

Members of the jury, you have seen and heard all the evidence and will hear the arguments of the attorneys. Now I will instruct you on the law.

You have two duties as a jury. Your first duty is to decide the facts from the evidence in the case. This is your job, and yours alone.

Your second duty is to apply the law that I give you to the facts. You must follow these instructions, even if you disagree with them. Each of the instructions is important, and you must follow all of them.

Perform these duties fairly and impartially. Do not allow prejudice to influence you.

Nothing I say now, and nothing I said or did during the trial, is meant to indicate any opinion on my part about what the facts are or about what your verdict should be.

FILED

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MAY 18 2018

CLERK OF THE COURT
U.S. DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA, ILLINOIS

The evidence consists of the testimony of the witnesses, the exhibits admitted in evidence, and stipulations.

A stipulation is an agreement between both sides that certain facts are true or that a person would have given certain testimony.

In determining whether any fact has been proved, you should consider all of the evidence bearing on the question regardless of who introduced it.

You may have heard the phrases “direct evidence” and “circumstantial evidence.” Direct evidence is proof that does not require an inference, such as the testimony of someone who claims to have personal knowledge of a fact. Circumstantial evidence is proof of a fact, or a series of facts, that tends to show that some other fact is true.

As an example, direct evidence that it is raining is testimony from a witness who says, “I was outside a minute ago and I saw it raining.” Circumstantial evidence that it is raining is the observation of someone entering a room carrying a wet umbrella.

The law makes no distinction between the weight to be given to either direct or circumstantial evidence. You should decide how much weight to give to any evidence. In reaching your verdict, you should consider all the evidence in the case, including the circumstantial evidence.

You should use common sense in weighing the evidence and consider the evidence in light of your own observations in life.

In our lives, we often look at one fact and conclude from it that another fact exists. In law we call this "inference." A jury is allowed to make reasonable inferences. Any inference you make must be reasonable and must be based on the evidence in the case.

You must decide whether the testimony of each of the witnesses is truthful and accurate, in part, in whole, or not at all. You also must decide what weight, if any, you give to the testimony of each witness.

In evaluating the testimony of any witness, including any party to the case, you may consider, among other things:

- the ability and opportunity the witness had to see, hear, or know the things that the witness testified about;
- the witness's memory;
- any interest, bias, or prejudice the witness may have;
- the witness's intelligence;
- the manner of the witness while testifying;
- and the reasonableness of the witness's testimony in light of all the evidence in the case.

If you decide that, before or during the trial, one of the witnesses made a statement not under oath that is inconsistent with his or her testimony here in court, you may consider the earlier statement only in deciding whether his or her testimony here in court was true and what weight to give to the testimony here in court.

In considering a prior inconsistent statement, you should consider whether it was simply an innocent error or an intentional falsehood and whether it concerns an important fact or an unimportant detail.

During the trial, certain testimony was presented to you by the reading of depositions and video. You should give this testimony the same consideration you would give it had the witnesses appeared and testified here in court.

You will recall that during the course of this trial I instructed you that I admitted certain documents for a limited purpose.

You must consider this evidence only for the limited purpose for which it was admitted.

Certain things are not to be considered as evidence. I will list them for you:

First, if I told you to disregard any testimony or exhibits or struck any testimony or exhibits from the record, such testimony or exhibits are not evidence and must not be considered.

Second, anything that you may have seen or heard outside the courtroom is not evidence and must be entirely disregarded. This includes any press, radio, Internet or television reports you may have seen or heard. Such reports are not evidence and your verdict must not be influenced in any way by such publicity.

Third, questions and objections or comments by the lawyers are not evidence. Lawyers have a duty to object when they believe a question is improper. You should not be influenced by any objection, and you should not infer from my rulings that I have any view as to how you should decide the case.

Fourth, the lawyers' opening statements and closing arguments to you are not evidence. Their purpose is to discuss the issues and the evidence. If the evidence as you remember it differs from what the lawyers said, your memory is what counts.

Any notes you have taken during this trial are only aids to your memory. The notes are not evidence. If you have not taken notes, you should rely on your independent recollection of the evidence and not be unduly influenced by the notes of other jurors. Notes are not entitled to any greater weight than the recollections or impressions of each juror about the testimony.

You may find the testimony of one witness or a few witnesses more persuasive than the testimony of a larger number. You need not accept the testimony of the larger number of witnesses.

The law does not require any party to call as a witness every person who might have knowledge of the facts related to this trial. Similarly, the law does not require any party to present as exhibits all papers and things mentioned during this trial.

Certain demonstrative exhibits were shown to you. Those exhibits are used for convenience and to help explain the facts of the case. They are not themselves evidence or proof of any facts.

In this case, Rent-A-Center is a corporation, and the Equal Employment Opportunity Commission is a governmental entity. All parties are equal before the law. A corporation and governmental entity are entitled to the same fair consideration that you would give any individual person.

When I say a particular party must prove something by “a preponderance of the evidence,” or when I use the expression “if you find,” or “if you decide,” this is what I mean: When you have considered all the evidence in the case, you must be persuaded that it is more probably true than not true.

The EEOC claims that Ms. Kerr was terminated by Defendant because of her transgender status. To succeed on this claim, the EEOC must prove by a preponderance of the evidence that Ms. Kerr's transgender status was a motivating factor for the decision to terminate her employment. That is, the EEOC must prove that Ms. Kerr's transgender status contributed to Rent-A-Center's decision to terminate her employment, even if other factors also contributed to the termination.

If you find that the EEOC has proved that Ms. Kerr's transgender status contributed to Rent-A-Center's decision to terminate her, you must then decide whether Rent-A-Center proved by a preponderance of the evidence that it would have terminated her even if Ms. Kerr was not transgender. If so, you must enter a verdict in favor of the EEOC but you may not award the EEOC damages.

If you find that the EEOC has proved its claim against Rent-A-Center, then you must determine what amount of damages, if any, the EEOC is entitled to recover. The EEOC must prove its damages by a preponderance of the evidence.

If you find that the EEOC has failed to prove its claim, then you will not consider the question of damages.

You may award compensatory damages only for injuries that the EEOC has proved by a preponderance of the evidence were caused by Rent-A-Center's wrongful conduct.

Your award must be based on evidence and not speculation or guesswork. This does not mean, however, that compensatory damages are restricted to the actual loss of money; they include both the physical and mental aspects of injury, even if they are not easy to measure.

In calculating damages, you should not consider the issue of lost wages and benefits. The court will calculate and determine damages for past or future lost wages and benefits, if appropriate.

You should only consider the following types of compensatory damages, and no others:

The physical and mental or emotional pain and suffering that Ms. Kerr has experienced. No evidence of the dollar value of physical or mental/emotional pain and suffering has been or needs to be introduced. There is no exact standard for setting the damages to be awarded on account of pain and suffering. You are to determine an amount that will fairly compensate Ms. Kerr for the injury she has sustained.

If you find for the EEOC, you may, but are not required to, assess punitive damages against Rent-A-Center. The purposes of punitive damages are to punish a defendant for his conduct and to serve as an example or warning to Rent-A-Center and others not to engage in similar conduct in the future.

The EEOC must prove by a preponderance of the evidence that punitive damages should be assessed against Rent-A-Center. You may assess punitive damages only if you find the conduct of Rent-A-Center's managers was in reckless disregard of Ms. Kerr's rights. An action is in reckless disregard of Ms. Kerr's rights if taken with knowledge that it may violate the law.

The EEOC must prove by a preponderance of the evidence that Rent-A-Center's managerial employees acted within the scope of their employment and in reckless disregard of Ms. Kerr's right not to be discriminated against. You should not, however, award the EEOC punitive damages if Rent-A-Center proves that it made a good faith effort to implement an anti-discrimination policy.

If you find that punitive damages are appropriate, then you must use sound reason in setting the amount of those damages. Punitive damages, if any, should be in an amount sufficient to fulfill the purposes that I have described to you, but should not reflect bias, prejudice, or sympathy toward either/any party. In determining the amount of any punitive damages, you should consider the following factors:

- the reprehensibility of Rent-A-Center's conduct;
- the impact of Rent-A-Center's conduct on Ms. Kerr;
- the relationship between Ms. Kerr and Rent-A-Center;
- the likelihood that Rent-A-Center would repeat the conduct if an award of punitive damages is not made;
- the relationship of any award of punitive damages to the amount of actual harm Ms. Kerr suffered.

Upon retiring to the jury room, you must select a presiding juror. The presiding juror will preside over your deliberations and will be your representative here in court.

Forms of verdict have been prepared for you.

[Forms of verdict read.]

You will take the jury instructions and the verdict forms with you to the jury room. When you have reached a unanimous agreement on each verdict, your presiding juror will fill in and date the appropriate form and all of you will sign it.

I do not anticipate that you will need to communicate with me. If you do need to communicate with me, the only proper way is in writing. The writing must be signed by the presiding juror, or, if he or she is unwilling to do so, by some other juror. The writing should be given to the marshal, who will give it to me. I will respond either in writing or by having you return to the courtroom so that I can respond orally.

If you do communicate with me, you should not indicate in your note what your numerical division is, if any.

The verdict must represent the considered judgment of each juror. Your verdict, whether for or against the parties, must be unanimous.

You should make every reasonable effort to reach a verdict. In doing so, you should consult with one another, express your own views, and listen to the opinions of your fellow jurors. Discuss your differences with an open mind. Do not hesitate to reexamine your own views and change your opinion if you come to believe it is wrong. But you should not surrender your honest beliefs about the weight or effect of evidence solely because of the opinions of other jurors or for the purpose of returning a unanimous verdict.

All of you should give fair and equal consideration to all the evidence and deliberate with the goal of reaching an agreement that is consistent with the individual judgment of each juror. You are impartial judges of the facts.

VERDICT FORM

- 1) Was Megan Kerr's transgender status a motivating factor in Rent-A-Center's decision to discharge her?

Answer Yes or No: _____

If your answer to Question No. 1 is "Yes," then answer Question No. 2. If you answered "No" to Question No. 1, then proceed to the end of this form and sign and return this verdict form.

- 2) Would Rent-A-Center have made the same decision to discharge Megan Kerr even if it had not considered her transgender status?

Answer Yes or No: _____

If your answer to Question No. 2 is "No," then proceed to Question No. 3. If you answered "Yes" to Question No. 2, then proceed to the end of this form and sign and return this verdict form.

- 3) What amount will fairly compensate Megan Kerr for the physical, emotional, and/or mental pain she experienced, if any, as a result of Rent-A-Center's decision to discharge her?

Answer: \$ _____

Proceed to Question No. 4.

- 4) Are punitive damages appropriate?

Answer Yes or No: _____

If you answered "Yes" to Question No. 4, then answer Question No. 5. If you answered "No" to Question No. 4, then proceed to the end of this form and sign and return this verdict form.

- 5) What amount will be sufficient to punish Rent-A-Center for its conduct and to serve as an example or warning to Rent-A-Center and others not to engage in similar conduct in the future?

Answer: \$ _____

Dated this _____ day of May, 2018.

Juror #1: _____

Juror #2: _____

Juror #3: _____

Juror #4: _____

Juror #5: _____

Juror #6: _____

Juror #7: _____

Juror #8: _____