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IN THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF ILLINOIS
URBANA DIVISION

U.S. EQUAL EMPLOYMENT)
OPPORTUNITY COMMISSION,)
)
Plaintiff,)
)
-vs-) Case No. 2:16-cv-02222
)
RENT-A-CENTER EAST, INC.,)
)
Defendant.)

COURT PROCEEDINGS BEFORE
MAGISTRATE JUDGE ERIC I. LONG

MAY 18, 2018

9:00 a.m.

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I N D E X

APPEARANCES:

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Appearing on behalf of the Defendant

1 THE COURT: Good morning, everybody.
2 Anything we need to take up, or are you ready to get
3 to work?

4 MR. MULAIRE: Plaintiff is ready.

5 MR. TRUSEVICH: Defense is ready.

6 THE COURT: All right. Let's get to
7 work, then.

8 (The following was held in the presence of
9 the Jury.)

10 THE COURT: Good morning, ladies and
11 gentlemen. Thank you for being on time. We're
12 almost on time ourselves, which is a pleasant change.
13 I'm going to -- you've seen and heard all the
14 evidence, and you're going to hear the arguments of
15 the attorneys. Now I'm going to instruct you on the
16 law.

17 You have two duties as a jury. We're going
18 to go ahead. Ladies and gentlemen, we're grabbing a
19 copy of the instructions for each of you to follow
20 along. So what I will do is read the instructions to
21 you, and you can follow along. Tom just ran to grab
22 those for you. He'll hand those out.

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

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

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

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

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

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

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

23 You may have heard the phrases "direct
24 evidence" and "circumstantial evidence." Direct
25 evidence is proof that does not require an inference,

1 such as the testimony of someone who claims to have
2 personal knowledge of a fact. Circumstantial
3 evidence is proof of a fact, or a series of facts,
4 that tends to show that some other fact is true.

5 As an example, direct evidence that it is
6 raining is testimony from a witness who says, "I was
7 outside a minute ago and I saw it raining."
8 Circumstantial evidence that it is raining is the
9 observation of someone entering a room carrying a wet
10 umbrella.

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

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

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

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

6 In evaluating the testimony of any witness,
7 including any party to the case, you may consider,
8 among other things: The ability and opportunity the
9 witness had to see, hear, or know the things that the
10 witness testified about; the witness' memory; any
11 interest, bias, or prejudice the witness may have;
12 the witness' intelligence; the manner of the witness
13 while testifying; and the reasonableness of the
14 witness' testimony in light of all the evidence in
15 the case.

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

23 In considering a prior inconsistent
24 statement, you should consider whether it was simply
25 an innocent error or an intentional falsehood and

1 whether it concerns an important fact or an
2 unimportant detail.

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

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

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

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

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

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

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

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

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

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

24 The law does not require any party to call
25 as a witness every person who might have knowledge of

1 the facts related to this trial. Similarly, the law
2 does not require any party to present as exhibits all
3 papers and things mentioned during the trial.

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

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

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

21 The EEOC claims that Ms. Kerr was
22 terminated by Defendant because of her transgender
23 status. To succeed on this claim, the EEOC must
24 prove by a preponderance of the evidence that Ms.
25 Kerr's transgender status was a motivating factor for

1 the decision to terminate her employment. That is,
2 the EEOC must prove that Ms. Kerr's transgender
3 status contributed to Rent-A-Center's decision to
4 terminate her employment, even if other factors also
5 contributed to the termination.

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

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

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

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

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

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

11 You should only consider the following
12 types of compensatory damages, and no others: The
13 physical and mental or emotional pain and suffering
14 that Ms. Kerr has experienced. No evidence of the
15 dollar value of physical or mental/emotional pain and
16 suffering has been or needs to be introduced. There
17 is no exact standard for setting the damages to be
18 awarded on account of pain and suffering. You are to
19 determine an amount that will fairly compensate Ms.
20 Kerr for the injury she has sustained.

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

1 to engage in similar conduct in the future.

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

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

18 If you find that punitive damages are
19 appropriate, then you must use sound reason in
20 setting the amount of those damages. Punitive
21 damages, if any, should be in an amount sufficient to
22 fulfill the purposes that I have described to you,
23 but should not reflect bias, prejudice, or sympathy
24 toward either or any party.

25 In determining the amount of any punitive

1 damages, you should consider the following factors:
2 The reprehensibility of Rent-A-Center's conduct; the
3 impact of Rent-A-Center's conduct on Ms. Kerr; the
4 relationship between Ms. Kerr and Rent-A-Center; the
5 likelihood that Rent-A-Center would repeat the
6 conduct if an award of punitive damages is not made;
7 the relationship of any award of punitive damages to
8 the amount of actual harm Ms. Kerr suffered.

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

13 Forms of verdict have been prepared for
14 you. These forms, ladies and gentlemen, are the last
15 two pages of your packet. If you'll turn there, I
16 will read them and we'll go over them together.

17 The first question is: "Was Megan Kerr's
18 transgender status a motivating factor in
19 Rent-A-Center's decision to discharge her?" You then
20 place your answer yes or no in the line.

21 If your answer to Question No. 1 is "Yes,"
22 then answer Question No. 2. In other words, you move
23 on to Question No. 2. If you answered "No" to
24 Question No. 1, then proceed to the end of this form
25 and sign and return this verdict form.

1 Question No. 2: "Would Rent-A-Center have
2 made the same decision to discharge Megan Kerr even
3 if it had not considered her transgender status?" If
4 your answer to Question No. 2 is "No," then proceed
5 to Question No. 3. If you answered "Yes" to Question
6 No. 2, then proceed to the end of this form and sign
7 and return this verdict form.

8 Question No. 3: "What amount will fairly
9 compensate Megan Kerr for the physical, emotional,
10 and/or mental pain she experienced, if any, as a
11 result of Rent-A-Center's decision to discharge her?"
12 You place your answer on the line and proceed to
13 Question No. 4: "Are punitive damages appropriate?"
14 You place your answer on the line.

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

19 Question No. 5: "What amount will be
20 sufficient to punish Rent-A-Center for its conduct
21 and to serve as an example or warning to
22 Rent-A-Center and others not to engage in similar
23 conduct in the future?" You place your answer to
24 that question on the line.

25 Once you've completed the form as explained

1 to you, then each of you should sign the form as
2 designated.

3 If you'll turn back to the page that we
4 left from. You will take the jury instructions and
5 the verdict forms with you to the jury room. When
6 you have reached a unanimous agreement on each
7 verdict, your presiding juror will fill it in and
8 date the appropriate form and all of you will sign
9 it.

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

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

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

25 You should make every reasonable effort to

1 reach a verdict. In doing so, you should consult
2 with one another, express your own views, and listen
3 to the opinions of your fellow jurors. Discuss your
4 differences with an open mind. Do not hesitate to
5 reexamine your own views and change your opinion if
6 you come to believe it is wrong. But you should not
7 surrender your honest beliefs about the weight or
8 effect of evidence solely because of the opinions of
9 other jurors or for the purpose of returning a
10 unanimous verdict.

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

16 That concludes my instructions. We're
17 going to proceed next to closing arguments and,
18 Mr. Mulaire or Mr. Shultz, are you prepared?

19 MR. MULAIRE: Yes, your Honor.

20 THE COURT: You may proceed.

21 MR. MULAIRE: Good morning. Ladies
22 and gentlemen of the jury, may it please the Court.
23 First of all, on behalf of the EEOC and my
24 colleagues, Miles Shultz and Kimberly Braden, I want
25 to thank you for your time and attention here this

1 week and for what really is the importance of your
2 duty here.

3 There's one claim in this case, and it's
4 that Rent-A-Center violated the law when it fired
5 Megan Kerr. The law that Rent-A-Center broke is an
6 important one. It's the law that protects
7 everybody's right to earn a living without being
8 discriminated against for who you are, whether that's
9 on the basis of age, gender, race, national origin,
10 disability, or any other illegal consideration,
11 including transgender status.

12 In this country, we want people to be able
13 to have a fair opportunity to earn a living and be
14 contributing members of society, and that's what that
15 law is here to protect.

16 My colleague, Mr. Shultz, told you at the
17 beginning of this case there would be a lot of
18 efforts to distract you this week. I think he was
19 right. In a little while you're going to get the
20 verdict form that you just heard read to you and you
21 just looked over yourselves, and, as you just saw,
22 the questions that you are going to be asked are the
23 ones that are on that form.

24 You also see that there are a number of
25 questions you are not going to be asked on that

1 verdict form. You'll see that there is no question
2 on the verdict form about harassment. You'll also
3 see that there's no question on that verdict form
4 about demotion.

5 We've heard an awful lot this week about
6 harassment, demotion. We've heard a lot of
7 questions, some of it a little bit theatrical.
8 That's all a complete distraction. We have not
9 brought a harassment claim. We have not brought a
10 demotion claim.

11 Ms. Kerr may have thought that she had been
12 harassed or been demoted. She may have said that in
13 her earlier communications with the EEOC years ago.
14 Maybe she was right, maybe she was wrong, but that's
15 not what we're here about today. We've brought one
16 claim, and that's that her discharge was unlawful.

17 And some other things that you also aren't
18 asked to decide on that verdict form, you're not
19 asked to decide anything about Jason Morris' career
20 or his family members. You won't be asked to decide
21 whether the rent-to-own business model is defined to
22 help customers or not the way Mr. Kober explained to
23 us at great length the other day.

24 And, for heaven's sake, you're not going to
25 be asked to decide anything about the Free Masons.

1 You're not going to be asked to decide what role the
2 Masons had in Amber Shumate's move, whether it was an
3 officially sanctioned project of the Lodge, or
4 whether it was members of the Lodge helping somebody
5 out. That has nothing to do with this case. Those
6 are distractions.

7 The reason the defendant, I think, is
8 spending so much more time on those issues and so
9 much more time generally with all the witnesses,
10 bringing up every possible issue under the sun, is to
11 muddy the waters. They're throwing spaghetti at the
12 wall and hoping something sticks.

13 Now, the question, the basic question that
14 you are going to be asked is the one that you just
15 saw on the verdict form, and that's Question 1: Was
16 Megan Kerr's transgender status a motivating factor
17 in Rent-A-Center's decision to discharge her.

18 Ladies and gentlemen, the evidence in this
19 case shows that the answer to that question is yes.
20 Jason Carnahan didn't want a transgender employee in
21 one of his stores. It's that simple. We know that
22 because that's what he told Russell Kasper, the store
23 manager at the time. Carnahan knew it was illegal to
24 fire somebody for that reason, so instead he wanted a
25 legitimate looking reason to fire her for instead.

1 He told Mr. Kasper to find something on her
2 and to make sure it wasn't little things and to make
3 sure that it was well documented.

4 Now, before I get too much further into my
5 closing, I want to emphasize one very important thing
6 from the instructions that you were just given. This
7 is a civil case and, as the judge told you, the
8 burden of proof is a preponderance of the evidence.
9 You may have heard elsewhere a different standard for
10 criminal cases, but here we work with a preponderance
11 of the evidence.

12 And as you just heard, and as you see in
13 the instructions that you have, this just means
14 finding that something is more probably true than not
15 true, and the same language that it's more likely
16 true than not. So if you can imagine the scales of
17 justice, this just means that the evidence sits more
18 in favor of one fact than against it. It doesn't
19 need to be beyond a reasonable doubt. It doesn't
20 even need to be a lot more likely. It just needs to
21 be more likely by at least some amount.

22 So if a fact is -- if the probability that
23 something is true is 51 percent and the probability
24 that it's not true is 49 percent, it's more likely
25 true than not. That's a preponderance of the

1 evidence, 51 percent.

2 Mr. Kasper. So let's talk about
3 Mr. Kasper. Maybe he didn't have the best sales
4 numbers and maybe he sometimes mistakenly used the
5 wrong pronouns for Ms. Kerr. Maybe he did it a lot.
6 That's not really part of this case.

7 At the end of the day, Mr. Kasper is a hero
8 here. He did the right thing by protecting Ms. Kerr
9 for nine months when he refused to go along with what
10 Mr. Carnahan was trying to do. This is a man who
11 served in the Air Force, who, after he got fired from
12 Rent-A-Center, went to work for Lincoln Challenge
13 Academy. That's the army contractor that runs the
14 boot camp for troubled youths. He's a good man.

15 But Rent-A-Center needs you to dislike him,
16 and so they've told you he was a bad store manager.
17 They had people say unkind things about him and that
18 his store was in last place in the district.

19 Well, first of all, where his store was,
20 where is the evidence of that? Rent-A-Center is a
21 big company. We know they have all kinds of sales
22 data. Mr. Morris said that he looked at that sales
23 data before he started the store manager position,
24 but they didn't show you any of that hard data this
25 week. What you have to go on is the say-so of Mr.

1 Carnahan and Mr. Morris.

2 Mr. Carnahan was pretty light on details
3 about that. When I asked him, he couldn't remember
4 when it was that he noticed sales in the Rantoul
5 store were falling in 2013. He also couldn't
6 remember how the store was doing earlier in 2013.
7 Remember, this is what he fired Mr. Kasper over, so
8 those aren't small details.

9 Mr. Kasper had been the Rantoul store
10 manager for several years, but suddenly, in 2013, his
11 sales became a problem right after he refused to go
12 along with what Carnahan was trying to do.
13 Mr. Kasper has no reason to lie to you. He didn't go
14 looking to get involved in this case. He's not
15 friends with Ms. Kerr. They haven't talked since he
16 was fired in 2013.

17 Rent-A-Center is making him out to be some
18 kind of disgruntled employee who is out to get the
19 company. You saw him. You can judge for yourself.
20 He's moved on with his life. He's not a vindictive
21 person.

22 Now, most of the time people don't have any
23 way of knowing what their boss might be saying to
24 other managers about them at work. Normally you're
25 not in the room for that. In this case we know what

1 Jason Carnahan said to Mr. Kasper because Mr. Kasper
2 came here and told you the truth.

3 That's not the only way that we know what
4 was going on here. Another way we know that the
5 company engaged in unlawful discrimination here is
6 that the explanation that their managers, Jason
7 Carnahan and also Jason Morris, are giving you isn't
8 believable.

9 They say, and Rent-A-Center is going with
10 their story, that Ms. Kerr was fired for using a cube
11 truck for personal reasons on Sunday, July 21st,
12 2014. Let's take these one by one.

13 First let's talk about Mr. Carnahan. So,
14 now, it's important to remember that Mr. Carnahan is
15 the decisionmaker here. He's the one who made the
16 decision to terminate Ms. Kerr. Rent-A-Center has
17 made a big effort to try and shift your focus to Mr.
18 Morris and to a whole bunch of other people during
19 this trial.

20 Mr. Morris is the face of the company at
21 this trial. He's been sitting at counsel table all
22 week. You've heard this long biography from him when
23 he was on the stand, his career at Rent-A-Center and
24 how he wants to move up. And seemed like he was on
25 the stand forever, and they didn't spend quite as

1 much time with Mr. Carnahan. You need to ask
2 yourself why.

3 Incidentally, Rent-A-Center has put all
4 these other people on the stand, you know, many of
5 them have admitted that they don't personally have
6 any knowledge of why Ms. Kerr was fired. They
7 weren't involved in the decision. The people like
8 Elena Reeves and Marcie Bussman, who didn't appear
9 here but gave their deposition, these are probably
10 perfectly decent people. They weren't involved in
11 the decision and they acknowledged that themselves.

12 The company is putting all these people up
13 here because they don't want you to focus on the
14 person who actually is the decisionmaker, and that's
15 Jason Carnahan, not Elena Reeves. Jason Morris was
16 doing what he was told, but he wasn't the ultimate
17 decisionmaker. That was Jason Carnahan.

18 Now, Mr. Carnahan, when he was here on the
19 stand, he agreed that he was the one who made the
20 decision to fire Ms. Kerr. And now I just want to
21 address one point, because you remember his regional
22 director was this man David Leavengood who was above
23 him and did sign off on the decision.

24 But Mr. Carnahan agreed, when I asked him,
25 that Mr. Leavengood was a rubber stamp. It was just

1 a quick phone call. Mr. Leavengood asked him
2 questions. Mr. Carnahan agrees, and the evidence is
3 clear, the decision by Rent-A-Center to fire Ms. Kerr
4 was made by Mr. Carnahan.

5 Now, Mr. Carnahan's story about that Sunday
6 back in July 2014 doesn't make very much sense. He
7 says that he received a phone call out of the blue
8 from Mr. Morris that Sunday morning informing him
9 that the cube truck was missing and Ms. Kerr's car
10 was in the parking lot instead. And despite
11 everything that you've heard this week, that a ten
12 thousand pound cube truck being missing is a very
13 serious matter and cause for deep concern, witnesses
14 went on about that at length, Mr. Carnahan oddly
15 didn't seem very concerned that Sunday.

16 You heard from Daniel Roling -- he was the
17 one who was on the golf course with Mr. Carnahan that
18 day -- that Mr. Carnahan didn't even stop playing the
19 Facebook game that he was playing when this call came
20 in. According to Mr. Carnahan, when he spoke with
21 Mr. Morris that day, he told Mr. Morris that he only
22 needed to look for the truck if he had time.

23 Remember that? Now, if this is really that
24 serious a matter, why would the instruction to the
25 store manager be, you know, if you have time see if

1 you can find the truck. Not credible.

2 And then after the call ended, his golf
3 game resumed. That's fine. Nothing wrong with golf.
4 But even more bizarre, later that Sunday he never
5 followed up again to say, hey, did you find the
6 truck? If the store really is, oh, my gosh, we have
7 no idea what happened, somebody stole the truck,
8 wouldn't you ask later in the day did you find it?
9 He didn't.

10 And despite the fact that he knew that
11 Mr. Morris lived in Champaign, twenty-five minutes
12 away from Rantoul, give or take, Mr. Carnahan
13 testified, these are his words, that it didn't strike
14 him as odd in any way that Mr. Morris was in the
15 parking lot of the Rantoul store on a Sunday morning
16 when it was closed. He admitted he didn't even think
17 to ask Mr. Morris why did he happen to be in the
18 parking lot on a Sunday.

19 In reality, that's because this story isn't
20 true. The reason that Mr. Carnahan was not surprised
21 by any of this and went back to his golf game is that
22 he knew full well what was going on. Ms. Kerr was
23 making the delivery that Mr. Morris had discussed
24 with her the night before.

25 Now, you'll be getting the exhibits in this

1 case when you deliberate, and one that you should
2 look at carefully and evaluate for yourself is
3 Plaintiff's Exhibit 3, which is Mr. Carnahan's
4 declaration. Remember this is that statement made
5 under penalty of perjury back on December 15th, 2015.

6 I'm not going to go through the whole thing
7 now, but I encourage you to look at it as carefully
8 as you like when you're deliberating.

9 Let's take a look, and, first of all,
10 you'll also see, I'll get to it in a moment, but you
11 also have Jason Morris' declaration from the same
12 day, December of 2015, and you can look at the
13 language and they say pretty much exactly the same
14 thing at certain points and you can evaluate for
15 yourself what's going on there.

16 Now, here in court both Mr. Carnahan and
17 Mr. Morris suggested that the decision to fire Ms.
18 Kerr was really made on Monday, only after Mr. Morris
19 talked to Ms. Kerr first to see her side of the
20 story.

21 In fact, let's take a look at paragraph 8
22 of Mr. Carnahan's declaration. Earlier in his
23 declaration, under penalty of perjury, what he said
24 was, at paragraph 8: On Sunday, July 20th, 2014,
25 Mr. Morris contacted me by phone and reported that

1 Ms. Kerr had taken a Rent-A-Center vehicle for
2 personal use and not on business hours, which is an
3 automatically terminable offense. During our
4 discussions, this is the discussion with Mr. Morris
5 that day, we both agreed that Ms. Kerr should be
6 terminated for violating the company policy, i.e.,
7 using the company vehicle for personal reasons.

8 They made that decision right then and
9 there on Sunday. They didn't need any more
10 information. They didn't wait to talk to Ms. Kerr
11 the next morning because they knew what was going on.
12 Similar statements in Mr. Morris' declaration.

13 So now let's talk about Mr. Morris.
14 Remember, after Ms. Kasper was fired in December of
15 2013, Mr. Carnahan, and it was Mr. Carnahan who chose
16 Mr. Morris, remember, chose Mr. Morris to take over
17 the store as store manager in February 2014.

18 Now, the Court just instructed you about
19 drawing inferences from fact. So if you know one
20 fact is true, you can infer that another fact is
21 probably true. And we think you should do that here.
22 Here you can reasonably infer that if Mr. Carnahan
23 told one store manager, Kasper, to look for a pretext
24 for firing Ms. Kerr and make sure it was not little
25 things and make sure it was well documented,

1 Mr. Carnahan probably told the next store manager
2 something very similar.

3 Unlike Mr. Kasper, though, Mr. Morris came
4 through. You got to hear Mr. Morris. Again, he may
5 not be the source of the discrimination here. That's
6 Carnahan, not Morris. But Mr. Morris, you heard him
7 at great length. He's definitely eager to please.
8 He explained at length how he wants to move up in the
9 company.

10 And his story that he told you about
11 July 21st is also just not credible. His story is
12 that he had a suspicion the Saturday before that, as
13 luck would have it, prompted him to drive by the
14 Rantoul store to check on the vehicles, and that
15 particular Sunday, of all the Sundays, that Sunday,
16 he just happened to have a sense that Saturday that
17 he should check the store the next morning, even
18 though it involved going to Rantoul, he lives in
19 Champaign, and lo and behold his suspicion was right.
20 The truck was missing and Ms. Kerr's car was there
21 instead. And unless he's a psychic, that would be
22 quite the lucky guess. But he's not a psychic.

23 You may have heard the expression that
24 sometimes the simplest explanation is probably the
25 one that's true. The reason he knew to look that

1 particular Sunday is because he had talked to Ms.
2 Kerr the day before and handed her the keys and
3 okayed the delivery.

4 Now, suppose, though, for a minute that
5 Mr. Morris had actually been suspicious that Saturday
6 as he says, that's really what was going on. It's
7 not, but suppose. If he was, he admitted he could
8 have just checked the keys before he left to make
9 sure that they're there, but he admitted he didn't.

10 Now, they say that Elena closed the store
11 that day. Well, he could have asked Elena, hey, make
12 sure to look for the keys before you close. He
13 didn't do that either.

14 Now, Carnahan also told us, by the way,
15 that if Mr. Morris truly had a suspicion on Saturday
16 that this was going to happen, that Ms. Kerr was
17 going to steal a truck, that Mr. Morris, under the
18 company's policies, would have been obligated to
19 report that on Saturday, not wait till the next day
20 to do something about it.

21 And Mr. Morris was asked about that on the
22 stand, well, why didn't you do something on Saturday?
23 You might remember, Mr. Shultz asked him about that,
24 and he tried to explain it away by saying, well, the
25 store is really busy on Saturday and it wasn't until

1 later after he left work that he was able to process
2 what was going on.

3 Come on. What's there to process? If you
4 think someone is going to steal a truck, do you
5 really need to think about it later? When did he
6 process it? At the county fair later that night?
7 His story isn't true.

8 One of the exhibits that you'll have to
9 look at, as I just mentioned, is also Mr. Morris'
10 declaration. And again, that's also, you'll see,
11 when you have a chance to look at it, you'll see it's
12 from the same date in December 2015.

13 In his declaration, look at paragraph 7.
14 Here in paragraph 7, he says that, in this first
15 sentence here, Saturday, July 19th, 2014, I noticed
16 that Ms. Kerr was acting unusual. She made several
17 requests to go out on deliveries alone, even though
18 the customer account representative who was
19 responsible for deliveries was at work.

20 Well, first of all, we know that Ms. Kerr
21 was put on deliveries so it's not like the customer
22 account representative is the only person in the
23 store who does deliveries. They have two delivery
24 vehicles, which suggests that deliveries can be done
25 by more than just one person. Let's look at that,

1 requests.

2 And also I should mention, we also heard
3 testimony, one person deliveries, which he also said
4 he was suspicious about that day, that's not uncommon
5 for Rent-A-Center people, for its employees. That's
6 not an issue.

7 But again, in paragraph 7 here, Mr. Morris'
8 testimony is that Ms. Kerr was making requests to go
9 out on deliveries, that that was what made him
10 suspicious.

11 Mr. Morris was the store manager. He could
12 have just told her no. He could have just denied the
13 requests. This isn't true. This is not what
14 actually happened.

15 Mr. Morris also explains his suspicion in
16 this declaration, in this second sentence, maybe the
17 third sentence of paragraph 7, sort of in the middle
18 here. At the time, I was aware that Ms. Kerr had
19 been evicted from her place of residence and
20 suspected that she was using one of the company
21 vehicles to move personal items, a clear violation of
22 company policy.

23 Well, that explanation didn't really hold
24 up during this litigation because her landlord,
25 Mr. Piekarski, said Ms. Kerr wasn't evicted from her

1 home. So that's just not true. He wasn't aware that
2 she was evicted because she wasn't evicted.

3 So Mr. Morris hedged his bets and later on
4 said that he was leaning more towards thinking that,
5 well, she had been evicted from her tattoo shop.
6 Turned out that didn't work either as an explanation
7 because the landlord of the tattoo shop, Ms. Kelly --
8 we saw her video. She was the one the dog popped up
9 halfway through. She also said Ms. Kerr wasn't
10 evicted from the tattoo shop.

11 So it turns out neither of those
12 explanations is a very good one. And it's pretty
13 much undisputed that Ms. Kerr was in Royal, Illinois,
14 that day, moving the two items of furniture for Ms.
15 Shumate. She wasn't being evicted from her home.
16 She wasn't being evicted from her tattoo shop.

17 Now, we know that she was in Royal that
18 day, partly because Amber Shumate, the customer, came
19 here and told you that herself. And even Russell
20 Wiedemann, remember he's the -- we actually saw the
21 video. He's the one who made it abundantly clear he
22 was bitter about his breakup with Ms. Kerr. Even he
23 acknowledged that Ms. Kerr was in Royal that Sunday.
24 It maybe from the day of what he says she was doing,
25 but she wasn't moving stuff out of an apartment in

1 Paxton or moving stuff out of a tattoo shop.

2 Now, let's look again at Mr. Morris'
3 declaration, paragraph 8, and here he explains his
4 suspicion prompted him to drive by the store that
5 Saturday. Now, a little farther down in the
6 paragraph, about the fourth sentence in on the fourth
7 line at the end, to document this violation I took a
8 date stamped picture of the parking lot. Remember,
9 Mr. Carnahan says that he needed good documentation.

10 So let's look at that picture, by the way.
11 That's Plaintiff's Exhibit 5. Now, do you remember
12 when Mr. Shultz asked Mr. Morris if he added this
13 date stamp at the bottom of the photo? Mr. Morris
14 said no. The camera on his phone just did that
15 automatically. What phone automatically puts a photo
16 on a black background and has a date stamp at the
17 bottom? His testimony isn't truthful.

18 He added the date stamp because he wanted
19 to make sure he had extra good documentation. And
20 there was doubt about what day the picture was from,
21 so he put the date down at the bottom. His phone
22 didn't do that automatically.

23 Now, there's something else that's odd
24 about the photo. You also heard from Brock
25 Duncan-Fox. I think that was yesterday. He was the

1 person who's the account representative, allegedly
2 helped Mr. Morris search for the truck that Sunday.
3 He told you that that photo that I just had on the
4 screen wasn't the photo that Mr. Morris took that
5 day. He said that he saw Mr. Morris take one photo
6 and that it was from the Rent-A-Center parking lot.

7 Remember, Exhibit 5 is clearly taken from
8 across the street, everybody agrees, across the
9 street at the Auto Zone parking lot. So if there
10 is -- this other photo, actually one taken that day,
11 why haven't we seen it? And if it's true that the
12 one photo taken that day isn't Exhibit 5, then what's
13 Exhibit 5? When was it actually taken? So there's
14 some fishy, funny business going on with the photos
15 as well.

16 Now, Mr. Morris also said in his
17 declaration that he picked up Mr. Duncan-Fox to help
18 him search for Ms. Kerr and the missing Rent-A-Center
19 vehicle, and so that gave him a witness. And
20 Mr. Duncan-Fox indeed was a witness. Let's just be
21 clear. That is exactly the role Mr. Duncan-Fox was
22 intended to serve, and he did. Mr. Morris' goal that
23 day was to get a photo, have his witness, and that
24 was what he was doing. This idea that there was then
25 a two to three hour search for the truck is just not

1 credible.

2 Suppose that they actually had searched for
3 the truck, though. After they couldn't find it, they
4 just went home. First of all, I thought they were
5 going to breakfast. We never heard about them
6 actually getting to breakfast. After the search for
7 the truck, they just went home.

8 If a ten thousand pound cube truck, if your
9 story is really that this important truck is missing,
10 dangerous that it's missing, you have no idea where
11 it is, A, why not call the police? B, why not wait
12 in the parking lot for her to come back. Ms. Kerr's
13 car is parked there. She's coming back. Why
14 wouldn't you wait to make sure that it comes back.
15 They didn't. They went home because they knew where
16 the truck was and they weren't actually concerned
17 about it.

18 Now, you'll also see Plaintiff's Exhibit
19 1 -- I'm going to put it on the screen for you --
20 that's a statement by the company's representatives
21 that accepts the story that Mr. Morris and
22 Mr. Carnahan give. So it's -- the story that we're
23 talking about is the company story as well. You'll
24 have that. You can look at it yourself.

25 In reality, we know that Mr. Carnahan and

1 Mr. Morris weren't aware of any eviction by Ms. Kerr
2 because there were no evictions. They made those
3 things up. Now, it is true, Ms. Kerr did at some
4 point move out of her apartment in Paxton. No debate
5 about that. She did that after she got fired from
6 Rent-A-Center and her boyfriend up north asked her to
7 move in.

8 There is zero evidence that she used a
9 Rent-A-Center truck to move her personal belongings
10 out of that apartment, and there's zero evidence that
11 she used a Rent-A-Center truck to move items out of
12 her tattoo shop when that closed.

13 You heard from Jennifer McCallister.
14 Remember, she was the employee at the accounting
15 office next door to where the tattoo shop used to be
16 who said that she only works on weekdays outside of
17 tax season. In July she'd only be there on a
18 weekday, and she said that she knows that Ms. Kerr
19 moved her stuff out on a weekday because she saw it
20 and she's only there on weekdays. She also said Ms.
21 Kerr used a personal vehicle with a trailer attached
22 to it, not a Rent-A-Center truck.

23 Now, Ms. Kerr moved out of these places
24 after she was fired from Rent-A-Center. It's true,
25 Mr. Piekarski, I believe you heard from him a couple

1 days ago, he did express some uncertainty about when
2 exactly in the summer Ms. Kerr moved, and they have
3 now blown that up into, ah-ha, she was planning to
4 leave all along because Mr. Piekarski said, well,
5 maybe she called me in June, maybe it was July.

6 But even Mr. Piekarski acknowledged in a
7 previous sworn statement, that he had made under the
8 penalty of perjury, that he was not sure. He thought
9 Ms. Kerr moved out sometime in August. So that's not
10 evidence that Ms. Kerr was secretly planning on
11 leaving the area at that point.

12 And, by the way, I'm only going to touch on
13 this briefly, but another distraction that
14 Rent-A-Center has engaged in, which is really just
15 puzzling, is getting into Ms. Kerr's rent. They put
16 into evidence Mr. Piekarski's rent ledger and they
17 talked about that some. And other than trying to
18 make her look bad for being behind on her rent, I
19 really have no idea what that's intended to prove.

20 It's true Mr. Piekarski's ledger had no
21 rent for that July, and so I think they're seizing in
22 on that. But, first of all, his rent ledger was
23 incorrect, and we've put in as Plaintiff's
24 Exhibit 12, which you'll get to see, a copy of a rent
25 receipt. Ms. Kerr did pay her rent in July 2014.

1 Second of all, the whole idea that Ms. Kerr
2 was planning on leaving anyway, and so just didn't
3 care about getting fired just doesn't hold water.
4 And one way you can tell that is that it's
5 contradicted by Ms. Kerr's ex, Mr. Wiedemann. Mr.
6 Wiedemann testified that right after she was fired --
7 this is in the video so it's really easy for us to
8 coming to a clip so I want you to focus on this.

9 Mr. Wiedemann testified that after Ms. Kerr
10 was fired she complained to him right after it
11 happened.

12 Question: What did she tell you?

13 Answer: She had said that she had
14 permission to use the truck and something about -- I
15 don't recall exactly. Something about being set up.

16 Question: And do you remember when that
17 conversation occurred?

18 Answer: It was shortly after she was
19 dismissed.

20 So what the evidence shows is that Ms. Kerr
21 was already complaining about the fact that she had
22 been fired right after she had been fired. Even her
23 ex, who is otherwise not her friend in this lawsuit,
24 is saying that. This idea that, oh, Ms. Kerr was
25 okay with being fired because she was headed out of

1 town anyway, it's just not true.

2 What the evidence does show is that Ms.
3 Kerr was making a delivery to Ms. Shumate that
4 Sunday. It was the delivery that somebody, we have
5 no idea who, put in the daily activity planner.
6 Remember, the daily activity planner is that paper
7 book that records the delivery schedule for three
8 months at a time.

9 And Mr. Trusevich keeps saying that Ms.
10 Kerr said it was Mr. Kasper who did this, I'm sure
11 you're going to hear that over and over again, but
12 Ms. Kerr's already told you that she was obviously
13 wrong when she guessed that maybe Mr. Kasper knew
14 this agreement.

15 Mr. Kasper wasn't working at the store in
16 February. We know that's not correct. So Ms. Kerr
17 misspoke. She's acknowledged that, and for them not
18 to be able to let it go, it's a distraction.

19 You heard from Amber Shumate, the customer.
20 She corroborates that Ms. Kerr made a delivery of a
21 brown sectional sofa and a bed frame that weekend
22 that July in a Rent-A-Center truck. And
23 Rent-A-Center's own internal records, which is the
24 receipt record that you saw, Plaintiff's Exhibit 4,
25 Rent-A-Center's own records confirm that Ms. Shumate

1 did indeed buy just such a sofa and bed frame from
2 Rent-A-Center. And when Ms. Kerr redelivered the
3 merchandise on July 21st, she was wearing a
4 Rent-A-Center red polo shirt.

5 First of all, if this really wasn't work
6 and this is just, you know, a day off, why would she
7 be wearing the uniform on her day off? Who wears
8 their work uniform on their day off? And
9 Rent-A-Center accuses Ms. Kerr of moving Amber
10 Shumate's other belongings, too, that day.

11 Now I can go on to the third story. Since
12 the evictions didn't work and since there is actually
13 evidence that Ms. Shumate had purchased merchandise
14 from Rent-A-Center, now the accusation is that, well,
15 Ms. Kerr must have been moving other belongings of
16 Ms. Shumate's in the truck that Sunday.

17 And that's not credible for several
18 reasons. So, first of all, Mr. Carnahan, Mr. Morris,
19 in their declarations, and the company in its
20 position statement, which is Exhibit 1, their claim
21 was that she was moving her own personal belongings,
22 not Ms. Shumate's. That wasn't their story. So they
23 changed their story. That's their number one.

24 And, second, the only evidence that
25 Rent-A-Center has given you in this trial that Ms.

1 Kerr was moving anything that day other than the
2 couch and the bed frame is the testimony of her ex,
3 Russell Wiedemann, and even that wasn't very clear.

4 Now, Mr. Wiedemann, by his own admission,
5 had a bad breakup with Ms. Kerr. He admitted that he
6 couldn't tell you exactly what was in the truck. He
7 saw some boxes and totes. That's as clear as he got.
8 He doesn't know what was in those. Couldn't tell you
9 how many there were.

10 And he told you himself that his memory was
11 not very good. He said, quote, it just seems like
12 some things are foggy. Some things are foggy and
13 some things are not, and then he continued, I might
14 not recall what I did three days ago. Ladies and
15 gentlemen, that's not reliable testimony.

16 Now, Rent-A-Center is trying to suggest
17 that Amber Shumate is friends with Ms. Kerr and so
18 she's in on it. They said that because they need a
19 reason for you to disbelieve Ms. Shumate as well.
20 But they're twisting the facts here. Ms. Kerr and
21 Ms. Shumate were not friends at the time these events
22 happened in 2014.

23 They both acknowledged they became friends
24 later after Ms. Kerr was terminated, but there is no
25 evidence that they were buddies at the time that

1 we're talking about, July 2014.
2 Rent-A-Center has no evidence suggesting otherwise.
3 And even later, it's not like they were close
4 friends.

5 And, also, let's think about the timing
6 here. Mr. Wiedemann, again the ex, said that he
7 broke up with Ms. Kerr in May of 2014, and we know
8 that Ms. Shumate and Ms. Kerr were acquainted through
9 Mr. Wiedemann because he introduced them once or
10 twice.

11 So in July of 2014, just after they'd
12 broken up, Ms. Shumate was a friend of Ms. Kerr's ex.
13 That was the relationship in July 2014. Who risks
14 their job of nine years to help out a friend of an ex
15 you broke up with who you met just a couple of times?
16 People don't do that.

17 Now, really the biggest part of
18 Rent-A-Center's case, though, is the claim that it's
19 actually Ms. Kerr and the EEOC who have been
20 inconsistent in this case. So let's take those one
21 by one.

22 First, the redelivery of the Rent-A-Center
23 furniture happened in connection with Amber's move.
24 That part's clear. Rent-A-Center makes a big deal
25 about the fact that Ms. Kerr has described that move,

1 Ms. Shumate's move, as the project of either a
2 charitable organization or it was a community service
3 project, or it was something that the Masons helped
4 with. Those are all just different ways of saying
5 the same thing.

6 Could Ms. Kerr have been more careful in
7 the way she described this? Yes. But Mr. Wiedemann,
8 who was formally a master of the Masons Lodge
9 himself, described the Masons as, quote, the world's
10 largest charitable organization. He also said we do
11 all we can to help the community.

12 And when he was asked are you aware of
13 civic projects that the Lodge decides to do, his
14 answer was absolutely. So it sounds like Ms. Kerr
15 was mistaken and she thought that this was some type
16 of project of the Masons Lodge. In reality, it was
17 just some people from the Lodge. It wasn't anything
18 official.

19 But Ms. Shumate corroborated that there
20 were indeed a number of members of the Masons Lodge
21 there that day, including Mr. Wiedemann, and people
22 he knew assisting with the move. So Ms. Kerr has not
23 been inconsistent about this. She's used different
24 words to describe the same thing, but it doesn't
25 matter. Ms. Kerr mistakenly thought that it was

1 something the Lodge was helping with rather than
2 members of the Lodge. Big deal.

3 Now, there is one statement that you hear
4 over and over and over again that refers to helping
5 Goodwill rather than the Masons, and it also contains
6 that weird reference to homeless people or a church.
7 Mr. Trusevich repeats it over and over and over again
8 because it sounds the most inconsistent, but it's
9 also very misleading because everybody agrees Ms.
10 Kerr didn't write that. Let's take a look at that.
11 That's Defendant's Exhibit 42.

12 You'll be able to look at it more closely
13 during your deliberations, but this is, I think, the
14 third page of the exhibit. And this is hard to read,
15 but these are these notes of the interview that some
16 Illinois Department of Employment Security person did
17 with Ms. Kerr in connection with her unemployment
18 application.

19 And it is confusing because this is phrased
20 in terms of "I was told" and "we did that," and so
21 the implication that I think that's trying to be put
22 to you is that, oh, well look at what Ms. Kerr said.

23 But everybody agrees, Ms. Kerr didn't write
24 that. I'll show you Exhibit 11, which is a
25 stipulation. Remember, we know that a stipulation is

1 an agreement by both parties. So there's no dispute
2 that this is true. It's a principal adjudication
3 summary. It's a document we just saw on the screen.

4 It's a document prepared by an Illinois
5 Department of Employment Security adjudicator at or
6 near the time of IDES' August 18, 2014, phone
7 interview with Ms. Kerr. Ms. Kerr didn't write those
8 notes. We don't even know the name of the person who
9 wrote those notes. We don't know if they were having
10 a bad day. We don't know if they did one interview
11 that day or a hundred interviews that day. Were they
12 writing up their notes the next morning and confusing
13 different interviews?

14 We have no idea, and it doesn't matter.
15 The fact that some person at the Illinois Department
16 of Employment Security wrote Goodwill instead of the
17 Masons is totally irrelevant to anything you're
18 deciding in this case.

19 Now, they've also talked a little bit about
20 the fact that the EEOC has used different phrasing.
21 They put up a copy of the complaint, the document
22 that begins the lawsuit here in court. And what I'll
23 say about that is this.

24 So from documents that the defendants
25 themselves have put into evidence, which you will

1 have, we don't normally tell you a whole lot about
2 what happens before the trial, but just from the
3 things they've put into evidence you can tell that
4 there were a number of steps that happened before the
5 trial this week.

6 You saw the intake questionnaire that Ms.
7 Kerr filled out. I think it was in September 2014.
8 Probably in a waiting room at the EEOC somewhere.
9 You saw the charge that she then formally filed with
10 the EEOC a whole week later in 2014. You heard some
11 talk that there was an investigation by the EEOC, and
12 then you saw, I think they put it in as an exhibit,
13 the complaint that the EEOC filed. It's referred to
14 as the lawsuit. It says complaint at the top. It's
15 one of their exhibits. You'll see it. That was in
16 2016.

17 And then from this week you've heard more
18 than you probably care to about depositions that have
19 happened in the last couple of years. From the date
20 you've seen videos taking place, you know there were
21 a lot of depositions that happened between that
22 complaint and between this week and now, of course,
23 we're here.

24 The EEOC was not on the scene in Rantoul in
25 2014. We were not at Amber Shumate's house in

1 Rankin, Illinois, in July 2014. So what we know we
2 know from witnesses, just like you. And just as you
3 know a lot more about this case right now than you
4 did four days ago, we, too, know more than we did a
5 year ago, two years ago, or three years ago.

6 So if we put Masons in a document from
7 2016, who on earth cares? The evidence that you are
8 supposed to consider is the evidence that was
9 presented to you this week at trial. That's the
10 evidence that's going back with you. That's the
11 evidence that counts.

12 What the evidence shows is that
13 Mr. Carnahan wanted Ms. Kerr out because he didn't
14 approve of her transition and told Mr. Kasper to find
15 things to write her up for and make sure they were
16 documented. Mr. Kasper didn't go along with that,
17 and he got fired.

18 Mr. Morris came along, did what
19 Mr. Carnahan asked. Then Mr. Morris gave Ms. Kerr
20 permission to use the truck that Sunday, documented
21 the fact eight ways to Sunday, and then fires her the
22 next day. That's discrimination, and Rent-A-Center
23 should be held accountable for it.

24 You heard about two items that might have
25 helped further aid in your deliberations but which

1 either Rent-A-Center threw out, in any event we've
2 never seen. Mr. Morris admitted that he threw out
3 the daily activity planner from that July, that paper
4 delivery book.

5 Now, if you were the store manager and you
6 were firing an employee for alleged misuse of a
7 delivery vehicle and if you have nothing to hide, why
8 would you throw out the only record of what the
9 legitimate deliveries were that month.

10 Mr. Kasper also told us he was a diligent
11 note keeper and kept notes of all of these
12 conversations, including his conversations with
13 Mr. Carnahan. And when he got fired he asked if he
14 could keep his notes, and he was told no. We have
15 not seen those notes this week. You can draw your
16 own conclusions.

17 Now, despite all of that, let's just
18 suppose for a minute that you don't believe our case
19 and that you believe Ms. Kerr actually was using the
20 truck that day without permission. I think there's
21 very little evidence of that, but just suppose for a
22 moment. Even if that's true, there is still evidence
23 of discrimination.

24 So Mr. Carnahan said both at his deposition
25 and here the other day that Ms. Kerr had to be fired

1 because violating the company's policy against
2 personal use of the vehicle results in automatic
3 termination. No exceptions. That's just false. You
4 heard not one but two separate examples, right here
5 in central Illinois, of store employees violating
6 this policy and either getting a verbal warning or no
7 discipline at all.

8 You heard from Michael Moreland two days
9 ago and then again yesterday. He's the one who used
10 a Rent-A-Center delivery vehicle to go visit
11 Harley-Davidson store to go on a shopping errand.
12 There's nothing wrong with that, nothing wrong with
13 Harley-Davidson, but doing it with a Rent-A-Center
14 truck is a violation of their policy. There's no
15 dispute about that.

16 There's also no dispute that Mr. Moreland
17 received no discipline whatsoever. There's this
18 debate about did he continue to work for the rest of
19 the day or did he continue to work for another week,
20 but what's undisputed is that they didn't fire him.
21 They didn't give him a warning. Nothing.

22 Rent-A-Center claims that this is because
23 this was his last day anyway and so they let him keep
24 working to the end of the day. First of all, if the
25 policy really is automatic termination, no

1 exceptions, why do you let the person keep working
2 till the end of the day? Ms. Kerr wasn't allowed to
3 keep working till the end of the day when she was
4 fired. Mr. Kasper wasn't allowed to keep working
5 till the end of the day when he was fired. We
6 haven't heard about anybody who was allowed just, oh,
7 keep working for a little while after you get fired.

8 Ms. Kerr -- oh, and there was a little
9 drama yesterday morning. You know, Mr. Moreland also
10 told you that his recollection, that it wasn't the
11 rest of the day but it was another week or so that he
12 worked there. And when he was on the stand
13 yesterday, we saw eventually his mind went through
14 some extremely tragic events in his life, which is
15 really neither here nor there for us, but it clearly
16 affected him. And after that, the attorney kept
17 pressing him about the dates. Given the experience
18 that he just described, who would remember anything
19 when their mind is going back to that? So I'll let
20 you decide for yourself what happened yesterday.

21 What we do know is that Nakia Bell, she's
22 one of the other defense witnesses you saw yesterday,
23 she testified that two nights ago, halfway through
24 the trial, she went and found some records about
25 Mr. Moreland and they put those into evidence, and

1 that was to try and disprove the idea that he
2 continued working for another week after the
3 Harley-Davidson trip. Records aren't infallible.
4 She admitted herself, it's human beings that type the
5 information into those records.

6 But even set aside Mr. Moreland, we also
7 heard an example from Mr. Morris himself about an
8 employee he himself didn't fire, even though the
9 employee violated the same policy. That's Greg
10 Holly. Mr. Moreland told us that Mr. Holly had used
11 a Rent-A-Center vehicle to drive a co-worker to a
12 recording studio. There's no dispute that is not
13 Rent-A-Center business. It's a violation of the
14 policy.

15 Now, Mr. Morris claimed here that the
16 reason Mr. Holly didn't get fired is because, well,
17 he came right back to work, he did the right thing
18 and he went right up to Mr. Morris and he informed
19 him about the violation. Well, that's just not what
20 Mr. Morris said in his deposition. Mr. Shultz read a
21 question and answer from Mr. Morris' deposition. Let
22 me show it to you.

23 So the question: How was he stealing time?
24 That's a reference to Greg Holly. Actually, that may
25 be a reference to the other person at the recording

1 studio.

2 In any event, the answer continues: He was
3 trying to make an album. That's Greg Cannon. So
4 they basically went out together to do deliveries.
5 The other guy, Gregory Holly, just dropped him off at
6 the studio, did the delivery, and would come back and
7 pick him up.

8 And then look at these next two things in
9 quotes. Do you know where Cannon is at? And the
10 second thing is no. I dropped him off at his studio.
11 So I dropped him off at his studio is clearly Holly,
12 and the first part is the question from Morris.
13 Otherwise it doesn't make any sense.

14 So what this is is Morris said do you know
15 where Cannon's at. Holly said no, I dropped him off
16 at the studio. This wasn't Holly just coming up and
17 volunteering this information. Mr. Morris told us at
18 his deposition that he found out about this because
19 he asked Mr. Holly. The reason that's important is
20 because that's exactly what he says Ms. Kerr did.

21 Remember, their story is that after Ms.
22 Kerr violated this policy on Monday morning, she came
23 in and Mr. Morris asked him, hey, were you using the
24 truck yesterday? And his testimony is that she
25 admitted it, right then and there, without any

1 equivocation. So if that's true, that she just said
2 yes, then how is that not just like Mr. Holly, who,
3 when he was asked, fessed up. If their story is that
4 Ms. Kerr, too, just acknowledged it right after being
5 asked, then why were the two of them treated
6 differently?

7 Ms. Kerr is transgender. That's one
8 difference and that was a factor.

9 Now, Rent-A-Center has also spent a very
10 large amount of time trying to show you that Ms. Kerr
11 failed to make an internal complaint to the company
12 or didn't complain hard enough within the company
13 first. She didn't call the 800 number to complain
14 about her termination. She didn't, I guess, e-mail
15 the CEO back or whatever.

16 But, ladies and gentlemen, this is also a
17 distraction. Ms. Kerr had no obligation to make a
18 complaint within the company before coming to the
19 EEOC or coming to court. The judge gave you what the
20 law is and what the rules are. You have a copy.
21 Look all the way through that. There's nothing in
22 there that says in order to prove her case that Ms.
23 Kerr had to have made a complaint to the company
24 first. That's a distraction. But also the 800
25 numbers? Really? That's what they expected her to

1 do?

2 The depositions you heard yesterday, there
3 was one that was read from the stand and there was
4 that video I think of Ms. Clatterbuch that you saw at
5 the end. The one down in Texas. Even they said --
6 and it's a little hard to follow just listening in
7 depositions, but even they said -- they go for
8 Solution Center, which is the company's call center,
9 even they both said that you wouldn't call the
10 Solution Center about discrimination.

11 Ms. Torres, that was the one that was read
12 from the stand, she's the director of the Solution
13 Center, she testified that she did a search of all --
14 they have records of all the calls that are made to
15 the Solution Center. They refer to them as tickets.
16 She said she did a search of all the tickets in the
17 Solution Center, and that covers hundreds of
18 thousands of calls that the Solution Center has
19 received, and she searched for complaints of
20 discrimination and she told you that she came up with
21 zero. People don't call the Solution Center to
22 complain about discriminatory discharge. That is a
23 total distraction.

24 In any event, Ms. Kerr did make a
25 complaint. You know from the intake questionnaire

1 that they put in and the charge of discrimination
2 they put in that Ms. Kerr, just a couple of weeks
3 later, came to the EEOC and complained that she
4 thought there was something fishy about her
5 termination. So she did complain.

6 Let's talk about the verdict form. First
7 question that you need to answer is, of course,
8 Question 1, and that is: Was Megan Kerr's
9 transgender status a motivating factor in
10 Rent-A-Center's decision to discharge her?

11 We think the answer to that is clearly yes.
12 Of course it was a factor. Mr. Carnahan himself
13 acknowledges that he was the one who made the
14 decision for Rent-A-Center to terminate Ms. Kerr.
15 When we're talking about Rent-A-Center's decision
16 here, we're talking about Mr. Carnahan's decision.

17 Now, what does motivating factor mean? The
18 court has given you a definition of what motivating
19 factor means, and that's just that it's something
20 that contributed to Rent-A-Center's decision to
21 terminate Ms. Kerr's employment. Doesn't need to be
22 the only factor, but it needs to be a factor and, of
23 course, it was a factor here.

24 Now, the next question -- and so we believe
25 you should answer the first question yes.

1 The second question is: Would
2 Rent-A-Center have made the same decision to
3 discharge Megan Kerr even if it had not considered
4 her transgender status? And we think the answer to
5 this is clearly no.

6 Rent-A-Center has not offered any evidence
7 at all to prove this. And look carefully at the
8 instructions because on Question 2 Rent-A-Center has
9 the burden to prove by a preponderance that the
10 answer to Question 2 is yes. They haven't presented
11 any evidence of that. If Ms. Kerr was still Jason
12 Kerr, we wouldn't be here today. The company would
13 not have done this. So the answer to Question 2, we
14 would urge you to answer no.

15 And then on the verdict form, if you answer
16 that way the next question is about damages,
17 compensatory damages. As you've been instructed,
18 there's no exact standard for compensatory damages.
19 There's no formula we can give you. That may be
20 frustrating, but we rely upon your judgment and your
21 evaluation of the evidence to decide what amount will
22 make up for what Ms. Kerr went through, what she went
23 through emotionally, as a result of being fired from
24 her job or more than nine years. And, remember, by
25 Jason Morris' own admission, she was the best

1 employee in the store. She's proud of her work.

2 This is not a small thing to lose her job.

3 Now, of course, there's cases that involve
4 very serious harm, for example, where somebody might
5 be severely or physically injured, and that could
6 possibly involve very large amounts for damages,
7 maybe in the millions. That's not this case. We're
8 not claiming that.

9 There's also cases that could involve very
10 small amounts of harm where maybe the amount needed
11 to make up for that is just in the thousands. We
12 don't think that's the case either. We think this
13 case is somewhere in the middle. Ms. Kerr lost her
14 job, after all, a job that had been part of her life
15 for more than a decade. But the exact amount is up
16 to you.

17 Finally, punitive damages. So there's two
18 questions on this. Question 4 is, first: Are
19 punitive damages appropriate? Now, you also got
20 instructions, they were towards the end, that gives
21 you the standard for punitive damages, and punitive
22 damages, it says, are appropriate if Rent-A-Center
23 acted in reckless disregard of Ms. Kerr's rights, and
24 it then explains what that means.

25 It says essentially that that means that

1 Rent-A-Center did what it did knowing that it may
2 violate the law. You may remember the questions that
3 Mr. Shultz and I asked Mr. Carnahan and Mr. Morris,
4 were you aware at the time that it was illegal to
5 fire somebody because of transgender and they said
6 yes. So there is no doubt that if they did that,
7 they were doing it knowing that what they were doing
8 was illegal. So there was reckless disregard.

9 In the next paragraph you'll see, and I'm
10 not going to go through every paragraph of it only
11 because you have it in writing, you'll be able to
12 look at it for yourselves, but it says if punitive
13 damages are not appropriate that Rent-A-Center proves
14 that it made a good faith effort to implement an
15 antidiscrimination policy.

16 The most important word in that sentence is
17 implement. We have heard a lot this week about all
18 the nice policies that the company has, e-mail from
19 the CEO, trainings that they do, and all those
20 things. But are those policies actually enforced?
21 Are they actually enforced against higher up managers
22 like Jason Carnahan? There's no evidence whatsoever
23 of that. So there is no evidence that Rent-A-Center
24 implemented a policy of nondiscrimination.

25 It's also important to focus on what the

1 purpose of punitive damages are. And as you were
2 instructed, the purposes of punitive damages are to
3 punish the defendant for its conduct and to serve as
4 an example or warning, either to the defendant or
5 others, not to engage in similar conduct in the
6 future.

7 That's important because -- so, now,
8 compensatory damages, remember, are to make up for
9 what Ms. Kerr went through, for the emotional
10 distress she experienced. And she absolutely
11 deserves compensation for that. No doubt in my mind.

12 But punitive damages is a little bit
13 different. Punitive damages have to do with making
14 sure that Rent-A-Center doesn't do something like
15 this again and try to get away with it with respect
16 to the other twenty thousand people who still work
17 there at all the stores across the country. We
18 believe, given the company's failure to take any
19 responsibility in this case, it's appropriate to set
20 an amount of punitive damages to serve as a warning
21 to the company not to engage in this in the future.

22 Again, the amount is up to you to come up
23 with a formula. For context, I'll remind you this is
24 a large company. You heard some facts read to you
25 the other day that are agreed on, and one of them is

1 that for the most recent year that we have
2 information for the net worth of the company is just
3 about \$265 million.

4 So in summary, there is no dispute Ms. Kerr
5 was a good employee. She was hard working. She's
6 somebody who honorably served her country. She was
7 just trying to earn a living at Rent-A-Center, be a
8 contributing member of society. That's what we want
9 people to do in this country is earn a living. She
10 was doing that. She got fired because of who she is.
11 That's not right, and we ask you to find in favor of
12 the EEOC. Thank you.

13 THE COURT: All right. Thank you,
14 Mr. Mulaire. Ladies and gentlemen, are you okay?
15 Ready to go with the next one? Anybody need a break?

16 All right. For Rent-A-Center.
17 Mr. Trusevich, you may proceed.

18 MR. TRUSEVICH: Thank you, your Honor.
19 I am hoping today that I will actually be shorter
20 than the other side. I first want to say good
21 morning to everybody. My name is Andy Trusevich, and
22 along with Stephanie Quincy and Rent-A-Center, on
23 behalf of them I just want to say thank you for your
24 time, but especially on behalf of Jason Morris, Jason
25 Carnahan, Elena Reeves, thank you for the time. We

1 appreciate it.

2 Ladies and gentlemen, everything -- what's
3 interesting and one thing I just want to address,
4 what Mr. Mulaire just told you five minutes ago, he
5 stood up here and he looked at you and he said just a
6 couple of weeks after she was fired she filled out
7 her intake questionnaire.

8 Look at Exhibit 15. I guarantee it's not a
9 couple of weeks. It's four months. He says things
10 that in order to talk about a distraction he wants
11 you to believe that, well, when she was fired she
12 kept this story, and within a couple of weeks was his
13 words just now because I wrote it down, and he said
14 that she filled out her intake questionnaire. You'll
15 see it's stamped received at the EEOC in November,
16 four months later.

17 Ladies and gentlemen, I wanted to say thank
18 you because EEOC sued Rent-A-Center and Rent-A-Center
19 is a business. And what is a business? It's bricks
20 and mortars. Bricks and mortars aren't what make a
21 business. It's the people that make the business.

22 And he says, oh, it's an e-mail. They try
23 to downplay everything that was done this week. If
24 something doesn't agree with the EEOC, they're liars.
25 If somebody at the unemployment agency writes

1 something down, well, then they're mistaken. They
2 were just busy that day.

3 You all have to decide whether when she did
4 that interview with the unemployment did somebody
5 really get it that wrong or did they get it right.

6 And it's made up of people. And they say,
7 oh, some e-mail from Mark Speese. It wasn't an
8 e-mail. You all saw that. It was the Mark Speese,
9 chairman of the board and CEO, and Mitch Fadel, the
10 chief operating officer, letter that went to all the
11 co-workers, and you all saw that and it was about
12 respecting the workplace.

13 You heard from Dan Kober, Dave Leavengood,
14 Jason Carnahan, Jason Morris. He just said that
15 there was no evidence that any EEO training was
16 implemented to Mr. Carnahan. I think I beat that
17 dead horse with witnesses on is training assigned,
18 and they all talked about yes, to my COE. It's
19 assigned. We have to do it within a certain time.

20 But I wanted to focus on that Mark Speese,
21 the chairman of the board, CEO, and Mitch Fadel memo.
22 And they said it went out yearly. And if you look at
23 that memo, it's that respect in the workplace, to
24 treat people fairly. And I said does leadership
25 start from the top down? And you can't get any

1 higher than that, I guess, unless you look at the
2 board of directors.

3 And what does that respect in the workplace
4 mean? Treating people fairly. That people shouldn't
5 discriminate or harass other people.

6 But, ladies and gentlemen, there's a flip
7 side to that. Treating people fairly also means that
8 when people are falsely accused of discrimination,
9 employers should stand up for their employees. If
10 they're falsely accused, treating people fairly is to
11 defend them also.

12 Ladies and gentlemen, I submit that's
13 exactly what this case is about. Mr. Mulaire says
14 that, oh, we talk about distractions. We have to
15 show you the picture of what Ms. Kerr was claiming in
16 order for you to decide who is telling the truth.

17 And let's look at that. The EEOC and Ms.
18 Kerr have alleged, falsely accused some really good
19 people of some bad things. They accuse Jason
20 Carnahan back over there and Jason Morris of
21 discriminating against someone because she's
22 transgender. They label them co-conspirators. They
23 label them as not telling the truth, meaning that
24 they're liars. They say Elena Reeves over there is
25 not telling the truth, that Brock Duncan-Fox is not

1 telling the truth.

2 What are these false allegations based on?
3 Let's look at that. Mr. Mulaire loves -- I think he
4 said distractions at least ten times in his closing.
5 Let's look at what the evidence is and see if those
6 are distractions.

7 Ms. Kerr has told so many different
8 versions of what she was doing with that truck on
9 that Sunday, July 20th of 2014, and it is important
10 to know why are these shifting versions? Why is she
11 telling different versions?

12 He says, oh, don't believe the state
13 unemployment records where it clearly says in the
14 record, it says the time that contact was made, an
15 interview was held with her. She admitted that was
16 her phone number. She admitted that she had that
17 interview. And what they're asking you to believe is
18 just disregard the State of Illinois.

19 Oh, we don't know, some adjudicator who
20 does this, he or she must have just got it wrong.
21 And what did Ms. Kerr tell them? That she was moving
22 homeless people from a church to a shelter and
23 Goodwill was involved. Then she said she was moving
24 a dislocated family. We know that's untrue. Amber
25 Shumate wasn't dislocated. She wasn't homeless.

1 Another version is a charitable or civic
2 event organized by the Masons. We know that's not
3 true. What Mr. Mulaire just came up and told you is
4 not what the evidence showed. Cash Wiedemann, he
5 said, threw in here in his closing, oh, there were
6 ten Masons or so there. Nobody has identified a
7 single Mason, and that is in their lawsuit.

8 When they falsely accused Rent-A-Center of
9 discrimination, they're the ones who put in their
10 lawsuit or in their interrogatory answers and
11 Mr. Shultz sitting there is the one who verified it
12 under oath. That is Exhibits 3, 4, and 5, and you
13 will see verification that, under penalty of perjury,
14 that lawyer said, yep, it was a charitable event for
15 the Free Masons. So take a look at that.

16 That's not even Ms. Kerr's version of that.
17 Mr. Shultz adopted a charitable event or civic event
18 organized by the Masons. We know Cash Wiedemann said
19 that's absolutely not true. You heard from
20 Mr. Thompson to get up here saying if it was a
21 charitable or civic event he would know about it. It
22 simply didn't happen. It's one of her changing
23 versions of events. The Masons had nothing to do
24 with that.

25 The next version, moving Amber Shumate

1 because Russ Kasper made a prior commitment. And
2 Mr. Mulaire said, oh, Mr. Trusevich is going to get
3 up there, and he anticipated this because that is one
4 of her versions of events. You saw that in her
5 deposition. She said that Russ Kasper made this
6 commitment. I had nothing to do with that
7 transaction for Amber Shumate.

8 Well, Amber denies that, Kasper denies
9 that, and we know it couldn't have happened because
10 Kasper wasn't even there when she did it. But Amber
11 and Megan are friends, and I submit the evidence
12 shows they both came in and said, oh, we're not
13 friends now. I believe the evidence shows they are
14 absolutely friends.

15 Amber and Megan are friends. Megan Kerr
16 discounted that merchandise, and instead of putting
17 it under Amber Wilkerson, meaning Amber Shumate's
18 maiden name, instead she -- and he showed you the
19 receipt. Instead in the system she listed under Amy
20 Wilkerson so if someone is searching for Amber
21 Wilkerson they couldn't find that receipt.

22 So Ms. Shumate comes in and says, oh, I go
23 by Amy, that's my nickname, but when she was
24 questioned about that by Ms. Quincy and said your
25 Facebook, do you ever list your name as Amy anywhere

1 in your Facebook? The answer was no. Do you have
2 anything on you, like a driver's license or anything,
3 that you could show the jury that you go by Amy? No.

4 Then Ms. Kerr comes in and says just the
5 opposite. Oh, well, Amy is her legal name but Amber
6 is her nickname. And why did Ms. Shumate do that?
7 She was trying to help a friend explain why her
8 friend put that different name intentionally into the
9 system under Amy Wilkerson. Because she discounted
10 that furniture.

11 Then another version. She tells Elena that
12 she was donating her furniture to veterans. That's
13 another version. And Mr. Mulaire says why would
14 Rent-A-Center get rid of that book? Mr. Morris did
15 that. How unfair for Mr. Mulaire to get up here and
16 say that Jason Morris should have kept the book.

17 I will show you, if you look at the
18 original charge, which is Exhibit 6, look at that
19 charge. That's what the EEOC told Rent-A-Center this
20 case was about. Rent-A-Center never knew anything
21 that the EEOC was going to sue and claim that Ms.
22 Kerr had permission to take the truck that Sunday.

23 Look at the charge, the date of the charge,
24 until the public lawsuit was filed in July 2016.
25 There's not a single e-mail from these gentlemen.

1 There's not a single text, letter, or anything else
2 that ever told Rent-A-Center that Ms. Kerr was
3 claiming that she had authorization to do a Sunday
4 delivery. And then to come in and say, well, during
5 that two year period he should have known somehow, be
6 clairvoyant, to keep the DAP. Tell us. Tell us --
7 when Ms. Kerr told them, tell us and we would have
8 saved the DAP.

9 And then they say, well, you don't have
10 that Facebook message anymore, do you, Ms. Reeves?
11 During the two year period, tell us that and so we
12 could have at least asked Ms. Reeves, hey, would you
13 mind saving that Facebook message where she said
14 she's donating furniture to veterans. That is
15 absolutely unfair.

16 Then she says, well, I was moving from a
17 mini storage facility located one mile from the
18 Rent-A-Center store, yet she couldn't remember where
19 the name of the store was or the facility. And I
20 asked her, I said, well, you told me that on January
21 17th, 2017, in your deposition. I said, Ms. Kerr,
22 since then, knowing that you are going to be at
23 trial, have you done anything to try to locate that,
24 and she said no. And we all know, I submit, why she
25 never looked. Because it doesn't exist.

1 Then she says on one of the unemployment
2 forms, they want you to believe the person who -- the
3 adjudicator got that wrong, but I showed you two
4 forms that she electronically signed. Same form,
5 same questions, yet different answers. On the second
6 one she said Jason Morris actually scheduled the
7 event.

8 To support their allegations, they bring in
9 Mr. Russ Kasper. And, by the way, if you have any
10 doubt that Mr. Kasper says it was roughly every week,
11 all you have to do is look at Exhibit 1. That's
12 their lawsuit that the EEOC puts in. In paragraph H,
13 the EEOC is the one who says roughly weekly,
14 Mr. Carnahan, starting in March of 2013 until
15 December of 2013, that's nine months, roughly weekly
16 that Mr. Carnahan over there would call Kasper and
17 say what's the status of finding something to
18 document so we can get rid of Ms. Kerr.

19 That is simply incredible. How can you
20 believe that for nine months, roughly every week --
21 let's say roughly every week. I say it's weekly, but
22 let's say it's every other week for nine months.
23 Yet, he doesn't say anything to anybody. He doesn't
24 call his RD. He doesn't call the 800 numbers. They
25 make fun of the 800 numbers. I am proud that

1 Rent-A-Center has those 800 numbers that you can call
2 to co-worker relations or to an outside company,
3 Global Compliance.

4 You heard -- I'm not going to put that
5 poster up again, you all have seen that how many
6 times -- the different avenues you can call. And he
7 never calls anybody for nine months? He never tells
8 anyone? And they say, oh, he's just a disinterested
9 witness. But that he says and claims, oh, I told
10 Elena Reeves. I told Elena Reeves, my assistant
11 manager, that Jason Carnahan was telling me this.

12 Ms. Reeves absolutely denies that. Is it
13 really credible for a store manager that roughly
14 every week that his PM is telling him to fire someone
15 because she's transgender and he says, yeah, I'm
16 going to document this. In fact, he even said he
17 would write these instructions when Jason Carnahan
18 was telling him in person. He said I would write
19 down these instructions in person.

20 He gets two PIPs, one in October and one in
21 November. Elena Reeves says he openly talked about,
22 yeah, he knew he was going to get fired because his
23 store, the evidence, Mr. Mulaire, the evidence was
24 uncontested that that store was at the bottom of the
25 barrel. Everybody knew, that has testified, said

1 that Mr. Kasper's store ranked not only at the bottom
2 of the district but at the bottom of the region. And
3 Mr. Kasper even stood up and said, will I take
4 responsibility? Yeah, it was going bad.

5 In the PIP he agreed. He says there's no
6 evidence. The PIP is saying here's the district
7 average. Here's your average. You don't see Mr.
8 Kasper signing at the bottom saying that's not true.
9 That's untrue. And if he thinks he's going to be
10 fired and Mr. Carnahan is telling him to do something
11 that's illegal or against company policy, really?
12 You're not going to call somebody, your own DM who
13 promoted you, Dan Kober, and say, Dan, help me out
14 here. Dan, can you help me out here? Marcie
15 Bussman, can you help me out here? What am I
16 supposed to do?

17 And he says now it was slitting my own
18 throat so I wasn't going to do it. But yet he
19 attended the January 2012 Respecting the Workplace
20 seminar, because we know he initialed it, that Dan
21 Kober held in 2012. And he knew that worked. He
22 knew the reporting procedures. But then let's say,
23 okay, he didn't want to, quote, slit -- I would be
24 slitting my own throat.

25 Okay. What about after you're fired?

1 After you're fired and you have nothing to lose, what
2 did he call him, a hero? After you're fired and you
3 have nothing to lose, if that really happened, a hero
4 would immediately call somebody and say I need to let
5 you know Jason Carnahan has been telling me every
6 week to fire her because she's transgender. I need
7 to let someone know. When's the first time he ever
8 told anybody? Two years later when the EEOC called
9 him. Two years later, twenty-four months later when
10 the EEOC called him, that was the first time he told
11 anybody.

12 Kasper says he documented these
13 instructions in his either journal or MFR, Memo for
14 Record. Yet, when he knew he was going to be fired,
15 two PIPs, he didn't take a copy. He didn't take them
16 home. I asked Elena, what was his demeanor when
17 Jason Carnahan drove up after Black Friday? And she
18 says he started shaking. He knew he was going to be
19 fired.

20 Ladies and gentlemen, if any document like
21 that existed, he would have went in there and gotten
22 that document. He would have either copied it, he
23 would have taken it home beforehand. That document
24 never existed because that man never told him that.
25 It doesn't make any sense.

1 They say Rent-A-Center wants to describe
2 him as a disgruntled individual. No. He's angry at
3 Mr. Carnahan for firing him and that's the
4 motivation. He's angry at Mr. Carnahan.
5 Mr. Carnahan put him on two PIPs. He didn't think it
6 was his fault that his store was failing, and he gets
7 fired after Black Friday.

8 When Ms. Quincy asked him, did you ever
9 record any of these conversations when he called you?
10 No, of course not. He has to say that because they
11 never happened. Who wouldn't record that? Maybe not
12 after -- if it's roughly every week for nine months,
13 maybe you don't record the first time, the fifth
14 time, the tenth time, but don't you think by the
15 twentieth or twenty-fifth or thirtieth, you know
16 what, I'm just going to hit record.

17 Whose cell phone today doesn't have, even
18 December of 2013, can't push a button and record a
19 phone conversation? What's that, Mr. Carnahan? Do
20 you want me to get rid of her because she's
21 transgender? You've been telling me this roughly
22 every week? Really? You don't believe a person like
23 Mr. Kasper would have the wherewithal to record a
24 single conversation if that happened?

25 And then after he's fired, after he's

1 fired, when he says I didn't want to slit my own
2 throat, talk about theatrical. And after he was
3 fired, he didn't say a word to anyone. Even when he
4 runs into Elena at Wal-Mart after he's fired and
5 Elena says -- he says how's it going and she says,
6 oh, well, Megan Kerr was let go.

7 If that was true what was happening, he
8 would have told Elena, you know what, that doesn't
9 surprise me at all. Carnahan was trying to get rid
10 of -- telling me to get rid of her roughly every week
11 for nine months. And I'll go through that theory in
12 a minute. But he doesn't tell Elena when they run
13 into each other at Wal-Mart. It just doesn't make
14 sense.

15 Anybody can accuse anybody of anything at
16 any time. So and so is a thief. So and so is a
17 bigot because they discriminate. But the nice thing
18 in this country is if you're going to accuse somebody
19 and bring a lawsuit, you have the burden of proof.

20 Here the EEOC has utterly failed to show
21 that Ms. Kerr's transgender status was a motivating
22 factor for the decision to terminate her employment.
23 What evidence have they brought on that they have
24 failed to show that her transgender status
25 contributed to Rent-A-Center's decision to terminate

1 her employment? All they can do is point to some
2 decent people and just call them, well, you're
3 bigots. You discriminate and you're liars.

4 You heard from the witnesses, Dave
5 Leavengood, Dan Kober, Jason Carnahan, Jason Morris,
6 Brock Duncan-Fox, Elena Reeves, on how she was
7 treated, that Ms. Kerr was treated fairly. If all
8 this stuff was happening, they say, oh, all the
9 harassment that she's claiming is a distraction. No,
10 it lets you know who's telling the truth. If all of
11 this stuff is going on, that people were referring to
12 her as bad names and Elena was telling her this,
13 somebody would have complained if that was going on.

14 And then they say there's no evidence that
15 she was treated the same. Really? You heard from
16 Nakia Bell, who testified that ninety-six other
17 people from 2012 until just last month were fired for
18 using a company vehicle. Ninety-six, ladies and
19 gentlemen.

20 And then look at the one, Dan Kober. Talk
21 about apples and apples. Dan Kober, one year -- this
22 is before Ms. Kerr's termination. Dan Kober tells
23 you about the story where a female store manager sees
24 a box truck going down the street on a Sunday and she
25 gets suspicious so she goes back to the store and

1 sees Raymond Paine's car there and the box truck is
2 missing. What does Kober tell her to do? Snap a
3 picture.

4 When Jason Morris does it and Carnahan does
5 it, it's a conspiracy. But they don't say anything
6 about Kober and Paine. So he tells the store manager
7 to snap a picture of it. I asked Mr. Kober, did you
8 go look for it? No. We knew Andy Paine's car was
9 there and he was going to have to come back and get
10 it and we addressed it the next day. How did you
11 address it? He was fired. He was fired. Talk about
12 apples to apples.

13 I think we can agree that if someone is
14 transgender they shouldn't be discriminated against,
15 but we can also agree that just because someone is
16 transgender doesn't mean that they get a free pass of
17 the law or a company policy. She took the truck
18 without permission, got caught and was fired, like
19 ninety-six other people. Like Raymond Paine.

20 I can just imagine if employees at Hertz or
21 Budget or U-Haul or Lowe's just started taking
22 vehicles or trucks that when the store closed and on
23 Sundays that nothing would happen to them. Really?
24 Really? Companies are going to allow that?

25 You heard testimony how dangerous the

1 automated lift gates can be and co-workers have to go
2 through training. He says, well, if that's the case,
3 why wouldn't they call the police? Dan Kober, I
4 asked him that. Did you call the police on Raymond
5 Paine? He says no, I'm not going to do that. Yet,
6 if they did call the police, they would be in here
7 saying that, oh, Rent-A-Center retaliated against her
8 by calling the police. You can't win for losing.

9 She says that she only put -- Ms. Kerr says
10 she only put the seven pieces of furniture in the box
11 truck -- the three piece Ashley chocolate vista
12 couch, the headboard, the footboard, and the side
13 rails. Seven pieces. Really?

14 Cash Wiedemann testified, and he wants to
15 discount Cash Wiedemann's testimony, oh, he's a
16 disgruntled former boyfriend. His testimony, you all
17 saw his testimony. Did your breakup or anything
18 affect your testimony? He says no. And that's,
19 ladies and gentlemen, you're the judges of
20 credibility.

21 Mr. Wiedemann said that he saw the truck
22 and it was loaded with other stuff in there. And it
23 only makes sense. If there was all these other
24 Masons, ten to twenty other Masons, then why meet the
25 RAC box truck for seven pieces of furniture. She

1 went and moved her friend and used it like a free
2 U-Haul. That's exactly what happened.

3 The EEOC then tries to point to Holly and
4 Moreland as proof that she was treated differently.
5 And you read the deposition. Mr. Morris explained
6 that, and that is a misrepresentation. At his
7 deposition he explained exactly what happened, that
8 Holly did drop Cannon off, that they were supposed to
9 go do a delivery. And Cannon said, hey, drop me off
10 at the recording studio, you go do the delivery, and
11 then come back and pick me up and no one will know.

12 He drops Cannon off and immediately turns
13 around, goes back to his store manager, and he tells
14 Jason Morris, ask me where Cannon is. And so he
15 says, where's Cannon? He goes, I dropped him off at
16 the recording studio.

17 He was a new employee. He came in. He
18 immediately reported. He shouldn't have been fired.
19 And Cannon was immediately fired, and they want to
20 say Mr. Holly not being fired, you go from here to
21 here that that is proof of transgender
22 discrimination. Ladies and gentlemen, that's not
23 even apples to oranges.

24 Then poor Mr. Moreland, the EEOC that says,
25 I mean, they trotted him in here and they wanted him

1 to say that, yep, I worked another week after RJ
2 Harding was fired. The evidence clearly shows RJ
3 Harding was fired on July 6, 2012. And when he came
4 back and he was shown his last paycheck, he was shown
5 the time card, that really didn't refresh his
6 recollection but then he said, you know, this last
7 paycheck, I remember now that it was more money in
8 there and I went back to the store and asked about
9 more money and he realized it was because his
10 vacation pay had been paid out and it refreshed his
11 recollection.

12 And then Nakia Bell testifies that she
13 looked at the time records and the payroll.
14 Moreland's last day was the same as Harding's,
15 July 6th, 2012. And then finally when I said, I know
16 I'm probably kicking a dead horse, I asked Ms.
17 Reeves, Ms. Reeves, were you there on Holly and
18 Cannon's last day? She said yes. I said was it
19 their last day, and Ms. Reeves says absolutely. So
20 either she's coming in here and lying to all of you
21 or there's no doubt, Moreland's last day.

22 So then they say, and because of theatrics
23 yesterday that Mr. Moreland had to change his
24 testimony, then they say, well, but he was allowed to
25 work the rest of the day. Of course he was. Dan

1 Kober said if you fire two people at the same time,
2 it's going to leave the store short staffed. Harding
3 was fired. Moreland had given his two week notice.
4 That was his last day, so they let him work out the
5 remainder of the day, and they say that is proof of
6 transgender discrimination.

7 Then say, well, it's RAC shifting stories.
8 Well, ladies and gentlemen, there's an old saying,
9 punching in the dark. For two years the EEOC -- look
10 at the charge, what they're saying. And Ms. Kerr
11 testified that they drafted the charge and sent it to
12 her. The EEOC drafted it. Why didn't they tell
13 Rent-A-Center, you know what, this is what she's
14 claiming. She's claiming that the store manager gave
15 her the keys or whatever different version that day,
16 but put Rent-A-Center on notice. Let them know what
17 the allegations are.

18 From that time, from the time of the
19 charge, and it's in evidence, until they filed their
20 public lawsuit in July of 2016, they never once said,
21 hey, she had permission. And so they say, well,
22 Jason Morris says he knew she had been evicted. He's
23 not a lawyer. His mom's a lawyer. But did he go and
24 see it in any papers or anything?

25 I asked him, do you still believe to this

1 day, when he was testifying, that she was using a
2 truck to move her personal stuff that day, and he
3 said absolutely. And you heard Mr. Piekarski. Mr.
4 Piekarski says she told me she was leaving at the end
5 of July. But they want to discount Mr. Piekarski.

6 Look at Exhibit 6, the EEOC charge. It's
7 dated November 2014. Look what they told
8 Rent-A-Center. This is what her complaint is. And
9 the EEOC typed it up. They purposely, purposely, did
10 not put her allegation in there about having
11 permission to do any delivery on a Sunday. Read that
12 charge, and then look at the lawsuit two years later
13 that they filed.

14 Then the EEOC -- he made a cheap shot
15 saying the EEOC kept Mr. Morris here as the company
16 rep all week, as the face, and they want to tell you
17 that Mr. Carnahan picked him as the store manager,
18 meaning that Mr. Carnahan was looking for someone
19 that was malleable, that he could get to fire
20 someone. Really? Really? Jason Morris?

21 Jason Morris set her up? A young man
22 raised by a single mom who decided to go to law
23 school later in life with two young boys that lived
24 in, during that law school, lived in Orchard Downs
25 graduate housing at the local university down the

1 road.

2 And Mr. Morris described during those
3 formative years, who were your friends? And he said
4 my friends were from all over. And I said all over
5 here? And he says no, all over the world. Different
6 countries, different backgrounds, different cultures.
7 While his mom was attending law school, those were
8 his friends growing up. And the EEOC looks you in
9 the eye and says that young man raised by her is the
10 type of person who would discriminate against someone
11 because they're transgender.

12 Described his openly gay brother as his
13 best friend and he said I would not want my brother
14 treated differently. That's why I would not do this.
15 He wouldn't want his brother treated differently.
16 The way he was growing up, and I said how were you
17 growing up, and he said my mom raised me up. That's
18 a good young man.

19 By the way, Mr. Carnahan was asked, when
20 Jason Morris was your store manager before Megan Kerr
21 was fired, did you know that Jason Morris' mother was
22 a local attorney? He said yes. They want you to
23 believe that Carnahan was telling Morris fire her
24 because she's transgender and, really, he's never
25 going to tell his mom the lawyer? Really?

1 Then we go to Jason Carnahan. They said,
2 oh, they didn't talk to him much. Jason Carnahan, a
3 man who worked his way up to become a DM, responsible
4 for the district, he gave Kasper two PIPs, a chance
5 to improve. They said, oh, that last one -- they
6 like to use percentages instead of saying in three
7 days you have to increase your sales by eight sales
8 in three days, the Thursday, Friday, Saturday.

9 You heard from Kober, a good store manager
10 should be able to do that in one day. So they like
11 to use the percentages. He signed it. He agreed to
12 it. He didn't say this is impossible, boss. He
13 signed it. And there's no question that Jason
14 Carnahan gave Kasper chance after chance trying to
15 increase sales in the store. After Black Friday,
16 Kasper is fired.

17 Now, at this time, remember, I call it
18 their nine plus two plus five theory, the EEOC's
19 theory. For nine months, the mastermind over there,
20 Mr. Carnahan, wants to get rid of her. So for nine
21 months he's telling Kasper roughly every week to fire
22 her. When he won't, he gets rid of Kasper, according
23 to the EEOC, as their theory goes.

24 So this is a missed opportunity. What
25 could Mr. Carnahan have done at this point? He could

1 have said to Dave Leavengood, you know, boss -- and
2 there's testimony on this. You know, boss, I want to
3 get rid of the whole sales team. Megan Kerr was the
4 assistant manager of sales at the time. You know,
5 the store is at the bottom of the district, bottom of
6 the region. I want to go ahead and replace the store
7 manager and the assistant manager of sales and bring
8 in a new sales team to get this store turned away.
9 Never once.

10 Never once did Carnahan suggest that. What
11 does he do after he fires Kasper? And here, ladies
12 and gentlemen, this is where their case literally --
13 it doesn't go off the tracks. It goes off the cliff.
14 They're telling you that for sixteen months he was
15 looking for every way to get rid of her.

16 After Kasper is fired, he does just the
17 opposite of what the EEOC is accusing him of. And
18 being accused of discriminating against someone,
19 being a discriminator, is one of the worst things
20 someone can be accused of. At least if you're
21 accused of being a thief -- remember the old Les
22 Miserables, Jean Valjean stole a loaf of bread for
23 his starving sister, you can at least make that
24 sympathetic.

25 If you're accused of discrimination, of

1 being a bigot, there is no sympathy there. And
2 that's what they're accusing, it rolls off their
3 tongue so easily, that for sixteen months you were
4 trying to get her fired because you are a bigot. You
5 wanted her gone because she was transgender. And
6 where does it go off not the tracks but the cliff?

7 As soon as Kasper is fired, Carnahan puts
8 Megan Kerr in charge of that store, just the very
9 opposite of what Mr. Mulaire and Mr. Shultz -- and
10 they can't explain that. What would that -- why
11 would he put Ms. Kerr in charge? And when I asked
12 her that, she admitted it on the stand.

13 So from the beginning of December until
14 February, now another two months go by, so nine, ten,
15 eleven, trying to get rid of her for nine months,
16 turns around in midair, mind you, puts her in charge
17 of running the store, and yet they're saying, yes,
18 Jason Carnahan would do anything to get rid of her
19 because she's transgender.

20 You heard, Ms. Kerr even admitted, I said
21 what days did he switch you off? To Wednesdays.
22 What days do the store managers have off?
23 Wednesdays. Elena Reeves testified that when Jason
24 Carnahan would call the store who would he talk to.
25 Ms. Kerr even admitted it. Yes, when he would call

1 he would talk with me because she was put in charge.
2 That defies logic in this case. How do you explain
3 that? How can the EEOC explain that Jason Carnahan
4 wanted him gone for sixteen -- wanted Megan Kerr gone
5 for sixteen months, and then puts Megan Kerr in
6 charge during that two month period? How can they
7 explain that? They can't.

8 And Elena backs him up on that. Elena
9 says, and again unless you believe Elena Reeves just
10 came in and lied that, yeah, when Carnahan would call
11 in that's who he would talk to, Megan Kerr. He would
12 talk to her. Why? Because she was in charge.

13 Then Morris is hired in February of 2014.
14 He's hired because he applied for the job. The EEOC
15 has zero evidence, but they want you to believe, they
16 infer, they drop these little pellets of accusations
17 against people. Oh, well, he's the one who approved
18 hiring Mr. Morris, meaning he found someone who would
19 play ball and get rid of her after putting her in
20 charge for two months. So, yeah, nine months plus
21 two. We're at eleven months.

22 Now, February through July, that's another
23 five months, so what they want you to believe is for
24 sixteen months Jason Carnahan had nothing else on his
25 mind but to get rid of Megan Kerr because she was

1 transgender. And I know you all know this. As soon
2 as Morris took over, he hit the ground running.

3 They won store of the month in February.
4 Store of the month in April. You saw the plaques.
5 And I asked Jason Morris and Carnahan was asked, who
6 won those? We did, the team. Was he part of the
7 team? Yeah, he was leading the team. But was Elena
8 Reeves part of the team? Sure. Was Alex Kasapov
9 part of the team? Sure. Was Megan Kerr part of the
10 team? And they said absolutely.

11 Did you value your team for going from the
12 bottom of the barrel to the top of the district? Why
13 would Jason Carnahan want her out? Talk about a
14 shifting theory. They first said, well, it's because
15 customers were leaving. Well, now they had to change
16 their story because they went from the bottom of the
17 store district to the top of the district. So now
18 that they can't use that they say, well, it's just
19 because he's a bigot. Ladies and gentlemen, that is
20 a strong word to accuse someone of. That is a dark,
21 dark cloud that can hang over people's heads when you
22 falsely accuse someone of bigotry.

23 Brock testified, Jason Morris treated
24 everyone equally. Oh, the bad things were happening.
25 He went and got a tattoo from Ms. Kerr, a bear next

1 to his daughter's name. Really? I mean, that
2 environment that people were treating her so bad?
3 And I said when you were alone with her during that
4 time period, did she ever mention anything that she
5 was being treated unfairly or anything? Nothing.

6 And, ladies and gentlemen, I think the
7 saddest, saddest part of this case is what Ms. Kerr
8 did to Elena Reeves. That is the saddest part of
9 this case. Elena Reeves, who was a confidante of
10 hers, who, the evidence would show, one of the first
11 people Jason Kerr, being presented as a male during a
12 delivery, told his friend that he at that time, he
13 told his friend, Elena Reeves, I'm thinking of
14 transitioning.

15 And what was her answer? Oh, I'm glad.
16 Why were you glad, Elena? Because Megan/Jason found
17 himself. I was happy for her. Elena even referred
18 to "her," even though it was Jason Kerr at the time.
19 Said I was happy for her. She found herself. She
20 found herself. And I said did you keep your friend's
21 confidence in confidence? And Elena says absolutely.
22 And there's no evidence that Elena told anybody prior
23 to Megan Kerr. She let Megan Kerr tell when Megan
24 Kerr was ready. And when Megan Kerr was ready to
25 tell people, she waited. And she was a confidante.

1 But that wasn't all that she did. I said
2 were you excited when she told you this? Oh,
3 absolutely. Why? Because I was excited that she
4 found herself. I was happy for her. I said, well,
5 what about when she opened the tattoo shop, were you
6 invited? She said yes. I said, did you go? She
7 goes yes. Why did you go Ms. Reeves? Because I was
8 excited for my friend. My friend was excited to open
9 this tattoo shop and I went to support her friend.
10 She's thinking that she's talking to a friend. She
11 thinks she's being supportive of a friend. She
12 thinks she's keeping the confidence of a friend.

13 When Ms. Reeves' friend, Ms. Keer, needed
14 help for transportation to and from work, Ms. Reeves
15 stepped up to the plate once again as a friend. What
16 did she do? She sold a car, a red Mitsubishi
17 hatchback. Gave her the keys before she even took
18 any money to help her friend.

19 I said why did you do that? Because my
20 friend needed help. And how does Ms. Kerr repay a
21 friend like that? By claiming that Brock Duncan-Fox
22 used the truck, the very same truck that she was
23 fired for, the very weekend before to move his
24 belongings into Elena Reeves' house. Both Brock and
25 Elena deny that. They denied they ever even dated.

1 Folks, John Travolta in a movie once in a
2 Civil Action played a lawyer and he said if lawyers
3 didn't care about their clients they wouldn't keep us
4 up at night.

5 Ms. Kerr goes and drags her friend and
6 makes up untruths about her and untruths about Brock
7 Duncan-Fox. Someone who supported her business to go
8 get a tattoo, and she throws them literally under
9 that -- it's not a bus. She threw them under the RAC
10 box truck.

11 Where is any of this? Look at Exhibit 15.
12 That is Ms. Kerr's own handwritten intake
13 questionnaire. Again, he said was a couple of weeks.
14 Take a look at it. It's November. She signs it at
15 the end of September, but the EEOC doesn't receive it
16 until November. It wasn't a couple of weeks. It's
17 four months later.

18 Where is any of that? Where are any of
19 those allegations? Where is it that Jason Morris was
20 treating her like the plague, referring to her as
21 "it." That Brock Duncan-Fox used the truck, the very
22 same truck, she got fired coincidentally, the Sunday
23 before. Look in those pages in her handwritten
24 notes, and I will promise you you will not find it
25 anywhere. And hopefully you don't need the

1 magnifying glass that I needed to read it.

2 Ladies and gentlemen, it's not there. What
3 is there, he talks about the DAP missing. They have
4 never explained, nor will they come up here after I'm
5 finished, they're not going to be able to explain
6 where the "see attached" is on the intake
7 questionnaire. They have never in four years
8 explained where that "see attached" is, where she
9 puts in her own handwriting see attached, see
10 attached.

11 And you heard her testimony. I said in
12 your deposition you said you mailed it in, along with
13 your EEOC intake questionnaire. And, ladies and
14 gentlemen, I submit everybody in this courtroom knows
15 why that "see attachment," you will never see it and
16 we've never seen it. It's yet some other version.

17 And maybe it's the truth version that, you
18 know what, like she told the unemployment commission,
19 when she electronically signed it, not when some
20 adjudicator was doing it but when she filled it out
21 herself, you know what, worse that's going to happen
22 is a verbal counseling. And I submit that "see
23 attachment," what it says is I took the truck without
24 permission. I figured the most that would happen is
25 I'd get a verbal counseling. I got fired instead.

1 And that's what's in that "see attachment."
2 We've never seen it, and I promise you you're never
3 going to see it. And they've never explained it to
4 this day where it is. If the government is going to
5 come up and put a cloud of bigotry over someone and
6 accuse them, then at least have your house in order.

7 On the intake questionnaire, ladies and
8 gentlemen, I had Ms. Kerr on the stand, and I said,
9 Ms. Kerr, isn't it true you were ready to leave and
10 move up with your now husband, Cain Bana? Oh,
11 absolutely not. I said, well, were you going around
12 between July and the end of September and referring
13 to Cain Bana as your spouse? No. She looked you
14 straight in the eye from that witness chair under
15 oath and said no.

16 And then I pulled up the intake
17 questionnaire, which she signed two months within her
18 being fired. She must not have mailed it in because
19 the EEOC didn't receive it until November. But on
20 the line, you'll see it, it says emergency contact or
21 list somebody that we can contact you through, she
22 lists Cain Bana. Relationship, spouse. And I said,
23 ma'am, isn't this what I asked you in front of the
24 ladies and gentlemen of the jury just five minutes
25 ago? And you all recall what her answer was. Spouse

1 can be many things. It was untrue. It was untrue
2 under oath as she looked you all in the eye.

3 I said isn't it true you were planning on
4 leaving during that period, meaning February to July?
5 No. And I asked her again, I continue to repeat
6 myself, but I asked her again and said, are you sure?
7 You weren't planning on moving between February and
8 July? She said no. I said so that would be
9 incorrect, and she said yes. She looked you all in
10 the eye from the witness stand under oath and said
11 yes.

12 Boom, I pull up her e-mails. She applied
13 in February for a job. I believe the first one was a
14 legal assistant. And then she applied in April again
15 as a -- I think it was an estimator or project
16 coordinator. Again, she told you untruths from the
17 stand. He wants to call it distractions. I call it
18 you need to know whether someone is telling you the
19 truth or not. She was looking to move, and I said if
20 you had gotten one of those jobs, we'd never even be
21 here. You were looking to leave to be with Cain
22 Bana.

23 And then I said, isn't it true, ma'am -- he
24 said why would anyone risk a nine year employment.
25 And I said, well, isn't it true because you thought

1 the worst would happen if you get verbal counsel?
2 No, that's not true. So then I show her the
3 unemployment forms that she actually electronically
4 signed. Not that someone filled out, that she filled
5 out.

6 And the second one, the answers change, was
7 there a policy, yes or no. Was there a policy? Yes.
8 She changes those answers. But then the second one,
9 what did you expect would happen if you got caught or
10 the result of the infraction, and she puts verbal
11 counsel in her own writing. That's what she thought
12 was going to happen.

13 That's why Mr. Mulaire, to answer your
14 question, is why would someone risk a nine year
15 career? She didn't think she was risking anything.
16 Plus, she was already looking. She sent out for two
17 jobs. How many other places was she looking for? We
18 only know of two. Different answers. Same form.
19 Same question.

20 Frank Piekarski told you that at the end of
21 June or beginning of July, Megan told him I'm going
22 to be moving out in July. They want to discount
23 that. You folks are the judge of credibility of a
24 witness. Either you're going to believe
25 Mr. Piekarski when he said yep, she told me that. I

1 know she told me either the end of June or beginning
2 of July that she was going to be moving out in July.

3 Mary Ann Kelly, on the video, testified she
4 just moved out. I had no notice whatsoever. They
5 say Jennifer McCallister proves that she wasn't using
6 the truck. Ms. McCallister was the accountant down
7 the road. She saw a pickup or some flatbed being
8 used during the week when she was there. I think it
9 was the shortest cross I've done in my career. I
10 said, Ms. McCallister, were you there the Sunday
11 before to see if the RAC truck was being used? No,
12 sir. Were you there the Sunday after you saw that to
13 see if the truck was being used? No, sir.

14 Then what happens after she's fired? He
15 says there's no legal requirements to call. We agree
16 with that, but we know that she called, and again
17 they want to discount this, that, oh, well, you
18 wouldn't call the Solution Center if you're going to
19 complain about discrimination.

20 I asked her in deposition, did you ever
21 talk to anybody live? No. Then we find these
22 records and find out three days after, three days
23 after she's fired, you saw Maria Clatterbuch, that
24 three days afterwards she calls to get an expense
25 check and nothing is mentioned about a setup. He

1 says, oh, she told Cash Wiedemann she was set up.

2 So you have someone from Rent-A-Center who
3 works for Rent-A-Center. Who cares what it's called.
4 Solution Center, facilities, whatever. You have a
5 live person on the phone. I need to speak to
6 somebody. I was set up. Never mentioned it.

7 And I asked Ms. Kerr, did you mention it?
8 Nope, wouldn't be appropriate. Why not?

9 Listen, while I have you on the phone, can
10 you transfer me to HR? Transfer me to somebody.
11 Because she hadn't cooked up the story yet in three
12 days. That's why she never mentioned it.

13 And not only in three days did she talk to
14 it, but a week after that she called back to the
15 Solution Center and this time it was to reset her ADP
16 password so she could get a copy of her W-2. Or W-9.
17 Or W-2.

18 And a week later. So a week later she's
19 talking to two different live people that work for
20 Rent-A-Center, and she never says transfer me to HR.
21 Let me talk to you while I have you on the phone.

22 And you heard Maria Clatterbuch. You know,
23 I probably asked her too many times, but she said
24 absolutely. If she would have told me that, I would
25 have documented it and I would have transferred the

1 call to HR.

2 And there is nothing in those documents
3 about any of this moving homeless people or Masons or
4 Amber Shumate or anything else. Or if you want to
5 simplify it to what Mr. Mulaire said, there is
6 nothing in there saying my store manager gave me
7 authorization to do whatever on Sunday to take the
8 truck.

9 But I can tell you one thing that you're
10 not going to find in that jury charge, it's not our
11 burden to show what she was doing with that truck on
12 July 20th. I submit the evidence shows she was
13 moving her stuff, whether it was from her residence
14 or from the tattoo shop, she was moving her stuff.
15 She was helping her friend Amber out.

16 And, who knows, whether it was Amber if you
17 get people to help move you and I'll get the truck,
18 you guys help move us. And I think the reason she's
19 talking about a mini storage unit is she's conflating
20 her personal move on that Sunday where she was
21 getting stuff out of mini storage with the Amber
22 Shumate move because no one can explain that mini
23 storage story. And she still is sticking by the mini
24 storage. And I suggest she's conflating it.

25 On that Sunday she went to help Amber

1 Shumate. And did they go and help her? Who knows,
2 but she's conflating those stories. She went to the
3 mini storage unit and got her stuff out that Sunday.
4 And then I asked her again when she was on the stand,
5 I said, was Cain Bana there. She looked you right in
6 the eye and said no. So then I showed her an e-mail
7 that she sent to the EEOC and it said Cain Bana was
8 there. Contact him. And her explanation to you was,
9 oh, you asked me if Cain Bana was at the store.
10 That's not what I asked. I asked was Cain Bana
11 there, and she knew what I meant.

12 And after and during her employment, she
13 never did contact her RD, co-worker relations hotline
14 or Global Compliance. Why not? If all these bad
15 things were truly happening, why wouldn't you call
16 somebody internally?

17 Her only complaint, and she admitted this
18 on the stand, when she talked to the EEOC
19 investigator, Mayfield, her only complaint during her
20 entire tenure was that Russ Kasper, if customers
21 would say, hey, did she used to be a he, Russ Kasper
22 would say yes. So who did she go and complain to?
23 The very person the EEOC is saying is the mastermind
24 of the plot.

25 And what did he do? Once again, here's

1 where their case goes off the tracks but off the
2 cliff. The guy who wants to get rid of her turns
3 around, immediately contacts Dave Leavengood, and you
4 heard Dave Leavengood by video, the regional
5 director, that, yeah, Jason Carnahan let me know
6 about it and he talked to Russ Kasper.

7 And, according to Ms. Kerr's own testimony,
8 Carnahan, the mastermind of this alleged sixteen
9 month plot, told Kasper that's her business. Knock
10 it off. And, more importantly, Ms. Kerr admitted to
11 Investigator Mayfield at the EEOC, the EEOC
12 investigator, that was her only complaint. That
13 after she complained to Carnahan, Kasper stopped. He
14 didn't make any more comments, and that was her only
15 complaint. Plain and simple, ladies and gentlemen.

16 And, finally -- I'm just about wrapping
17 up -- Ms. Kerr testified and the EEOC tried to
18 rehabilitate her, but it just didn't happen. I said,
19 Ms. Kerr, you say you do a lot of these Sunday
20 deliveries and you volunteer, right? Yes. And you
21 wouldn't get paid, right? And she said yeah. I
22 said, you have to say that because otherwise there
23 would be time records of these Sundays, and she said
24 yeah, you're right.

25 And I said one of the Sunday deliveries

1 you're saying you did was in the summer of 2014, a
2 delivery to a fair. I think you may all remember
3 this question. She was on the stand, and I said, Ms.
4 Kerr, can you explain to the jury this. If the
5 EEOC's theory is that the best plot that Mr. Carnahan
6 and Mr. Morris could come up with is to give you
7 authorization to do a delivery on Sunday, give you
8 the keys on Saturday, do a delivery on Sunday, if you
9 did a summer of 2014 delivery to the fair, obviously
10 that would have had to be before July.

11 The podium was turned this way. I said,
12 can you explain to the ladies and gentlemen, then, if
13 that's the plot to get rid of you, to give you the
14 keys on Saturday to let you go do a Sunday delivery,
15 why didn't they fire you when you did this alleged
16 summer of 2014 delivery to the fair, and she could
17 not answer that.

18 Mr. Shultz later said -- I withdrew the
19 question. He was wrong about that. That's the
20 question I withdrew because she couldn't answer it.
21 She sat up there, and I just said question withdrawn.
22 How do you answer that? If they wanted her gone, why
23 wait till July? By her own admission, she says she
24 did a Sunday delivery in the summer of 2014. If
25 that's the plot, then fire her then.

1 I'll submit to you there was no delivery in
2 the summer of 2014 and there were no other Sunday
3 deliveries that she did. But that's her story and
4 testimony. So it doesn't make any sense.

5 Ladies and gentlemen, this case boils down
6 to one question. Question Number 1, that's what this
7 case boils down to, I submit to you. Was Megan
8 Kerr's transgender status a motivating factor in
9 Rent-A-Center's decision to discharge her? Answer,
10 yes or no.

11 Ladies and gentlemen, Rent-A-Center submits
12 that the overwhelming evidence is no. The answer to
13 that question is a resounding no. How do you explain
14 ninety-six other people -- they haven't even touched
15 that -- ninety-six other people that were terminated
16 for the same thing, Raymond Paine, and all they can
17 point to is Holly, a guy who self reported, and Greg
18 Cannon. I mean, Cannon was fired. And Mr. Moreland,
19 who they try to say was allowed to work an extra week
20 but clearly everyone in this courtroom knows, I
21 submit, that his last day was the same as Harding's.
22 They let him work out the rest of the day.

23 Ladies and gentlemen, the answer to
24 Question No. 1 is no. And I would ask you to answer
25 no based on the evidence, but along with that answer

1 no, based on the evidence, lift that cloud of
2 bigotry, lift that cloud of bigotry that's been
3 hanging over their heads for four years. Lift the
4 cloud of being a liar that's been hanging over
5 Ms. Reeves' head for four years. Clear their names.
6 Clear their names. Thank you, ladies and gentlemen,
7 for your time.

8 THE COURT: Mr. Mulaire, rebuttal?

9 MR. MULAIRE: Yes, your Honor. Good
10 morning again. So Mr. Trusevich said that I haven't
11 touched a couple of things. I'm here to touch a
12 couple of things now.

13 First of all, they talk about the time that
14 Ms. Kerr was the interim store manager in between
15 Morris and, excuse me, in between Kasper and Morris.
16 Let's think about that for a moment. Remember, the
17 Rent-A-Center store, this is not like a store with
18 thirty employees in it. There are four people in the
19 store. There's the store manager, there's the two
20 assistant managers, and there's an account
21 representative.

22 So the store manager is fired. There's
23 only two managers in the store to choose from to then
24 run the store. That would be Ms. Reeves and there
25 would be Ms. Kerr. Mr. Morris told you himself

1 that -- and, actually, I apologize. I think it was
2 Mr. Morris. Either Mr. Morris or Mr. Carnahan said
3 Ms. Reeves had never even been trained on the sales
4 position. That's their explanation for the reason
5 why the two of them were switched, remember?

6 So if you have one employee in the store,
7 Ms. Kerr, who Mr. Morris had said is the best person
8 in the store and she is trained on both things, then
9 who else are you going to put in charge of the store?
10 The customer account representative? He's not even a
11 manager. So that's kind of a weak explanation. They
12 needed somebody to be in charge, and she was the best
13 person available.

14 Now, related to that, by the way, I want to
15 show you something in their position statement. We
16 talk about how, you know, as soon as Mr. Morris
17 arrived at the store, as soon as Mr. Morris arrived
18 in the store in February the store started winning
19 awards and you saw the plaques waved around.

20 Well, let's look at when Mr. Morris
21 started. So again this is Exhibit 1. This is the
22 company's position statement, their statement to the
23 EEOC. And, according to this, company says that
24 Jason Morris started February 13th. There's only
25 twenty-eight days in February. So he was only on the

1 job for about two weeks in February. So if the store
2 is winning an award in February for sales, the person
3 who's responsible for that is probably the person who
4 just got finished being in charge of the store for
5 two months.

6 They didn't give the plaque to Ms. Kerr,
7 they gave the plaque to Mr. Morris, though. So
8 there's really five months between when Mr. Morris
9 arrives and when Ms. Kerr is discharged. That's the
10 period you should focus on.

11 Now, couple of other points quickly. First
12 of all, as I said earlier, and I won't belabor the
13 point, they want to talk a lot about people who
14 aren't Jason Carnahan. There was a very long portion
15 of Mr. Trusevich's closing just now that was all
16 about Elena Reeves.

17 We have no beef with Elena Reeves. I'm
18 sure she's a good person. She's in a little bit of a
19 difficult position. She still works there. But
20 Elena Reeves didn't fire Ms. Kerr. We're not
21 accusing her of anything. So it's a little bit of a
22 straw man when they get up here and say how wonderful
23 Elena Reeves is. Sure, no complaints. This case
24 isn't about Elena Reeves.

25 Now, remember you've been instructed that

1 what the lawyers say is not evidence, and that's
2 absolutely true. So you should be remembering what
3 the testimony was and you should look at what's in
4 the exhibits. And if what I'm saying is consistent
5 with that, then that's fine. If what Mr. Trusevich
6 is saying is consistent with that that's fine, but
7 just because a lawyer says something doesn't make it
8 true.

9 Now, they said this in their opening and
10 they said this again at the closing that the two
11 items of furniture that Ms. Shumate purchased, that
12 Ms. Kerr gave her a discount. You may remember that
13 from the opening and Mr. Trusevich just mentioned
14 that again. There was no evidence of that
15 whatsoever. It was used furniture, so it cost less
16 than new furniture. That's the thing that was
17 testified about. So when they throw this out there,
18 no, Ms. Kerr gave her a discount. No witness said
19 that. There's no document that says that. That's
20 just something that they're putting out there hoping
21 you won't notice there's no evidence of it.

22 I'm not going to get very far into there's
23 this argument about Amber Shumate's name and the fact
24 that her nickname Amy appeared on the sales receipt.
25 Who cares. I mean, if you walk into a store and you

1 give -- you walk in and go I'm Amy and you give
2 someone your name as Amy, I really don't understand
3 what that proves. Shumate is her married name now.
4 Wilkerson was her name then because she wasn't
5 married at the time, so it's really not clear how the
6 fact that Wilkerson appeared on that record is
7 somehow proof of anything either. So I think that's
8 all I'll say about that.

9 Now, they say how unfair it was for us to
10 say that the daily activity planner was thrown out
11 and they had no idea until years later that that, you
12 know, there's going to be anything involving the
13 daily activity planner that might be at issue.

14 Remember, their explanation for why Ms.
15 Kerr was fired is misuse of a delivery vehicle. If
16 you're firing somebody for misuse of a delivery
17 vehicle, wouldn't you save your delivery records? So
18 it's not that they need to be told by somebody else,
19 hey, maybe this would be a good idea.

20 But even if they were, remember, we didn't
21 put in any evidence about this unemployment
22 application that Ms. Kerr made, but they did, so you
23 have some evidence about it thanks to them.

24 And we know that as soon as August of 2014
25 there was an application for unemployment insurance.

1 And you can see that, I mean, this stuff was raised
2 in there. So they already knew in August, and that
3 would have been the same daily activity planner,
4 July, August, September, that's all one quarter, so
5 midway through that same DAP they would already know,
6 okay, she's disputing the circumstances of her
7 discharge. So they knew before they threw that out
8 that there was a dispute about that but they threw it
9 out anyway. We didn't need to tell them that.

10 I'm not going to talk very long about the
11 Illinois Department of Employment Security forms.
12 Mr. Trusevich referred a couple of times not to the
13 adjudication summary, which is what I put on the
14 screen earlier, but you'll see in that exhibit there
15 are two other forms, complaint forms, which Ms. Kerr
16 did fill out.

17 And you should look at those for
18 yourselves. I would submit to you that they're not
19 inconsistent with the gist of what Ms. Kerr has been
20 saying all along. There's a little bit of spin
21 that's been put on them. You should look at them for
22 yourselves. They're not different from what we're
23 claiming Ms. Kerr has said.

24 There was also -- this is another thing
25 where you need to focus on what the evidence is and

1 not what lawyers say. We heard repeatedly from the
2 other side that Mr. Kasper's claims that roughly
3 every week he was being called by Mr. Carnahan. You
4 may remember, Mr. Kasper's testimony was that it was
5 about every month or maybe every six weeks. So
6 that's kind of a little exaggeration. It's not from
7 evidence.

8 Now, our complaint, to be fair, the
9 complaint, that's the thing that the EEOC filed in
10 2016, that says roughly every week but, again, the
11 EEOC is not a witness here. The complaint is not
12 evidence. It's an exhibit, but the complaint is just
13 an accusation. Mr. Kasper's testimony is the
14 evidence. You should listen to the evidence.

15 And with respect to Mr. Kasper's
16 performance and improvement plans, which I believe
17 were just characterized as a chance to improve, yeah,
18 I think it's fair to look at the percentage increase
19 that, you know, Mr. Kasper was being asked to do for
20 sales because he was being asked to increase sales
21 dramatically in as little as eleven or three days.

22 And, again, it only became an issue with
23 his sales in the store after he started objecting to
24 what Mr. Carnahan is asking him to do. So the
25 circumstances of that are suspicious.

1 Now, we also heard again this anecdote that
2 when Mr. Kasper was about to be fired or when
3 Mr. Carnahan arrived on the day that Mr. Kasper was
4 going to be fired that Mr. Kasper was trembling. And
5 all I'll say is you saw Mr. Kasper. Does he look
6 like the sort of individual who's likely to tremble
7 about anything? So I think the picture that's being
8 painted there is a little bit distorted.

9 The ninety-six people. So Ms. Bell
10 conveniently came and told us that, oh, over some
11 period of years we found ninety-six people, out of
12 the twenty thousand people they employ at any one
13 time, who were also fired under this policy. Well,
14 first of all, out of twenty thousand people, that's
15 not a whole lot.

16 Remember, Mr. Carnahan himself said he had
17 never written anybody up for violating this personal
18 vehicle use policy in the eighteen years that he had
19 been there up until Ms. Kerr. So when they say
20 ninety-six, it sounds like an impressive number at
21 first but that's out of a gigantic company over a
22 period of years.

23 It's also true, we have no information
24 about, you know, what other Hollys and Morelands are
25 there out there from the rest of the country. That

1 ninety-six is apparently a nationwide figure. We
2 know about Holly and Moreland from here in Central
3 Illinois, but how many people are out there who
4 weren't fired or given a verbal warning like Holly.
5 We just don't know.

6 And an important thing to note, we don't
7 have to prove that they never fire people for this.
8 That's not our claim. The claim is it's not an
9 automatic termination the way they set it out. It's
10 not no exceptions. There are other -- the company
11 takes things into consideration.

12 So to the extent that their explanation is
13 there are no exceptions, the reason we point to
14 Moreland and Holly is to show that that's not true,
15 not to show nobody ever gets fired for this. We
16 don't have to do that. Ultimately the question is
17 why was Ms. Kerr fired, and we're just rebutting the
18 explanation that they've given.

19 Now, they also say that Mr. Carnahan could
20 have fired the whole store. I'm not really sure how
21 that would have been a better plan because if you're
22 trying to do something quietly, probably firing a
23 large group of people wouldn't be the way to go about
24 that. But, you know, again, we don't need to prove
25 what Mr. Trusevich just said, that Mr. Carnahan would

1 do anything to get rid of Ms. Kerr. We don't need to
2 show that. We just need to show that he wanted her
3 gone.

4 There was a comment about whether Ms. Kerr
5 referred to her now spouse as a spouse in September
6 when she wasn't a spouse. There was all that. I
7 want to -- well, I won't show you, but I just want to
8 remind you of one set of jury instructions that you
9 were given, and that is that you're supposed to
10 distinguish between an important fact and unimportant
11 details.

12 So you've been told that when there is some
13 kind of difference like that you should consider
14 whether it was simply an innocent error or an
15 intentional falsehood, and whether it concerns an
16 important fact or an unimportant detail. I would
17 submit to you that a lot of what you've been hearing
18 about are unimportant details.

19 Is Ms. Kerr wrong about where the furniture
20 was picked up on that Sunday? Was it a mini storage
21 as opposed to Ms. Shumate's mother-in-law's house?
22 Maybe she remembered that wrong. Okay. That's not
23 the question in this case. The question isn't where
24 was the furniture picked up from. The question is
25 why was she fired and did Jason Morris give her

1 permission for that delivery, wherever it started
2 that day.

3 So that's where I would ask that you please
4 distinguish between what are the details that
5 actually matter for answering questions on the
6 verdict form and what are other things that, yeah,
7 maybe Ms. Kerr got them wrong, maybe another witness
8 got them wrong, but they're not details that actually
9 matter for why we're here.

10 Ms. Kerr may not be a perfect person.
11 Maybe her memory is not very good about that. We
12 don't have to prove that she's a perfect person. The
13 law protects everybody, not just perfect people. Not
14 just people with perfect memories.

15 With respect to Ms. McCallister, the only
16 real thing they had to say with respect to that was,
17 oh, well, Ms. McCallister said that, you know, she
18 wouldn't have been there the Sunday before and the
19 Sunday after. And I guess the suggestion there is
20 that now they're saying, well, maybe Ms. Kerr used
21 the vehicle the Sunday after July 20th or the Sunday
22 before July 20th, which is yet a new explanation.
23 There's zero evidence of that whatsoever.

24 Remember, their claim in this case or their
25 defense in this case is that Ms. Kerr was using it on

1 July 20th for personal reasons. So I don't know if
2 this is an effort to change the story now, but there
3 is zero evidence that anything happened the weekend
4 before or the weekend after. And for that matter the
5 weekend after she'd been fired, so I doubt that she
6 even had access to the Rent-A-Center truck. So that,
7 I would submit to you, is a fairly weak argument.

8 You know, and there were a lot of
9 assertions made about what was and wasn't in the
10 charge of discrimination. That's the administrative
11 charge that is an exhibit and the intake
12 questionnaire. And all I would say there is the
13 evidence that you're supposed to decide the case on
14 is the evidence that you hear about at trial this
15 week.

16 As I said before, there's a lot of stuff
17 that comes before. We have not tried to explain to
18 you all the procedures of what happens during an EEOC
19 investigation, what are you supposed to put in the
20 charge, what are you supposed to put in the intake
21 questionnaire. There's no evidence about any of
22 that. You've been asked to make some assumptions
23 about should everything, every last detail, be in an
24 intake questionnaire, but those are just assumptions
25 that you're being asked to make. The evidence in

1 this case is what was presented to you this week. We
2 haven't told you anything about how the intake
3 questionnaires work, what you're supposed to put in
4 the charge, any of that, so you shouldn't put much
5 weight on that. You should put weight on the
6 evidence.

7 So in conclusion, at the end of the day,
8 Ms. Kerr, again, was a good employee. There's no
9 dispute about that. And she worked there for almost
10 a decade, and the evidence shows that they wanted to
11 get rid of her because of who she is. If Ms. Kerr
12 wasn't transgender, she wouldn't have been fired and
13 we wouldn't be here. Rent-A-Center broke the rules
14 and we ask that you hold them accountable.

15 So we thank you again for your time and
16 attention, and ask that you return a verdict in favor
17 of the EEOC. Thank you.

18 THE COURT: All right. Thank you
19 both. Ladies and gentlemen of the jury, you will now
20 retire to the jury room to deliberate. You must
21 first select a presiding juror. The presiding juror
22 will preside over your deliberations and will be your
23 representative here in court. The forms of verdict
24 have been prepared for you and you have those with
25 you.

1 When you have reached a unanimous agreement
2 on the verdict, your presiding juror will fill in and
3 date the appropriate form and all of you will sign
4 it. Even though you have eight copies of the
5 instructions, you only need to complete and sign one
6 form. Madam clerk, will you please swear in our
7 court security officer.

8 (Officer sworn.)

9 THE COURT: Ladies and gentlemen, you
10 may now retire to the jury room to deliberate.

11 (The following was held outside the
12 presence of the Jury.)

13 THE COURT: It's my understanding that
14 you all worked through which exhibits would go back
15 yesterday afternoon. And so, Shannon, if you would,
16 make sure those exhibits are delivered to them as
17 soon as we break here.

18 If there are any questions, it's the jury's
19 responsibility to put those in writing and submit
20 them to me. I will then call all of you back
21 together, and we will review the question as a group
22 and my practice is to prepare a written response in
23 all circumstances that we possibly can. So it's only
24 the rare circumstance that we will bring them back in
25 to answer orally.

1 So make sure that Shannon has your cell
2 phone numbers. I assume, it's 11:30, you'll all
3 probably put some things away and then go to lunch,
4 but make sure you have your -- we have your cell
5 phones so that we can contact you promptly. Don't go
6 far, because we do want you to come back within about
7 five or ten minutes after we call you. All right.
8 So stay close, and that's what we'll do. Anything
9 from either of you?

10 MR. TRUSEVICH: Just to let you know,
11 Judge, we'll just be in the room across the hall.

12 THE COURT: That works well if we've
13 got it already reserved. I'm sure you figured out by
14 now there's a handful of restaurants that deliver and
15 so that's what we'll do. Okay. We'll stand in
16 recess until we hear something from the jury. Thank
17 you.

18 (Court in recess at 11:36 a.m.)

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1 STATE OF ILLINOIS)
)
2 COUNTY OF CHAMPAIGN)

3

4 I, Janet E. Frederick, a Certified
5 Shorthand Reporter, in and for the County of
6 Champaign, State of Illinois, do hereby certify that
7 the foregoing is a true record of the proceedings had
8 in the above-captioned matter.

9 I do hereby certify that I am a
10 disinterested person in this cause of action; that I
11 am not a relative of any party or any attorney of
12 record in this cause, or an attorney for any party
13 herein, or otherwise interested in the event of this
14 action, and am not in the employ of the attorneys for
15 either party.

16 IN WITNESS WHEREOF, I have hereunto set my
17 hand this 24th day of May 2018.

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JANET E. FREDERICK, CSR

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