NOT FOR PUBLICATION

FILED

DEC 9 2022

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

UNITED STATES OF AMERICA, Plaintiff-Appellee, v. VARDAN KESHISHYAN, Defendant-Appellant.	No. 22-50030 D.C. No. 2:19-cr-00567-PSG-1 MEMORANDUM[*]

Appeal from the United States District Court
for the Central District of California
Philip S. Gutierrez, Chief District Judge, Presiding

Submitted December 6, 2022[**]
Pasadena, California

Before: R. NELSON, BADE, and FORREST, Circuit Judges.

Vardan Keshishyan appeals his conviction on two counts of structuring transactions to evade currency reporting requirements, in violation of 31 U.S.C. § 5324. We have jurisdiction under 28 U.S.C. § 1291, and we affirm.

1. We review for abuse of discretion the district court's admission of

[*] This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

[**] The panel unanimously concludes this case is suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

evidence, including the decision "that the probative value of evidence exceeds its potential for unfair prejudice." *United States v. Curtin*, 489 F.3d 935, 943 (9th Cir. 2007) (en banc). Although we will engage in de novo review where the district court "fails to engage in necessary Rule 403 balancing," *United States v. Wells*, 879 F.3d 900, 914 (9th Cir. 2018), the district court engaged in the requisite balancing here. The parties briefed the Rule 403 issue in their motions in limine. *See United States v. Ramirez-Jiminez*, 967 F.2d 1321, 1326 (9th Cir. 1992) (trial court "implicitly made the necessary [Rule 403] finding" when the government's trial memorandum "reminded the judge of the necessity of weighing probative value and prejudice"); *United States v. Lillard*, 354 F.3d 850, 855 (9th Cir. 2003) (district court "implicitly balanced" probative value and prejudice when defense counsel "specifically and repeatedly argued" the evidence should be excluded because it was "highly prejudicial" and had "no probative value" under Rule 403). Further, when defense counsel revisited the issue before jury selection, the district court stated that "all evidence" is prejudicial and that the evidence had "absolute probative value" because it went "right to knowledge," which was Keshishyan's defense. Therefore, the court "adequately weighed the probative value and prejudicial effect of [the] proffered evidence." *United States v. Pineda-Doval*, 614 F.3d 1019, 1035 (9th Cir. 2010) (quoting *Boyd v. City of San Francisco*, 576 F.3d 938, 948 (9th Cir. 2009)).

2. The district court did not abuse its discretion in admitting Judge Fujie's comments about the legality of Keshishyan's conduct. These comments were highly probative because they undercut Keshishyan's lack-of-knowledge defense. And any potential for the jury to be misled by these comments was mitigated by the jury instructions, which Keshishyan does not challenge. *See United States v. Reyes*, 660 F.3d 454, 468 (9th Cir. 2011) ("Jurors are presumed to follow the court's instructions.").

We need not resolve whether the district court abused its discretion in admitting Judge Fujie's statements expressing skepticism about Keshishyan's story. Given the evidence at trial, any error in admitting this evidence was harmless. Shortly after his wife filed for divorce, Keshishyan opened new bank accounts and, in a one-month period, made eleven cash withdrawals within $1,000 of the reporting limit. On one occasion, a bank employee informed Keshishyan that she would have to fill out a currency transaction report to complete the withdrawal; instead, Keshishyan canceled the withdrawal. Then, in his divorce proceedings, Keshishyan represented that he had only $1,000 in assets. Shortly after his divorce was finalized, Keshishyan opened another bank account and made ten cash deposits—two per day, at two different banks, sometimes within minutes of each other—in the amount of $9,000 each. Given this evidence, "it is more probable than not" that any error in admitting the transcript "did not materially

affect the verdict." *United States v. Torres*, 794 F.3d 1053, 1063 (9th Cir. 2015) (quoting *United States v. Seschillie*, 310 F.3d 1208, 1214 (9th Cir. 2002)).

3. Similarly, Keshishyan cannot show that the district court's failure to give a limiting instruction affected the outcome of his proceedings. *See United States v. Pelisamen*, 641 F.3d 399, 404–05 (9th Cir. 2011) (under plain error review, reversal is warranted only where "there has been (1) error; (2) that is plain; (3) that affects substantial rights; and (4) where the error seriously affects the fairness, integrity, or public reputation of judicial proceedings").

AFFIRMED.