IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA

ATLANTA DIVISION

UNITED STATES OF AMERICA	)	
	)	
vs.	)	CRIMINAL ACTION NO.
	)	1:22-CR-171-MLB
CARL DELANO TORJAGBO	)	
	)	

MOTION IN LIMINE

COMES NOW Defendant, CARL DELANO TORJAGBO, by and through undersigned counsel, and moves this Court to exclude from introduction or presentation in the trial of this case certain information, documents, and recordings which are in the possession of the Government and which have been disclosed or referenced in discovery provided by the Government. Mr. Torjagbo posits that those items of evidence are irrelevant to the determination of guilt or innocence on the crimes charges and the presentation of that evidence would be more prejudicial than probative. In support thereof, Mr. Torjagbo states the following.

Mr. Torjagbo is charged by superseding indictment with one count of bank fraud in violation of 18 U.S.C. §§ 1344 and 2, one count of aggravated identity theft in violation of 18 U.S.C. §§ 1028A and 2, three counts of concealment money laundering in violation of 18 U.S.C. §§ 1956(a)(1)(B)(i) and 2, three counts of transactional money laundering in violation of 18 U.S.C. §§ 1957 and 2, and two counts of wire fraud in violation of 18 U.S.C. §§ 1343 and 2. (Doc. 110).

The indictment alleges that Mr. Torjagbo fraudulently obtained a loan under the Paycheck Protection Program ("PPP") from JPMorgan Chase Bank. (Doc. 110 at 1-4). The indictment alleges that Mr. Torjagbo provided false and misleading information in doing so. Id. Mr. Torjagbo applied for the loan on behalf of his business Kremkov Industries.

The aggravated identity theft count is premised on Mr. Torjagbo's alleged possession and misuse of the identifying information of a person with the initials M.S during and in relation to the acquisition of the PPP loan. (Doc. 110 at 5). The three concealment money laundering charges relate to three bank transactions conducted by Mr. Torjagbo following receipt of the PPP loan funds: transferring $3,000,000 from a Chase Bank account to a PNC Bank account in the name of Kremkov Industries; and wire transferring money in connection with two separate purchases of real estate parcels. (Doc. 110 at 9). The three transactional money laundering counts relate to Mr. Torjagbo's purchases of a residential property located at 5114 Greythorne Lane, Marietta, Georgia, a 2021 Land Rover Velar, and a 2022 BMV M850XL. (Doc. 110 at 10-11). The two wire fraud counts relate to the filing of two 2020 federal income returns in the name Carl Torjagbo. (Doc. 110 at 12-13).

Federal Rule of Evidence 402 states that relevant evidence is admissible unless any of the following provides otherwise: the United States Constitution; a federal statute; the Federal Rules of Evidence; or other rules prescribed by the Supreme Court. F.R.E. 402. Rule 402 also states that "[i]rrelevant evidence is not admissible." Rule 401 provides the test for relevant evidence. "Evidence is relevant if: (1) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the action." F.R.E. 401. Under Rule 403, "[t]he Court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." F.R.E. 403.

The Advisory Committee notes to Rule 403 recognize that certain circumstances call for the exclusion of evidence even if it is of unquestioned relevance. Those circumstances entail risks that "range all the way from inducing a decision on a purely emotional basis, at one extreme, to nothing more harmful than merely wasting time, at the other extreme." F.R.E. 403, Advisory Comm.

Notes. In this context, unfair prejudice means “an undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one.” Id.

The Supreme Court has stated that “unfair prejudice” concerns the capacity of some evidence, albeit relevant, “to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.’” Old Chief v. United States, 519 U.S. 172, 180 (1997). The United States Court of Appeals for the Tenth Circuit has expounded, “Evidence is unfairly prejudicial if it makes a conviction more likely because it provokes an emotional response in the jury or otherwise tends to affect adversely the jury’s attitude toward the defendant wholly apart from its judgment as to his guilt or innocence of the crime charged.” United States v. Leonard, 439 F.3d 648, 652 (10th Cir. 2006).

The discovery presented by the Government contains banking records of several accounts, including following: a Bank of America account in the name FlyingJack Freight & Logistics, LLC; a Chase Bank account for Kremkov Industries, LL; three PNC Bank accounts in the name Carl Torjagbo; and one PNC Bank account in the name Kremkov Industries, LLC. Mr. Torjagbo posits that records of personal transactions unrelated to the transactions referenced in the indictment are not relevant to the trial of the charges in the indictment. If it could be said that such transactions are relevant, the relevance is outweighed by risk of unfair prejudice, confusing the issues, misleading the jury, undue delay, and wasting time." F.R.E. 403. Mr. Torjagbo asks the Court to exclude banking records and any evidence of personal financial or commercial transactions that are not related to the transactions referenced in the indictment.

Some of the banking records also precede the time frame of the alleged offense conduct. For instance, some banking records date to 2017. The indictment alleges that Mr. Torjagbo submitted a PPP loan application to Chase Bank on February 21, 2021 and that he submitted two individual tax returns to the IRS on February 13, 2021. (Doc. 110 at 4, 12). Those acts form the basis for the bank and wire fraud charges in the indictment. Banking records and related information that precedes those dates are irrelevant to the charges in this case. Furthermore, presentation of evidence related to that banking activity and those transactions would distract the jury from consideration of the issues raised in the indictment. Mr. Torjagbo submits that most of the concerns raised in Rule 403 would arise if the Government were allowed to present banking records and other evidence regarding transactions that precede the alleged offense conduct —

namely, unfair prejudice, confusing the issues, misleading the jury, undue delay, and wasting time.

Mr. Torjagbo also posits that the nature of some of the transactions in the banking would serve to prejudice him. As an example, the records document a transaction at Victoria's Secret, a store that sells lingerie. Presentation of records regarding such transactions would risk causing undue and unfair prejudice. That is, evidence of such transactions risks the possibility of evoking an emotional response from members of the jury against Mr. Torjagbo regarding a matter that is the immaterial and irrelevant to the issues presented in the indictment.

Mr. Torjagbo also moves the Court to exclude the presentation of any evidence that would suggest that he has associated with exotic dangers. As an example, FBI Agents arrested Mr. Torjagbo on May 12, 2022. After Mr. Torjagbo was taken into custody, Special Agents Caruana and Pressley questioned Mr. Torjagbo regarding his connection to a woman named Claudia. Mr. Torjagbo said that Claudia was his girlfriend and acknowledged that he had given her approximately $2,000 to help her close on a house. When asked what her employment was, Mr. Torjagbo said that Claudia is an exotic dancer.

Mr. Torjagbo submits that presentation of evidence that Claudia is an exotic dancer, particularly in the context of Mr. Torjagbo having given her money, will be unduly prejudicial to him. Furthermore, her occupation or employment is not relevant to the charges pending against Mr. Torjagbo. Text messaging with other persons in Mr. Torjagbo's cell phone raises similar concerns. This subject matter presents the risk of evoking an emotional reaction in the jury that is adverse to Mr. Torjagbo but unrelated to the pending charges. Moreover, this subject matter presents a risk of confusing the issues and wasting time. Evidence related to this subject matter should be excluded as irrelevant and more prejudicial than probative under Rule 403.

The discovery contains credit reports for Mr. Torjagbo from Equifax and Transunion. Some information in the reports dates back to at far as 2005. The information on the Equifax and Transunion reports is irrelevant to the charges in the indictment. Additionally, the information contained in the reports is inadmissible hearsay to the extent that it was reported to Equifax and Transunion by other entities.

The discovery contains records from Gotham Plastic Surgery. The records relate to services rendered during the time frame of April 2021 to June 2021. The services did not involve changing the appearance of Mr. Torjagbo's face or facial appearance. The rendering of those services does not make any fact of consequence to determining this action more probable. Thus, those services are irrelevant to the trial of the charges in the indictment. On the other hand, they certainly run a strong danger of unfairly prejudicing Mr. Torjagbo before the jury. That is, presentation of that evidence would raise the specters of provoking an emotional response from the jury and adversely affecting its attitude towards Mr. Torjagbo wholly apart from its judgment as to Mr. Torjagbo's guilt or innocence of the crimes charged in the indictment. In sum, that evidence is both irrelevant and more prejudicial than probative.

The discovery contains records regarding a purchase of a 2014 Lamborghini Aventador by Karl Lucius Delano. The transaction took place on April 23, 2022. Mr. Torjagbo submits that evidence relating to the transaction, including the purchase records, is not relevant to deciding the charges presented in the indictment. The indictment does not charge Mr. Torjagbo with an offense relating to the purchase of that vehicle. Presentation of evidence relating to that transaction will likely confuse the issues, mislead the jury, waste time and unduly inflame the jury's attitude against Mr. Torjagbo. Thus, evidence relating to the purchase of the Lamborghini is both irrelevant and more prejudicial than probative.

Tax records from the IRS pertaining to Carl Torjagbo, Kremkov Industries. The discovery contains tax records dating back as far as tax year 2018. The indictment charges Mr. Torjagbo with alleged fraudulent filing of two federal individual tax forms for tax year 2020. Those forms were filed on February 13, 2021. Mr. Torjagbo asks that the Court exclude the presentation of tax records for tax years preceding 2020. Mr. Torjagbo posits that those tax records are irrelevant to the pending charges. Furthermore, they are more prejudicial than probative, as they present risks of causing unfair prejudice to Mr. Torjagbo, confusing the issues, misleading the jury, and wasting time.

Mr. Torjagbo also moves to exclude as irrelevant and more prejudicial than probative any evidence that is the subject of the Government's motion for interlocutory sale of certain properties owned by Mr. Torjagbo or FlyingJack Freight and Logistics. The subject matters addressed in those motions, such as risk of demise of the properties, is irrelevant to the issues to be addressed in the trial of the criminal charges.

CONCLUSION

Mr. Torjagbo asks that the Court grant this motion. He also asks that the Court allow him additional time to supplement this motion, as he recently received production of a data extraction from his cell phone as discovery. The defense needs additional time to review the data extraction. Mr. Torjagbo requests two weeks to supplement this motion.

DATED: This 28th day of January, 2025.

Respectfully submitted,

S/ Kendal D. Silas
KENDAL SILAS
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CERTIFICATE OF SERVICE

This is to certify that I have this day served a copy of the Motion in Limine, formatted in Times New Roman 14-pt., upon:

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by electronically filing the same through the Court's ECF system.

Dated: This 28th day of January, 2025.

s/ *Kendal D. Silas*
KENDAL SILAS, Esq.
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