

VIRGINIA: IN THE CIRCUIT COURT FOR THE CITY OF CHARLOTTESVILLE

COMMONWEALTH OF VIRGINIA

v.

Case Nos. CR17000296-01 to 10

JAMES A. FIELDS

DEFENDANT'S MOTION IN LIMINE ON THE ADMISSIBILITY OF PROTEST MEMES

FILED
11-29-18 9:45 AM
(Date & Time)
City of Charlottesville
Circuit Court Clerk's Office
Lizella A. Dugger, Clerk
By [Signature] Deputy Clerk

COMES NOW the Defendant James Alex Fields (“Fields”), by counsel, and moves for a ruling *in limine* that certain images posted on the Defendant’s Instagram account, (hereinafter “Account”) not be admissible at trial pursuant to Virginia Rule of Evidence 2:401 and 2:403.

Upon information and belief the Commonwealth intends to introduce during their case the two images attached hereto as Exhibit “A”. It is stipulated that the image dated May 16, 2017 was posted to the public portion (open to those member of the public who have an Instagram account) of the Account and the image dated May 12, 2017 was posted in a private message to an Instagram account user named “JAMICUS. It is further stipulated that these images are available from various websites and are commonly referred to as “Memes”. A “meme” is an “amusing or interesting item (such as a captioned picture or video) or genre of items that is spread widely online especially through social media.” *Meme, Merriam Webster* (2016).

RELEVANCY

Rule 2:401 of the Virginia Rule of Evidence defines “Relevant Evidence as evidence having any tendency to make the existence of any fact in issue more probable or less probable than it would be without the evidence “. It is the Commonwealths’ argument that the Images assist in proving beyond a reasonable doubt that on August 12, 2017 the Defendant acted with

malice in the killing and wounding of the alleged victims. The Commonwealth further argues that the Images assist in proving that the Defendant traveled to Charlottesville on August 2, 2018 with the intent to commit acts of violence against persons protesting the “Unite the Right Rally” with an automobile.

UNFAIR PREJUDICE

Rule 2:403 of the Virginia Rule of Evidence states that relevant evidence may be excluded if “the probative value of the evidence is substantially outweighed by the danger of unfair prejudice”. “In determining whether relevant evidence should be admitted, the trial court must apply a balancing test to assess the probative value of the evidence and any undue prejudicial effect of that evidence. The determination to admit such relevant evidence rests within the trial court's sound discretion and will be disturbed on appeal only upon a showing of an abuse of that discretion. *Juniper v. Commonwealth*, 271 Va. 362,413 (2006).

The Images are clearly prejudicial to the Defendant in that they reference a violent act against pedestrians by the operator of a motor vehicle. Such acts may or may not be similar to the allegations contained in the Commonwealth’s indictments against the Defendant.

This Court must therefore be very careful in weighing this prejudice against the probative value of the image tending to prove the Defendant’s intent and state of mind.

In making this decision the court should consider the following:

1. The Images were posted three (3) months prior to the alleged criminal activity; and
2. The Images were in the form of Memes which are generally “amusing or interesting items and not associated with political or criminal statements; and
3. The writings on the face of the Images indicate that the driver of the automobile is not an individual with political views in opposition to the protestors, but who is fact

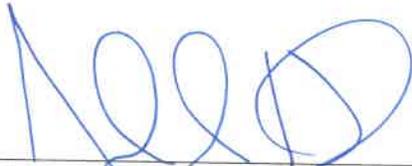
attempting to get to work in a timely manner.

CONCLUSION

The possible unfair prejudice to the Defendant caused by the admission of the image of Adolf Hitler substantially outweighs the limited probative value that the image will assist in proving his malicious intent. The Defendant therefore respectfully requests that the Commonwealth be precluded from admitting the image at trial or mentioning it in their opening statements to the jury.

Respectfully submitted,

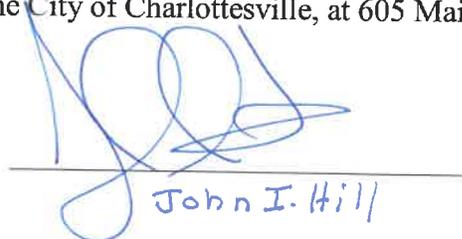
JAMES ALEX FIELDS
By Counsel



John I Hill, Esq. (VSB 30381)
Denise Y. Lunsford, Esq. (VSB 31833)
Counsel for Defendant

CERTIFICATE OF SERVICE

I certify that on November 28, 2018, the foregoing document was hand-delivered to Joseph Platania, Commonwealth Attorney for the City of Charlottesville, and Nina Alice-Antony, Assistant Commonwealth's Attorney for the City of Charlottesville, at 605 Main Street, Room 331, Charlottesville, Virginia, 22902.

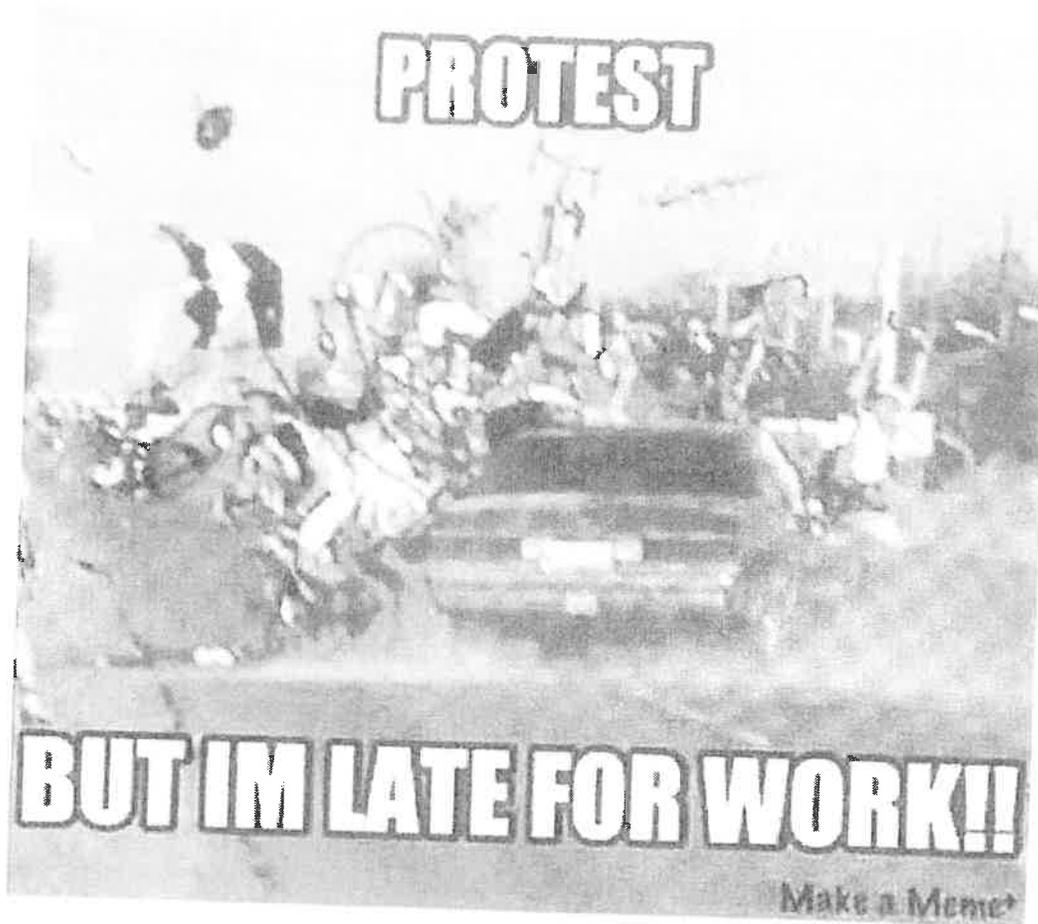


John I. Hill

Denise Y. Lunsford

Exhibit "A-1"

5/12/2017 Private Message to "JAMICUS"



When I see protesters blocking

Exhibit "A-2"

5/16/2017 Public Post to Instagram

**YOU HAVE THE RIGHT TO
PROTEST**



BUT IM LATE FOR WORK