

EXHIBIT

Lawyer Turned Judge as a Witness for Defendant
in Minnesota Federal Court Criminal Proceeding

Doc. 98

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Plaintiff,

v.

Civil No. 22-cr-48 ECT/ECW

Steven Dornsbach; Kamida, Inc.,

DISQUALIFICATION ORDER

Defendants.

Because criminal case number 22-cr-48 ECT/ECW involves U.S. Magistrate Judge Dulce J. Foster as a potential trial witness, it is hereby determined that all U.S. District Judges and U.S. Magistrate Judges of the above Court are disqualified from presiding over the matter.

Based on the files, records, and proceedings herein:

IT IS SO ORDERED.

DATED: August 29, 2022
at Minneapolis, Minnesota.

s/Patrick J. Schiltz
PATRICK J. SCHILTZ
Chief Judge
United States District Court

Doc. 119

**DESIGNATION OF UNITED STATES DISTRICT JUDGE
FOR SERVICE IN ANOTHER DISTRICT WITHIN THE CIRCUIT**

WHEREAS, in my judgment the public interest so requires;

NOW THEREFORE, pursuant to the provisions of Title 28, United States Code, Section 292(b), I do hereby designate and assign the

HONORABLE DANIEL M. TRAYNOR

United States District Judge for the **DISTRICT OF NORTH DAKOTA**, to hold court in the **DISTRICT OF MINNESOTA**, beginning **September 2, 2022**, and for such additional time in advance thereof to prepare or thereafter as may be required to complete unfinished business for the following case:

Case No. 22-CR-0048 (ECT/ECW)

Dated: September 2, 2022



Lavenski R. Smith, Chief Judge
United States Court of Appeals, Eighth Circuit

Original: **Kate Fogarty, Clerk of Court, District of Minnesota**
cc: Honorable Peter Welte, Chief Judge, District of North Dakota
Honorable Patrick J. Schiltz, Chief Judge, District of Minnesota
Honorable Daniel M. Traynor, District Judge, District of North Dakota
Rob Ansley, Clerk of Court, District of North Dakota
Millie B. Adams, Circuit Executive

Doc. 364

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

United States of America,

Plaintiff,

vs.

Steven Dornsbach and Kamida, Inc.,

Defendants.

Case No. 0:22-cr-00048

**ORDER DENYING MOTION TO QUASH SUBPOENA AS TO FOSTER
AND
GRANTING MOTION TO QUASH SUBPOENA AS TO HOPPE**

[¶1] THIS MATTER comes before the Court on two Motions to Quash Subpoenas filed by Magistrate Judge Dulce J. Foster (“Foster”)¹ and Lousene Hoppe (“Hoppe”) on April 21, 2023. Doc. Nos. 274, 277. Steven Dornsbach and Kamida, Inc. (“Defendants”) filed a Response on April 25, 2023. Doc. No. 298. Trial is scheduled in this matter for May 1, 2023. For the reasons set forth below, the Motion to Quash (Doc. No. 277) as to Foster is **DENIED** and the Motion to Quash (Doc No. 274) as to Hoppe is **GRANTED**.

BACKGROUND

[¶2] The United States’ investigation and prosecution of Ronnie Taggart (“Taggart”), an employee of the City of Plymouth, Minnesota, eventually led them to the Defendants in the instant case: Kamida, Inc. (“Kamida”) and its Chief Executive Officer, Steven Dornsbach (“Dornsbach”).

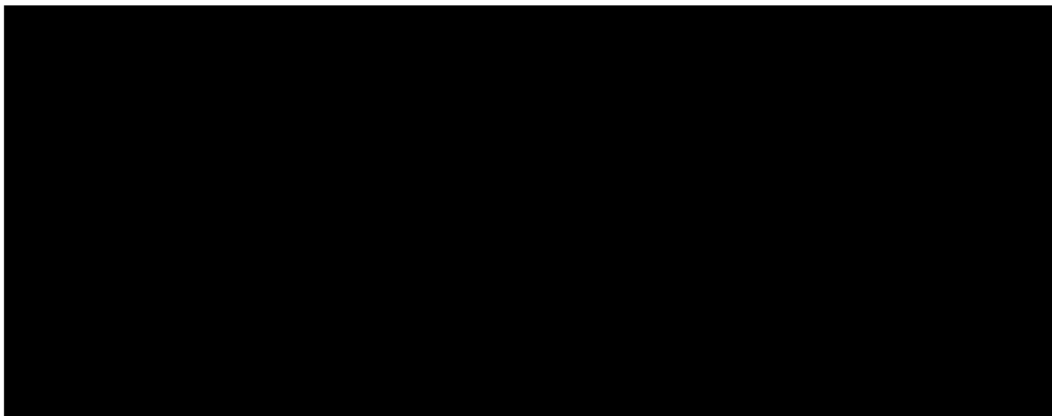
¹ Magistrate Judge Foster took the bench after representing Olson. The subpoena served to Foster does not arise out of the performance of her official duties as a Magistrate Judge but rather the testimony the Defendants seek is related to Foster’s work in private practice. For ease of this Order and to prevent confusion, the Court will refer to Judge Foster as “Foster” throughout.

[¶3] Taggart was allegedly involved in a bid rigging scheme. He allegedly provided municipal contracts to contractors in exchange for bribes and kickbacks, contrary to Minnesota law and municipal policies that governed the bidding process. He was eventually charged by way of Information with wire fraud in violation 18 U.S.C. §§ 1343 and 1346. See United States v. Taggart, Case No. 18-cr-93 (D. Minn. 2018), Doc. No. 1. He entered a guilty plea to this charge in May 2018. See id. at Doc. No. 10.

[¶4] The United States traced an email sent by Taggart as a part of the aforementioned scheme to Dornsbach. Doc. No. 65, p. 5. In this email, Taggart requested a “Comp bid from your guy for [his] records in case [he] gets audited.” The “guy” referenced by Taggart turned out to be Clarence Olson (“Olson”). See Taggart, Case No. 18-cr-93 (D. Minn. 2018), Doc. No. 10, pp. 4-5.

[¶5] On August 11, 2021, Olson was charged with the one count of conspiracy to restrain trade in violation of the Sherman Act, 15 U.S.C. § 1. See United States v. Olson, Case No. 21-cr-00172-ECT (D. Minn. 2021), Doc. No. 1, ¶ 2. On September 27, 2021, he appeared before Judge Eric. C. Tostrud, waived Indictment, pled guilty to the offense charged in the Information. See id. at Doc. Nos. 11, 13.

[¶6] Olson wrote the following letter (“First Letter”) to Judge Tostrud on October 12, 2021, in anticipation of sentencing (which has yet to occur):





Doc. No. 49-3. The United States disclosed the First Letter and summaries of its communications with Olson’s counsel.² Those summaries related to Counsel’s belief that “Olson’s memory is poor and his recollection of certain topics is incomplete, not the most reliable, and/or that Olson may have difficulty remembering specifics” and that “Olson was part of a special education program growing up.” Doc. No. 49-3.

[¶7] On June 10, 2022, Olson submitted another letter (“Second Letter”) to Judge Tostrud. Doc. No. 127-1. The Second Letter reads:



Id.

² Defendants have previously sought production of all communications between the United States and Olson’s Counsel. Doc. No. 44. Magistrate Judge Wright denied the motion and this Court affirmed the Order, reasoning that the “summaries produced by the United States of its communications with Olson’s counsel provided Defendant with ample information for any direct or cross examination of Olson and his counsel.” Doc. No. 156. While the Motion for Discovery was pending, Defendants served Foster’s former law firm, with a subpoena, requiring the production of “all documents related to the representation provided by your law firm . . . to Clarence Olson, Maribeth Olson, and C. Olson Concrete” since January 2019. Doc. No. 94. Magistrate Judge Hochhalter granted the law firm’s Motion to Quash reasoning the subpoena lacked specificity and was oppressive. Doc. No. 196. This Court affirmed the Order. Doc. No. 211.

[¶8] Before filing of the Information and thereafter, Olson was represented by Dulce Foster, now a United States Magistrate Judge, prior to her taking the bench. Olson, Case No. 21-cr-00172-ECT (D. Minn. 2021). On May 31, 2022, Foster withdrew as counsel for Olson and Hoppe was substituted as Olson’s counsel of record. Olson, Case No. 21-cr-00172-ECT (D. Minn. 2021), Doc. No. 28.

[¶9] On March 24, 2023, Defendants served Hoppe with a subpoena to testify at trial. Doc. No. 274-1. On March 31, 2023, Defendants served Foster with a subpoena to testify at trial. Doc. No. 277-1. Counsel for Defendants, Jennifer Robbins (“Robbins”), submitted an affidavit in support of the subpoena. Id. at 277-2. In the affidavit, Robbins states the Defendants anticipate calling Foster to testify for purpose of impeaching either Olson or his counsel “based on the information provided to the government (summarized above) and the information in his plea agreement or otherwise related to his plea of guilty, including to show that Olson had ulterior motives to plead guilty and his claim that he was not coerced to enter his guilty plea.” Id. at p. 5. Robbins also asserts that Olson’s “memory, and lack thereof, as observed by [Foster] during her representation of Olson, is relevant to Defendants Dornsbach and Kamida’s defenses.” Id. at p. 4.

[¶10] On April 21, 2023, Foster and Hoppe filed Motions to Quash the Subpoenas. Doc. Nos. 274, 277. The Defendants filed a Response on April 25, 2023. Doc. No. 298.

DISCUSSION

I. Legal Standard

[¶11] Generally, Rule 17(a) subpoenas may be issued where a defendant seeks testimony that is relevant and material to the issue being litigated. Stern v. U.S. Dist. Ct. for Dist. of Mass., 214 F.3d 4, 17 (1st Cir. 2000). The Supreme Court in United States v. Nixon established the standard governing a Rule 17(c) subpoena that has been distilled to three fundamental elements: 1)

relevancy; 2) admissibility; and 3) specificity. 418 U.S. 683, 699-700 (1974). Moreover, Rule 17 may not be used to conduct a “fishing expedition.” Id. The same standard applies to subpoenas compelling the attendance of witnesses, i.e., subpoenas ad testificandum. Stern, 214 F.3d at 17. When faced with a motion to quash, the defendant has the burden to show that the witness whose presence he seeks is necessary for an adequate defense, and the trial court has wide discretion in determining whether the defendant has met that burden. United States v. LeBeau, 867 F.3d 960, 975 (8th Cir. 2017).

[¶12] The district court “may quash or modify” a subpoena if “compliance would be unreasonable or oppressive.” Fed. R. Crim. P. 17(c)(2). Where the sought testimony is cumulative or immaterial, a court does not abuse its discretion by quashing a Rule 17(a) subpoena. See United States v. Beasley, 479 F.2d 1124, 1128 (5th Cir. 1973). Generally, courts may find a subpoena is unreasonable or oppressive if it is irrelevant, abusive or harassing, overly vague, or excessively broad. See In re Grand Jury Subpoena (THCF Med. Clinic Records), 504 F.Supp.2d 1085, 1088 (E.D. Wash. 2007). Courts should also quash or modify Rule 17(c) subpoenas if they seek privileged materials. United States v. Reyes, 239 F.R.D. 591, 598 (N.D. Cal. 2006) (citing United States v. Tomison, 969 F. Supp. 587, 597 (E.D. Cal 1997)). The Rule 17(c)(2) inquiry is a “discretionary, case-by-case inquiry,” that “cannot sensibly be converted into a mechanical rule,” or set of factors. United States v. Bergeson, 425 F.3d 1221, 1225-26 (9th Cir. 2005). This inquiry is the same whether the individual challenging the subpoena is a party or non-party. See Fed. R. Civ. P. 17(c)(2) advisory committee's note to 2008 amendment.

II. Foster Subpoena

[¶13] Foster argues the subpoena should be quashed because the testimony is irrelevant and cumulative and will necessarily encompass privileged communications and attorney work product.

Defendants argue they are not seeking testimony regarding Foster's client communications with Olson, rather they argue the testimony is relevant to the statements she made regarding Olson's memory and recollection of facts and seek to limit the testimony to the summary disclosed and the two letters that Olson submitted to Judge Tostrud.

[¶14] A Rule 17(c) subpoena "should be quashed or modified if it calls for privileged matter." 2 Federal Practice & Procedure § 275, at 258; see also Tomison, 969 F. Supp. at 597. In this case, two privileges are pertinent, the attorney-client privilege and the attorney work-product privilege. "The attorney-client privilege protects confidential communications between a client and his attorney made for the purpose of facilitating the rendering of legal services to the client." United States v. Spencer, 700 F.3d 317, 320 (8th Cir. 2012). The privilege exists for the benefit of the client, not the attorney, "[b]ut the attorney has the duty, upon any attempt to require him to testify or produce documents within the confidence, to make assertion of the privilege, not merely for the benefit of the client, but also as a matter of professional responsibility in preventing the policy of the law from being violated." Schwimmer v. United States, 232 F.2d 855, 863 (8th Cir. 1956). As explained by the Supreme Court, the work-product privilege safeguards "written statements, private memoranda and personal recollections prepared or formed by an adverse party's counsel in the course of his legal duties." Hickman v. Taylor, 329 U.S. 495, 510 (1947).

[¶15] The Defendants seek testimony related to the Counsel's statements in the summary disclosure and the two letters that Olson submitted to Judge Tostrud. Defendants fail to identify any specific testimony that Foster could provide surrounding the two letters. Foster withdrew her representation prior to Olson sending the Second Letter and any conversations between Foster and Olson about the First Letter are protected by attorney client privilege and are not admissible.

[¶16] Further, in the affidavit, Robbins states the Defendants anticipate calling Foster to testify for purpose of impeaching either Olson or his counsel “based on the information provided to the government (summarized above) and the information in his plea agreement or otherwise related to his plea of guilty, including to show that Olson had ulterior motives to plead guilty and his claim that he was not coerced to enter his guilty plea.” Again, any conversations between Foster and Olson regarding his plea agreement, reasons to plead guilty, and motives to plead guilty are protected by attorney-client privilege and are not admissible. Defendants’ assertion that Foster be required to testify about information “otherwise related to his plea of guilty” is not specific, nor reasonable.

[¶17] Defendants also seek testimony about the summaries prepared by the United States related to Foster’s belief that “Olson’s memory is poor and his recollection of certain topics is incomplete, not the most reliable, and/or that Olson may have difficulty remembering specifics” and that “Olson was part of a special education program growing up.” Doc. No. 49-3. The summary produced is related to communications between Foster and the United States – not between Foster and Olson. Further, Counsel shared these observations with the United States and thus surrendered any privileges that may have attached to them. United States v. Workman, 138 F.3d 1261, 1263 (8th Cir. 1998) (“Voluntary disclosure of attorney client communications expressly waives the privilege.”) (citations omitted).

[¶18] Accordingly, Foster’s Motion to Quash Subpoena (Doc. No. 277) is **DENIED**. At this time, the Court will limit any testimony provided by Foster to the communications she had with the United States as memorialized in the summary disclosed by the United States.

III. Hoppe Subpoena

[¶19] Hoppe argues the subpoena should be quashed because the Defendants have failed to meet their burden that Hoppe has relevant and material testimony. Hoppe contends that requiring her to testify while she is currently counsel of record for Olson is unreasonable and oppressive and would pose a significant risk to the attorney-client relationship. The Defendants argue Hoppe’s testimony is relevant for the same reasons as Foster because she represented Olson around the time of the Second Letter and “the facts and circumstances regarding the government’s involvement with respect to that second letter are relevant to show Olson’s failing memory, his lack of intent to rig bids, and the government’s ‘coaching’ of his testimony.”

[¶20] Rule 17(c)(2) confers discretion on the district court to quash a subpoena if compliance would be “unreasonable or oppressive.” Fed. R. Crim. P. 17. “[T]he district court may properly consider, among other factors, whether compliance would likely destroy the attorney-client relationship, and whether the information sought from the lawyer is already available from other sources.” Id.

[¶21] The Defendants have failed to meet their burden that Hoppe’s testimony is relevant and material. The summary of counsel’s statements disclosed by the United States was produced to the Defendants on April 14, 2022. Doc. No. 49-3. This was prior to the substitution of Hoppe as Olson’s counsel on May 31, 2022. Doc. No. 299-1. While Hoppe may have been Olson’s Counsel during the time he sent the second letter, Hoppe’s declaration specifically states she does not have “independent knowledge about the advice and/or context surrounding Mr. Olson’s submissions of two letters to the Honorable Eric C. Tostrud other than information received via attorney-client privileged communications.” Doc. No. 275. Therefore, Defendants have not shown that the testimony sought is both relevant and material because Hoppe was substituted as counsel after the

summary was produced and she has no independent knowledge or facts about the Second Letter. Defendants are relying on a FBI 302 form to draw an inference that Olson's Counsel was involved nefarious activity with the Second Letter, which the Court previously found was "not particularly reasonable." Doc. No. 207. See Stern, 214 F.3d at 17 ("[A] subpoena ad testificandum survives scrutiny if the party serving it can show that the testimony sought is both relevant and material." (citing United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982))). Defendants are merely speculating that Hoppe's testimony will confirm their previously drawn inference. The Court will not require Hoppe to testify just so the Defendants can go on a fishing expedition. United States v. Bradford, 806 F.3d 1151, 1155 (8th Cir. 2015) ("[A] subpoena should not issue based upon a party's mere hope that it will turn up favorable evidence." (internal quotation marks omitted))

[¶22] Further, requiring Hoppe to testify against Olson while she still represents him would be unreasonable and oppressive, especially in light of Defendant's failure to seek testimony that is relevant and material. See Bergeson, 425 F.3d at 1226-27 (upholding a district court's decision to quash a subpoena of the defendant's current attorney to testify before a grand jury).

[¶23] Accordingly, Hoppe's Motion to Quash Subpoena (Doc. No. 274) is **GRANTED** and the subpoena served by Defendants on Hoppe is **QUASHED**.

CONCLUSION

[¶ 1] For the reasons set forth above, the Motion to Quash (Doc. No. 277) as to Foster is **DENIED** and the Motion to Quash (Doc No. 274) as to Hoppe is **GRANTED**.

[¶24] In addition, the Parties shall file proposed redactions to this Order on or before **May 5, 2023**. Their filing must state whether the Parties agree as to each redaction and, if the parties do not agree, provide support for each party's position as to that redaction. The Court will then issue

a redacted version of this Order, unless the Court determines no redactions are appropriate, in which case it will unseal this Order.

[¶25] **IT IS SO ORDERED.**

DATED April 28, 2023.

A handwritten signature in black ink, appearing to read 'D. Traynor', written over a horizontal line.

Daniel M. Traynor, District Judge
United States District Court

Doc. 277

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

United States of America,

Court File No. 22-cr-48 (DMT)

Plaintiff,

v.

**NOTICE OF MOTION AND
MOTION TO QUASH SUBPOENA**

Steven Dornsbach and Kamida, Inc.,

Defendants.

PLEASE TAKE NOTICE that United States Magistrate Judge Dulce J. Foster, by and through her counsel, moves the Court for an Order Quashing the Subpoena attached hereto as **Exhibit A**, pursuant to Federal Rule of Criminal Procedure 17(c).

This motion is based upon the accompanying memorandum of law, as well as the arguments of counsel at any hearing and all the files, records, and proceedings herein.

Dated: April 21, 2023

Jon M. Hopeman (#0047065)
Hopeman Law LLC
333 S. Seventh Street
Suite 3020
Minneapolis, MN 55402
(612) 326-0656 (office)
(612) 840-5480 (cell)

*Attorney for United States Magistrate Judge
Dulce J. Foster*

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case

UNITED STATES DISTRICT COURT

for the

District of Minnesota

United States of America)

v.)

STEVEN DORNSBACH; KAMIDA, INC.)
Defendant)

Case No. 22-CR-00048

SUBPOENA TO TESTIFY AT A HEARING OR TRIAL IN A CRIMINAL CASE

To: MAGISTRATE JUDGE DULCE J. FOSTER

YOU ARE COMMANDED to appear in the United States district court at the time, date, and place shown below to testify in this criminal case. When you arrive, you must remain at the court until the judge or a court officer allows you to leave.

Place of Appearance: WARREN E. BURGER 310 ROBERT ST. N. COURTHOUSE ST. PAUL, MN 55101	Courtroom No.: EDWARD J. DEVITT Date and Time: MAY 1, 2023; 9:30 AM CST
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You must also bring with you the following documents, electronically stored information, or objects (blank if not applicable):

(SEAL)

Date: 3-20-23

CLERK OF COURT

Kate M. Fogarty

Signature of Clerk or Deputy Clerk

The name, address, e-mail, and telephone number of the attorney representing (name of party) STEVEN DORNSBACH; KAMIDA, INC., who requests this subpoena, are:

CHRISTOPHER W. MADEL
JENNIFER M. ROBBINS
800 PENCE BUILDING
800 HENNEPIN AVENUE
MINNEAPOLIS, MN 55403
612-605-0630

CMADEL@MADELLAW.COM
JROBBINS@MADELLAW.COM

AO 89 (Rev. 08/09) Subpoena to Testify at a Hearing or Trial in a Criminal Case (Page 2)

Case No. _____

PROOF OF SERVICE

This subpoena for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I served the subpoena by delivering a copy to the named person as follows: _____
_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____.

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____.

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

**Affidavit of Jennifer M. Robbins regarding the
Subpoena for trial testimony to The Honorable Dulce J. Foster**

1. My name is Jennifer M. Robbins and I am one of the attorneys representing the Defendants in the matter of *United States v. Dornsbach and Kamida Inc.*, Court File 22-CR-00048-DMT (D. Minn.) (the “Dornsbach Matter”).
2. I am over the age of 18 and competent to testify to the matters in this affidavit, which is made based on my personal knowledge.
3. This affidavit is provided in an abundance of caution pursuant to Volume 20 of the Guide to Judiciary Policy and Chapter 8’s information regarding testimony of federal judicial personnel (Guide to Judiciary Policy, Vol. 20, Ch. 8, at § 830(a)) even though Defendants do not believe the regulations apply in the circumstances of this matter. Specifically, “testimony” in the regulations is defined as “[a]ny written or oral statement in any form by a witness arising out of the performance of the witness’ official duties” Guide to Judiciary Policy, Vol. 20, Ch. 8, § 810.30 (defining “testimony”) (underlining added); *id.* § 810.40 (“Applicability . . . (b) These regulations **do not** apply to: . . . (3) Legal proceedings in which federal judicial personnel are to testify while in leave or off-duty status as to matters that do not arise out of the performance of official duties. (**Note:** These regulations do not seek to deny federal judicial personnel access to the courts as citizens in their private capacities on off-duty duty.)”) (bold in original). To be clear, the subpoena to Magistrate Judge Foster does not arise out of the performance of her official duties as a Magistrate Judge. The subpoena, instead,

relates only to testimony arising out of Magistrate Judge Foster's work in private practice (as described below) before she became a Magistrate Judge.

4. In its one-count Indictment in the Dornsbach Matter, the government alleges that Defendants Dornsbach and Kamida conspired with Clarence Olson and "others" to rig bids submitted to four alleged victims over the span of approximately five years. Specifically, the government alleges that Defendants submitted rigged bids to (1) the City of Eden Prairie; (2) the City of Plymouth; (3) Eden Prairie Schools; and (4) Wayzata Public Schools with Clarence Olson, "COMPANY A," and "others" between "at least as early as September 2012 and continuing through at least as late as July 2017." (Doc. 1 at ¶ 2-12 of the Dornsbach Matter.)
5. Olson is the only alleged conspirator identified in the Indictment. (*See id.* at ¶ 9 ("Others, not made defendants in this Indictment, participated as co-conspirators in the offense charged herein and performed acts and made statements in furtherance of the conspiracy.").)
6. While still in private practice at Fredrikson & Byron, P.A., and before becoming a U.S. District Court Magistrate Judge in the District of Minnesota, Magistrate Judge Foster represented Clarence Olson. (*See, e.g., Exhibit 1* (docket from *United States v. Olson*, Court File 21-CR-00172-ECT (D. Minn.) (the "Olson Matter") (showing counsel for Olson); *see also* Doc. 96-2 in the Dornsbach Matter (Hoppe email to Robbins dated 8/22/22) ("Dulce is no longer with the firm, but I have taken over the file from Dulce, and Fredrikson still represents Clarence Olson").)

7. That representation of Olson culminated in an Information against Olson in which the government charged one count of Conspiracy to Restrain Trade under 15 U.S.C. § 1. (Doc. 1 of the Olson Matter.)
8. The following month, the government filed Olson's Plea Agreement and Sentencing Stipulations in which Olson pled guilty to violating 15 U.S.C. § 1 with "COMPANY B" and "INDIVIDUAL B." (Doc. 13 at ¶ 1 in the Olson Matter (capitalization in original).)
9. That same day, September 27, 2021, Olson appeared and pled guilty before Judge Tostrud. (**Exhibit 1**.)
10. The plea agreement confirmed that "Company A" is C. Olson Concrete because it stated that Olson was "employed by COMPANY A" which "engaged in the business of concrete repair and construction." (Doc. 13 at 2, ¶ 2 of the Olson Matter.)
11. At the time of the plea, the Honorable Dulce Foster was representing Olson. (*Id.* at 13 (plea agreement signed by "Dulce J. Foster" as "Counsel for Defendant").)
12. On October 12, 2021, Olson wrote a letter to Judge Tostrud in which he stated that he prepared bids after he "knew that [Defendant Kamida] had already been selected to do the projects, and that [Dornsbach] was asking me to submit a higher bid than his so there would be second bid in the file to meet requirements." (Doc. 49 at ¶ 110 of the Dornsbach Matter.)
13. Olson also acknowledged that he received nothing from Dornsbach for submitting Olson's bids and stated that he submitted his second bid "as a favor to

[Dornsbach] because he was my friend. He did not compensate me for submitting the bids in any way and I did not share in the work.” (*Id.*)

14. The Honorable Dulce Foster was still representing Olson at the time he wrote the above-described letter to the Court. (*See* Doc. 28 of the Olson Matter (showing the “withdrawal of Dulce J. Foster as counsel for Defendant Clarence Olson” and substitution of Lousene Hoppe as Olson’s counsel on May 31, 2022).)

15. Also during the Honorable Dulce Foster’s representation of Olson, she represented the following information to the government, which was provided to counsel for Dornsbach and Kamida in a government disclosure letter:

- Counsel for Clarence Olson indicated her belief that Olson’s memory is poor and his recollection of certain topics is incomplete, not the most reliable, and/or that Olson may have difficulty remembering specifics, including: (1) the specifics regarding the bids Kamida asked Olson to send; (2) conversations, including those that occurred years prior; (3) exact statements made from Dornsbach to Olson regarding the rigged bids; (4) the specifics of which proposals Olson sent and/or faxed to Dornsbach versus those Olson sent and/or faxed directly to the city agency; and (5) the city administrators.
- Counsel for Clarence Olson indicated her understanding that Olson was part of a special education program growing up, and he is not able to read above a sixth-grade level; Olson tended to get confused very easily and he may not be able to follow along with complex topics; Olson does not have clear communication skills.

16. Olson’s memory, and lack thereof, as observed by Magistrate Judge Foster during her representation of Olson, is relevant to Defendants Dornsbach and Kamida’s defenses against the bid-rigging claim for which Olson is the only identified alleged conspirator with Defendants.

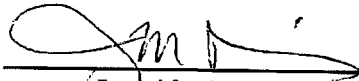
17. Defendants anticipate calling Magistrate Judge Foster, as Olson’s counsel during relevant times, to testify for purposes of impeaching either Olson or his counsel

based on the information provided to the government (summarized above) and the information in his plea agreement or otherwise related to his plea of guilty, including to show that Olson had ulterior motives to plead guilty and his claim that he was not coerced to enter his guilty plea.

18. To date, Defendants have been foreclosed from obtaining any other documents related to the anticipated testimony of Magistrate Judge Foster whether from her former firm, Fredrikson & Byron, or from the government.
19. Even if Defendants' objection to the most recent order regarding these matters was sustained such that Defendants were provided documents from Fredrikson that may touch on the information contained in the government's disclosure letter, quoted above, Defendants still have no way of obtaining the relevant testimony from any person other than Magistrate Judge Foster. In short, the relevant information from Magistrate Judge Foster is not readily available, from any other sources or by any other means.
20. It was on the basis of Defendants' anticipated subpoena to Magistrate Judge Foster that all U.S. District Judges and U.S. Magistrate Judges of the U.S. District Court for the District of Minnesota were ordered "disqualified from presiding over" this matter. (Doc. 98 ("Disqualification Order") of the Dornsbach Matter (stating "Because criminal case number 22-cr-48 ECT/ECW involves U.S. Magistrate Judge Dulce J. Foster as a potential trial witness, it is hereby determined that all U.S. District Judges and U.S. Magistrate Judges of the above Court are disqualified from presiding over the matter.")).

FURTHER AFFIANT SAYETH NOT.

I affirm, under penalty of perjury, that the foregoing is true and correct.



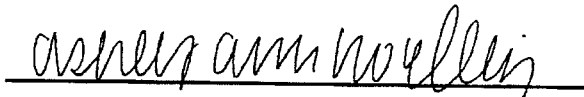
Jennifer M. Robbins

3-27-23

Date

Affirmed to and subscribed before me on

This the 27 day of MARCH, 2023.



Notary Signature



EXHIBIT 1

0:21cr172, USA v. Olson

US District Court Criminal Docket
United States District Court, Minnesota
(DMN)

This case was retrieved on 03/16/2023

Header

Date Filed: 08/11/2021
Other Docket: None

Class Code: Open
Closed:

Participants

Defendant

Name

Clarence Olson

Attorneys

Lousene M Hoppe
LEAD ATTORNEY;ATTORNEY TO BE NOTICED
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200 S 6th St Ste 4000
Mpls, MN 55402-1425
USA
lhoppe@fredlaw.com
612-492-7402
Fax: 612-492-7077
Designation: Retained

Dulce J Foster
05/31/2022
Fredrikson & Byron, PA
200 S 6th St Ste 4000
Mpls, MN 55402-1425
USA
dfoster@fredlaw.com
612-492-7110 Fax: 612-492-7077 Designation: Retained

Charges

Complaints: none

Pending: 15:1 CONSPIRACY TO RESTRAIN TRADE(1)

Offense Level (Opening): Felony

Terminated: none

Case Assigned To: Judge Eric C. Tostrud

Disposition

U.S. Attorneys

0:21cr172, USA v. Olson

Sandra Talbott

LEAD ATTORNEY; ATTORNEY TO BE NOTICED

DOJ-Atr

Antitrust Division 209 S. LaSalle Ste 600

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USA

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Proceedings

#	Date	Proceeding Text	Source
1	08/11/2021	FELONY INFORMATION by USA's Jonathan Clow, Mary T. McCarthy, and Sandra Talbott as to Clarence Olson (1) count 1 assigned to Judge Eric C. Tostrud (KDS) Document QC'd on 8/11/2021 (KDS). (Entered: 08/11/2021)	
2	08/11/2021	Defendant Information Sheet as to Clarence Olson. (Attachments: # 1 Cover Letter) (KDS) Document QC'd on 8/11/2021 (KDS). (Entered: 08/11/2021)	
3	08/18/2021	(Text-Only) NOTICE to Judge Eric C. Tostrud: I have met with my client. Clarence Olson consents to a Video Conference for a Plea Agreement Hearing. (Foster, Dulce) (Entered: 08/18/2021)	
4	08/19/2021	FILED IN ERROR - WILL BE RE-FILED. Summons Issued in case as to Clarence Olson. Arraignment, Initial Appearance, and Plea Agreement Hearing set for 9/27/2021 at 10:00 AM via Video	

Jennifer Robbins

0:21cr172, USA v. Olson

#	Date	Proceeding Text	Source
		Conference (no courtroom) before Judge Eric C. Tostrud. (KDS) Modified text on 8/20/2021 (KDS). (Entered: 08/19/2021)	
5	08/20/2021	Summons Issued in case as to Clarence Olson. Arraignment, Initial Appearance, and Plea Agreement Hearing set for 9/27/2021 at 10:00 AM via Video Conference (no courtroom) before Judge Eric C. Tostrud. (KDS) (Entered: 08/20/2021)	
7	09/01/2021	NOTICE OF WITHDRAWAL FROM CASE as to Clarence Olson (Clow, Jonathan) (Entered: 09/01/2021)	
8	09/16/2021	Joint MOTION for CARES Act Findings by USA as to Clarence Olson. (McCarthy, Mary) (Entered: 09/16/2021)	
9	09/16/2021	PROPOSED ORDER TO JUDGE re 8 Joint MOTION for CARES Act Findings by USA as to Clarence Olson (McCarthy, Mary) (Entered: 09/16/2021)	
10	09/17/2021	NOTICE Rule 12.4 Disclosure Statement by USA as to Clarence Olson (Talbot, Sandra) (Entered: 09/17/2021)	
11	09/27/2021	Minute Entry for proceedings held before Judge Eric C. Tostrud: Initial appearance, arraignment and plea hearing as to Clarence Olson (1) on Count 1 of the Information held on 9/27/2021. (Court Reporter Tim Willette) (RMM) (Entered: 09/27/2021)	
12	09/27/2021	WAIVER OF INDICTMENT by Clarence Olson. (lmb) (Entered: 09/27/2021)	
13	09/27/2021	PLEA AGREEMENT as to Clarence Olson. (lmb) (Entered: 09/27/2021)	
14	09/27/2021	ORDER Setting Conditions of Release as to Clarence Olson. Signed by Judge Eric C. Tostrud on 9/27/2021. (lmb) (Entered: 09/27/2021)	
15	09/27/2021	DOCUMENT FILED IN ERROR-WILL REFILE. Appearance Bond Entered as to Clarence Olson. Signed by Judge Eric C. Tostrud on 9/27/2021. (lmb) Modified text on 9/29/2021 (lmb). (Entered: 09/27/2021)	
17	09/27/2021	Appearance Bond Entered as to Clarence Olson. Signed by Judge Eric C. Tostrud on 9/27/2021. (lmb) (Entered: 09/29/2021)	
16	09/28/2021	TRANSCRIPT REQUEST for an Expedited 14-Day Transcript of 11 Order on Motion for Miscellaneous Relief, Arraignment, Change of Plea Hearing and Plea Entered, Initial Appearance to Court Reporter Tim Willette. (JGK) (Entered: 09/28/2021)	
18	11/15/2021	Letter to the Court re: Preliminary Notice as to Clarence Olson. (GMS) (Entered: 11/15/2021)	
19	11/15/2021	PRELIMINARY PRESENTENCE REPORT as to Clarence Olson (Restricted Document). (GMS) (Entered: 11/15/2021)	
23	12/03/2021	TRANSCRIPT REQUEST for a 30-Day Transcript of 11 Order on Motion for Miscellaneous Relief, Arraignment, Change of Plea Hearing and Plea Entered, Initial Appearance to Court Reporter Tim Willette. (Barry, Kaitlyn) (Entered: 12/03/2021)	
24	01/13/2022	TRANSCRIPT of Initial Appearance, Arraignment, and Plea to Information held on 9/27/2021 before Judge Eric C. Tostrud as to Clarence Olson. (38 pages). Court Reporter: Tim Willette. For a copy of the transcript, please file a Transcript Request under Other Filings/Other Documents. Parties have 7 days to file a Notice of Intent to Request Redaction. In accordance with Judicial Conference policy and Local Rule 80.1, the transcript may be released and made remotely electronically available to the public in 90 days. For further information on redaction procedures, please review Local Rule 5.5 and Case Information > Transcripts, Court Reporters and Digital Audio Recordings. Notice Intent/No Intent to Request Redactions due 1/20/2022. Redaction Request due 2/3/2022. Redacted Transcript Deadline set for 2/14/2022. Release of Transcript Restriction set for 4/13/2022. (TJW)	

0:21cr172, USA v. Olson

#	Date	Proceeding Text	Source
		(Entered: 01/13/2022)	
25	01/18/2022	EXPEDITED DAILY TRANSCRIPT SERVICES REQUEST to Court Reporter Tim Willette. (Foster, Dulce) (Entered: 01/18/2022)	
26	01/20/2022	NOTICE THAT NO REDACTION IS REQUIRED by Clarence Olson re 24 Transcript,,,, . Attn: Court Reporter Tim Willette. (Foster, Dulce) (Entered: 01/20/2022)	
27	03/14/2022	TRANSCRIPT REQUEST for a 30-Day Transcript for a COPY OF 24 Transcript(s) to Court Reporter Tim Willette. (JGK) (Entered: 03/14/2022)	
28	05/31/2022	NOTICE OF ATTORNEY SUBSTITUTION for Clarence Olson. (Foster, Dulce) (Entered: 05/31/2022)	
29	10/07/2022	NOTICE OF WITHDRAWAL FROM CASE as to Clarence Olson (McCarthy, Mary) (Entered: 10/07/2022)	

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March 31, 2023

Magistrate Judge Dulce J. Foster
United States District Court
300 South Fourth Street
Minneapolis, MN 55415

Via Email

Re: *United States of America v. Steven Dornsbach and Kamida, Inc.*
Case No. 22-CR-00048

Dear Magistrate Judge Foster,

The above-captioned case has been set for trial starting on May 1, 2023 and we will be potentially calling you as a witness. Trial will likely last 10 days. Enclosed with this letter is a trial subpoena set for the first day of trial, and we will work with you as trial approaches on your specific testimony dates.

Please give me or Jennifer Robbins a call at your earliest convenience at 612-605-0630 or via email at cmadel@madellaw.com and jrobbins@madellaw.com

Very truly yours,

/s/ Christopher W. Madel

Christopher W. Madel

Enclosures

Exhibit A

Doc. 326

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

United States of America,)		
	)	JURY TRIAL MINUTES	
Plaintiff,)		
	)	BEFORE:	Hon. Daniel M. Traynor
v.	)		United States District Judge
)		
Steven Dornsbach; Kamida, Inc.,	)	Case No.:	22-cr-48
	)	Date:	Wednesday, May 3, 2023
Defendants.	)	Courthouse:	St. Paul
	)	Courtroom:	7D
	)	Deputy:	Roxanne Muffenbier (NDD)
	)	Court Reporter:	Lynne Krenz
	)	Law Clerk:	Conor Kennelly (NDD)
	)	Time Commenced:	8:45 am - 12:15 pm
	)		1:30 pm - 5:00 pm
	)	Time Concluded:	5:00 pm
	)	Time in Court:	7 Hours

APPEARANCES:

Plaintiff:	Sandra Talbott
	Eun-Ha Kim
	Matthew Gold
Defendants:	Christopher Madel
	Jennifer Robbins

PROCEEDINGS:

Outside the presence of the Jury.

Government Exhibits 4, 5, 7, 9-11, 16, 19-21, 31, 32, 34-36, 38, 126, 127, 130-141, 180, 182-193, 209-214, 234-239, 242-245, 250-252 and 257-265: offered, no objection, received.

Defendants Exhibits 9, 13, 16, 18, 20, 32, 35, 36, 38, 45, 60, 88 and 89: offered, some objections. Defendants Exhibits 13, 35, 36, 38, 88 and 89: received.

Government provides witness update.

Jury Present.

Government's Case Continues.

Clarence Olson, continued on behalf of the Government.

Cross-examination by Mr. Madel.

Court Exhibit 1002: received.

Court Exhibit 1003: received.

Court Exhibit 1004: received.

Defendants Exhibit 59: shown to witness, objection.

Court Exhibit 1005.

Court Exhibit 1006: received.

Defendants Exhibit 42: shown to witness.

Outside the presence of the Jury.

Defense moves for no communication order between Mr. Olson and all counsel, including Mr. Olson's attorney.

Court grants Defendants' motion.

Recess 10:25 am to 10:35 am.

Outside the presence of the Jury.

Defense motion for discovery. Government resists motion.

Court questions witness.

Defense motion to examine U.S. Magistrate Judge Dulce Foster.

Court grants Defendants' motion.

Jury present.

Clarence Olson, continued on behalf of the Government.

Redirect examination by Ms. Talbott.

Defendants Exhibit 42: offered, received as Court Exhibit 1007.

Defendants Exhibit 43: offered, received as Court Exhibit 1008.

Bradley Berghuis, sworn & testifies on behalf of the Government.

Direct examination by Ms. Talbott.

Cross-examination by Mr. Madel.

Redirect examination.

Jay Pomeroy, sworn & testifies on behalf of the Government.

Direct examination by Ms. Kim.

Government Exhibits 17 and 18: offered, no objection, received.

Cross-examination by Mr. Madel.

Defendants Exhibit: offered, received as Court Exhibit 1009.

Outside the presence of the Jury.

Defense request for summary exhibits. Government previously provided exhibits to defense counsel.

Lunch Recess 12:15 pm to 1:30 pm.

Outside the presence of the Jury.

Attorney Jon Hopeman notes his appearance on behalf of U.S. Magistrate Judge Foster.

U.S. Magistrate Judge Dulce J. Foster, sworn & testifies on behalf of the Defendants.

Direct examination by Mr. Madel.

No cross-examination.

Defendants move for Rule 29 Judgment of Acquittal. Government resists motion. Defendants reply. Court denies Defendants' Rule 29 Motion and will allow defendants to recall Mr. Olson for limited purpose.

Jury present.

Jay Pomeroy, continued on behalf of the Government.

Redirect examination by Ms. Kim.

Maria Solano, sworn & testifies on behalf of the Government.

Direct examination by Ms. Kim.

Cross-examination by Ms. Robbins.

Defendants Exhibits 9, 16, 20 and 22: offered, objection, overruled, received.

Recess 3:15 pm to 3:40 pm.

Outside the presence of the Jury.

Government moves to introduce evidence regarding Ron Taggart. Defense resists motion. Court reserves ruling on motion.

Jury present.

Maria Solano, continued on behalf of the Government.

Redirect examination by Ms. Kim.

Bench Conference held.

Court orders that Maria Solano remains under subpoena.

Jason Mutzenberger, sworn & testifies on behalf of the Government.

Direct examination by Ms. Talbott.

Cross-examination by Ms. Robbins.

Redirect examination.

Outside the presence of the Jury.

Court denies Government's motion to introduce evidence regarding Ron Taggart.

Court reprimands counsel.

Government provides witness schedule update.

Court will provide counsel with proposed Final Jury Instructions.

Court in recess at 5:00 pm.

Reconvene at 8:45 am on Thursday, May 4, 2023.

Date: May 3, 2023

s/Roxanne Muffenbier
Courtroom Deputy to
The Hon. Daniel M. Traynor

Doc 351

Local AO 245A (Rev. 5/13) (AO Rev. 12/03)

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

UNITED STATES OF AMERICA

V.

Steven Dornsbach

JUDGMENT OF ACQUITTAL

CASE NUMBER: 22-cr-48-01

The Defendant was found not guilty. IT IS ORDERED that the Defendant is acquitted, discharged, and any bond exonerated.



Signature of Judge

Daniel M. Traynor

U.S. District Judge

Name of Judge

Title of Judge

12 May 2023

Date