

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

FILED
JUN 13 AM 10:11
U.S. DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA, FLORIDA

UNITED STATES OF AMERICA

vs.

Case No. 8:03-CR-77-T-30TBM

GHASSAN ZAYED BALLUT

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**DEFENDANT GHASSAN BALLUT'S MEMORANDUM
OF LAW ON APPLICABILITY OF LIMITATIONS TO COUNT 19**

The Defendant, GHASSAN ZAYED BALLUT, by and through his undersigned counsel, pursuant to the Court's Order of March 12, 2004, and in support of the Defendant's Motion to Dismiss or Strike Counts 1 through 4, 19, 36 through 38, and 40 through 42 (Dkt. 200), submits this memorandum to address the applicability of the statute of limitations to Count 19 of the Indictment.

Allegations in Count 19

Count 19 appears in a collective chart encompassing Counts 5 through 44 of the Indictment. Indictment, 100-102. As to each of these "Travel Act" counts, the general allegation is that the Defendants knowingly and willfully used a facility as described in the chart in interstate and foreign commerce with the intent to (a) commit any crime of violence to further any unlawful activity, specifically extortion and money laundering, in violation of the laws of the State of Florida and the United States, and (b) otherwise promote, manage, establish, carry on and facilitate the promotion, management, establishment and carrying on of said unlawful activity, again described as extortion and money laundering. Indictment, 100. These acts are alleged to violate 18 U.S.C. §§ 1952(a)(2) and (3) (pertaining to unlawful activity as defined at 18 U.S.C. §

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1952(b)) and 18 U.S.C. § 2 (pertaining to principals). Indictment, 102.

On the chart, Count 19 is described as a “telephone conversation” involving the Defendant and co-defendant SAMI AL-ARIAN occurring on “5/24/95” and incorporating by reference the conduct alleged in Overt Act 170 of Count One. Indictment, 101. Overt Act 170 alleges that on May 24, 1995, SAMI AL-ARIAN in Tampa had a telephone conversation with the Defendant outside of Florida in which SAMI AL-ARIAN requested the Defendant to arrange an overseas call because SAMI AL-ARIAN wanted to speak with the person who was recently released by the authorities. Indictment, 60-61. Neither Count 19 nor Overt Act 170 allege that this was an act occurring on any day other than May 24, 1995. As alleged in the Indictment, this “telephone conversation” was a single and distinct use of a facility, namely a telephone, in interstate or foreign commerce that occurred on a single day and was not ongoing, continuous, or intermittent.

By the nature and detail of the allegations in Count 19 and Overt Act 170, and based on other information provided through discovery, it is the knowledge and belief of the Defendant and his undersigned counsel that this alleged telephone conversation was intercepted and known at the time it occurred by the United States and not on a later date. The Indictment including Count 19 was filed with the Court and sealed on February 19, 2003.

The Application of the Statute of Limitations on Count 19

Except where otherwise expressly provided by law, no person shall be prosecuted, tried, or punished for any non-capital offense unless the indictment is found within five years next after the offense is committed. 18 U.S.C. § 3282. There is an eight-year extension of the statute of limitations for certain terrorism offenses as listed in 18 U.S.C. § 2332b(g)(5)(B) and elsewhere, but none of these exceptions apply to the allegations of Count 19, which is specifically charged

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under 18 U.S.C. §§ 1952(a)(2) and (3) and 18 U.S.C. § 2. A Travel Act violation must be alleged and proved to be on a date within the statute of limitations before the return date of the indictment. *United States v. Phillips*, 664 F.2d 971, 1036 (5th Cir. 1981). A single telephone call that facilitates the promotion, management, establishment, or carrying on of unlawful activity can constitute a Travel Act violation. *United States v. Corona*, 885 F.2d 766, 773 (11th Cir. 1989). The five-year limitations period of 18 U.S.C. § 3282 clearly applies to the Travel Act violation alleged in Count 19 and can act as a bar to its prosecution.

Under 18 U.S.C. § 3282, an indictment must be filed within five years of the date the crime is committed. *United States v. Butler*, 792 F.2d 1528 (11th Cir. 1986). Normally, the limitations period begins to run on the date on which the crime is complete unless the crime is deemed to be a continuing offense. *United States v. Gilbert*, 136 F.3d 1451, 1453 (11th Cir. 1998). Offenses should not be considered continuing unless the explicit language of the statute compels such a conclusion, or the nature of the crime involved is such that Congress must assuredly have intended that it be treated as a continuing offense. *Id.* A continuing offense is the type of crime which is committed over a span of time as, for example, a conspiracy, while as to the period of a statute of limitations, the last act of the offense controls for commencement of the period. *Id.* Statutes of limitations, both criminal and civil, are to be liberally interpreted in favor of repose. *Id.* When doubt exists about the statute of limitations in a criminal case, the limitations period should be construed in favor of the defendant. *See United States v. Habig*, 390 U.S. 222, 226-27, 88 S.Ct. 926, 929, 19 L.Ed.2d 1055 (1968).

Count 19 alleges a single telephone call on May 24, 1995, between the Defendant and SAMI AL-ARIAN violated 18 U.S.C. §§ 1952(a)(2) and (3) and 18 U.S.C. § 2. The alleged

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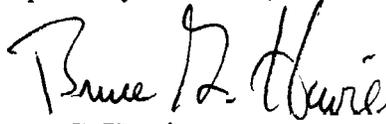
crime was completed when the telephone call concluded. Although the telephone call is deemed in Count One to be one overt act in a continuing offense, Count 19 standing alone cannot be considered a continuing offense. The explicit language of 18 U.S.C. § 1952(a)(2) and (3) does not compel the conclusion that a specified use of a facility on a particular date is a continuing offense, and the nature of the crime alleged is not such that Congress must assuredly have intended that it be treated as a continuing offense.

Because the last act of the offense controls for commencement of the limitations period, and because the last (and only) act alleged in Count 19 was a single telephone conversation on May 24, 1995, the alleged crime is deemed complete on May 24, 1995, at which date the limitations period began to run. Because the limitations period in 18 U.S.C. § 3282 is five years, the limitations period ran out on May 24, 2000. Because the Indictment including Count 19 was not filed until February 19, 2003, the Indictment was not found within five years after the alleged offense was committed, and therefore the Defendant cannot be prosecuted, tried, or punished for the alleged offense.

There are statutes permitting the tolling of the limitations period, but they do not apply here. The period is tolled if a defendant is “fleeing from justice,” but mere absence from the jurisdiction where the crime allegedly occurred does not render a defendant a fugitive; the defendant must have absented himself with the intent to avoid prosecution. *United States v. Fonseca-Machado*, 53 F.3d 1242 (11th Cir. 1995). Such is not the case here. Without tolling, Count 19 arrives too late and cannot be prosecuted.

WHEREFORE, the Defendant requests this Honorable Court to dismiss Count 19 as barred by the statute of limitations.

Respectfully submitted,



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Certificate of Service

I HEREBY CERTIFY that a true and correct copy of the foregoing has been sent by U.S.

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