

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF KENTUCKY  
AT LOUISVILLE

CIVIL ACTION NO. 3:98-CV-43-H

EZRA KEITH PIETY and  
JRAYSON J. DAVIDSON

PLAINTIFFS

V.

DILLARD'S DEPARTMENT STORE, INC.

DEFENDANT

**JURY INSTRUCTIONS**

**Members of the Jury**, now that you have heard all of the evidence and the argument of the attorneys, it is my duty to give you instructions as to the law applicable in this case.

It is your duty as jurors to follow the law as stated in the instructions, and to apply that law to the facts you find from the evidence. Do not single out one instruction alone as stating the law but you should consider the instructions as a whole. Nor should you be concerned with the wisdom of any rule of law stated by the Court. You must apply the law given in these instructions whether you agree with it or not.

It is your duty to determine the facts, and in so doing you must consider only the evidence I have admitted in the case. The term "evidence" includes the sworn testimony of the witnesses and the exhibits admitted in the record. It is your own interpretation and recollection of the evidence that controls. The statements, objections, and arguments made by the lawyers are not evidence. What the lawyers have said to you is not binding upon you. You are permitted

to draw reasonable inferences, deductions, and conclusions from the testimony and exhibits which you feel are justified in the light of your own common sense.

In saying that you must consider all the evidence, I do not mean to suggest that you must necessarily accept all of the evidence as true or accurate. You are the sole judges of the credibility or believability of each witness and the weight to be given to the testimony of each witness. In determining the credibility of any witness, you may properly consider the demeanor of the witness while testifying, frankness or lack of it, and his or her interest in the outcome of the case, if any.

The rules of evidence permit a witness who by education and experience has become expert in any art, science, or profession to state an opinion and the reasons for such an opinion. You should consider this evidence and give it such weight as you, in the application of your common sense, may think it deserves. If you should conclude that the reasons given by the expert witness in support of an opinion are not sound, or that the opinion is outweighed by other credible evidence in the case, then you may reject the opinion of such expert in whole or in part.

The weight of the evidence is not necessarily determined by the number of witnesses testifying as to the existence or nonexistence of any fact. You should be guided in your deliberations by the quality and credibility of the evidence you have heard.

The fact that the Defendant is a corporation should not affect your decision. All persons are equal before the law, and corporations, whether large or small, are entitled to the same fair and conscientious consideration by you as any other person.

In this case it is each Plaintiff's responsibility to persuade you that his claim is more likely true than not. If either Plaintiff fails to persuade you on every essential element of his claim, then you should find for the Defendant on that claim.

Your job in this case is to listen to the evidence and determine what motivated Dillard's to deny the merchandise return and cause the arrest of Plaintiffs. You should focus your attention on what Dillard's personnel knew and whether their actions were motivated by Plaintiff's race.

### **Instruction No. 1: Liability**

The Plaintiffs, Ezra Piety and Jayson Davidson, allege that Dillard's violated the Kentucky Civil Rights Act. Under that Act, the Plaintiffs had a right to the full and equal enjoyment of the goods, services, facilities, privileges, advantages and accommodations of the store as is enjoyed by white citizens. It was the duty of Dillard's, acting by and through its agents, Terri Bennett Ash and Brian Tillman, not to discriminate against the Plaintiffs because of their race.

You should consider each Plaintiff's claim separately from the other. In order to prove his claim, each Plaintiff must establish each of the following elements:

*First:* That Dillard's discriminated against him because of his race; and

*Second:* That Dillard's did so intentionally; and

*Third:* That Dillard's actions proximately caused damages sustained him.

"Discrimination" means any direct or indirect act or practice of exclusion, distinction, restriction, segregation, limitation, refusal, denial, or any other act or practice of differentiation or preference in the treatment of a person or persons.

An act is the "proximate cause" of injury or damage whenever it appears from the evidence that the act played a substantial part in bringing about or actually causing the injury or damage.

As a reminder, Plaintiff's stipulation of probable cause means that the Plaintiffs agreed that Officer Tillman had reasonable grounds to arrest them at the time for all the charges on which they were arrested. This does not mean that there was or was not enough evidence to convict plaintiffs, or even that the information the arrests were based on turned out to be true.

Plaintiffs have always denied the charges against them. At the District court hearing, Plaintiffs produced a Dillard's receipt for the Hilfiger shirt from the day prior to the arrest. All the charges against Plaintiffs were dismissed. Nevertheless, by stipulating to probable cause, the plaintiffs have admitted that at the time of the arrests, Tillman had legitimate reason to believe that the arrests were appropriate. You must decide based on the evidence why Tillman acted as he did. You should also understand that the stipulation of probable cause applies only to Tillman's actions.

Even if you find that Dillard's did not follow its return policy or that it acted carelessly or that it could have done something differently to help Plaintiffs, this alone is not enough to find for Plaintiffs. In order to enter a verdict for Plaintiffs, you must find from the evidence that Dillard's intentionally treated these Plaintiffs differently because of their race. You should focus on this. If you do not believe that Dillard's intentionally treated the Plaintiffs differently because of their race, then you must find for the Defendant.

If you find that either Plaintiff failed to prove any of the elements, you will return a verdict in favor of the Dillard's as to that Plaintiff's claim. Enter your verdict on Question 1 of the Verdict Form, and disregard the rest of these instructions.

If you find that either Plaintiff has proven each of these elements, you will return a verdict in favor of that Plaintiff. Enter your verdict on Question 1 of the Verdict Form, and proceed with Instruction No. 2.

## **Instruction No. 2: Actual Damages**

If you find in favor of either Plaintiff, then you must consider whether to award damages as to that Plaintiff and, if so, the amount of those damages. I will now give you instructions on how to calculate damages. The fact that I do so does not mean that I think you should or should not award any. That question is for you to decide.

You will award that Plaintiff such a sum as you believe will fairly and reasonably compensate him for any actual damages you believe he sustained as a result of Dillard's actions. Enter that amount as to either Plaintiff on Question 2 of the Verdict Form.

### **Instruction No. 3: Punitive Damages**

In addition to actual damages, the law permits you, under certain circumstances, to award the injured person punitive and exemplary damages, in order to punish the wrongdoer for some extraordinary misconduct, and to serve as an example to or warning to others not to engage in such conduct.

If you have found for one or both of the Plaintiffs and you further find that the acts or omissions of Dillard's were malicious or in reckless disregard of or indifference to the rights of Plaintiffs, then you may add to the award of actual damages such an amount as you unanimously agree to be proper, as punitive and exemplary damages. An act or a failure to act is "malicious" if prompted or accompanied by ill will, spite or grudge toward Plaintiff.

Whether or not to make any award of punitive and exemplary damage is a matter exclusively within the province of the jury, but you should bear in mind that such extraordinary damage is appropriate only if you should first unanimously award the Plaintiff a verdict for actual or compensatory damages. You should also bear in mind that extraordinary damages, if awarded, must be fixed with calm discretion and sound reason, and must never be either awarded or fixed in amount because of any sympathy, bias, or prejudice with respect to any party to the case.

If you determine to award punitive damages, enter the amount of those damages on Question 3 of the Verdict Form.

Any verdict must represent the considered judgment of each juror. In order to return a verdict, it is necessary that each juror agree. Your verdict must be unanimous.

It is your duty as jurors, to consult with one another, and to deliberate with a view to reach an agreement, if you can do so without violence to individual judgment. You must each decide the case for yourself, but only after an impartial consideration of the evidence in the case with your fellow jurors. In the course of your deliberations, do not hesitate to reexamine your own views and change your opinion, if convinced it is erroneous. But do not surrender your honest conviction as to the weight or effect of the evidence, solely because of the opinion of your fellow jurors, or for the mere purpose of returning a verdict.

Upon retiring to the jury room, you will select one of your number to act as your foreperson. The foreperson will preside over your deliberations and will be your spokesperson here in Court. A verdict form has been prepared for your convenience. You will take this form to the jury room and, when you have reached unanimous agreement as to your verdict, you will have your foreperson fill in, date and sign the verdict upon which you unanimously agree with respect to each issue in this case. You will then return with your verdict to the courtroom.

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**VERDICT FORM**

**Question 1:**

(a) Did Dillard's intentionally discriminate against Ezra Piety on account of his race?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

(b) Did Dillard's intentionally discriminate against Jrayson Davidson on account of his race?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

**Question 2:**

(a) If you answered "yes" to Question 1(a), indicate the amount of compensatory damages caused by that discrimination: \$ \_\_\_\_\_

(b) If you answered "yes" to Question 1(b), indicate the amount of compensatory damages caused by that discrimination: \$ \_\_\_\_\_

**Question 3:**

(a) If you have found against Dillard's and awarded Piety compensatory damages, do you find that Dillard's conduct toward Piety was malicious or recklessly indifferent to his rights?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

If yes, indicate the amount of punitive damages: \$ \_\_\_\_\_

(b) If you have found against Dillard's and awarded Davidson compensatory damages, do you find that Dillard's conduct toward Davidson was malicious or recklessly indifferent to his rights?

\_\_\_\_\_  
YES

\_\_\_\_\_  
NO

If yes, indicate the amount of punitive damages: \$ \_\_\_\_\_

\_\_\_\_\_  
FOREPERSON

DATE: \_\_\_\_\_