

1 PLANTIFF: Mr. Burns

2 WITNESS: June Brown

3 COURT:

4 DEFENDANT: Ms. Park

5

6 WARM UP

7

8 THE COURT: Good afternoon. The record should
9 reflect that we are on the record with the defendant
10 present and the attorneys. State your appearances,
11 please.

12 MR. BURNS: Yes, your / Honor. Thank you.
13 Jeff Burns for the people.

14 MS. PARK: Margaret Park for the defendant.

15 THE COURT: All right. Are you ready to call your
16 next witness?

17 MR. BURNS: Yes, your / Honor, I am.

18 THE COURT: Let's proceed.

19 MR. BURNS: Your Honor, the people call June Brown.

20 THE COURT: Please state your name and spell it for
21 the record.

22 THE WITNESS: I am June / Brown, B-R-O-W-N.

23 THE COURT: Thank you.

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1 Q. BY MR. BURNS: Ms. Brown, I just have several
2 questions for you. When I am finished then defense
3 counsel will / probably have some as well. Let us know
4 if you don't understand any of our questions.

5 A. All right.

6 Q. Where are you currently employed?

7 A. Right now / I work at Smith Plumbing.

8 Q. What do you do for them?

9 A. I work in the office and I am responsible for
10 the billing, filing, answering / phones and duties like
11 that.

12 Q. How long have you worked there?

13 A. I have been there for approximately eight years
14 now.

15 Q. Have you always held the / same position since
16 you were hired?

17 A. Pretty much. Actually, when I started working
18 I wasn't doing the banking right away. I didn't begin
19 doing that */ until five years ago.

20 Q. What duties do you have with the banking?

21 A. When the mail comes and there are payments,
22 then I record them and / prepare them for the deposits.

23 Q. Are you the one who takes the deposits to the
24 bank?

25 A. Usually. I mean sometimes the owner will do
26 that, / but I have authority for the banking, too.

1 MR. BURNS: Your Honor, I would like to mark as an
2 exhibit the signature card. I am not sure / what my
3 next exhibit is.

4 THE COURT: That will be people's exhibit 10 for
5 identification.

6 MR. BURNS: Thank you.

7 MS. PARK: Your Honor, I have an objection as no
8 foundation.

9 THE COURT: Counsel / is just marking it at this
10 time. It is not in evidence yet.

11 MS. PARK: I understand. I don't believe the
12 foundation can be properly laid with / this witness.

13 THE COURT: Let's just have the next question and
14 see where it goes.

15 Q. BY MR. BURNS: Ma'am, do you recognize this
16 exhibit as something that you prepared or / that you
17 created?

18 A. Yes, I do.

19 Q. What does this exhibit represent?

20 A. It is the signature card the bank has you fill
21 out so you can / have access to the account.

22 Q. Whose signature is on there?

23 MS. PARK: Objection. No foundation.

24 THE COURT: Sustained as to the form of the
25 question.

26 **END OF WARMUP**

1 EXAM

2
3 Q. BY MR. BURNS: Did you sign this */ card?

4 A. Yes, I did. This is my signature right here.

5 Q. The document has two sections with handwriting
6 in both. Did you fill out anything in / the top
7 section of the exhibit?

8 A. No. The bank teller did that.

9 Q. Were you physically present when that was
10 prepared?

11 A. No.

12 MS. PARK: Objection. Motion to strike. /

13 THE COURT: Sustained.

14 Q. BY MR. BURNS: How do you know who created this
15 document if you weren't present?

16 A. Fred Dunlap told me I just needed to authorize
17 it and that / the bank really needed it.

18 Q. Let's clarify something. Where did you sign
19 this application?

20 A. It was in the office.

21 Q. Were you present at the bank / building or --

22 A. No, it was at Smith Plumbing in the offices.
23 Fred notified me I needed to authorize it.

24 Q. Who is Fred?
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1 A. He is the / accountant that prepares the taxes
2 and filings for the business. He comes in every now
3 and then and gets papers ready for filing and stuff /
4 with the government.

5 Q. So Fred isn't the legal owner of the business?

6 A. No, he isn't. Bob Smith is the only owner of
7 the business.

8 Q. Does / Bob work in the office with you?

9 A. Occasionally, but he is a plumber and he is
10 usually in the field. Fred comes by every couple */
11 months and prepares work in the offices.

12 Q. When you initially saw this document, what
13 handwriting was already on the card?

14 A. All the top portion was / filled out. It also
15 was signed or initialed by Bob at the bottom.

16 Q. Are you familiar with Mr. Smith's signature?

17 A. Yes, I am.

18 Q. Let me / ask you about what the policy is for
19 signing checks at the business. When you receive a
20 bill, what is your procedure?

21 MS. PARK: Objection. Vague.

22 THE COURT: Sustained. /

23 Q. BY MR. BURNS: Could you please explain briefly
24 what happens when you receive an invoice in the mail?
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1 A. Sure. I open the mail every day and I just /
2 separate the bills and any payments that come in.

3 There is always junk mail and I just throw that away.

4 Q. When you talk about payments, / are you
5 speaking about money that your clients are sending to
6 you?

7 A. Correct. We have statements that go out to
8 customers and they send us / checks. When those are
9 received, I merely record that they have paid their
10 charges. I will then get it ready for deposit in the
11 bank. /

12 Q. What kind of clients are you talking about?

13 A. We have many.

14 Q. People will be calling a plumber in emergency
15 situations, correct?

16 A. That's correct. That happens. */

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1 START TYPING

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3 Q. BY MR. BURNS: Does that happen very often?

4 A. Yes.

5 Q. Somebody engages your service and they pay when
6 work is completed?

7 A. Yes, that happens. We have workers who deliver
8 / checks and we also have payment that comes in from
9 the mail. People can mail in the payment if they are
10 regular customers. Plus, we / also have several
11 contract projects that we service.

12 Q. What type of contract work do you perform?

13 A. We have many plumbers who are on call for /
14 some businesses or project sites. We will routinely
15 bill them monthly and they send in their payment.

16 Q. Is that billing something that you take care /
17 of?

18 A. It definitely is. I process them somewhere
19 around the end of the month. They become due and
20 payable by the 10th of each month. /

21 MR. BURNS: Your Honor, I would request to mark as
22 an exhibit a photocopy of a billing statement printed
23 on the letterhead of Smith Plumbing.

24 THE COURT: Okay. That's / next in order as 11.

25 MS. PARK: Your Honor, may we approach sidebar?

26 THE COURT: Are you lodging an objection?

1 MS. PARK: I just needed to address an issue and /
2 didn't want to do it in the presence of the jury.

3 THE COURT: Okay. That's fine. You may approach
4 sidebar.

5 MS. PARK: Your Honor, I don't want to */ delay the
6 proceedings, but I just wanted to clear up something
7 before we get too far into these exhibits.

8 MR. BURNS: What's the problem?

9 MS. PARK: Are you planning / on calling Bob Smith
10 as a witness? Because, I believe he is the individual
11 who should be laying the foundation for these exhibits
12 and not / June.

13 THE COURT: Counsel, if you have an objection you
14 need to state it for the record so I can rule on it.

15 MS. PARK: I don't really have / an objection. I
16 just believe that there is a better witness to lay the
17 foundation for these exhibits.

18 THE COURT: Counsel, since you don't have an
19 objection, / there is no necessity to be sidebar.
20 Let's just proceed with the witness.

21 MS. PARK: I am sorry, your Honor. I just wanted
22 to inquire about / the offer of proof that was given
23 previously.

24 MR. BURNS: I represented to her that I would be
25 calling Bob and June, and I don't think I / should be
26 limited in the manner I present my evidence.

1 THE COURT: Okay. I understand. Let's just
2 proceed with the witness at this time.

3 MR. BURNS: Thank you, your / Honor.

4 MS. PARK: All right. Thank you.

5 THE COURT: Next question, please.

6 Q. BY MR. BURNS: Ma'am, let me ask you about this
7 exhibit that we just marked. Do you recognize that
8 document? */

9 A. Yes, I do.

10 Q. Did you prepare that statement?

11 A. Yes, that's correct. My initials are at the
12 very bottom here.

13 Q. Can you explain to us why / this particular
14 statement would be prepared?

15 A. Okay. It's the monthly billing statement for
16 the period of June 1998. It reflects the service calls
17 that / were made that month and the amounts due.

18 Q. Now, once you receive the payment for a billing
19 statement and you have recorded it as paid, / you
20 prepare it for deposit and what is the next step?

21 A. I deliver them to the bank and deposit them.

22 Q. How often do you / do the banking?

23 A. Obviously, there is really no set schedule. It
24 is not like I go weekly or anything like that. I only
25 go when / I have a deposit to make.

26

1 Q. Are there ever certain situations where you are
2 holding checks, waiting to receive more money prior to
3 traveling to / the bank?

4 A. I suppose you could say that. When the
5 statements go out and the payments are made, we will
6 receive the majority of them / the first week of the
7 month. I may wait until the end of that week to
8 deposit them. I'm not going every single day.

9 Q. When */ a plumber goes out on a call to a
10 residence and they return back with a payment for
11 services performed, what happens to that paperwork? /

12 A. The plumber has already completed a work order
13 and they simply attach the payment to our copy of the
14 work order. I then handle it / from there.

15 Q. What duties do you perform in handling it?

16 A. I basically record the payment and I file the
17 office copy of the work order / in our files.

18 THE COURT: Excuse me. If you could pull the
19 microphone a little closer to you. Your voice trails
20 off sometimes and we all need / to be able to hear your
21 testimony.

22 THE WITNESS: I'm sorry. Is that better?

23 THE COURT: That's perfect. Just try to keep your
24 voice up and speak clearly into / the microphone so all
25 the jurors can hear you.

26 THE WITNESS: Okay. Absolutely.

1 Q. BY MR. BURNS: Ma'am, when the monthly invoices
2 are received for your business, like the electric bill,
3 / telephone bill and items like that, are you
4 responsible for paying those invoices?

5 A. I prepare them for payment. When I open the
6 mail, I separate / out the bills and set them aside for
7 Bob to review later. He will return them back to me
8 and tell me that they are */ okay for payment. I will
9 then process the checks for immediate payment.

10 Q. Do you actually fill out the checks and mail
11 them yourself?

12 A. Correct, I / write out the checks. Thereafter,
13 I give them back to Bob for signature and I eventually
14 mail them. Although, sometimes if he is out of / town
15 or not around, I will simply initial them and mail them
16 if he has authorized that they are okay for payment.

17 Q. Are there any / other occasions wherein you
18 process checks for the business, or I should say where
19 you sign checks for business operations?

20 A. Not that I can think / of. Sometimes, if a
21 driver purchases something that they need reimbursement
22 for, then I will issue payment to them for that.
23 That's really about it, / though.

24 Q. What would be an example of that?

25 MS. PARK: Objection. Irrelevant.
26

1 THE COURT: Overruled. You can answer the
2 question.

3 THE WITNESS: Sometimes a driver will have to fill
4 up the / truck with gasoline, or maybe have to purchase
5 a part, and I will just pay them back for that.

6 Q. BY MR. BURNS: Is that something that happens
7 regularly? /

8 A. Not really. Most of the drivers have credit
9 cards for that. But, sometimes they will forget them
10 at home or something and they have to */ pay. Bob then
11 will want them to get their money repaid.

12 MR. BURNS: Thank you. Nothing further of this
13 witness.

14 THE COURT: Counsel, any cross-examination?

15 MS. PARK: Yes, I have a / couple questions, your
16 Honor.

17 THE COURT: Proceed.

18 Q. BY MS. PARK: Ms. Brown, let me begin with
19 something that you just were talking about. You
20 testified that sometimes the plumbers are / required to
21 go purchase parts and pay for them.

22 Is that basically what you're saying?
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1 A. If they are working on a project and they need
2 / something that they don't have onboard the truck,
3 sometimes they will need to purchase what they require
4 at a store and then bring the receipt / in so I will
5 repay them.

6 Q. What kind of purchases are we actually talking
7 about?

8 A. Nothing big. They usually have whatever they
9 need for assignments / on the trucks. But, sometimes
10 if it is something inexpensive and they just need it to
11 complete the project, they will go purchase it.

12 Q. Where / would they go to obtain whatever parts
13 they need?

14 A. It possibly could be Home Depot or any plumbing
15 supply place.

16 Q. Do they have to get / permission from somebody
17 first before purchasing those parts on their own?

18 A. No.

19 Q. Is that something that is left up to the
20 plumber to make that */ decision?

21 A. I don't really know how that works. I just
22 know that if they have a valid receipt, then I am to
23 reimburse them.

24 Q. Has / Bob Smith ever given you any instructions
25 in regard to that procedure?
26

1 A. Not really. He is usually the one who gives me
2 the receipts and / then I just write the checks and
3 distribute them to the workers.

4 Q. How much money are we talking about?

5 MR. BURNS: Objection. Irrelevant.

6 THE COURT: Overruled. You may answer. /

7 THE WITNESS: Do you mean each receipt, or what are
8 you asking?

9 MR. BURNS: I suppose my objection should be it is
10 vague.

11 THE COURT: Sustained.

12 Q. BY MS. PARK: Let me rephrase it. Can / you
13 think of an example of when you recently issued a check
14 for payment of a receipt?

15 A. Absolutely. I did one last Thursday.

16 Q. How much / money was that receipt?

17 A. If I remember correctly, I wrote the check for
18 15 dollars. It was in payment for something on a call
19 at / one of our monthly clients.

20 Q. Now, in that situation would that charge of 15
21 dollars be on the billing statement for the following
22 month as / an expense or a charge against that client?

23 A. Not on our monthly clients, no. We only bill
24 them a flat rate for monthly service.

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1 Q. What */ if you have to replace parts or
2 complete repairs, is that all included in the monthly
3 contract?

4 A. Only regular maintenance is included, yes,
5 ma'am. If / there are major repairs or any new
6 projects, then I don't know how that's figured out
7 exactly.

8 Q. Well, don't you prepare the monthly billing
9 statements / that are mailed?

10 A. Yes, that's correct.

11 Q. How are you able to calculate what's on the
12 monthly statements?

13 A. Bob explains the amount to bill the client /
14 and that's what I bill them.

15 Q. Does he instruct you every month what the
16 amount should be for every client?

17 A. He just tells me if / it is something other
18 than the normal amount that I typically bill.

19 Q. How do you typically calculate what the normal
20 amount should be?

21 A. It is / taken from the contract the client
22 negotiated with Smith Plumbing.

23 Q. Were you involved in the preparation of those
24 contracts?

25 A. No.

26 Q. Then how do you know / the amount?

1 A. I only bill what I am instructed to bill, but
2 it is not like he has to tell me every month what the /
3 amount is. I know that it is the same unless he gives
4 me something different.

5 Q. Now, I wanted to inquire about this bank
6 signature card */ that you filled out.

7 MR. BURNS: Objection. Misstates the evidence.

8 THE COURT: Sustained.

9 Q. BY MS. PARK: Exhibit 10 is a document that you
10 signed; is that correct?

11 A. Yes.

12 Q. Do you remember when / you signed this card?

13 A. No.

14 Q. You don't remember signing it; is that correct?

15 MR. BURNS: Objection. Misstates the evidence.

16 THE COURT: Okay. You can restate your question.

17 MR. BURNS: Your Honor, / the exhibit is dated so
18 that would be the best evidence of when it was signed.

19 THE COURT: Let's just have the next question,
20 please.

21 Q. BY MS. PARK: You remember / signing the card,
22 but you just don't remember the date; is that correct?

23 A. Yes. I know that's my signature and I signed
24 it, and I / kind of remember doing it, but I don't
25 recall what day it was.

26

1 Q. Did you have any discussion with Bob Smith
2 prior to your signing / this particular document?

3 MR. BURNS: Objection. Vague as to time.

4 THE COURT: Overruled. You may answer.

5 THE WITNESS: I speak to him constantly.

6 Q. BY MS. PARK: Did he ever talk to you about
7 having / your signature on this card for the bank?

8 A. Yes.

9 Q. Okay. What was that conversation?

10 MR. BURNS: Hearsay.

11 THE COURT: Sustained.

12 Q. BY MS. PARK: It wasn't a surprise to you that
13 you were / required to sign this card, was it?

14 A. No, I knew that I was going to be doing that.

15 Q. Now, you testified that Fred brought you */ the
16 paperwork; is that correct?

17 A. Definitely. He was working to prepare some
18 paperwork. He brought it over to my desk for
19 signature.

20 Q. Did he remain / there waiting for your
21 signature, or how did that actually happen?

22 A. No, he left the paperwork for me in my office
23 and it had a / note to sign it and return it back to
24 him when I was finished.

25 Q. Was the note signed?

26 A. Do you mean handwritten?

1 Q. I mean, was / it signed with a name for who
2 authored the note?

3 A. Not that I remember. I completed the paperwork
4 and put it in his mailbox.

5 Q. How / did you know who to return it to if the
6 note wasn't signed?

7 A. I recognized his handwriting.

8 Q. Do you have anything to do with the /
9 assignment of workers?

10 A. Not really.

11 Q. Who decides the schedule of employees?

12 A. That would be Jim Smith.

13 Q. With that last name, I assume he is related /
14 to Bob Smith.

15 A. They are brothers.

16 Q. Has he been working there longer than you have?

17 A. Absolutely. He started there probably ten
18 years before I did. /

19 Q. How long has the company been in existence?

20 MR. BURNS: Objection. Irrelevant and beyond the
21 scope.

22 THE COURT: Sustained.

23 MR. BURNS: May I be heard sidebar?

24 THE COURT: All right. That's fine. */
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