IN THE SUPREME COURT FOR THE STATE OF IOWA
NO. 21-1092

DES MOINES CIVIL AND HUMAN RIGHTS COMMISSION,
Plaintiff-Appellee,

v.

PATRICK KNUEVEN and MARY KNUEVEN,
Defendants-Appellants.

APPEAL FROM THE IOWA DISTRICT COURT
FOR POLK COUNTY,
HONORABLE SARAH CRANE

APPELLEE'S FINAL BRIEF

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1. ROUTING STATEMENT

The Commission agrees with Mr. Knueven that this case should be routed to the Iowa Supreme Court. Fair housing is an important goal of Iowa law. Addressing the emerging issue of steering protected individuals away from housing will advance the goals of fair housing in Iowa. Further, clarifying the scope of discriminatory steering will allow civil rights agencies to combat the subtler forms of discrimination that persist in our society.

2. STATEMENT OF THE CASE

The Commission agrees with Mr. Knueven's Statement of the Case.

3. STATEMENT OF FACTS

The Des Moines Civil and Human Rights Commission exists to protect individuals' rights and prevent discrimination. (Trial Tr. 5-18-21 p.16:6-16.) One way it does this, is by investigating potentially discriminatory actions. (Trial Tr. 5-18-21 p.16:17-25.)

Patrick Knueven is an Iowa resident who has been a residential landlord in the Des Moines area for 50 years. (Trial Tr. 5-19-21 p.62:21-63:9.)

3.1. Complaint, 2015-2016 testing

In 2015, the Des Moines Civil and Human Rights Commission received a complaint relating to housing discrimination by Patrick Knueven. (Trial Tr. 5-18-21 p.21:11-22.) Based on the complaint, the Commission chose to proceed with housing testing. (Trial Tr. 5-18-21 p.21:11-22.) Initially, the Commission conducted testing over a few months in 2015 and 2016 utilizing community volunteers. (Trial Tr. 5-18-21 p.21:23-22:14.)

Chris Fultz acted as a housing tester for the Commission in 2015 and 2016. (Trial Tr. 5-18-21 p.92:14-20.) Mr. Fultz was a

control tester as he did not present a protected characteristic for purposes of testing. (Trial Tr. 5-18-21 p.99:6-12.) Mr. Fultz called and spoke with Mr. Knueven on December 22, 2015. (Trial Tr. 5-18-21 p.94:7-9.) During the call, he made an appointment for an in-person meeting to view the property available for rent. (Trial Tr. 5-18-21 p.94:14-17.)

On December 23, 2015, Mr. Fultz met with Mr. Knueven at the rental property. (Trial Tr. 5-18-21 p.95:6-9.) Mr. Fultz described the visit as a mostly normal site visit at a potential rental property. (Trial Tr. 5-18-21 p.96:11-18.)

Deeq Abdi is another individual who acted as a volunteer housing tester for the Commission. (Trial Tr. 5-19-21 p.3:23-4:10.) Mr. Abdi has a notable accent that marks him as not being a native English speaker. (Trial Tr. 5-19-21 p.8:14-20.) Mr. Abdi called and spoke with Mr. Knueven about a rental property on December 28, 2015. (Trial Tr. 5-19-21 p.6:2.) Mr. Abdi recorded the call, and the recording is 2 minutes 32 seconds long. (Ex. 12 App. 60.) Mr. Abdi's accent is notable in the recording. (Ex. 12 App. 60.) During the conversation, Mr. Abdi gave his name and

indicated he was calling about the house. (Ex. 12 App. 60.) Mr. Knueven quickly responded "It's rented. It's taken and they're living there." (Ex. 12 App. 60.) Mr. Abdi asked the name of the person he was speaking to, and Mr. Knueven answered "Joe." (Ex. 12 App. 60.)[1] Mr. Abdi asked if any other units would be coming available, and Mr. Knueven answered "Nope." (Ex. 12 App. 60.) Mr. Abdi thanked Mr. Knueven, and Mr. Knueven ended the call without response. (Ex. 12 App. 60.) In testifying about the call, Mr. Abdi indicated it seemed like Mr. Knueven was trying to avoid questions and noted that he did not offer an application like other landlords would even if no unit is currently available. (Trial Tr. 5-19-21 p.7:10-8:13.) He also noted that the person he spoke to didn't ask him any questions. (Trial Tr. 5-19-21 p.16:12-24.)

On December 31, 2015, Mr. Fultz called Mr. Knueven again and left a voicemail. (Trial Tr. 5-18-21 p.97:5-9.) On January 4, 2016, Mr. Fultz called and spoke with Mr. Knueven. (Trial Tr. 5-18-21 p.97:14-24.) Mr. Knueven informed him that the apartment

[1] Mr. Knueven has not denied that he is the individual Mr. Abdi spoke to on the recording. (Trial Tr. 5-19-21 p.96:9-18.)

had been rented, but another would be available in a week. (Trial Tr. 5-18-21 p.97:14-24.)

Jodi Mashek also served as a volunteer tester for the Commission. (Trial Tr. 5-18-21 p.115:4-13.) Ms. Mashek is a white female and also acted as a control tester. (Trial Tr. 5-18-21 p.122:17-19.) She initially called Mr. Knueven and left him a voicemail on December 30, 2015. (Trial Tr. 5-18-21 p.117:2-12.) Ms. Mashek called again on January 26, 2016 about a different property and again left a voicemail. (Trial Tr. 5-18-21 p.118:3-9.) She connected with Mr. Knueven on January 27, 2016, and arranged an in-person visit. (Trial Tr. 5-18-21 p.118:15-22.)

Ms. Mashek visited the property Mr. Knueven had available on January 29, 2016. (Trial Tr. 5-18-21 p.120:3-9.) She toured the unit and Mr. Knueven stayed near her. He mentioned that it was a nice neighborhood and that neighbors on both sides had been there a long time. (Trial Tr. 5-18-21 p.120:22-121:15.) Mr. Knueven volunteered information about the neighborhood. (Trial Tr. 5-18-21 p.121:16-18, 122:8-12.) Mr. Knueven also highlighted

for Ms. Mashek the new flooring and appliances. (Trial Tr. 5-18-21 p.121:19-122:7.)

In the same time frame as Ms. Mashek, Nadia Igram also acted as a volunteer tester for the Commission. (Trial Tr. 5-18-21 p.63:17-64:13.) Ms. Igram is a Muslim and wears a hijab headscarf but does not demonstrate any particular background when speaking on the phone. (Trial Tr. 5-18-21 p.69:3-7, 81:21-25.) On January 28, 2016, Ms. Igram called and spoke with Mr. Knueven. (Ex. 20 App. 61; Trial Tr. 5-18-21 p.64:17-21, 65:14-16.) The call was generally very pleasant and lasted a couple minutes. Mr. Knueven asked questions about Ms. Igram's situation and when she planned to move. They set up a time for her to view the property. (Trial Tr. 5-18-21 p.64:22-65:4, 67:3-8; Ex. 20 App. 61.)

On January 29, 2016, Ms. Igram visited the apartment. (Trial Tr. 5-18-21 p.67:21-22; Ex. 22 App. 62.) It was a cold day, and Ms. Igram had her two-year-old and five-month-old children with her. (Trial Tr. 5-18-21 p.68:10-20.) Ms. Igram was wearing a hijab, and when she arrived Mr. Knueven was going in and out of the house on the phone with someone. (Trial Tr. 5-18-21 p.68:23-

69:7.) Ms. Igram and her children waited in the driveway for about five minutes for Mr. Knueven to speak to them. (Trial Tr. 5-18-21 p.69:8-9; Ex. 22 0:15-5:10 App. 62.) When he finished the phone call, Mr. Knueven led Ms. Igram and her children in the house. (Trial Tr. 5-18-21 p.69:15-17.) Mr. Knueven quickly asked Ms. Igram whether her husband was with her. (Ex. 22 5:10 App. 62.)

Ms. Igram and her children toured the house. A radio with loud talk radio was on while Ms. Igram was there. (Ex. 22 5:45-7:55, 12:30 App. 62.) When she entered a room, Mr. Knueven left the room, and it seemed he didn't want to be in the same room as her. (Trial Tr. 5-18-21 p.70:6-71:2.) Ms. Igram tried to get information about the property. (Trial Tr. 5-18-21 p.70:6-71:2, 80:8-17.) Mr. Knueven would mutter expletives like "son of a bitch" and "fuck" as he left the rooms Ms. Igram was in. (Trial Tr. 5-18-21 p.80:8-17, 80:25-81:1.)

In person, Mr. Knueven gave her short answers, denied knowing much, and didn't offer her options about the property. He had seemed more forthcoming on the phone, and it didn't seem

like he wanted Ms. Igram around when she was in person. (Trial Tr. 5-18-21 p.81:16-20.) When asked, Mr. Knueven indicated he didn't know what year the house was built. (Ex. 22 11:50 App. 62.) While Mr. Knueven answered her questions, he didn't discuss much with Ms. Igram beyond that. (Trial Tr. 5-18-21 p.87:13-88:13.) Ms. Igram asked if others were interested in the unit and Mr. Knueven answered "Oooh yes. Oh yes." (Ex. 22 12:35 App. 62.) Ms. Igram asked what the neighborhood was like, and Mr. Knueven answered that he didn't know about the neighborhood or what the neighbors were like. (Ex. 22 13:45 App. 62.) In person, Mr. Knueven seemed annoyed by Ms. Igram's presence. (Trial Tr. 5-18-21 p.91:4-7.)

3.2. August 2017 testing

After the December 2015 and January 2016 testing, the Commission did not take action regarding Mr. Knueven for some time. However, it conducted testing again in the summer of 2017. Due to the Commission's workload, the 2017 testing was conducted by the Fair Housing Center of Nebraska and Iowa. (Trial Tr. 5-18-21 p.21:9-22:14.) The Fair Housing Center handles landlord/tenant issues including conducting testing. (Trial Tr. 5-18-21 p.41:24-42:7.) Test coordinator Carla Cox prepared and oversaw the testing with regards to Mr. Knueven. (Trial Tr. 5-18-21 p.43:22-44:1.)

The 2017 testing was with regard to a property Mr. Knueven owned at 102 E. Kenyon. A July 31, 2017 Craigslist advertisement for the property listed it as having a $650 rental rate. (Ex. 2 App. 55.) Based on discussions with an organization called Renter's Warehouse, Mr. Knueven decided to raise rent on the unit to $800 per month. (Trial Tr. 5-19-21 p.64:23-65:16.) On August 3, 2017, a new Craigslist ad was posted for the same property raising the rental rate to $800 per month. (Ex. C1 App. 63.)

To initiate the testing process, Carla Cox called Mr. Knueven on August 4, 2017 to verify that the property was still available. (Trial Tr. 5-18-21 p.46:10-25.) Ms. Cox asked about the Craigslist ad with the $650 per month rental rate, and Mr. Knueven confirmed the property was still available at that rate. (Trial Tr. 5-18-21 p.57:3-8, 62:8-13.) Mr. Knueven thought-or rather assumed that-Ms. Cox must have had a couple day old printout because she would have seen the $800 rate if she were looking at a computer screen. (Trial Tr. 5-19-21 p.68:11-69:15.) Ms. Cox's voice does not demonstrate an obvious protected characteristic at issue in the testing of Mr. Knueven. (Ex. 7 App. 59.)

At Ms. Cox's direction, Laurie Madison called posing as a caseworker for a Muslim family on August 7, 2017. (Trial Tr. 5-18-21 p.52:4-11.) Ms. Madison's call with Mr. Knueven was approximately two and a half minutes. (Ex. 3 App. 57.) At the start of the call, Ms. Madison identified herself as calling from the Omaha Refugee Resettlement Program. (Ex. 3 App. 57.) Mr. Knueven responded "All right, what ya got?" (Ex. 3 App. 57.) Ms.

Madison indicated she was seeking housing for a married Muslim couple from Pakistan and asked whether the unit was still available. (Ex. 3 App. 57.) Mr. Knueven indicated that it was. (Ex. 3 App. 57.) Ms. Madison inquired about the $650 a month rent from an ad, and Mr. Knueven responded "No, that's an old ad, it's 800." (Ex. 3 App. 57.) Mr. Knueven did not believe Ms. Madison was being honest about the rate and must know it was now $800 a month because the ad with the $650 rate would be so far down on Craigslist she couldn't have actually seen it. (Trial Tr. 5-19-21 p.69:16-70:16.) Ms. Madison asked if there was a garage, and Mr. Knueven answered "No." Ms. Madison asked if there were certain hours he showed the unit and he answered "No." (Ex. 3 App. 57.) Ms. Madison indicated she would be back in touch with availability and thanked him. Mr. Knueven hung up without responding. (Ex. 3 App. 57.)

Another tester, named Jamie for purposes of testing, called as a control tester not exhibiting any protected characteristics. (Trial Tr. 5-18-21 p.52:12-19, 53:9-11.) Jamie called on August 7, 2017 and connected with Mr. Knueven's wife, Mary Knueven. (Ex.

5 App. 58; Trial Tr. 5-18-21 p.28:6-19.) Jamie's call with Mary Knueven was about four and a half minutes. (Ex. 5 App. 58.) Jamie asked if the property was still available, and Mrs. Knueven indicated she thought so. Jamie indicated she was calling on behalf of herself and her husband. During the call, Mrs. Knueven asked Jamie how soon the wished to move in, whether they were renting now, and where she and her husband worked. Jamie asked about the $650 rental rate, and Mrs. Knueven indicated it was now $800. (Ex. 5 App. 58.)

On August 10, 2017, Ms. Cox made an additional call to Mr. Knueven. (Ex. 7 App. 59; Trial Tr. 5-18-21 p.48:9-21.) The call with Mr. Knueven lasted almost five and a half minutes. (Ex. 7 App. 59.) At the start of the call, Ms. Cox reminded Mr. Knueven of their prior call and he indicated he remembered her. (Ex. 7 App. 59.) She indicated that during their prior conversation, Mr. Knueven had told her he couldn't show the unit until Monday, and he responded that was correct and he hadn't shown the unit to anyone since their prior call. (Ex. 7 App. 59.) Ms. Cox asked if it was still available, and he responded that it was but that he had

showed it to others who had filled out applications and another was possible. He indicated the unit may be rented. (Ex. 7 App. 59.) They discussed information about the unit. Ms. Cox asked about the $650 rental rate, and Mr. Knueven confirmed that was correct. (Ex. 7 App. 59.) They continued the discussion, and Ms. Cox indicated she would call again to schedule a viewing when she was coming to Des Moines. (Ex. 7 App. 59.) Ms. Cox thanked Mr. Knueven and said goodbye, and Mr. Knueven answered "Bye." (Ex. 7 App. 59.)

3.3. Trial testimony

In addition to individuals already discussed, Emily Cohen testified at trial. Ms. Cohen was employed as a Human Rights Specialist for the Commission when it investigated Mr. Knueven. (Trial Tr. 5-19-21 p.17:24-18:9.) Ms. Cohen investigated the case after testing of Mr. Knueven had concluded. (Trial Tr. 5-19-21 p.24:4-10.) Ms. Cohen noted that Mr. Knueven was less cooperative with the investigation than was typical. (Trial Tr. 5-19-21 p.25:2-18.) She had an initial meeting with Mr. Knueven and his attorney on June 5, 2018 where they discussed various

matters including the testing recordings. (Trial Tr. 5-19-21 p.26:12-28:9.) Ms. Cohen also interviewed Mary Knueven and Patrick Knueven on October 31, 2018. (Trial Tr. 5-19-21 p.29:16-24, 33:1-8.)

Ms. Cohen recounted the results of her investigation. She noted that when testers spoke unaccented English, Mr. Knueven seemed pleasant and comfortable interacting with them. When they called on behalf of refugees or had an accent, he was more aggressive, less pleasant. (Trial Tr. 5-19-21 p.33:14-34:22.) She discussed this change in tone with Mr. Knueven, and he had no explanation for the difference in his responsiveness. (Trial Tr. 5-19-21 p.33:14-34:22, 43:12-21.) Mr. Knueven also confirmed that the recording of Mr. Abdi speaking to "Joe" sounded like him and had no explanation for why he would refer to himself as Joe. (Trial Tr. 5-19-21 p.44:16-45:1.)

Mr. Knueven also testified at trial. He explained that he had been having trouble getting the unit at 102 E. Kenyon rented at $650 a month. (Trial Tr. 5-19-21 p.66:21-67:13.) Based on discussion with Renter's Warehouse, he raised the rate to $800 a

month. (Trial Tr. 5-19-21 p.65:7-16.) Eventually, Renter's Warehouse found a tenant who moved into the unit September 1, 2017. (Trial Tr. 5-19-21 p.75:22-76:8.)

Mr. Knueven also testified about some of the tenants related to the 102 E. Kenyon property. Describing the tenant in the unit adjacent to 102 E. Kenyon, Mr. Knueven explained he is a

> wonderful guy, totally wonderful fellow and his wife and I don't have any problem renting to him whatsoever, not at all. The check is there two, three weeks before the first of the month every single month. It's been that way for years.

(Trial Tr. 5-19-21 p.75:20-76:3.) The tenant Renter's Warehouse found for the 102 E. Kenyon unit in 2017 was "a lady, really nice lady that moved in there and lived there for one year." (Trial Tr. 5-19-21 p.76:2-17.) She moved out "on very, very good terms, no problem whatsoever." (Trial Tr. 5-19-21 p.76:9-11.) Describing a second tenant Renter's Warehouse found for the same unit:

> So they found another really, really nice lady and a year contract and that lady lived in there for 12 months and moved out and I believe she bought a house, I think that's why she moved out.

(Trial Tr. 5-19-21 p.76:11-17.) Then a third tenant Renter's Warehouse found for the unit: "Then they found another gal and, again, really, really nice gal, black gal with a couple little kids and

just really, really sweet gal." (Trial Tr. 5-19-21 p.76:18-20.) He later explained it was a compliment to mention the black gal was a great tenant. (Trial Tr. 5-19-21 p.94:23-95:9.)

Mr. Knueven testified that 25-33% of his tenants are black. He also testified that he contracts with a number of minority people for work: a Chinese woman for accounting and Hispanics for lawn care and tree removal (Trial Tr. 5-19-21 p.83:6-84:21.)

Mr. Knueven testified that he honored the $650 rental rate for Carla Cox because otherwise she would feel like it was a bait and switch with advertising one rate then demanding another. (Trial Tr. 5-19-21 p.77:13-78:2.) He assumed Ms. Cox was being honest with him. (Trial Tr. 5-19-21 p.108:11-12.) However, he assumed Ms. Madison was deceiving him when she asked for the $650 rate. (Trial Tr. 5-19-21 p.108:6-10.) He just knew Ms. Madison was lying. (Trial Tr. 5-19-21 p.114:4-8.)

4. ARGUMENT

At trial, the jury was properly instructed on what housing discrimination through steering is and correctly determined that Mr. Knueven had engaged in that illegal practice in 2017. On the basis of national origin or religion, Mr. Knueven discouraged individuals he disfavored from renting with him while strongly encouraging people he perceived to be the same as himself. The court followed existing precedent on discriminatory steering that recognizes that any action to encourage or discourage because of a protected characteristic is illegal and discriminatory. This broad interpretation of steering is appropriate given that both the Iowa Civil Rights Act and the federal Fair Housing Act are to be construed broadly to eliminate discriminate and making housing opportunities equal for all. *See Pippen v. State*, 854 N.W.2d 1, 28 (Iowa 2014); *Samaritan Inns, Inc. v. Dist. of Columbia*, 114 F.3d 1227, 1234 (D.C. Cir. 1997); *Cmty. Hous. Trust v. Dep't of Consumer and Regulatory Affairs*, 257 F. Supp. 2d 208, 220-21 (D. D.C. 2003).

Also consistent with precedent, the court gave the jury the opportunity to hear evidence of Mr. Knueven's motives both from

the 2017 events that warranted liability and from earlier events which showed him acting in the same way to discourage individuals who demonstrated protected characteristics. The court did not err in its rulings, the case was properly submitted to the jury, and this Court should affirm the jury's verdict holding Mr. Knueven liable for housing discrimination.

4.1. Court adopted the proper legal standard for steering claims.

4.1.1. Issue Preservation

The Commission agrees that Mr. Knueven has preserved this issue.

4.1.2. Standard of Review

The Commission agrees that review of the appropriate legal standards and the appropriateness of jury instructions are both reviewed for correction of errors of law.

4.1.3. Argument

The district court applied the correct legal standard for the Commission's steering claim and properly instructed the jury on what steering is. Laws at the local, state, and federal levels prohibit discrimination in housing on the basis of protected characteristics such as national origin and religion. At the state level, housing discrimination is prohibited by the Iowa Civil Rights Act. Iowa Code § 216.8. The City of Des Moines is also required by the Iowa Civil Rights Act to maintain an independent civil rights commission, and it has adopted ordinances to do so. Iowa Code § 216.19(2) (2021); Des Moines Municipal Code §§ 62-3, 62-4, 62-101 thru 62-107.

4.1.3.1. Discriminatory housing steering includes any act to discourage one group while encouraging another.

The Iowa Civil Rights Act prohibits a variety of forms of housing discrimination including providing:

> It shall be an unfair or discriminatory practice for any person, owner, …, of rights to housing or real property, …:
>
> a. To refuse to sell, rent, lease, assign, sublease, refuse to negotiate, or to otherwise make unavailable, or deny any real property or housing accommodation or part, portion, or interest therein, to any person because of

> the … religion, national origin, disability, or familial status of such person.

Iowa Code § 216.8(1)(*a*). The Des Moines Municipal Code contains a substantially similar provision:

> It shall be an illegal discriminatory housing practice for any person, or for any owner or person acting for an owner of rights to a dwelling, … to:
>
> (1) Refuse to sell, lease or rent after making of a bona fide offer; refuse to show or represent that a dwelling is unavailable; or refuse to negotiate for the sale, lease or rental of any dwelling or refuse to sublease or assign or otherwise make unavailable or deny a dwelling to any person because of race, religion, … national origin, … or source of income.

Des Moines Municipal Code § 62-101(a). Both provisions are substantially the same as the federal Fair Housing Act which also make it a discriminatory act to "otherwise make unavailable or deny, a dwelling to any person" on the basis of a protected characteristic. 42 U.S.C.A. § 3604(a).

Because the ICRA and the Des Moines ordinances are modeled after federal civil rights legislation, Iowa courts have traditionally looked to federal law for guidance in interpreting it. *See Pippen*, 854 N.W.2d at 18; *Pecenka v. Fareway Stores, Inc.*, 672 N.W.2d 800, 803 (Iowa 2003); *Deboom v. Raining Rose, Inc.*, 772 N.W.2d 1, 7 (Iowa 2009). Federal court decisions interpreting

the Fair Housing Act are persuasive, but not necessarily controlling, when interpreting the housing provisions of the ICRA. *See Pippen* at 18; *Renda v. Iowa Civil Rights Comm'n*, 784 N.W.2d 8, 15-16 (Iowa 2010).

One form of housing discrimination is steering individuals away from certain housing. Illegal steering consists of discouraging housing seekers from the housing they desire. Steering is a form of otherwise making housing unavailable in violation of 42 U.S.C.A. § 3604(a). *Village of Bellwood v. Dwivedi*, 895 F.2d 1521, 1529 (7th Cir. 1990); *Harris v. Vanderburg*; No. 4:19-CV-111-D, 2022 WL 421132, at *6 (E.D.N.C. Feb.10, 2022); *Fair Hous. Cong. v. Weber*, 993 F. Supp. 1286, 1293 (C.D. Cal. 1997). As steering is recognized as a discriminatory form of making housing unavailable under the Fair Housing Act, it stands to reason that it would be a discriminatory form of making housing unavailable under Iowa Code section 216.8(1)(*a*) and Municipal Code section 62-101(a).[2] While those sections do not use

[2] It is also reasonable given the fact that the Civil and Human Rights Commission has a contract with the United States Department of Housing and Urban Development to investigate

the word steering, they incorporate the same standards for illegal steering as established by the federal Fair Housing Act.

Traditionally, racial steering caselaw referred to the practice of directing white home-seekers to one neighborhood and minority home-seekers to another. However, the legal concept of steering is broader than this and involves any action to discourage prospective tenants from the housing they desire because of their protected status. The elements of a less desirable housing steering claim include:

> 1. The complainant is a member of a protected class.
> 2. The complainant sought to buy or rent housing from the respondent.
> 3. The respondent discouraged the complainant from pursuing the housing.
> 4. The respondent encouraged someone not of the complainant's protected class to pursue such housing.

Elements of Proof Memorandum, U.S. Dept. of Housing and Urban Dev. ("HUD"), p.8.[3]

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housing discrimination applying HUD standards. (Trial Tr. 5-18-21 p.29:22-30:16.)

[3] Available online at: https://www.hud.gov/sites/dfiles/FHEO/images/AJElementsofproofmemocorrected.pdf

Courts have found a variety of actions to constitute steering if done on a discriminatory basis. Misrepresentations about housing availability and refusal to provide information can be illegal steering. *Village of Bellwood*, 895 F.2d at 1529. In one case, a court found that the agent's willingness to call a superintendent for white testers but declining to do so for minority testers generated a fact issue on steering. *Fair Hous. Just. Ctr., Inc. v. Broadway Crescent Realty, Inc.*, No. 10 CIV. 34 CM, 2011 WL 856095, at *7 (S.D.N.Y. Mar. 9, 2011). Volunteering information or failing to do so was also considered in the steering analysis. *Id.* In another case, a court found that jurors could conclude from the record that the defendant had engaged in housing discrimination by being helpful and encouraging to some testers while being "abrupt, inattentive, and actually discouraging of any prospect that a person of color could" find housing at that location. *Walker v. Todd Village, LLC*, 419 F. Supp. 2d 743, 747-48 (D. Md. 2006). In another case, discouraging prospective tenants with children from renting second floor units based on safety was a form of illegal steering on the basis of family status. *Fair Hous. Cong.*, 993

F. Supp. at 1293-94. As far back as 2012, a HUD study analyzed the helpfulness of agents in showing rental properties as a factor in analyzing steering. Housing Discrimination Against Racial and Ethnic Minorities 2012, U.S. Dept. of Housing and Urban Dev., p.10 (June 2013).[4]

These cases and the study demonstrate that illegal steering in housing is much broader than the traditional neighborhood by neighborhood steering originally addressed in caselaw. In this context, Mr. Knueven's action of volunteering additional information to a control tester while withholding any additional information not specifically requested from the protected tester constitutes illegal steering. Also, his hostile demeanor when speaking to protected testers, as compared to his encouraging tone and commentary with control testers is further evidence of illegal steering. Mr. Knueven was doing something more sinister than offering protected testers *less desirable* housing; he was creating barriers to *any* of his housing through his negative actions toward

[4] Available online at: https://www.huduser.gov/portal/publications/pdf/hud-514_hds2012.pdf

protected individuals. For all the above reasons, this Court should find standard for steering claims the trial court adopted was proper.

4.1.3.2. The court properly instructed the jury on the legal standard for steering.

Jury instructions must convey the applicable law in such a way that the jury has a clear understanding of the issues it must decide. *State v. Davis*, 951 N.W.2d 8, 17 (Iowa 2020). Jury instructions are not considered separately; they should be considered as a whole. *Id.* Reversal is only warranted on appeal if the jury instructions have misled the jury. *Deboom*, 772 N.W.2d at 5.

At trial, the jury was properly instructed on the legal standard for steering. On the Commission's steering claim, the Court instructed the jury as follows in instruction 13:

> To support its claim of housing discrimination in Count II against Patrick Knueven, the Plaintiff Des Moines Civil and Human Rights Commission must prove:
>
> 1. In August 2017, a tester (hereinafter referred to as the protected tester) is a member of a protected class based upon religion or national origin.
> 2. The protected tester sought to rent housing from the defendant Patrick Knueven.

> 3. The defendant Patrick Knueven engaged in steering by discouraging the protected tester from pursuing the housing and encouraging someone not of the protected class to pursue such housing.
> 4. The tester's religion or national origin was a motivating factor in defendant Patrick Knueven's steering.
>
> If any of the above elements has not been proved, your verdict must be for the defendant Patrick Knueven. If the Commission has proven all of these elements, your verdict must be for the Commission on the issue of liability.

(Jury Instruction #13 App. 100.) This instruction properly explained that steering required treatment of protected testers differently than control testers. The instruction explained that Mr. Knueven had to do something to engage in steering. The instruction explained that steering consisted of encouraging one group while discouraging another group. The instruction also indicated that the protected characteristic needed to be a motivation for the different conduct.

All of these points of law are consistent with the caselaw for steering that makes housing otherwise unavailable. The *Fair Housing Justice Center* and *Todd Village* cases both demonstrate that treating different classes of people differently to encourage or discourage them from housing constitutes steering that makes

housing otherwise unavailable. Both Iowa Code section 216.8(1)(*a*) and Municipal Code section 62-101(a) prohibit actions to make housing unavailable, and the federal case law interpreting the counterpart section of the Fair Housing Act indicates that steering through discouragement is a violation of these sections.

4.1.3.3. Mr. Knueven's proposed jury instructions did not accurately state the law.

The court correctly refused to give Mr. Knueven's proposed jury instructions on steering because they did not accurately state the law. Mr. Knueven submitted two proposed jury instructions related to steering. The first, filed on May 3, 2021 incorrectly stated the law because it required jurors to find that Mr. Knueven "took some steps to show or guide the tester to an alternative property according to their race, national origin, gender or religion" before they could find him liable for discriminatory steering. (D's Proposed Stmt. of the Case, Jury Instructions, and Verdict Form App. 46.) The proposed instruction narrowed the legal standard for steering beyond what case law provides appropriate. Mr. Knueven's proposed instruction would have required the jury to rule that misrepresentations, refusal to

provide information, unwillingness to call a superintendent, or refusing to volunteer information to some potential tenants did not constitute steering and was inconsistent with prior case law. Regardless of whether there was Iowa case law on point, the court fashioned the jury instructions to comport with available case law rather than in contradiction to it. Because the proposed instruction was not a correct statement of the law, the court was correct to decline it.

Mr. Knueven's recast jury instruction on steering was a similarly incorrect statement of the law. On May 19, 2021, Mr. Knueven submitted a recast jury instruction regarding steering, but it too required the jury to find that Mr. Knueven "presented undesirable conditions of a property offered by the Defendants with the intent to steer or channel a prospective buyer into or away from an area" to find discrimination occurred. (D's Recast Jury Instructions App. 75.) This again was an incorrectly narrow instruction on what actions could constitute steering. As such, the court was again correct to reject it.

Any steering instruction that instructed the jury to only find steering if direction away from one property or to a different property or to only target home buyers would be an incorrect statement of the steering law that has developed. Perhaps in the 1950s and '60s, an instruction about directing to or away from specific properties was sufficient when property owners were that brazen. As time has gone on, actions taken to effectuate discrimination have become less obvious, and the legal standards for discriminatory steering have evolved to address the less obvious steering actions that may occur today. Limiting steering to Mr. Knueven's proposed instructions would provide property owners the ability to subtly keep out protected classes they are biased against so long as they don't make the obvious blunder of directing someone to another of their properties based on a goal of racial segregation. Iowa should not allow any actions that make housing unavailable to one protected group or another, just because they are crafted to avoid overt statements of discriminatory intent.

Mr. Knueven's focus on suggesting alternative properties overlooks making housing otherwise unavailable and would make that language superfluous. In his discussion and arguments on steering, Mr. Knueven looks to Municipal Code section 62-101(a)(10) which specifically references steering as a prohibited act and describes one specific type as directing "a prospective buyer into or away from an area." Des Moines Municipal Code § 62-101(a)(10). However, this overlooks the fact that steering is also a form of making housing otherwise unavailable covered by Municipal Code section 62-101(a)(1). While the making housing otherwise unavailable statutes do not specifically list steering, case law makes clear that steering is covered by those sections. Under Mr. Knueven's reasoning, steering would not be a discriminatory practice under federal law or the Iowa Civil Rights Act because neither specifically uses the word steering. Such reasoning would result in absurdity and should be rejected.

Mr. Knueven's reliance on the *Jakabovitz* case is also misplaced. In one part of that decision, the court described simpler jury instructions that could have been given relating to the facts of

that case, and described it as seeking and being denied the opportunity to rent an apartment. *Cabrera v. Jakabovitz*, 24 F.3d 372, 371 (2nd Cir. 1994). The court was not providing a definition of all types of steering cases, it was simply providing a clear version of the law that could have been applied in that case. After a discussion of how cunning landlords can use subtle tactics to discriminate, the court noted: "As long as a plaintiff can prove that a defendant afforded an African-American person fewer housing opportunities than a similarly-situated White person on account of race, the plaintiff has made out a case under Title VIII." *Id.* at 390. Mr. Knueven again takes up the argument that unless he discriminates in a blatant way, he has not discriminated. That position has been rejected by courts time after time, and this Court should reject it as well. Mr. Knueven's actions specifically provided fewer opportunities to protected individuals.

The court also correctly declined to include gender as a protected classification listed in the jury instructions. A plaintiff has the right to choose the causes of action it wishes to pursue, and the Commission chose to pursue claims that Mr. Knueven had

discriminated on the basis of national origin or religion. As those were the only protected classifications upon which the Commission claimed discrimination, there was no value to including gender as a protected classification in the jury instructions. It would have done nothing to make the instructions easier to understand or help the jury decide the issues in the case. On the contrary, it could have confused the jury to have gender in the instructions when the Commission was not asking them to find that discrimination on the basis of gender occurred.

An instruction based on gender was also not supported by the record. The parties were in agreement throughout trial that only the testing that occurred in August 2017 could warrant liability for Mr. Knueven. All of the testers in August 2017 were women. As such, it would have been ipossible for the jury to find that women were treated differently than men in the August 2017 testing because there were no male comparators to show a difference. On the facts of this case and based on the claims brought by the Commission, there was no basis for discussing gender as a protected characteristic in the jury instructions.

4.2. The evidence warranted submission of steering claim to jury.

4.2.1. Issue Preservation

The Commission agrees that Mr. Knueven has preserved this issue for review.

4.2.2. Standard of Review

The Commission agrees that this issue is reviewed for whether substantial evidence supported the claim. Additionally, in addressing this issue evidence is to be viewed in the light most favorable to the jury's verdict. *Poulsen v. Russell*, 300 N.W.2d 289, 294 (Iowa 1981).

4.2.3. Argument

The standards for substantial evidence are well established.

> Evidence is substantial when a reasonable mind would accept it as adequate to reach a conclusion. The district court is required to view the evidence in the light most favorable to the party against whom the motion is made, and we review the evidence in the same light. Circumstantial evidence is equally as probative as direct evidence. It is for the jury to determine the credibility of witnesses.

Carter v. Carter, 957 N.W.2d 623, 635 (Iowa 2021) (cleaned up). *See also Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 391 (Iowa 2001).

There was substantial evidence to submit the Commission's steering claim against Mr. Knueven to the jury. A tester representing protected characteristics, religion and national origin, sought to rent housing from Mr. Knueven when Laurie Madison called him on behalf of a Pakistani Muslim couple. (Ex. 3 App. 57, Trial Tr. 5-18-21 p.52:4-11.) Mr. Knueven discouraged Ms. Madison from helping the Pakistani Muslim couple. As soon as Ms. Madison indicated she was calling on behalf of refugees and continuing after she indicated they were Pakistani and Muslim, Mr. Knueven provided terse answers to her questions. (Ex. 3 App. 57.) Mr. Knueven did nothing to volunteer information about the unit and encourage Ms. Madison. (Ex. 3 App. 57.) When Ms. Madison inquired about the $650 rental rate, Mr. Knueven corrected her and told her the rent was now $800 a month. (Ex. 3 App. 57.) Mr. Knueven testified that he assumed Ms. Madison was deceiving him in asking for the $650 rental rate, and he just knew

she was lying to him. (Trial Tr. 5-19-21 p.108:6-10; Trial Tr. 5-19-21 p.114:4-8.) When Ms. Madison indicates she would be back in touch with him and thanked him, Mr. Knueven hung up without response. (Ex. 3 App. 57.) Mr. Knueven's disinterest in speaking to someone about potential Muslim renters from Pakistan is reflected in the brief, two and a half minute call. (Ex. 3 App. 57.)

Mr. Knueven's actions and behavior toward Ms. Cox, who did not exhibit any protected national origin or religious characteristics, was completely different. In speaking with Ms. Cox, Mr. Knueven provided helpful, friendly answers with lots of information about the property. (Ex. 7 App. 59.) When Ms. Cox asked, Mr. Knueven agreed to honor the $650 rental rate on both August 4 and August 10 even though he had raised the rate to $800 on August 3. (Ex. C1 App. 63; Trial Tr. 5-18-21 p.57:3-8, 62:8-13; Ex. 7 App. 59.) During the August 10 call Mr. Knueven chatted with Ms. Cox in a friendly way causing the call to be almost five and a half minutes. (Ex. 7 App. 59.) When Ms. Cox thanked Mr. Knueven and said goodbye, he said bye in return. (Ex. 7 App. 59.)

Mr. Knueven's August 2017 interactions with Ms. Madison and Ms. Cox demonstrate markedly different responses to the people he's speaking with. With the protected tester, Mr. Knueven avoids volunteering information or being friendly but is ready to do both with a caller demonstrating no protected characteristics on religion or national origin. For the Pakistani Muslim couple, Mr. Knueven insists on the newly raised $800 rental rate when asked about the earlier $650 rate because the person calling on behalf of a protected couple must be lying to him. However, with Ms. Cox he is willing to honor the no longer applicable $650 rental rate even a week after it has been raised because he trusts her. Mr. Knueven courteously acknowledges the end of the call with Ms. Cox by saying "Bye," but is too annoyed to do so with Ms. Madison calling on behalf of a protected couple. Mr. Knueven tells Ms. Cox on August 10 that the unit may already be rented, but continues to encourage her interest. However, Mr. Knueven does nothing but discourage Ms. Madison. All of this evidence supports the jury's finding that Mr. Knueven discouraged the protected

tester while encouraging someone who did not share the same protected characteristics.

With evidence that a protected tester sought to rent from Mr. Knueven and was treated differently from a tester without protected characteristics, the only element left is whether Mr. Knueven's different treatment was motivated by the protected characteristics. The record also contains substantial evidence on this point. The August 2017 interactions are enough to show that the protected characteristics were the basis for the different treatment from Mr. Knueven. He was immediately curt with Ms. Madison after she told him she was calling on behalf of refugees, and there is no other credible explanation in the record for why he treated her differently than Ms. Cox. No explanation as to why he was not as encouraging to Ms. Madison in volunteering information and being courteous as he was with Ms. Cox. This alone would be enough for a reasonable person to conclude that the national origin or religion was a motivating factor in Mr. Knueven's different treatment of the two callers.

Reasonable people could conclude from this evidence that Mr. Knueven treated protected callers less favorably than callers without a protected national origin or religion characteristic. It was for the jury to determine witness credibility, and it determined that Mr. Knueven's explanation that he was annoyed with Ms. Madison because she asked for the $650 rate was not a credible explanation of why he was friendlier, volunteered more information, and offered Ms. Cox a more favorable rental rate.

Mr. Knueven's interactions with testers in 2015 and 2016 provided additional evidence that he was motivated by national origin or religion to treat potential renters differently. The evidence showed a consistent pattern that Mr. Knueven's different treatment of protected versus control testers discouraged those demonstrating protected characteristics from renting at his properties. Every time a protected characteristic was demonstrated to Mr. Knueven, he was less friendly, provided less information, was ruder, and sometimes lied. When Mr. Abdi called with an audible accent, the call was brief, Mr. Knueven's answers were mostly no or negative, he volunteered no information, and he

lied about his name. (Ex. 12 App. 60.) In contrast, Ms. Igram did not present a protected characteristic when she called. The call was longer, Mr. Knueven provided helpful answers and volunteered information, and accurately told her his name. (Ex. 20 App. 61; Trial Tr. 5-18-21 p.64:22-65:4, 67:3-8; Ex. 20 App. 61.)

When Mr. Abdi asked Mr. Knueven on December 28, 2015 whether any units would be coming available, Mr. Knueven told him no. (Ex. 12 App. 60.) When Mr. Fultz, without a protected characteristic, made a similar inquiry on December 31, 2015, Mr. Knueven told him a unit would be available in a week. (Trial Tr. 5-18-21 p.97:14-24.)

Ms. Mashek and Ms. Igram toured the same available unit on January 29, 2016. Ms. Mashek, without a protected characteristic, had a typical interaction with a landlord showing a property. Mr. Knueven stayed near her. He told her it was a nice neighborhood and the neighbors on both sides had been there a long time. (Trial Tr. 5-18-21 p.120:22-121:15.) He volunteered information, and he emphasized the new flooring and appliances. (Trial Tr. 5-18-21 p.121:19-122:7.)

Ms. Igram had a different experience. In person, she presented with a protected religious characteristic wearing the hijab that indicates she is Muslim. (Trial Tr. 5-18-21 p.68:23-69:7.) She had to wait with her children in the cold for five minutes while Mr. Knueven was on the phone. (Trial Tr. 5-18-21 p.69:8-9; Ex. 22 0:15-5:10 App. 62.) He promptly asked where her husband was. (Ex. 22 5:10 App. 62.) He avoided being in the same room as her, and muttered expletives under his breath as he left the room. (Trial Tr. 5-18-21 p.70:6-71:2, 80:8-17, 80:25-81:1.) He answered questions but didn't volunteer information. (Trial Tr. 5-18-21 p.87:13-88:13.) He claimed not to know when the house was built. (Ex. 22 11:50 App. 62.) He told Ms. Igram he didn't know what the neighborhood or neighbors were like. (Ex. 22 13:45 App. 62.) When Ms. Igram asked if there were others interested in the unit, the tone of Mr. Knueven's voice when he said "Oooh yes. Oh yes." was a hint that this property was out of Ms. Igram's reach. (Ex. 22 12:35 App. 62.)

The evidence showed that Mr. Knueven consistently treated people with protected religious or national origin characteristics

less favorably than those without characteristics different from his own. With people he perceives as like him, he is honest, encouraging, and helpful. With people who demonstrate different characteristics, he is discouraging, provides little information, and outright lies. All of this, along with the evidence from the 2017 testing, supported a rational finder of fact in concluding that the protected characteristics were a motivating factor in the differences in how Mr. Knueven treated different testers. With that, there was substantial evidence to support all the elements of the Commission's claim that Mr. Knueven steered people by discouraging individuals demonstrating protected religious or national origin characteristics and encouraging those who did not.

Mr. Knueven is also incorrect that the Commission's evidence is insufficient because the housing testers were not legitimately seeking to rent Mr. Knueven's properties. This argument would undercut an important tool in exposing housing discrimination and reverse decades of legal authority. The United States Supreme Court has described housing testers as "individuals who, without an intent to rent or purchase a home or

apartment, pose as renters or purchasers for the purpose of collecting evidence of unlawful … practices." *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 373 (1982). Evidence resulting from such tests has been the crucial element of proof in many fair housing cases. The 8th Circuit Court of Appeals noted in 1977 that "The use of checkers is a commonplace, their purpose being to compare the rental procedures employed as applied to black and white persons. Their evidence in discrimination cases has been uniformly accepted." *Wharton v. Knefel*, 562 F.2d 550, 554 n.18 (8th Cir. 1977). Additionally, the Iowa Court of Appeals has accepted the evidence of a housing tester as creating standing for both the tester and the civil rights agency on behalf of which the tester was acting. *Rixner v. James W. Boyd Rev. Trust*, 940 N.W.2d 450 (Table), at *4-5 (Iowa Ct. App. 2019). There is no reason for Iowa to depart from allowing the testimony of housing testers as evidence of discrimination and deprive Iowa civil rights agencies of a tool available in the rest of the nation.

4.3. The evidence of testing in 2015 and 2016 was properly admitted.

4.3.1. Issue Preservation

The Commission agrees that Mr. Knueven preserved this issue.

4.3.2. Standard of Review

The Commission agrees this issue is subject to an abuse of discretion standard.

4.3.3. Argument

The court did not abuse its discretion in allowing presentation of evidence related to the 2015 and 2016 housing testing to the jury. This evidence was relevant and admissible in relation to whether the differences in Mr. Knueven's conduct in 2017 were motivated by testers' protected characteristics. Both the housing discrimination and steering claims before the jury required the Commission to prove the protected characteristics of testers were a motivating factor in Mr. Knueven's actions. Discriminatory motivation can be proven by direct or indirect evidence. *Hedlund v. State*, 930 N.W2d 707, 719 (Iowa 2019).

However, direct evidence of discrimination is rare. *Bordelon v. Bd. of Educ. of the City of Chicago*, 811 F.3d 984, 990 (7th Cir. 2016); *Naficy v. Ill. Dept. of Human Servs.*, 697 F.3d 504, 509 (7th Cir. 2012). Mr. Knueven's past conduct is important indirect evidence of discriminatory motive. It demonstrates his consistent pattern of being unhelpful when he believes he is dealing with someone of a protected religion or national origin. However, when he believes the person he is dealing with is the same as him, he is eager to provide information and help. This consistent pattern is indirect evidence that national origin or religion motivated his August 2017 conduct.

It has been repeatedly held that evidence of past discriminatory actions can be used as background evidence to support a timely claim. In *National Railroad Passenger Corporation v. Morgan*, the United States Supreme Court addressed the interaction of timely and untimely claims under Title VII. 536 U.S. 101 (2002). In that case, a black employee alleged that his employer had taken a number of discriminatory actions against him over the course of years. *Id.* at 105-06. The

Court held that discriminatory actions outside the time for filing discrimination charges were not actionable, but that they could still be relevant evidence. *Id.* 113-15.

> [D]iscrete discriminatory acts are not actionable if time barred, even when they are related to acts alleged in timely filed charges. Each discrete discriminatory act starts a new clock for filing charges alleging that act. The charge, therefore, must be filed within the 180– or 300–day time period after the discrete discriminatory act occurred. The existence of past acts and the employee's prior knowledge of their occurrence, however, does not bar employees from filing charges about related discrete acts so long as the acts are independently discriminatory and charges addressing those acts are themselves timely filed. Nor does the statute bar an employee from using the prior acts as background evidence in support of a timely claim.

Id. at 113. From this, it is clear that relevant prior acts should not be excluded from evidence just because they do not support an independently actionable claim.

Since *Morgan*, courts have applied this principle in a variety of different contexts. Courts have applied this principle in the context of Fair Housing Act claims. *Egbukichi v. Wells Fargo Bank, NA*, No. 3:15-cv-2033-SI, 2017 WL 1199737, at *4-5 (D. Or. Mar 29, 2017) (noting that the principle outlined in *Morgan* has been applied "with equal force to actions arising under other civil

rights laws." *Id.* at *5 fn.4 (cleaned up)); *Anderson Group, LLC. v. City of Saratoga Springs*, No. 1:05-CV-1369 (GLS/DRH), 2008 WL 2064969, at *3 (N.D.N.Y. May 13, 2008). The United States Court of Appeals for the Eighth Circuit has applied this principle in the context of the Americans with Disabilities Act, the Family and Medical Leave Act, and the Driver's Privacy Protection Act. *See Henderson v. Ford Motor Co.*, 403 F.3d 1026, 1037 (8th Cir. 2005) (ADA); *Hite v. Vermeer Mfg. Co.*, 446 F.3d 858, 866 (8th Cir. 2006) (FMLA); *McDonough v. Anoka County*, 799 F.3d 931, 946 (8th Cir. 2015) (DPPA). In a housing discrimination case, the Eighth Circuit has also discussed that evidence from past conduct of a landlord can be relevant. *Quigley v. Winter*, 598 F.3d 938, 950-51 (8th Cir 2010). In 2005, the United States District Court for the District of Minnesota also collected cases discussing the admission of prior evidence of discriminatory conduct to prove motive. *U.S. v. Kreisler*, Civ. 03–3599 MJD/JSM, 2005 WL 3299074, at *2-3 (D. Minn. Dec. 5, 2005).

This Court has also held that evidence of past conduct can be admitted as relevant to motive. *Clarey v. K-Products, Inc.*, 514

N.W.2d 900, 902-03 (Iowa 1994) (in the context of workers' compensation retaliation). The Commission's 2015 and 2016 evidence of discriminatory conduct by Mr. Knueven toward protected housing testers is admissible as relevant to his motivation in treating people differently in 2017, and it was properly admitted.

The 2015 and 2016 testing evidence was also similar in nature to the 2017 evidence. The evidence from the 2015 and 2016 testers showed the same pattern of conduct as the 2017 testing with Mr. Knueven showing an obvious preference and being more cooperative with non-minority testers than those evidencing a protected national origin or religion. In both time frames, Mr. Knueven is more friendly toward and provides more information to testers who do not exhibit a protected characteristic.

Mr. Knueven is mistaken in arguing that the motivation behind his 2017 actions was not before the jury. Showing that the difference in protected characteristics is a motivating factor to someone's different treatment is an essential element of discrimination claims. Even Mr. Knueven's jury instructions

would have required this evidence. His instruction on the housing discrimination claim related to charging different rental rates would have required the jury to find that "the decision to charge the higher rent was based upon the potential tenant(s)" protected characteristic. (D's Proposed Stmt. of the Case, Jury Instructions, and Verdict Form p.11 App. 45.) Similarly, his proposed instruction on the steering claim required the jury to find Mr. Knueven's actions to be according to or on account of a protected characteristic. (D's Proposed Stmt. of the Case, Jury Instructions, and Verdict Form p.12 App. 46.) His recast instruction on steering required the jury to find that Mr. Knueven "intended to direct or 'steer' the person because of their protected status." (D's Recast Jury Instructions p.4 App. 75.) Even under Mr. Knueven's proposed jury instructions, the motivations behind his 2017 actions would always have been an issue for the jury to confront. Motive was an issue in the case, and the earlier testing evidence was relevant to that.

The court did not abuse its discretion in admitting the 2015 and 2016 testing evidence as it was directly related to Mr. Knueven's motivation for the 2017 conduct.

4.4. The unrelated Iowa Civil Rights Commission Order was properly excluded.

4.4.1. Issue Preservation

The Commission agrees that Mr. Knueven preserved this issue.

4.4.2. Standard of Review

The Commission agrees evidentiary rulings are reviewed for abuse of discretion.

4.4.3. Argument

The court properly excluded Mr. Knueven's proposed testimony about an Iowa Civil Rights Commission ("ICRC") investigation that resulted in a favorable outcome for him. For several reasons, the outcome of that proceeding was not relevant. The ICRC Order was not relevant because it was not based on facts similar to those at issue at trial. The complaint before the

ICRC had dealt with disability discrimination rather than discrimination on the basis of religion or national origin. (Court Ex. 1 App. 77.) Additionally, it dealt with an existing tenant instead of a perspective tenant. (Court Ex. 1 App. 77.) Testimony that the ICRC had not found Mr. Knueven to have discriminated on the basis of disability against an existing tenant would not have assisted the jury in determining whether Mr. Knueven discriminated against potential tenants on the basis of national origin or religion.

Admission of evidence about the ruling would also have been contrary to limine rulings Mr. Knueven obtained. The ICRC Order found that there was not probable cause to believe Mr. Knueven had engaged in discrimination, but the court had already ordered that terms like "probable cause" and decisions related to them were not to be presented to the jury. (Pre-Trial Tr. 5-7-21 p.17:8-13.)

Mr. Knueven had also been granted motions in limine to exclude evidence of other discrimination complaints. Mr. Knueven requested that evidence of the discrimination complaint filed with

the Commission be excluded as unproven. (D's Mot. in Limine App. 26-27.) Mr. Knueven also requested exclusion of discussion of a separately pending district court case involving a discrimination claim against Mr. Knueven. (D's Mot. in Limine App. 33.) The court granted Mr. Knueven's requests on both issues. (Pre-Trial Tr. 5-7-21 p.22:6-23:16, 41:15-21.) Testimony about the ICRC Order would have been contrary to two limine rulings that Mr. Knueven requested to exclude evidence of other claims of discrimination against him. Evidentiary rulings should only be reversed if there is an abuse of discretion where the court makes a decision that is clearly untenable or clearly unreasonable based on an erroneous application of the law. *City of Des Moines v. Ogden*, 909 N.W.2d 417, 423 (Iowa 2018). Because the testimony about the ICRC Order was both not relevant and would have been contrary to multiple limine orders, the court did not make an erroneous application of the law and did not abuse its discretion.

4.5. Mr. Knueven's prior testimony about raising rental rates was relevant and admissible.

4.5.1. Issue Preservation

The Commission agrees that Mr. Knueven preserved this issue.

4.5.2. Standard of Review

The Commission agrees evidentiary rulings are reviewed for abuse of discretion.

4.5.3. Argument

The court did not abuse its discretion in allowing the Commission to impeach Mr. Knueven with a prior inconsistent statement made under oath. In his testimony at trial, Mr. Knueven testified that he raised the rent on a unit that was vacant and that he was having difficulty renting. (Trial Tr. 5-19-21 p.64:6-65:11, 66:23-67:13, 100:15-101:9.) During prior deposition testimony Mr. Knueven had testified that one wouldn't raise rents on a vacant unit because having the unit vacant makes it difficult to increase the rent to what it should be. (Trial Tr. 5-19-21 p.105:10-20.) Mr. Knueven had increased the rent on a vacant

unit in 2017, then in 2021 testified that you don't increase the rent on a vacant unit. The prior testimony had been inconsistent with the actions Mr. Knueven had taken in relation to this case and was relevant and admissible for that purpose. Because the prior testimony was relevant and inconsistent, the court did not make an erroneous application of the law and did not abuse its discretion.

Impeachment with the prior testimony did not prejudice Mr. Knueven. The inconsistency between the prior testimony and Mr. Knueven's actions related to the raising of rents at issue in the Commission's first claim of housing discrimination. The jury found in Mr. Knueven's favor on that claim. As such, Mr. Knueven was not prejudiced by admission of this prior testimony even if there had been an abuse of discretion in its admission.

4.6. Attorney fees

4.6.1. Issue Preservation

The Commission agrees that Mr. Knueven preserved this issue.

4.6.2. Standard of Review

The Commission agrees with the standard of review set forth by Mr. Knueven on this issue.

4.6.3. Argument

The Commission agrees that if this Court reverses the legal rulings made at trail necessitating a new trial, the attorney fee award in favor of the Commission should be set aside. However, ordering the district court to enter an attorney fee award in favor of Mr. Knueven would be premature. Assuming the Court found an error in the legal standard used or an abuse of discretion in the evidentiary rulings, the appropriate course of action would be remand for a new trial. Only after that new trial would it be appropriate for the district court to enter a new attorney fee award in favor of the prevailing party.

5. CONCLUSION

This Court should affirm the jury's verdict that Patrick Knueven engaged in illegal and discriminatory housing steering on the basis of national origin or religion. There is no need for remand because the district court followed precedent on the legal standard for steering and on admission of evidence relating to prior discriminatory acts to show the motivation behind the discriminatory acts at issue at trial. The Commission's evidence demonstrated that Mr. Knueven was friendly and encouraging to people he perceived to be like himself. However, when people he perceived as having a different national origin or religion from himself expressed interest in his properties, he made sure that his actions, responses, and demeanor sent the message to them that they would not find housing with him. He acted to make them feel unwelcome so that they would understand, without him saying it, that his housing was unavailable to them. Mr. Knueven engaged in the type of cunning discrimination that was not necessary a century ago, but that landlords today have learned to use to shield themselves against repercussion. The subtle discrimination Mr.

Knueven engaged in is more invidious, and no less harmful to our society, than the more blatant forms that he avoids. This Court should not allow him to shield himself from discrimination laws by avoiding only blatantly discriminatory actions.

CONDITIONAL REQUEST FOR ORAL ARGUMENT

Appellee requests oral argument only if Appellant is granted oral argument.

Respectfully submitted,

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CERTIFICATES

Compliance with Type-Volume Limitation, Typeface Requirements and Type-Styles Requirements.

1. This Brief complies with the type-volume limitation of Iowa R. App. P. 6.903(1)(g)(1) because it contains 9,863 words.

2. This Brief complies with the typeface requirements of Iowa R. App. P. 6.903(1)(e) and the typestyle requirement for Iowa R. App. P. 6.903(1)(f) because this Brief has been prepared in a proportionally spaced typeface using Word 2016 in Century 14 point font.

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