

INSTRUCTION NO. 1

Members of the Jury, the instructions I gave you at the beginning of the trial and during the trial remain in effect. I now give you some additional instructions on the law that applies to this case. You must, of course, continue to follow all the instructions I gave you earlier, as well those I give you now.

The instructions I am about to give you now are in writing and will be available to you in writing in the jury room. I emphasize, however, that this does not mean they are more important than my earlier instructions. Again, all my instructions, whether given in writing or spoken from this bench, must be followed.

It is your duty as jurors to follow the law as stated in the instructions, and to apply the given rules of law to the facts as you find them to be from the evidence in this case.

You are not to single out one instruction alone as stating the law, but must consider the instructions as a whole.

Neither are you to be concerned with the wisdom of any rule of law as stated by the Court. Regardless of any opinion you may have as to what the law ought to be, it would be a violation of your sworn duty to base a verdict

upon any other view of the law other than that given in the instructions of the Court; just as it would be a violation of your sworn duty, as judges of the facts, to base a verdict upon anything but the evidence in the case.

Nothing I say in the instructions is to be taken as an indication that I have any opinion about the facts of the case, or what that opinion is. It is not my function to determine the facts. You will determine the facts. During this trial I have occasionally asked questions of witnesses. Do not assume that because I asked questions I hold any opinion on the matters to which my questions related.

Justice through trial by jury must always depend on the willingness of each individual juror to seek the truth about the facts from the same evidence presented to all the jurors; and to arrive at a verdict by applying the same rules of law as given in the Court's instructions.

Statements and arguments of counsel are not evidence in the case. When the lawyers on both sides stipulate or agree on the existence of a fact, however, the Jury must accept the stipulation and regard that fact as proved. The evidence in the case always consists of the sworn testimony of the witnesses, regardless of who may have called them and any documents,

photographs, or other items that are received by the Court, and all facts that may have been admitted or stipulated. Any evidence on which an objection was sustained by the Court—and any witness statement or tangible item that was stricken by the Court—must be entirely disregarded.

Anything you may have seen or heard outside this courtroom is not evidence, and it must be entirely disregarded.

INSTRUCTION NO. 2

In conducting your deliberations and returning your verdict, there are certain rules you must follow.

First, when you go to the jury room, you must select one of your members as your foreperson. That person will preside over your discussions and speak for you all here in court.

Second, it is your duty, as jurors, to discuss this case with one another in the jury room. You should try to reach agreement if you can do so without violence to individual judgment, because a verdict must be unanimous.

Each of you must make your own conscientious decision, but only after you have considered all the evidence, discussed it fully with your fellow jurors, and listened to the views of your fellow jurors.

Do not be afraid to change your opinions if the discussion persuades you that you should. But do not come to a decision simply because other jurors think it is right, or simply to reach a verdict. Remember at all times that you are not partisans. You are judges—judges of the facts. Your sole interest is to seek the truth from the evidence in the case.

Third, if you need to communicate with me during your deliberations, you may send a note to me, through the court security officer, that is signed by one or more jurors. I will respond as soon as possible either in writing or orally in open court. Remember that you should never tell anyone –including me – how your votes stand numerically.

Fourth, your verdict must be based solely on the evidence and on the law that I have given to you in my instructions. The verdict must be unanimous. Again, nothing I have said or done is intended to suggest what your verdict should be – that is entirely for you to decide.

INSTRUCTION NO. 3

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.

INSTRUCTION NO. 4

You are the sole judges of the credibility of the witnesses and the weight and value to be given to their testimony. In deciding what the facts are, you may have to decide what testimony you believe and what testimony you do not believe. You may believe all of what a witness said, or only part of it, or none of it.

In deciding what testimony to believe, you may consider the witness's intelligence; the opportunity the witness had to see or hear the things about which he or she testified; the witness's memory; any motives a witness may have for testifying a certain way; the manner and demeanor of the witness while testifying; whether the witness said something different at an earlier time; the general reasonableness or unreasonableness of the testimony; and the extent to which the testimony is consistent with any other evidence that you believe.

In deciding whether or not to believe a witness, keep in mind that people sometimes hear or see things differently and sometimes forget things. You need to consider therefore whether a contradiction is an innocent

misrecollection, lapse of memory, or an intentional falsehood – and that may depend on whether it has to do with an important fact or only a small detail.

INSTRUCTION NO. 5

A witness may be discredited or impeached by contradictory evidence or by evidence that at some other time the witness has said or done something, or has failed to say or do something that is inconsistent with the witness's present testimony.

If you believe any witness has been impeached and thus discredited, you may give the testimony of that witness whatever credibility, if any, you think it deserves.

If a witness is shown knowingly to have testified falsely about any material matter, you have a right to distrust that witness's other testimony and you may reject all the testimony of that witness or give it whatever credibility you think it deserves.

An act or omission is "knowingly" done, if the act is done voluntarily or intentionally, and not because of mistake or accident or other innocent reason.

INSTRUCTION NO. 6

In considering the evidence in this case you are not required to set aside your common sense or common knowledge. You have the right to consider all the evidence in light of your own observations and experiences in the affairs of life.

INSTRUCTION NO. 7

In these instructions you are told that one or the other party has the burden to prove certain facts. 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.

INSTRUCTION NO. 8

You must consider Harrell's gender discrimination claim against each defendant separately. Independence County, Fulmer, individually, and Potts, individually, are each entitled to have the case decided solely on the claim against them, and based solely on the evidence that applies to each of them.

INSTRUCTION NO. 8A

If there's no contract for a fixed term, subject to some exceptions, either the employer or the employee may end an employment relationship at any time. This is called the employment-at-will doctrine. There was no employment contract between Harrell and Independence County. Therefore, Harrell could be fired for good cause, no cause, or even a morally wrong cause. You can't return a verdict for Harrell just because you disagree with the decision to fire her or conclude that the decision was unreasonable. But the law forbids treating an at-will employee such as Harrell differently because of her gender. The law does not allow Independence County, Fulmer, or Potts to discriminate against Harrell because she is a woman. Employers may take subjective considerations into account in making their employment decisions. But these considerations may hide discrimination, and so you should scrutinize them.

INSTRUCTION NO. 9

Your verdict must be for Genie Harrell and against Independence County on her claim of gender discrimination under Title VII if Harrell has proved the following elements:

First, Independence County fired Harrell; and

Second, Harrell's gender was a motivating factor or played a part in the decision to fire her.

If Harrell has not proved both elements against Independence County then your verdict must be for the County.

Harrell's gender was a "motivating factor," if her gender played a part or a role in the firing decision. But Harrell's gender need not have been the only reason for the decision to fire her.

You may find that Harrell's gender was a motivating factor if she has proved that the stated reason for the firing decision was not the real reason, but was a pretext to hide gender discrimination.

INSTRUCTION NO. 10

If you find in favor of Harrell under Instruction No. 9, then you must answer the following question in the verdict forms: Has Independence County proven that it would have fired Harrell regardless of her gender? In other words, would the County have made the same decision if Harrell was a man?

INSTRUCTION NO. 11

Your verdict must be for Genie Harrell and against Odus Fulmer, individually, on her claim of gender discrimination under the Equal Protection Clause if Harrell has proved all the following elements:

First, Fulmer fired Harrell;

Second, Harrell's gender was the determining factor in the decision to fire her; and

Third, Fulmer was acting under color of State law.

If Harrell has not proved all three elements against Fulmer then your verdict must be for him.

Harrell's gender was the determining factor only if Fulmer would not have fired Harrell but for her gender. Harrell's gender, however, need not have been the only reason for the decision to fire her.

You may find that Harrell's gender was the determining factor if she has proved that the stated reason for the firing decision was not the real reason, but was a pretext to hide gender discrimination.

INSTRUCTION NO. 12

Your verdict must be for Genie Harrell and against Greg Potts, individually, on her claim of gender discrimination under the Equal Protection Clause if Harrell has proved all the following elements:

First, Potts fired Harrell;

Second, Harrell's gender was the determining factor in the decision to fire her; and

Third, Potts was acting under color of State law.

If Harrell has not proved all three elements against Potts then your verdict must be for him.

Harrell's gender was the determining factor only if Potts would not have fired Harrell but for her gender. Harrell's gender, however, need not have been the only reason for the decision to fire her.

You may find that Harrell's gender was the determining factor if she has proved that the stated reason for the firing decision was not the real reason, but was a pretext to hide gender discrimination.

INSTRUCTION NO. 13

Acts are done under color of law when a person acts or purports to act in the performance of official duties under any state, county, or municipal law, ordinance or regulation.

INSTRUCTION NO. 14

You may infer gender discrimination against one employee by comparing the discipline of another employee of the opposite gender under similar circumstances. Harrell offers Kenny Mize as a comparator. To draw a reasonable inference of gender discrimination, however, you must find by a preponderance of the evidence that Harrell and Mize were similarly situated in all relevant respects. This includes:

1. Dealing with the same supervisor;
2. Being subject to the same work standards;
3. Engaging in misconduct of comparable seriousness without any mitigating or extenuating circumstances; and
4. Being punished differently for similar misconduct.

INSTRUCTION NO. 15

Harrell has separate claims against Independence County, Fulmer, and Potts. Consider each claim, and related damages, separately. Harrell may not recover two or three times for the same damages.

INSTRUCTION NO. 16

If you find in favor of Harrell under Instruction No. 9 (the Title VII elements instruction for Independence County), and if you answered “no” under Instruction No. 10 (the same decision instruction), then you must award Harrell a sum against Independence County that will fairly and justly compensate Harrell for any damages you find she sustained as a direct result of the decision to discharge her. Harrell’s claim for damages includes two distinct types of damages. Consider them separately.

First, you must determine the amount of any wages and fringe benefits Harrell would have earned in her employment with Independence County if she had not been discharged on 8 July 2011 through the date of your verdict, minus the amount of earnings and benefits that Harrell received from other employment during that time.

Harrell has a duty under the law to “mitigate” her damages—that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if it has been proved that Harrell failed to seek out or take advantage of an opportunity that was reasonably available to her, you must reduce her damages by the amount of the wages and fringe benefits

Harrell reasonably could have earned if she had sought out or taken advantage of such an opportunity.

Second, you must determine the amount of any other damages sustained by Harrell, such as emotional distress and damage to her reputation. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 17

If you find in favor of Harrell under Instruction No. 11 (the Equal Protection elements instruction for Odus Fulmer), then you must award Harrell a sum against Fulmer, individually, that will fairly and justly compensate Harrell for any damages you find she sustained as a direct result of the decision to discharge her. Harrell's claim for damages includes two distinct types of damages. Consider them separately.

First, you must determine the amount of any wages and fringe benefits Harrell would have earned in her employment with Independence County if she had not been discharged on 8 July 2011 through the date of your verdict, minus the amount of earnings and benefits that Harrell received from other employment during that time.

Harrell has a duty under the law to "mitigate" her damages – that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if it has been proved that Harrell failed to seek out or take advantage of an opportunity that was reasonably available to her, you must reduce her damages by the amount of the wages and fringe benefits

Harrell reasonably could have earned if she had sought out or taken advantage of such an opportunity.

Second, you must determine the amount of any other damages sustained by Harrell, such as emotional distress and damage to her reputation. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 18

If you find in favor of Harrell under Instruction No. 12 (the Equal Protection elements instructions for Greg Potts), then you must award Harrell a sum against Potts, individually, that will fairly and justly compensate Harrell for any damages you find she sustained as a direct result of the decision to discharge the her. Harrell's claim for damages includes two distinct types of damages. Consider them separately.

First, you must determine the amount of any wages and fringe benefits Harrell would have earned in her employment with Independence County if she had not been discharged on 8 July 2011through the date of your verdict, minus the amount of earnings and benefits that Harrell received from other employment during that time.

Harrell has a duty under the law to "mitigate" her damages – that is, to exercise reasonable diligence under the circumstances to minimize her damages. Therefore, if it has been proved that Harrell failed to seek out or take advantage of an opportunity that was reasonably available to her, you must reduce her damages by the amount of the wages and fringe benefits

Harrell reasonably could have earned if she had sought out or taken advantage of such an opportunity.

Second, you must determine the amount of any other damages sustained by Harrell, such as emotional distress and damage to her reputation. You must enter separate amounts for each type of damages in the verdict form and must not include the same items in more than one category.

Remember, throughout your deliberations, you must not engage in any speculation, guess, or conjecture and you must not award damages under this Instruction by way of punishment or through sympathy.

INSTRUCTION NO. 19

If you find in favor of Harrell, but you find that her damages have no monetary value, then you must return a verdict for Harrell in the nominal amount of \$1.00.

INSTRUCTION NO. 20

In addition to the damages mentioned in other instructions, the law permits the jury under certain circumstances to award punitive damages. If you find in favor of Harrell and assess damages under Instruction No. 16, No. 17, No. 18, or No. 19, then you must decide whether any of the three defendants—Independence County, Fulmer, individually, or Potts, individually—acted with malice or reckless indifference to Harrell's right not to be discriminated against on the basis of her gender. A defendant acted with malice or reckless indifference if:

It has been proved that the defendant knew that the termination was in violation of the law prohibiting gender discrimination, or acted with reckless disregard of that law.

If you find that a defendant acted with malice or reckless indifference to Harrell's rights, then, in addition to any other damages to which you find Harrell entitled, you may, but are not required to, award Harrell an additional amount as punitive damages for the purposes of punishing the defendant for engaging in misconduct and deterring the defendants and others from engaging in the same misconduct in the future. You should presume that

Harrell has been made whole for her injuries by the damages awarded under Instruction No. 16, No. 17, No. 18, and No. 19

If you decide to award punitive damages, you should consider the following in deciding the amount:

1. How reprehensible the defendant's conduct was. In this regard, you may consider whether the harm suffered by Harrell was physical or economic or both; whether there was violence, deceit, intentional malice, reckless disregard for human health or safety; whether the defendant's conduct that harmed Harrell also posed a risk of harm to others; whether there was any repetition of the wrongful conduct and past conduct of the sort that harmed Harrell.

2. How much harm the wrongful conduct caused Harrell and could cause Harrell in the future.

3. What amount of punitive damages, in addition to the other damages already awarded, is needed, considering the defendant's financial condition, to punish the defendant for its wrongful conduct toward the plaintiff and to deter the defendant and others from similar wrongful conduct in the future.

The amount of any punitive damages award should bear a reasonable relationship to the harm caused to Harrell.

You may assess punitive damages against any or all defendants or you may refuse to impose punitive damages. If punitive damages are assessed against more than one defendant, the amounts assessed against each defendant may be the same or they may be different.

INSTRUCTION NO. 21

The verdict forms are simply the written notice of your decision. See the attached questions.

You will take the verdict forms to the jury room, and when each of you has agreed on the answers, your foreperson will fill in the forms for each question that you are called upon to answer to reflect your unanimous decision, sign and date them, and then advise the court security officer that you are ready to return to the Courtroom.

I add the caution that nothing said in the instructions – and nothing in the verdict forms I've prepared for your convenience – is or was intended to suggest or convey in any way or manner any intimation as to what answers I think you should find. How you choose to answer the verdict form shall be the sole and exclusive responsibility of you, the Jury.

If it becomes necessary during your deliberations to communicate with the Court, you may send a note by the court security officer, signed by your foreperson, or by one or more members of the Jury. No member of the Jury should ever attempt to communicate with the Court by any means other than a signed writing; and the Court will never communicate with any member of

the Jury on any subject touching the merits of the case, other than in writing, or orally here in open Court.

You will note from the oath about to be taken by the court security officer to act as bailiff that he, and all other persons, are forbidden to communicate in any way or manner with any member of the Jury on any subject touching the merits of the case. Bear in mind also that you must never reveal to any person, not even to the Court, how the Jury stands, numerically or otherwise, on the issue presented to you unless or until you reach a unanimous verdict.

Court security officer, do you solemnly swear to keep this Jury together in the jury room, and not to permit any person to speak to or communicate with them, concerning this case, nor to do so yourself unless by order of the Court or to ask whether they have agreed on a verdict, and to return them into the Courtroom when they have so agreed, or when otherwise ordered by the Court, so help you God?