If you do not, the case might have to be retried, and you could be held in

contempt of court and possibly punished.

COURT'S INSTRUCTION NO. 1.08

OUTLINE OF TRIAL

The trial will proceed in the following manner:

First, Harrell's lawyer will make an opening statement. Next, the lawyer for the Defendants will make an opening statement. An opening statement is not evidence but is simply a summary of what the lawyer expects the evidence to be.

Harrell's lawyer will then present evidence by calling witnesses, and the Defendants' lawyer may cross-examine those witnesses. Following Harrell's case, the Defendants' lawyer may present evidence by calling witnesses, and Harrell may cross-examine those witnesses.

Finally, Harrell may offer rebuttal evidence.

After presentation of evidence is completed, I'll give you some more jury instructions. Then the lawyers will have a second opportunity to address you directly, and on that second occasion, they are permitted to argue to you the evidence in an attempt to persuade you to their differing views of the true facts of the case. As with opening statements, closing arguments are not evidence.

After the closing arguments, the Court will give you some final instructions on the law. Then you'll go to the jury room to deliberate on your verdicts.