IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America,	)	Criminal No. 2:15-472-RMG
	)	
v.	)	**ORDER**
	)	**UNDER SEAL**
Dylann Storm Roof	)	
	)	

This matter is before the Court on Defendant's motion in limine (Dkt. No. 358). This Order concerns only Defendant's arguments regarding evidence Defendant may have targeted other churches and racially charged statements Defendant allegedly made to certain other persons. For the reasons set forth below, the Court grants in part, denies in part, denies without prejudice in part, and denies as moot in part Defendant's motion to exclude that evidence.

I. Background

Defendant Dylann Roof is accused of killing nine persons and attempting to kill three other persons at the Emanuel African Methodist Episcopal Church ("Mother Emanuel") in Charleston, South Carolina on June 17, 2015. Defendant has moved in limine to exclude evidence regarding churches other than Mother Emanuel, to exclude certain panoramic depictions of the crime scene, to exclude statements allegedly made to Carl Stroebel on May 16, 2015, to exclude "certain other statements"—specifically, statements by Defendant to Brock Pack, Jacob Meek, and Lindsey Fry, [redacted] (Dkt. No. 358.) The evidence regarding churches other than Mother Emanuel includes photographs of Branch AME Church, handwritten lists of churches found in Defendant's car after his arrest, and GPS data showing Defendant may have travelled near or to other churches. The Government has withdrawn its opposition to Defendant's motion in limine regarding use of GPS data to show Defendant traveled to other churches and regarding photographs of churches other than Mother Emanuel. (Dkt. No. 444.) The

Government also represents that it does not anticipate using Mr. Stroebel as a witness. (Dkt. No. 425 at 1 n.1.) The Court will rule separately on Defendant's challenge to panoramic depictions of the crime scene [redacted] Remaining for the Court's consideration in this Order are Defendant's challenge under Rule 403 of the Federal Rules of Evidence to the lists of churches found in Defendant's car and to his statements to Mr. Pack, Mr. Meek, and Ms. Fry.

II. Legal Standard

Although not specifically provided for in the Federal Rules of Evidence, motions in limine "ha[ve] evolved under the federal courts' inherent authority to manage trials." *United States v. Verges*, Crim. No. 1:13-222, 2014 WL 559573, at *2 (E.D. Va. Feb. 12, 2014). "The purpose of a motion in limine is to allow a court to rule on evidentiary issues in advance of trial in order to avoid delay, ensure an even-handed and expeditious trial, and focus the issues the jury will consider." *Id.* "Questions of trial management are quintessentially the province of the district courts." *United States v. Smith*, 452 F.3d 323, 332 (4th Cir. 2006); *see also United States v. McBride*, 676 F.3d 385, 403 (4th Cir. 2012) ("[A]ssessing [whether evidence is] relevan[t] is at the heart of the district court's trial management function."). A district court therefore has "broad discretion" in deciding a motion in limine. *Kauffman v. Park Place Hosp. Grp.*, 468 F. App'x 220, 222 (4th Cir. 2012). Nonetheless, a motion in limine "should be granted only when the evidence is clearly inadmissible on all potential grounds." *Verges*, 2014 WL 559573, at *3.

Rule 403 of the Federal Rules of Evidence provides, "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." But "[t]he mere fact that the evidence will damage the defendant's case is not enough—the evidence must be unfairly prejudicial, and the unfair prejudice must substantially outweigh the probative value of the evidence." *United States*

v. Hammoud, 381 F.3d 316, 341 (4th Cir. 2004) (en banc) (internal quotation marks omitted), *vacated on other grounds*, 543 U.S. 1097 (2005). "Evidence is unfairly prejudicial and thus should be excluded under Rule 403 when there is a genuine risk that the emotions of a jury will be excited to irrational behavior, and . . . this risk is disproportionate to the probative value of the offered evidence." *United States v. Williams*, 445 F.3d 724, 730 (4th Cir. 2006) (internal quotation marks omitted).

In a capital sentencing proceeding, "[t]he Federal Death Penalty Act evidentiary standard excludes a greater amount of prejudicial information than the Federal Rules of Evidence by permitting the judge to exclude information where the probative value is outweighed by the danger of creating unfair prejudice" rather than "substantially outweighed." *United States v. Le*, 327 F. Supp. 2d 601, 607 (E.D. Va. 2004) (internal quotation marks omitted); *see also* 18 U.S.C. § 3593(c). "This lenient standard affords a defendant the opportunity to present mitigating evidence consistent with the Supreme Court's directive that in capital cases the jury must not be precluded from considering, as a *mitigating factor*, any aspect of a defendant's character or record and any circumstances of the offense that the defendant proffers as a basis for a sentence less than death." *United States v. Lighty*, 616 F.3d 321, 362–63 (4th Cir. 2010) (internal quotation marks omitted).

III. Discussion

A. Evidence relating to churches other than Emanuel AME

Defendant moves to exclude evidence relating to churches other than Mother Emanuel: photographs of Branch AME Church, handwritten lists of churches found in Defendant's car after his arrest, and GPS data showing Defendant may have travelled near or to other churches. (Dkt. No. 358 at 2–7.) Because the Government has withdrawn its opposition to Defendant's motion in limine regarding use of GPS data to show Defendant traveled to other churches and photographs of churches other than Mother Emanuel, the only issue remaining for adjudication is the

admissibility of the lists of churches found in Defendant's car. The first list found provides names, addresses, and telephone numbers for six churches: Emanuel AME Church, Morris Brown AME Church, Calvary Episcopal Church, Central Baptist Church, Ebenezer AME Church, and St. Patrick Catholic Church. (Dkt. No. 358-2.) Defendant also moves to exclude other church lists subsequently found in his car, which additionally name Mount Moriah Baptist Church, St. John's Episcopal Church, Howard Chapel AME Church, St. Mark's Episcopal Church, and New Light Beulah Baptist Church.[1] (Dkt. No. 467-1.) All listed churches are historically associated with African-Americans or have predominately African-American congregations.

Defendant objects to the lists because they suggest he may have considered targeting churches other than Mother Emanuel.[2] Defendant concedes the lists are relevant in that Mother Emanuel appears at the top of the first-discovered list, but he argues their probative value is minimal because there is no dispute that Mother Emanuel was targeted. The Government responds that the lists are probative of Defendant's racial motive for attacking Mother Emanuel—a necessary element of the § 249 violations charged in the indictment—and are probative of planning and premeditation—an element of the charged § 924(j) violations.

Defendant's Rule 403 challenge requires him to show the potential for unfair prejudice substantially outweighs the probative value of the church lists—18 U.S.C. § 3593(c) similarly requires the potential for unfair prejudice to outweigh the probative value of the church lists. The

[1] The subsequently found lists also include five non-church locations: The Meeting Street Inn, a Charleston YMCA, the Northwoods Mall, the Citadel Mall, and a James Island shopping center.

[2] Defendant also argues the lists are extrinsic evidence subject to Rule 404(b) because they are "neither necessary nor inextricably *intertwined* with the crimes charged"—apparently because Defendant believes the Government has sufficient proof without them. (*See* Dkt. No. 467 at 1–2.) The Court sees no colorable argument that a list of church names and addresses is "character evidence" that is "extrinsic" to an attack on the first listed church. No attack, attempt to attack, or conspiracy to attack any other church is alleged, so the church lists are not evidence of some crime or act other than the attack on Mother Emanuel.

Government's argument is more persuasive than Defendant's. Defendant correctly notes the lists are not particularly probative of the fact that Mother Emanuel was targeted, but he ignores the fact that the lists are highly probative of other relevant facts. To prove the charged violations of § 249, the Government must prove Defendant acted "because of the actual or perceived race" of the victims. 18 U.S.C. § 249(a)(1). Lists of African-American churches, with Mother Emanuel, found in Defendant's getaway car, are probative of Defendant's racial motive to target African-Americans. To prove the charged violations of § 924(j) as capital offenses, the Government must prove Defendant's actions were "willful, deliberate, malicious, and premeditated." 18 U.S.C. §§ 924(j) & 1111(a). Lists of many Africa-American churches found in the car used to attack the first-listed church suggest the attack was deliberate and premeditated. Further, the Court sees no potential for unfair prejudice. The lists suggest Defendant wanted to target African-American communities, that he researched lists of such communities as possible targets, and that the place he attacked was at the top of his list. That is what Defendant is charged with doing—evidence is not *unfairly* prejudicial simply because it tends to prove the alleged offense. *Old Chief v. United States*, 519 U.S. 172, 180 (1997) ("The term 'unfair prejudice,' as to a criminal defendant, speaks to the capacity of some concededly relevant evidence to lure the factfinder into declaring guilt on a ground different from proof specific to the offense charged.").

The Court therefore denies Defendant's motion in limine as to the lists of churches found in Defendant's car. Defendant's motion as to photographs of those churches and GPS data related to those churches is denied as moot.

B. Defendant's statements to others

Defendant seeks to exclude three sets of statements by Defendant to his acquaintances:

- A 2015 statement to coworker Brock Pack in which Defendant identified himself as a racist;

- Laudatory statements about Adolph Hitler made "four or more times" to Jacob Meek; and
- Defendant's statements to Lindsey Fry indicating his desire to travel with Mr. Meek to Charleston to rob some unidentified person he previously met there, who had offered Defendant a place to stay.

(Dkt. No. 358 at 19–20.) Defendant argues that these statements are not probative of the charged offenses, that they are not well established because the witnesses cannot remember exact dates or other corroborating details, and that they are highly prejudicial. The Government responds that Defendant's motion is premature before trial, and that the statements at issue are relevant: Defendant's self-description as a racist and his praise of Adolph Hitler are probative of his racial motives. The possible relevance of Defendant's statements to Lindsey Fry is less clear: the Government's argument that they somehow rebut Defendant's lack of a history of violence as a mitigating factor falls flat. (Dkt. No. 425 at 22.) A suggestion to commit some future violent act, never acted upon, is not a history of violence.

The Court agrees Defendant's challenge to his statements to Mr. Pack and Mr. Meek is premature. In the abstract, expressions of racial animus may be probative of racial motives for the charged offenses, but the Court cannot make that determination with certainty unless and until the statements are offered for that purpose. The Court therefore denies without prejudice Defendant's motion to exclude those statements.

The Government argues Defendant's statements to Ms. Fry are germane to consideration of mitigating factors in the sentencing phase, where the controlling evidentiary standard is whether evidence's probative value is merely outweighed by the danger of creating unfair prejudice. *See* 18 U.S.C. 3593(c). The Court sees no relevance in those statements, however, so any danger of

prejudice they create—and they clearly create some danger of prejudice—is both unfair and outweighs their nonexistent probative value. The Court therefore grants Defendant's motion to exclude those statements, but the Government may nonetheless seek permission to introduce them as rebuttal evidence if Defendant presents mitigation evidence that "opens the door." But the Government will seek permission from the Court before referring to those statements in the presence of the jury.

IV. Conclusion

For the foregoing reasons, the Defendant's motion in limine (Dkt. No. 358) is **DENIED** as to the lists of churches found in Defendant's car, **DENIED WITHOUT PREJUDICE** as to certain statements made by Defendant to Brock Pack and Jacob Meek; **GRANTED** as to certain statements made by Defendant to Lindsey Fry; and **DENIED AS MOOT** as to photographic and GPS data evidence relating to other churches and as to testimony from Carl Stroebel.

AND IT IS SO ORDERED.

Richard Mark Gergel
United States District Court Judge

October 19, 2016
Charleston, South Carolina