

Jeremy Warren
WARREN & BURSTEIN
State Bar No. 177900
501 West Broadway, Suite 240
(619) 234-4433
jw@wabulaw.com

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,)	Case No.: 19cr4768-GPC
)	
Plaintiff,)	
)	
v.)	Motion to dismiss Count 3 based on a
)	violation of the statute of limitations
)	
GIOVANNI TILOTTA,)	
)	
Defendant.)	
)	

Introduction

The grand jury returned a superseding indictment on April 5, 2021. Count 3 is time-barred.

Statement of relevant facts

The grand jury returned the original indictment on November 21, 2019. ECF-1. Mr. Tilotta was charged in only two counts: aiding and abetting Marco Garmo's gun-dealing business without a license (Count 1, 18 U.S.C. § 922(a)(1)(A) and § 2), and conducting a firearms transaction in violation of state law (Count 13, 18 U.S.C. § 922(b)(2)).

The grand jury then returned a superseding indictment on April 5, 2021. ECF-152. The new indictment broadened the case against Mr. Tilotta and charged

him with a host of crimes under new statutes or theories:

- Count 1: Conspiracy to make false statements in the acquisition of firearms (**new charge**),
- Count 2: Aiding and abetting Garmo's crime of engaging in the business of dealing firearms without a license (Count 1 in the original indictment),
- Count 3: Aiding and abetting the false statement in the acquisition of a firearm (**new charge**),
- Count 4: Aiding and abetting the false statement in the acquisition of a firearm (**new charge**),
- Count 5: Aiding and abetting the false statement in the acquisition of a firearm (**new charge**),
- Count 6: Aiding and abetting the false statement in the acquisition of a firearm (**new charge**),
- Count 7: Willfully conducting firearms transactions in violation of state law (Count 13 from old indictment, but **new**, higher level of mens rea).

Count 3, the subject of this motion, allegedly occurred on October 21, 2015.

Id. at 13-14.

Argument

The applicable statute of limitations is five years. *See* 18 U.S.C. § 3282. It begins to run when the offense is complete. *Toussie v. United States*, 397 U.S. 112, 115 (1970). The government asserts the crime charged in Count 3 was complete “on or about October 21, 2015.” ECF-152 at 14. Accordingly, the five-year limit expired on or around October 21, 2020, and the April 2021 superseding indictment first charging Mr. Tilotta with that offense was untimely. As such, Count 3 must be dismissed.

1 The relation back doctrine does not impact the analysis. The filing of an
2 indictment tolls the statute of limitations, but only for those charges contained in
3 the indictment against the particular defendant. *See United States v. Pacheco*, 912
4 F.2d 297, 305 (9th Cir. 1990). The only exception is “where the counts of an original
5 indictment are *simply duplicated verbatim* into a superseding indictment[.]” *Id.*
6 (emphasis added). Where the identical charges are duplicated verbatim, “the
7 statute of limitations on those counts is tolled[.]” *Id.*

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10 But, like here, where “the counts in the superseding indictment broadened or
11 substantially amended the charges in the original indictment, the statute of
12 limitations would not have been tolled as to those charges.” *Id.* (quotations and
13 citation omitted). The Courts are uniform in this rule. *See, e.g., United States v.*
14 *Grady*, 544 F.2d 598, 601-02 (2d Cir. 1976) (“a superseding indictment brought at
15 any time while the first indictment is still validly pending, if and only if it does not
16 broaden the charges made in the first indictment, cannot be barred by the statute
17 of limitations.”); *accord* U.S. Attorneys Criminal Resource Manual § 665 (“After the
18 original limitation period has expired, a superseding indictment may narrow, but
19 not broaden, the charges made in the original indictment.”). The strict standard is
20 consistent with the Supreme Court’s repeated admonition that, as “we have stated
21 before the principle that criminal limitations statutes are to be liberally interpreted
22 in favor of repose[.]” *Toussie*, 397 U.S. at 115 (quotations and citations omitted).

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27 Here, the charges were both substantially broadened and amended against
28 Mr. Tilotta. The charge contained in Count 3 was not “duplicated verbatim” from

1 the previous indictment. Rather, it is a rebranding of Count 6, which initially
2 charged other defendants (Garmo and Hamel) only, with a substantive offense,
3 rather than the aiding and abetting theory against Mr. Tilotta in the superseding
4 indictment.
5

6 Because the indictment was substantially amended and broadened, and
7 because Count 3 is not a verbatim duplication, it does not enjoy the relation back
8 exception, and is time-barred.
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10 Conclusion

11 The government did not charge Mr. Tilotta with the offense contained in
12 Count 3 within five years of the completion of the offense. Count 3 must be
13 dismissed.
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17 Dated: December 10, 2021

s/ Jeremy Warren
Jeremy Warren
Attorney for Mr. Tilotta