

IN THE SUPERIOR COURT OF RAPID RIVER COUNTY  
STATE OF MIDLANDS

STATE OF MIDLANDS

V.

AUGUST SLAUGHTER

Case No.  
25-CR-000777-02

**INDICTMENT AND BILL OF PARTICULARS**

On April 25, 2024, in Rapid River County, Midlands, August Slaughter did purposefully, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life, cause the death of Nickie Benton, in violation of Midlands Code 6.2.

The acts committed by the accused were as follows:

The accused did cause death to another in that the accused did maliciously, intentionally and without justification tamper with one or more components of the engine of a vessel purposefully, knowingly, or recklessly under circumstances manifesting extreme indifference to the value of human life, and which actually and proximately caused the death of Nickie Benton.

A TRUE BILL OF INDICTMENT.

/s/ Emma Lowman  
Grand Jury Foreperson,  
Rapid River County, Midlands

This the 2<sup>nd</sup> day of January, 2025.

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**STIPULATIONS**

1. For the convenience of the parties, witnesses, court, and jury, all potential exhibits have been pre-labeled and pre-numbered. Those numbers will be used for all purposes at trial, regardless of which party first offers the exhibit or the order in which the exhibits are offered.
2. The parties waive all objections arising under the United States Constitution.
3. All parties and witnesses are at least of normal intelligence, and none has or ever has had a mental condition that would impact a person's perception, memory, or ability to respond to questions on cross examination.
4. All notice requirements of Midlands Rule of Evidence 902(11) and 902(12) have been satisfied for all exhibits.
5. Defendant August Slaughter has elected to testify and will not invoke the Fifth Amendment right not to testify in response to any questions asked.
6. Decedent Nickie Benton died on April 25, 2024.
7. Decedent Nickie Benton's death was neither the result of suicide nor occurred during an attempt of suicide.
8. Both parties agree that no witness, party, or nonparty in any way committed or expressly or implicitly threatened sexual assault against Abi Angelo, Nickie Benton, or any other individual related to this case.
9. The human remains recovered by Mr. Salomon on April 25, 2024, are the left arm of a human being, and the remains were positively identified as belonging to Decedent Nickie Benton. The additional human remains recovered by the dive team later that day were positively identified as belonging to Decedent Nickie Benton.
10. Defendant August Slaughter wears size 8 shoes.

11. The Anchor's employee uniform consists of navy blue pants, a navy blue shirt, black shoes, and a loose white neckerchief. Text reading "The Anchor" is printed on the back of the shirt.
12. There are no chain of custody issues with any of the photographs labeled as Exhibits 1-11.
13. Exhibit 1 is pre-admitted and may be used at any point in trial, including opening statements, without further foundation.

SO STIPULATED.

/s/ Morgan Soundy

Counsel for the State of Midlands

/s/ Alyssa Clark

Counsel for Defendant

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**ORDER ON MOTIONS IN LIMINE**

1. Defendant has moved to exclude several photographs of human remains, as well as photographs of the remnants of the vessel in question in this case, on the grounds that the photographs have extremely limited probative value and are highly prejudicial under Rule 403. That motion is GRANTED. No party may admit any such photographs, and the photographs shall not be numbered as exhibits or admitted into evidence. Additionally, no party may suggest that such photographs do not exist or comment on the other party's failure to introduce such photographs into evidence. The State has requested that this ruling not apply to the radiographs supplied in the report of Dr. Taylor Jeremiah. That request is GRANTED, and the radiographs shall be usable as demonstratives.

2. The State and the Defendant have each submitted requested jury charges. The Court expects to give the charges attached hereto as Attachment A.

SO ORDERED, this 1st day of July, 2025.

/s/ Hon. J. Crockett

Judge, Superior Court of Rapid River County

## **Attachment A: Jury Instructions**

### **1. Burden of Proof**

You may find the defendant guilty if, and only if, the government has proven beyond a reasonable doubt all of the elements of the offense as listed in the attached Indictment. The burden of proving the essential elements of the charge beyond a reasonable doubt rests with the prosecution alone.

### **2. Presumption of Innocence**

The law presumes a defendant to be innocent of a crime, and the indictment shall not be considered as evidence or as having any weight against the defendant. You shall find the defendant not guilty unless you are satisfied from the evidence alone and beyond a reasonable doubt that the defendant is guilty. If upon the whole case you have a reasonable doubt as to guilt, you must find the defendant not guilty.

### **3. Indictment**

A defendant is charged with criminal offenses through an indictment. You must not let the existence of an indictment influence you in any way. An indictment is simply a legal document to provide notice to a defendant of the offense alleged by the State of Midlands. You must find the defendant not guilty unless you find that the State of Midlands has proven beyond a reasonable doubt that the defendant is guilty of every element of every offense(s) argued here today.

### **4. Types of Evidence**

When making your decision, you may rely on both direct and circumstantial evidence. Direct evidence is testimony by a witness about what that witness personally did, saw, or heard. Circumstantial evidence is indirect evidence from which the fact finder may infer that another fact is true. Neither type of evidence should be given categorically more weight than the other.

The State's burden of proving its case beyond a reasonable doubt applies to each and every element of the crime charged. This burden, however, does not operate on the many subordinate, evidentiary, or incidental facts as distinguished from proof of the elements of the crime or of an ultimate fact. Where, however, the State relies in whole or in part on circumstantial evidence to prove an element of a crime, although each link in the chain of evidence need not be proven beyond a reasonable doubt, the cumulative

impact of that evidence must, in order to support that inference, convince the finder of fact beyond a reasonable doubt that the element has been proven.

#### 5. Remarks of Counsel

Remarks of the attorneys are not evidence. If the remarks suggest certain facts not in evidence, disregard those remarks.

#### 6. Witness Credibility

It is the duty of the jury to scrutinize and weigh the testimony of witnesses and to determine the effect of the evidence as a whole. You are the sole judges of the credibility, that is, the believability, of the witnesses and of the weight to be given to their testimony. In determining the credibility of each witness and the weight to give the testimony of each witness, consider these factors:

- A. Whether the witness has an interest or lack of interest in the result of this trial;
- B. The witness's conduct, appearance, and demeanor on the witness stand;
- C. The clearness or lack thereof of the witness's recollections;
- D. The opportunity the witness had for observing and for knowing the matters about which the witness testified;
- E. The reasonableness of the witness's testimony;
- F. The apparent intelligence of the witness;
- G. Bias or prejudice, if any has been shown;
- H. Possible motives for falsifying testimony; and
- I. All other facts and circumstances during the trial which tend either to support or to discredit the testimony.

Then give to the testimony of each witness the weight you believe it should receive. There is no predetermined way for you to evaluate the testimony; instead, you should use your common sense and experience.

## 7. Murder - Purposeful or Knowing

You may find the defendant guilty of murder if you find from the evidence presented to you that the defendant purposely or knowingly caused the death of another.

A person acts purposely when acting with the objective or purpose to accomplish a result that constitutes a crime.

A person knows or acts knowingly or with knowledge with respect to a result when the person is aware their conduct is practically certain to cause that result. If a person has information that would lead a reasonable person in the same situation to believe that their conduct would result in a particular consequence, the jury is permitted but not required to find that the person acted with knowledge of that consequence.

## 8. Murder - Depraved Indifference

You may find the defendant guilty of murder if you find from the evidence presented to you that the defendant acted with extreme recklessness and wanton disregard manifesting a depraved indifference to the value of human life.

## 9. Unanimous Verdict

The verdict of the Jury must be unanimous as to guilty or not guilty and be signed by one of you as Foreperson.

## MIDLANDS CASE LAW

(All cases listed below are from the Supreme Court of Midlands)

### Charges

*State v. Hutchinson* (2008)

Murder may be proved if the State proves that the defendant acted either purposefully, knowingly, or with depraved indifference to the value of human life. Proof of one of these three mental states is an essential element of a murder charge, but the State need not prove all three to sustain a conviction.

*State v. Sanghavi* (2002)

For the purpose of Code Section 6.2, depraved indifference requires proof of the deliberate perpetration of a knowingly dangerous act with reckless and wanton unconcern and indifference as to whether anyone is harmed or not. The common law treats such a state of mind as just as blameworthy, just as anti-social and, therefore, just as truly murderous as the specific intents to kill and to harm.

*State v. Keyton* (1994)

Defendant argued that he could not be convicted of depraved indifference murder when his car crashed due to poor maintenance, killing the victim. Conviction overturned. For the purpose of Code Section 6.2, depraved indifference is not mere negligence, nor merely one even of gross criminal negligence.

*State v. Reynolds* (2001)

Defendant, convicted of killing another in a game of 'Russian Poker' where the defendant pointed a loaded gun at the victim and pulled the trigger, argued she could not have acted with depraved indifference since she did not want to kill the victim, and there was only a one in six chance that the gun would fire. Conviction upheld. There is no threshold percentage chance of death necessary for a defendant to have acted with depraved indifference; the question is whether the defendant knowingly engaged in a dangerous act with reckless and wanton indifference to whether anyone would be harmed.

### Burden of Proof / Presumption of Innocence

*State v. Monarch* (1904)

In a criminal case, the burden of proof is on the State and only shifts to the defendant if she offers an affirmative defense. Where the State has the burden of proof, it must establish the defendant's guilt beyond a reasonable doubt. The prosecution may not suggest that the defendant had a duty to provide evidence or that the defendant's



failure to call a witness or provide evidence means they would not have supported the defendant's case. To do so would improperly shift the burden of proof to the defendant. However, a prosecutor may reference a lack of evidence to support the defendant's theory of the case. This is a credibility argument, not burden shifting.

*State v. Stinson* (1981)

The State's burden of proof applies to elements, not discrete facts. The question in every case is whether cumulative impact of the otherwise-admissible evidence is sufficient to convince the fact finder beyond a reasonable doubt that the element has been proven.

*State v. Arun* (2016)

Criminal defendants have a constitutionally protected right to refuse to speak with police officers and to decline to testify in their own defense. No prosecutor or witness may comment (expressly or implicitly) on a defendant's exercise of either right or suggest that refusal to testify or termination of a police interrogation demonstrates consciousness of guilt.

*State v. Leddy* (2019)

A criminal defendant's decision to exercise the constitutionally protected right not to testify in their own defense may not be commented upon by the State either explicitly or implicitly. However, if the defendant does choose to testify, his or her credibility is to be judged like that of any other witness.

## **Trial Procedures**

*State v. Feliciano* (2007)

In Midlands, all criminal trials are bifurcated, with a guilt phase followed by a penalty phase.

*State v. Schoeberl* (2009)

During the guilt phase, evidence is not relevant if it is directed solely to the penalty to be given to the defendant if found guilty. It also is improper for an attorney to comment on sentencing or discuss potential penalties during the guilt phase of the trial. Such conduct is grounds for a mistrial and may constitute conduct for which sanctions are appropriate.

*State v. Ammerman* (2002)

Under Midlands practice, the prosecution always proves, and the defense may always rebut, any element of a charged offense. Neither side may object to such evidence on the

ground that the objecting party is no longer pursuing (or challenging) the pertinent issue.

### **Basis of Evidentiary Rulings**

*Zomerfeld v. Noto* (2012)

Pursuant to Midlands Rules of Evidence 104(a), when evaluating the admissibility of evidence, a trial court is permitted to rely on both admissible and inadmissible evidence. The use of underlying inadmissible evidence does not make that inadmissible evidence admissible. Instead, the court is merely permitted to consider the underlying inadmissible evidence in order to assess the admissibility of the offered evidence. In a jury trial, the jury may not always be privy to the underlying facts used to determine what evidence is admissible, but the Court may hear it. Previous upheld examples of this in Midlands include using character evidence to make a ruling on hearsay exceptions, using hearsay to make a ruling on character evidence, and using hearsay to decide whether an expert has adequate foundation to testify.

*State v. Guliuzza's Franks and Beans, LLC* (1977)

Pursuant to Midlands Rule of Evidence 104(a), courts may consider custodial documents, such as clerks' certifications or affidavits of records keepers, when determining the admissibility of other evidence without regard for the admissibility of the custodial document itself. The custodial document typically only addresses preliminary matters of admissibility and is not entered into evidence, and thus the court is not bound by the rules of evidence when considering it. However, if a party wishes to enter the custodial document itself into evidence, the proper foundation must be laid to establish its admissibility.

### **Authentication**

*Filteau v. Wanek* (1992)

A statement's admissibility will sometimes turn on the identity of the person making a statement. Because Midlands law contains a strong preference for jury determinations of important questions, courts must be careful not to usurp the jury's role in this context. As long as the proponent of the statement produces evidence that would permit a reasonable jury to find, by a preponderance of the evidence, that a given person made a particular statement, the court must assume for the purposes of assessing the statement's admissibility that the statement was made by that person.

*Grover's of New Mexico v. R.G.D. Boots Co.* (2014)

That an email is listed as coming from an address that either is known or purports to belong to a particular person is sufficient to lay foundation that the email was sent by

the person in order to determine its admissibility, at least absent a particularized reason to believe that the email may have been sent by someone else. This ruling does not foreclose challenges to the admissibility of an email on other grounds.

## **Hearsay**

### *Illiadis v. State* (1987)

Rule 801(d)(2) may be invoked in only one direction in a criminal case. Specifically, Rule 801(d)(2) permits the State to offer statements by a criminal defendant. The rule does not permit a defendant to offer statements from himself. This rule remains the same even if the State has already elicited out-of-court statements by a defendant during a preceding examination. Consider a case where the defendant made a variety of statements to a police officer, who was called by the State at trial. Rule 801(d)(2)(A) permits the State to elicit the defendant's statements during the direct examination of the police officer, because those statements are being offered "against an opposing party" (i.e., the defendant). The State thus elected to admit only a few of the statements provided by the defendant. But when defense counsel attempted to elicit other, less inculpatory statements by the defendant on cross-examination of the police officer, the State properly objected because those additional statements would not be offered "against an opposing party."

### *America's Best Cookie v. International House of Waffles* (2009)

Although practices may be different in other jurisdictions, in Midlands it is entirely possible for an out-of-court statement by a person who is or will be testifying in a particular trial to be excluded by the general rule against hearsay. Subject to Rule 801(d), hearsay is any out-of-court statement offered to prove the truth of the matter asserted in the statement. And although the Midlands Rules of Evidence contain a variety of exceptions to the rule that hearsay is generally inadmissible, there is no categorical principle permitting receipt of any out-of-court statement simply because the person who made that out-of-court statement is or will be a witness in the trial.

### *State v. Capaldi* (2010)

In a criminal case, a law enforcement officer is not considered a "party opponent" for the purpose of admissibility of a statement made by that officer under Midlands Rule of Evidence 801(d)(2). This remains true even when a law enforcement officer is designated as a "party representative" for purposes of Rule 615. Midlands allows prosecutors to designate a police officer to remain in the courtroom throughout trial. However, the same logic that allows the State to admit admissions by a criminal defendant as admissions by a party opponent under Rule 801(d)(2) does not permit defense attorneys to offer statements of a police officer as statements of the State of

Midlands. This ruling should not be misconstrued to preclude the admissibility of a law enforcement officer's out-of-court statements under other applicable provisions of the Midlands Rules of Evidence.

*State v. Pita-Mendez (2023)*

Hearsay is an out-of-court statement offered to prove the truth of the matter asserted in the statement. As a consequence, statements are not hearsay if offered to prove an effect on a listener, such as notice, knowledge, or motive for subsequent action. This rule does not give parties carte blanche to offer all statements into evidence, and trial courts need not blindly accept a party's contention that it is using a quote for a non-hearsay purpose. For a statement to come in under the "effect on the listener" theory, the statement's proponent must convince the court that (1) the effect on the listener is relevant to the case under Rule 401, and (2) a reasonable jury could find that the listener actually heard and understood the statement under Rule 104(b). While the court may admit the statements conditionally for the second requirement to be met later in trial, courts should not admit out-of-court statements under an "effect on the listener" theory unless both requirements are met by the close of evidence.

## **Experts**

*Davis v. Adams (1993)*

Trial judges must ensure that any scientific testimony or evidence admitted is not only relevant but reliable. In determining reliability, judges should consider only the methods employed and the data relied upon, not the conclusions themselves. The proponent of the evidence has the burden of proving each section of MRE 702 by a preponderance of the evidence.

*Tarot Readers Association of Midlands v. Merrell Dow (1994)*

In assessing reliability under MRE 702(c), judges should consider whether the theory or technique has been or can be tested, whether it has been subjected to peer review and publication, whether it has a known error rate, or whether it has gained widespread acceptance within the field. These factors, while relevant, are not necessarily dispositive. For example, lack of publication does not automatically foreclose admission; sometimes well-grounded but innovative theories will not have been published. There is no definitive checklist. Judges must make such assessments based on the totality of the circumstances.

*Richards v. Mississippi BBQ (1997)*

MRE 703 does not permit experts to testify or present a chart in a manner that simply summarizes inadmissible hearsay without first relating that hearsay to some specialized

knowledge on the expert's part. The Court must distinguish experts relying on otherwise inadmissible hearsay to form scientific conclusions from conduits who merely repeat what they are told. The testimony of the former is admissible; that of the latter is not. At the same time, statements that would otherwise be admissible are not inadmissible simply because they are offered by or through an expert witness.

*Kane Software Co. v. Mars Investigations* (1998)

Midlands does not permit parties to use their experts as weapons in a trial by ambush or unfair surprise. Expert reports that are exchanged prior to trial must contain a complete statement of all opinions the expert will testify to and the basis and reasons for them, the facts or data considered by the expert in forming their opinions, and the expert's qualifications. Experts are strictly prohibited from testifying on direct and redirect examination about any opinions or conclusions not stated in their report, and such testimony must be excluded upon a timely objection from opposing counsel. For example, an expert may not testify on direct or redirect examination that they formed a conclusion based on evidence that came out during trial that the expert did not previously review. However, if an expert is asked during cross examination about matters not contained in their report, the expert may freely answer the question as long as the answer is responsive. When an objection is made under Kane Software, the trial court should ask the party offering the expert testimony to refer the trial court to where the proposed testimony is contained or otherwise referenced in the expert's disclosure to ensure that the record is clear.

*Yu-Oh Industries v. Beckstein Alekri Inc.* (2000)

Experts should not be expected to include in their reports every basic scientific fact known to lay people and known realities that support their conclusion. Similarly, experts should not be expected to include in their reports every underlying fact from a specific document so long as the experts explicitly disclosed that they relied upon that document in forming their opinions and that document was made available to the other party through discovery. Such requirements would lead to expert reports that are hundreds, if not thousands, of pages long. For example, an accident reconstructionist need not explain Newton's laws of motion in their report. However, if an expert wishes to testify that they believe the indentations on a vehicle's door means that the vehicle collided with a streetlamp at 45 MPH, then measurements, equations, and other relevant facts that form the basis for that specific conclusion must be disclosed in the expert's report.

## MIDLANDS PENAL CODE

### **PART I. GENERAL PROVISIONS**

#### **Article 2. General Principles of Liability**

##### **SECTION 2.01. General Requirements of Culpability**

- 1) *Minimum Requirements of Culpability.* A person is not guilty of an offense unless he acted purposefully, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense.
- 2) *Kinds of Culpability Defined.*
  - a) *Purposefully.* A person acts purposefully with respect to a material element of an offense when, if the element involves the nature of his conduct or a result thereof, it is his conscious objective to engage in conduct of that nature or to cause such a result.
  - b) *Knowingly.* A person acts knowingly with respect to a material element of an offense when, if the element involves the nature of his conduct or is the result thereof, he is aware that his conduct is of that nature or that it is practically certain that his conduct will cause such a result.

### **PART II. DEFINITION OF SPECIFIC CRIMES**

#### **Article 6. Criminal Homicide**

##### **SECTION 6.2 Murder**

- 1) Criminal homicide constitutes murder when:
  - a) it is committed purposely or knowingly; or
  - b) it is committed recklessly under circumstances manifesting a depraved indifference to the value of human life.
- 2) Murder is a felony of the first degree.



# American Mock Trial Association

## MIDLANDS RULES OF EVIDENCE

### Article I.

#### Rule 101. Scope; Definitions

(a) **Scope.** These rules apply to proceedings in the courts of the State of Midlands. The specific courts and proceedings to which the rules apply, along with exceptions, are set out in Rule 1101. No bureaucratic organizations whose edicts govern conduct in Midlands are considered to exist unless specified within the case problem.

*Comment:* Midlands is recognized as being in the United States and governed by the U.S. Constitution.

(b) **Definitions.** In these rules

- (1) “civil case” means a civil action or proceeding;
- (2) “criminal case” includes a criminal proceeding;
- (3) “public office” includes a public agency;
- (4) “record” includes a memorandum, report, or data compilation;
- (5) a “rule prescribed by the Midlands Supreme Court” means a rule adopted by the Midlands Supreme Court under statutory authority; and
- (6) a reference to any kind of written material or any other medium includes electronically stored information.

#### Rule 102. Purpose

These rules should be construed so as to administer every proceeding fairly, eliminate unjustifiable expense and delay, and promote the development of evidence law, to the end of ascertaining the truth and securing a just determination.

#### Rule 103. Rulings on Evidence

(a) **Preserving a Claim of Error.** A party may claim error in a ruling to admit or exclude evidence only if the error affects a substantial right of the party and:

- (1) if the ruling admits evidence, a party, on the record:
  - (A) timely objects or moves to strike; and
  - (B) states the specific ground, unless it was apparent from the context; or
- (2) if the ruling excludes evidence, a party informs the court of its substance by an offer of proof, unless the substance was apparent from the context.

(b) **Not Needing to Renew an Objection or Offer of Proof.** Once the Court rules definitively on the record – either before or at trial – a party need not renew an objection or offer of proof to preserve a claim of error for appeal.

(c) **Omitted.**

(d) **Preventing the Jury from Hearing Inadmissible Evidence.** To the extent practicable, the court must conduct a jury trial so that inadmissible evidence is not suggested to the jury by any means.

(e) **Taking Notice of Plain Error.** A court may take notice of a plain error affecting a substantial right, even if the claim of error was not properly preserved.

#### **Rule 104. Preliminary Questions**

**(a) In General.** The court must decide any preliminary question about whether a witness is qualified, a privilege exists, or evidence is admissible. In so deciding, the court is not bound by evidence rules, except those on privilege.

**(b) Relevance That Depends on a Fact.** When the relevance of evidence depends on whether a fact exists, proof must be introduced sufficient to support a finding that the fact does exist. The court may admit the proposed evidence on the condition that the proof be introduced later.

**(c) Omitted.**

**(d) Omitted.**

**(e) Evidence Relevant to Weight and Credibility.** This rule does not limit a party's right to introduce before the jury evidence that is relevant to the weight or credibility of other evidence.

#### **Rule 105. Omitted**

#### **Rule 106. Remainder of or Related Writings or Recorded Statements**

If a party introduces all or part of a writing or recorded statement, an adverse party may require the introduction, at that time, of any other part – or any other writing or recorded statement – that in fairness ought to be considered at the same time.

*Comment:* This rule of completeness applies only to material provided in the case packet.

This rule does not reference any material not provided in the case packet.

### **Article II.**

#### **Rule 201. Judicial Notice of Adjudicative Facts**

**(a) Scope.** This rule governs judicial notice of an adjudicative fact only, not a legislative fact.

**(b) Kinds of Facts That May Be Judicially Noticed.** The court may judicially notice a fact that is not subject to reasonable dispute because it:

(1) is generally known within the trial court's territorial jurisdiction; or

(2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.

**(c) Taking Notice.** The court:

(1) *omitted*;

(2) must take judicial notice if a party requests it and the court is supplied with the necessary information.

**(d) Timing.** The court may take judicial notice at any stage of the proceeding.

**(e) Opportunity to Be Heard.** On timely request, a party is entitled to be heard on the propriety of taking judicial notice and the nature of the fact to be noticed. If the court takes judicial notice before notifying a party, the party, on request, is still entitled to be heard.

**(f) Instructing the Jury.** In a civil case, the court must instruct the jury to accept the noticed fact as conclusive. In a criminal case, the court must instruct the jury that it may or may not accept the noticed fact as conclusive.

### **Article III.**

#### **Rule 301. Presumptions in Civil Actions Generally**

In a civil case, unless a Midlands statute or these rules provide otherwise, the party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. But this rule does not shift the burden of persuasion, which remains on the party who had it originally.



**Rule 302. Omitted**

**Article IV.**

**Rule 401. Test for Relevant Evidence**

Evidence is relevant if:

- (a) 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.

**Rule 402. General Admissibility of Relevant Evidence**

Relevant evidence is admissible unless any of the following provides otherwise:

- the United States Constitution;
- these rules; or
- other rules prescribed in Midlands.

Irrelevant evidence is not admissible.

*Comment:* Relevant evidence is limited to the information supplied by or reasonably inferred from the case materials supplied by AMTA. For further explanation see Rule 8.9 of the AMTA Rulebook.

**Rule 403. Excluding Relevant Evidence for Prejudice, Confusion, Waste of Time, or Other Reasons**

The 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.

**Rule 404. Character Evidence; Crimes or Other Acts**

**(a) Character Evidence.**

**(1) Prohibited Uses.** Evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the character or trait.

**(2) Exceptions for a Defendant or Victim in a Criminal Case.** The following exceptions apply in a criminal case:

**(A)** A defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it. In lieu of rebuttal witness availability, a defendant must first notify the court and opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed and presented to the judges with the ballots, and the prosecution may also offer such character evidence during its case-in-chief.

**(B)** A defendant may offer evidence of an alleged victim's pertinent trait, and if the evidence is admitted, the prosecutor may:

- (i)** offer evidence to rebut it; and
- (ii)** offer evidence of the defendant's same trait.

In lieu of rebuttal witness availability, a defendant must first notify opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed

and presented to the judges with the ballots, and the prosecution may also offer such character evidence during its case-in-chief.

(C) In a homicide case, the prosecutor may offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor.

**(3) Exceptions for a Witness.** Evidence of a witness's character may be admitted under Rules 607, 608, and 609.

**(b) Crimes, Wrongs, or Other Acts.**

**(1) Prohibited Uses.** Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

**(2) Permitted Uses; Notice in a Criminal Case.** This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. The prosecution in a criminal case shall provide written notice of such intent prior to witness selection in the Captains' Meeting.

**Rule 405. Methods of Proving Character**

**(a) By Reputation or Opinion.** When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, the court may allow inquiry into relevant specific instances of the person's conduct.

**(b) By Specific Instances of Conduct.** When a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct.

**Rule 406. Habit; Routine Practice**

Evidence of a person's habit or an organization's routine practice may be admitted to prove that on a particular occasion the person or organization acted in accordance with the habit or routine practice. The court may admit this evidence regardless of whether it is corroborated or whether there was an eyewitness.

**Rule 407. Subsequent Remedial Measures**

When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove:

- negligence;
- culpable conduct;
- a defect in a product or its design; or
- a need for a warning or instruction.

But the court may admit this evidence for another purpose, such as impeachment or – if disputed – proving ownership, control, or the feasibility of precautionary measures.

**Rule 408. Compromise Offers and Negotiations**

**(a) Prohibited Uses.** Evidence of the following is not admissible – on behalf of any party – either to prove or disprove the validity or amount of a disputed claim or to impeach by a prior inconsistent statement or a contradiction:

- (1) furnishing, promising, or offering – or accepting, promising to accept, or offering to accept – a valuable consideration in compromising or attempting to compromise the claim; and

(2) conduct or a statement made during compromise negotiations about the claim – except when offered in a criminal case and when the negotiations related to a claim by a public office in the exercise of its regulatory, investigative, or enforcement authority.

**(b) Exceptions.** The court may admit this evidence for another purpose, such as proving a witness's bias or prejudice, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**Rule 409. Offers to Pay Medical and Similar Expenses**

Evidence of furnishing, promising to pay, or offering to pay medical, hospital, or similar expenses resulting from an injury is not admissible to prove liability for the injury.

**Rule 410. Pleas, Plea Discussions, and Related Statements**

**(a) Prohibited Uses.** In a civil or criminal case, evidence of the following is not admissible against the defendant who made the plea or participated in the plea discussions:

- (1) a guilty plea that was later withdrawn;
- (2) a nolo contendere plea;
- (3) *omitted*; or
- (4) a statement made during plea discussions with an attorney for the prosecuting authority if the discussions did not result in a guilty plea or they resulted in a later-withdrawn guilty plea.

**(b) Exceptions.** The court may admit a statement described in Rule 410(a)(3) or (4):

- (1) in any proceeding in which another statement made during the same plea or plea discussions has been introduced, if in fairness the statements ought to be considered together; or
- (2) in a criminal proceeding for perjury or false statement, if the defendant made the statement under oath, on the record and with counsel present.

**Rule 411. Liability Insurance**

Evidence that a person was or was not insured against liability is not admissible to prove whether the person acted negligently or otherwise wrongfully. But the court may admit this evidence for another purpose, such as proving a witness's bias or prejudice or proving agency, ownership, or control.

**Rule 412. *Omitted***

**Rule 413. *Omitted***

**Rule 414. *Omitted***

**Rule 415. *Omitted***

**Article V.**

**Rule 501. Privileges in General**

Only privileges granted by a statute of the state of Midlands or by Midlands case law shall be recognized.

**Rule 502. *Omitted***

## **Article VI.**

### **Rule 601. Competency to Testify in General**

Every person is competent to be a witness unless these rules provide otherwise.

### **Rule 602. Need for Personal Knowledge**

A witness may not testify to a matter unless evidence is introduced sufficient to support a finding that the witness has personal knowledge of the matter. Evidence to prove personal knowledge may, but need not, consist of the witness's own testimony. This rule is subject to the provisions of Rule 703, relating to opinion testimony by expert witnesses.

### **Rule 603. Oath or Affirmation to Testify Truthfully**

Before testifying, a witness shall be presumed to have been sworn in, by an oath or affirmation to testify truthfully administered in a form designed to impress that duty on the witness's conscience.

### **Rule 604. Omitted**

### **Rule 605. Judge's Competency as a Witness**

The presiding judge may not testify as a witness at the trial. A party need not object to preserve the issue.

### **Rule 606. Omitted**

### **Rule 607. Who May Impeach a Witness**

Any party, including the party that called the witness, may attack the witness's credibility.

### **Rule 608. A Witness's Character for Truthfulness or Untruthfulness**

**(a) Reputation or Opinion Evidence.** A witness's credibility may be attacked or supported by testimony about the witness's reputation for having a character for truthfulness or untruthfulness, or by testimony in the form of an opinion about that character. But evidence of truthful character is admissible only after the witness's character for truthfulness has been attacked.

*Comment:* Written notice is required in civil and criminal cases. In lieu of rebuttal witness availability, if the party attacking the character of the witness for truthfulness is the defense and the witness is a plaintiff/prosecution witness, the defense must first notify opposing counsel in writing at the Captains' Meeting of the intention to offer such evidence. If such notice is given, the form included with these Rules of Evidence should be completed and presented to the judges with the ballots, and the plaintiff/prosecution may offer evidence of truthful character during its case-in-chief.

**(b) Specific Instances of Conduct.** Except for a criminal conviction under Rule 609, extrinsic evidence is not admissible to prove specific instances of a witness's conduct in order to attack or support the witness's character for truthfulness. But the court may, on cross-examination, allow them to be inquired into if they are probative of the character for truthfulness or untruthfulness of:

- (1) the witness; or
- (2) another witness whose character the witness being cross-examined has testified about.

**Rule 609. Impeachment by Evidence of a Criminal Conviction**

**(a) In General.** The following rules apply to attacking a witness's character for truthfulness by evidence of a criminal conviction:

- (1) for a crime that, in the convicting jurisdiction, was punishable by death or by imprisonment for more than one year, the evidence:
  - (A) must be admitted, subject to Rule 403, in a civil case or in a criminal case in which the witness is not a defendant; and
  - (B) must be admitted in a criminal case in which the witness is a defendant, if the probative value of the evidence outweighs its prejudicial effect to that defendant; and
- (2) for any crime regardless of the punishment, the evidence must be admitted if the court can determine that establishing the elements of the crime required proving – or the witness's admitting – a dishonest act or false statement.

**(b) Limit on Using the Evidence After 10 Years.** This subdivision (b) applies if more than 10 years have passed since the witness's conviction or release from confinement for it, whichever is later. Evidence of the conviction is admissible only if:

- (1) its probative value, supported by specific facts and circumstances, substantially outweighs its prejudicial effect; and
- (2) the proponent gives an adverse party reasonable written notice of the intent to use it so that the party has a fair opportunity to contest its use.

**(c) Effect of a Pardon, Annulment, or Certificate of Rehabilitation.** Evidence of a conviction is not admissible if:

- (1) the conviction has been the subject of a pardon, annulment, certificate of rehabilitation, or other equivalent procedure based on a finding that the person has been rehabilitated, and the person has not been convicted of a later crime punishable by death or by imprisonment for more than one year; or
- (2) the conviction has been the subject of a pardon, annulment, or other equivalent procedure based on a finding of innocence.

**(d) Juvenile Adjudications.** Evidence of a juvenile adjudication is admissible under this rule only if:

- (1) it is offered in a criminal case;
- (2) the adjudication was of a witness other than the defendant;
- (3) an adult's conviction for that offense would be admissible to attack the adult's credibility; and
- (4) admitting the evidence is necessary to fairly determine guilt or innocence.

**(e) Pendency of an Appeal.** A conviction that satisfies this rule is admissible even if an appeal is pending. Evidence of the pendency is also admissible.

**Rule 610. Religious Beliefs or Opinions**

Evidence of a witness's religious beliefs or opinions is not admissible to attack or support the witness's credibility.

**Rule 611. Mode and Order of Examining Witnesses and Presenting Evidence**

**(a) Control by the Court; Purposes.** The court should exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to:

- (1) make those procedures effective for determining the truth;
- (2) avoid wasting time; and
- (3) protect witnesses from harassment or undue embarrassment.

**(b) Scope of Examinations.** The initial cross examination is not limited to matters discussed on direct examination. Re-direct and re-cross examination are permitted. But any re-direct or re-cross examination may not go beyond the subject matter of the examination immediately preceding it and matters affecting the witness's credibility.

**(c) Leading Questions.** Leading questions should not be used on direct examination except as necessary to develop the witness's testimony. Ordinarily the court should allow leading questions:

- (1) on cross- examination; and
- (2) when a party calls a hostile witness, an adverse party, or a witness identified with an adverse party.

#### **Rule 612. Writing Used to Refresh a Witness's Memory**

A witness may use any material provided by AMTA to refresh memory either during or prior to giving testimony.

#### **Rule 613. Witness's Prior Statement**

**(a) Showing or Disclosing the Statement During Examination.** When examining a witness about the witness's prior statement, a party need not show it or disclose its contents to the witness. But the party must, on request, show it or disclose its contents to an adverse party's attorney.

**(b) Extrinsic Evidence of a Prior Inconsistent Statement.** Extrinsic evidence of a witness's prior inconsistent statement is admissible only if the witness is given an opportunity to explain or deny the statement and an adverse party is given an opportunity to examine the witness about it, or if justice so requires. This subdivision (b) does not apply to an opposing party's statement under Rule 801(d)(2).

#### **Rule 614. Court's Calling or Examining a Witness**

Calling and/or examining of a witness by the court is not allowed.

#### **Rule 615. Excluding Witnesses.**

At a party's request, the court must order witnesses constructively excluded so that they cannot hear other witnesses' testimony. But this rule does not authorize constructively excluding:

- (a) a party who is a natural person;
- (b) an officer or employee of a party that is not a natural person, after being designated as the party's representative;
- (c) *omitted*; or
- (d) a person authorized by a statute provided in the case materials to be present.

*Comment:* This rule does not permit the actual exclusion of students portraying witnesses. Rather, it allows for the constructive exclusion of some witnesses.

## **Article VII.**

### **Rule 701. Opinion Testimony by Lay Witnesses**

If a witness is not testifying as an expert, testimony in the form of an opinion is limited to one that is:

- (a) rationally based on the witness's perception;
- (b) helpful to clearly understanding the witness's testimony or to determining a fact in issue; and
- (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702.

### **Rule 702. Testimony by Expert Witnesses**

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if:

- (a) the expert's scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert has reliably applied the principles and methods to the facts of the case.

*Comment: Formal Certification of Experts Not Permitted.* Unless otherwise provided in the case materials, formal certification of a witness as an expert in a specific field of expertise is not required nor permitted. Attorneys and witnesses should develop expertise and lay foundation through appropriate questioning based on the case materials provided. Judges may entertain any appropriate objections to expert witness qualifications and opinions under the Midlands Rules of Evidence.

### **Rule 703. Bases of an Expert's Opinion Testimony**

An expert may base an opinion on facts or data in the case that the expert has been made aware of or personally observed. If experts in the particular field would reasonably rely on those kinds of facts or data in forming an opinion on the subject, they need not be admissible for the opinion to be admitted. But if the facts or data would otherwise be inadmissible, the proponent of the opinion may disclose them to the jury only if their probative value in helping the jury evaluate the opinion substantially outweighs their prejudicial effect.

### **Rule 704. Opinion on an Ultimate Issue**

(a) **In General – Not Automatically Objectionable.** An opinion is not objectionable just because it embraces an ultimate issue.

(b) **Exception.** In a criminal case, an expert witness must not state an opinion about whether the defendant did or did not have a mental state or condition that constitutes an element of the crime charged or of a defense. Those matters are for the trier of fact alone.

### **Rule 705. Disclosing the Facts or Data Underlying an Expert's Opinion**

Unless the court orders otherwise, an expert may state an opinion – and give the reasons for it – without first testifying to the underlying facts or data. But the expert may be required to disclose those facts or data on cross-examination.

### **Rule 706. Omitted**

## Article VIII.

### Rule 801. Definitions That Apply to This Article; Exclusions from Hearsay

(a) **Statement.** “Statement” means a person’s oral assertion, written assertion, or nonverbal conduct, if the person intended it as an assertion.

(b) **Declarant.** “Declarant” means the person who made the statement.

(c) **Hearsay.** “Hearsay” means a statement that:

- (1) the declarant does not make while testifying at the current trial or hearing; and
- (2) a party offers in evidence to prove the truth of the matter asserted in the statement.

(d) **Statements That Are Not Hearsay.** A statement that meets the following conditions is not hearsay:

(1) **A Declarant-Witness’s Prior Statement.** The declarant testifies and is subject to cross-examination about a prior statement, and the statement:

- (A) is inconsistent with the declarant’s testimony and was given under penalty of perjury at a trial, hearing, or other proceeding or in a deposition;
- (B) is consistent with the declarant’s testimony and is offered to rebut an express or implied charge that the declarant recently fabricated it or acted from a recent improper influence or motive in so testifying; or
- (C) identifies a person as someone the declarant perceived earlier.

(2) **An Opposing Party’s Statement.** The statement is offered against an opposing party and:

- (A) was made by the party in an individual or representative capacity;
- (B) is one the party manifested that it adopted or believed to be true;
- (C) was made by a person whom the party authorized to make a statement on the subject;
- (D) was made by the party’s agent or employee on a matter within the scope of that relationship and while it existed; or
- (E) was made by the party’s coconspirator during and in furtherance of the conspiracy.

The statement must be considered but does not by itself establish the declarant’s authority under (C); the existence or scope of the relationship under (D); or the existence of the conspiracy or participation in it under (E).

### Rule 802. The Rule Against Hearsay

Hearsay is not admissible unless any of the following provides otherwise:

- these rules; or
- other rules prescribed by the Midlands Supreme Court.

### Rule 803. Exceptions to the Rule Against Hearsay – Regardless of Whether the Declarant Is Available as a Witness

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) **Present Sense Impression.** A statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.

(2) **Excited Utterance.** A statement relating to a startling event or condition, made while the declarant was under the stress of excitement that it caused.



**(3) Then-Existing Mental, Emotional, or Physical Condition.** A statement of the declarant's then-existing state of mind (such as motive, intent, or plan) or emotional, sensory, or physical condition (such as mental feeling, pain, or bodily health), but not including a statement of memory or belief to prove the fact remembered or believed unless it relates to the validity or terms of the declarant's will.

**(4) Statement Made for Medical Diagnosis or Treatment.** A statement that:

- (A) is made for – and is reasonably pertinent to – medical diagnosis or treatment; and
- (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.

**(5) Recorded Recollection.** A record that:

- (A) is on a matter the witness once knew about but now cannot recall well enough to testify fully and accurately;
  - (B) was made or adopted by the witness when the matter was fresh in the witness's memory; and
  - (C) accurately reflects the witness's knowledge.
- If admitted, the record may be read into evidence but may be received as an exhibit only if offered by an adverse party.

**(6) Records of a Regularly Conducted Activity.** A record of an act, event, condition, opinion, or diagnosis if:

- (A) the record was made at or near the time by – or from information transmitted by – someone with knowledge;
- (B) the record was kept in the course of a regularly conducted activity of a business, organization, occupation, or calling, whether or not for profit;
- (C) making the record was a regular practice of that activity;
- (D) all these conditions are shown by the testimony of the custodian or another qualified witness, or by a certification that complies with Rule 902(11) or (12) or with a statute permitting certification; and
- (E) neither the source of information nor the method or circumstances of preparation indicate a lack of trustworthiness.

**(7) Absence of a Record of Regularly Conducted Activity.** Evidence that a matter is not included in a record described in paragraph (6) if:

- (A) the evidence is admitted to prove that the matter did not occur or exist;
- (B) a record was regularly kept for a matter of that kind; and
- (C) neither the possible source of the information nor other circumstances indicate a lack of trustworthiness.

**(8) Public Records.** A record or statement of a public office if:

- (A) it sets out:
  - (i) the office's activities;
  - (ii) a matter observed while under a legal duty to report, but not including, in a criminal case, a matter observed by law-enforcement personnel; or
  - (iii) in a civil case or against the government in a criminal case, factual findings from a legally authorized investigation; and
- (B) neither the source of information nor other circumstances indicate lack of trustworthiness.

**(9) Public Records of Vital Statistics.** A record of a birth, death, or marriage, if reported to a public office in accordance with a legal duty.

**(10) Absence of a Public Record.** Testimony – or a certification under Rule 902 – that a diligent search failed to disclose a public record or statement if the testimony or certification is admitted to prove that:

(A) the record or statement does not exist; or

(B) a matter did not occur or exist, if a public office regularly kept a record or statement for a matter of that kind.

**(11) Records of Religious Organizations Concerning Personal or Family History.** A statement of birth, legitimacy, ancestry, marriage, divorce, death, relationship by blood or marriage, or similar facts of personal or family history, contained in a regularly kept record of a religious organization.

**(12) Certificates of Marriage, Baptism, and Similar Ceremonies.** A statement of fact contained in a certificate:

(A) made by a person who is authorized by a religious organization or by law to perform the act certified;

(B) attesting that the person performed a marriage or similar ceremony or administered a sacrament; and

(C) purporting to have been issued at the time of the act or within a reasonable time after it.

**(13) Family Records.** A statement of fact about personal or family history contained in a family record, such as a Bible, genealogy, chart, engraving on a ring, inscription on a portrait, or engraving on an urn or burial marker.

**(14) Records of Documents That Affect an Interest in Property.** The record of a document that purports to establish or affect an interest in property if:

(A) the record is admitted to prove the content of the original recorded document, along with its signing and its delivery by each person who purports to have signed it;

(B) the record is kept in a public office; and

(C) a statute authorizes recording documents of that kind in that office.

**(15) Statements in Documents That Affect an Interest in Property.** A statement contained in a document that purports to establish or affect an interest in property if the matter stated was relevant to the document's purpose – unless later dealings with the property are inconsistent with the truth of the statement or the purport of the document.

**(16) Statements in Ancient Documents.** A statement in a document that is at least 20 years and whose authenticity is established.

**(17) Market Reports and Similar Commercial Publications.** Market quotations, lists, directories, or other compilations that are generally relied on by the public or by persons in particular occupations.

**(18) Statements in Learned Treatises, Periodicals, or Pamphlets.** A statement contained in a treatise, periodical, or pamphlet if:

(A) the statement is called to the attention of an expert witness on cross-examination or relied on by the expert on direct examination; and

(B) the publication is established as a reliable authority by the expert's admission or testimony, by another expert's testimony, or by judicial notice.

If admitted, the statement may be read into evidence but not received as an exhibit.

*Comment:* This rule concerns published treatises, periodicals, or pamphlets that have been provided in the case packet. Mere reference to a title in the packet is insufficient; the entirety of the item must be provided in the case packet for this rule to be applicable.

**(19) Reputation Concerning Personal or Family History.** A reputation among a person's family by blood, adoption, or marriage – or among a person's associates or in the community – concerning

the person's birth, adoption, legitimacy, ancestry, marriage, divorce, death, relationship by blood, adoption, or marriage, or similar facts of personal or family history.

**(20) Reputation Concerning Boundaries or General History.** A reputation in a community – arising before the controversy – concerning boundaries of land in the community or customs that affect the land, or concerning general historical events important to that community, state, or nation.

**(21) Reputation Concerning Character.** A reputation among a person's associates or in the community concerning the person's character.

**(22) Judgment of a Previous Conviction.** Evidence of a final judgment of conviction if:

(A) the judgment was entered after a trial or guilty plea, but not a nolo contendere plea;

(B) the conviction was for a crime punishable by death or by imprisonment for more than a year;

(C) the evidence is admitted to prove any fact essential to the judgment; and

(D) when offered by the prosecutor in a criminal case for a purpose other than impeachment, the judgment was against the defendant.

The pendency of an appeal may be shown but does not affect admissibility.

**(23) Judgments Involving Personal, Family, or General History, or a Boundary.** A judgment that is admitted to prove a matter of personal, family, or general history, or boundaries, if the matter:

(A) was essential to the judgment; and

(B) could be proved by evidence of reputation.

**(24) Omitted.**

#### **Rule 804. Exceptions to the Rule Against Hearsay –When the Declarant Is Unavailable as a Witness**

**(a) Criteria for Being Unavailable.** A declarant is considered to be unavailable as a witness if the declarant:

(1) is exempted from testifying about the subject matter of the declarant's statement because the court rules that a privilege applies;

(2) refuses to testify about the subject matter despite a court order to do so;

(3) testifies to not remembering the subject matter;

(4) cannot be present or testify at the trial or hearing because of death or a then-existing infirmity, physical illness, or mental illness; or

(5) is absent from the trial or hearing and the statement's proponent has not been able, by process or other reasonable means, to procure:

(A) the declarant's attendance, in the case of a hearsay exception under Rule 804(b)(1) or (6); or

(B) the declarant's attendance or testimony, in the case of a hearsay exception under Rule 804(b)(2), (3), or (4).

But this subdivision (a) does not apply if the statement's proponent procured or wrongfully caused the declarant's unavailability as a witness in order to prevent the declarant from attending or testifying.

*Comment:* This rule may not be used at trial to assert that a team has "procured" the unavailability of a witness by choosing not to call that witness.

**(b) The Exceptions.** The following are not excluded by the rule against hearsay if the declarant is unavailable as a witness:

**(1) Former testimony.** Testimony that:

(A) was given as a witness at a trial, hearing, or lawful deposition, whether given during the current proceeding or a different one; and

(B) is now offered against a party who had – or, in a civil case, whose predecessor in interest had – an opportunity and similar motive to develop it by direct, cross-, or redirect examination.

**(2) Statement Under the Belief of Imminent Death.** In a prosecution for homicide or in a civil case, a statement that the declarant, while believing the declarant's death to be imminent, made about its cause or circumstances.

**(3) Statement Against Interest.** A statement that:

(A) a reasonable person in the declarant's position would have made only if the person believed it to be true because, when made, it was so contrary to the declarant's proprietary or pecuniary interest or had so great a tendency to invalidate the declarant's claim against someone else or to expose the declarant to civil or criminal liability; and

(B) is supported by corroborating circumstances that clearly indicate its trustworthiness, if it is offered in a criminal case as one that tends to expose the declarant to criminal liability.

**(4) Statement of Personal or Family History.** A statement about:

(A) the declarant's own birth, adoption, legitimacy, ancestry, marriage, divorce, relationship by blood, adoption, or marriage, or similar facts of personal or family history, even though the declarant had no way of acquiring personal knowledge about that fact; or

(B) another person concerning any of these facts, as well as death, if the declarant was related to the person by blood, adoption, or marriage or was so intimately associated with the person's family that the declarant's information is likely to be accurate.

**(5) Omitted.**

**(6) Statement Offered Against a Party That Wrongfully Caused the Declarant's Unavailability.** A statement offered against a party that wrongfully caused – or acquiesced in wrongfully causing – the declarant's unavailability as a witness, and did so intending that result.

#### **Rule 805. Hearsay Within Hearsay**

Hearsay within hearsay is not excluded by the rule against hearsay if each part of the combined statements conforms with an exception to the rule.

#### **Rule 806. Attacking and Supporting the Declarant's Credibility**

When a hearsay statement – or a statement described in Rule 801(d)(2)(C), (D), or (E) – has been admitted in evidence, the declarant's credibility may be attacked, and then supported, by any evidence that would be admissible for those purposes if the declarant had testified as a witness. The court may admit evidence of the declarant's inconsistent statement or conduct, regardless of when it occurred or whether the declarant had an opportunity to explain or deny it. If the party against whom the statement was admitted calls the declarant as a witness, the party may examine the declarant on the statement as if on cross-examination.

#### **Rule 807. Omitted**

## Article IX.

### Rule 901. Authenticating or Identifying Evidence

- (a) **In General.** To satisfy the requirement of authenticating or identifying an item of evidence, the proponent must produce evidence sufficient to support a finding that the item is what the proponent claims it is.
- (b) **Examples.** The following are examples only – not a complete list – of evidence that satisfies the requirement:
- (1) **Testimony of a Witness with Knowledge.** Testimony that an item is what it is claimed to be.
  - (2) **Nonexpert Opinion About Handwriting.** A nonexpert's opinion that handwriting is genuine, based on a familiarity with it that was not acquired for the current litigation.
  - (3) **Comparison by an Expert Witness or the Trier of Fact.** A comparison with an authenticated specimen by an expert witness or the trier of fact.
  - (4) **Distinctive Characteristics and the Like.** The appearance, contents, substance, internal patterns, or other distinctive characteristics of the item, taken together with all the circumstances.
  - (5) **Opinion About a Voice.** An opinion identifying a person's voice – whether heard firsthand or through mechanical or electronic transmission or recording – based on hearing the voice at any time under circumstances that connect it with the alleged speaker.
  - (6) **Evidence About a Telephone Conversation.** For a telephone conversation, evidence that a call was made to the number assigned at the time to:
    - (A) a particular person, if circumstances, including self-identification, show that the person answering was the one called; or
    - (B) a particular business, if the call was made to a business and the call related to business reasonably transacted over the telephone.
  - (7) **Evidence About Public Records.** Evidence that:
    - (A) a document was recorded or filed in a public office as authorized by law; or
    - (B) a purported public record or statement is from the office where items of this kind are kept.
  - (8) **Evidence About Ancient Documents or Data Compilations.** For a document or data compilation, evidence that it:
    - (A) is in a condition that creates no suspicion about its authenticity;
    - (B) was in a place where, if authentic, it would likely be; and
    - (C) is at least 20 years old when offered.
  - (9) **Evidence About a Process or System.** Evidence describing a process or system and showing it produces an accurate result.
  - (10) **Methods Provided by a Statute or Rule.** Any method of authentication or identification allowed by a Midlands statute or a rule prescribed by the Midlands Supreme Court.

### Rule 902. Evidence That Is Self-Authenticating

The following items of evidence are self-authenticating; they require no extrinsic evidence of authenticity in order to be admitted:

- (1) **Domestic Public Documents That Are Sealed and Signed.** A document that bears:
- (A) a seal purporting to be that of the United States; any state, district, commonwealth, territory, or insular possession of the United States; the former Panama Canal Zone; the

Trust Territory of the Pacific Islands; a political subdivision of any of these entities; or a department, agency, or officer of any entity named above; and

(B) a signature purporting to be an execution or attestation.

**(2) Domestic Public Documents That Are Not Sealed but Are Signed and Certified.** A

document that bears no seal if:

(A) it bears the signature of an officer or employee of an entity named in Rule 902(1)(A); and

(B) another public officer who has a seal and official duties within that same entity certifies under seal – or its equivalent – that the signer has the official capacity and that the signature is genuine.

**(3) Foreign Public Documents.** A document that purports to be signed or attested by a person who is authorized by a foreign country's laws to do so. The document must be accompanied by a final certification that certifies the genuineness of the signature and official position of the signer or attester – or of any foreign official whose certificate of genuineness relates to the signature or attestation or is in a chain of certificates of genuineness relating to the signature or attestation. The certification may be made by a secretary of a United States embassy or legation; by a consul general, vice consul, or consular agent of the United States; or by a diplomatic or consular official of the foreign country assigned or accredited to the United States. If all parties have been given a reasonable opportunity to investigate the document's authenticity and accuracy, the court may, for good cause, either:

(A) order that it be treated as presumptively authentic without final certification; or

(B) allow it to be evidenced by an attested summary with or without final certification.

**(4) Certified Copies of Public Records.** A copy of an official record – or a copy of a document that was recorded or filed in a public office as authorized by law – if the copy is certified as correct by:

(A) the custodian or another person authorized to make the certification; or

(B) a certificate that complies with Rule 902(1), (2), or (3) or a rule prescribed by the Midlands Supreme Court.

**(5) Official Publications.** A book, pamphlet, or other publication purporting to be issued by a public authority.

**(6) Newspapers and Periodicals.** Printed material purporting to be a newspaper or periodical.

**(7) Trade Inscriptions and the Like.** An inscription, sign, tag, or label purporting to have been affixed in the course of business and indicating origin, ownership, or control.

**(8) Acknowledged Documents.** A document accompanied by a certificate of acknowledgment that is lawfully executed by a notary public or another officer who is authorized to take acknowledgments.

**(9) Commercial Paper and Related Documents.** Commercial paper, a signature on it, and related documents, to the extent allowed by general commercial law.

**(10) Omitted.**

**(11) Certified Domestic Records of a Regularly Conducted Activity.** The original or a copy of a domestic record that meets the requirements of Rule 803(6)(A)-(C), as shown by a certification of the custodian or another qualified person that complies with a rule prescribed by the Midlands Supreme Court. Before the trial or hearing, the proponent must give an adverse party reasonable written notice of the intent to offer the record – and must make the record and certification available for inspection – so that the party has a fair opportunity to challenge them.

*Comment:* The reasonableness requirement of this rule is satisfied if the aforementioned notice, record, and certification are affirmatively made available at the Captains' Meeting.

**(12) Certified Foreign Records of a Regularly Conducted Activity.** In a civil case, the original or a copy of a foreign record that meets the requirements of Rule 902(11), modified as follows: the certification, rather than complying with a Midlands Supreme Court rule, must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed. The proponent must also meet the notice requirements of Rule 902(11).

*Comment:* If no foreign law is provided in the case materials, the presumption will be that no legal infraction occurred with respect to the requirement of subdivision 12 that the certification “must be signed in a manner that, if falsely made, would subject the maker to a criminal penalty in the country where the certification is signed.”

### **Rule 903. Subscribing Witness’s Testimony**

A subscribing witness’s testimony is not necessary to authenticate a writing.

## **Article X.**

### **Rule 1001. Definitions That Apply to This Article**

In this article:

- (a) A “writing” consists of letters, words, numbers, or their equivalent set down in any form.
- (b) A “recording” consists of letters, words, numbers, or their equivalent recorded in any manner.
- (c) A “photograph” means a photographic image or its equivalent stored in any form.
- (d) An “original” of a writing or recording means the writing or recording itself or any counterpart intended to have the same effect by the person who executed or issued it. For electronically stored information, “original” means any printout – or other output readable by sight – if it accurately reflects the information. An “original” of a photograph includes the negative or a print from it.
- (e) A “duplicate” means a counterpart produced by a mechanical, photographic, chemical, electronic, or other equivalent process or technique that accurately reproduces the original.

### **Rule 1002. Requirement of the Original**

An original writing, recording, or photograph is required in order to prove its content unless these rules or a Midlands statute provide otherwise.

*Comment:* No attorney may object under this Rule that the “original writing, recording, or photograph” in question is not among the documents contained in the case packet.

### **Rule 1003. Admissibility of Duplicates**

A duplicate is admissible to the same extent as the original unless a genuine question is raised about the original’s authenticity or the circumstances make it unfair to admit the duplicate.

### **Rule 1004. Admissibility of Other Evidence of Content**

An original is not required and other evidence of the content of a writing, recording, or photograph is admissible if:

- (a) all the originals are lost or destroyed, and not by the proponent acting in bad faith;
- (b) an original cannot be obtained by any available judicial process;
- (c) the party against whom the original would be offered had control of the original; was at that time put on notice, by pleadings or otherwise, that the original would be a subject of proof at the trial or hearing; and fails to produce it at the trial or hearing; or
- (d) the writing, recording, or photograph is not closely related to a controlling issue.

**Rule 1005. Copies of Public Records to Prove Content**

The proponent may use a copy to prove the content of an official record – or of a document that was recorded or filed in a public office as authorized by law – if these conditions are met: the record or document is otherwise admissible; and the copy is certified as correct in accordance with Rule 902(4) or is testified to be correct by a witness who has compared it with the original. If no such copy can be obtained by reasonable diligence, then the proponent may use other evidence to prove the content.

**Rule 1006. Summaries to Prove Content**

The proponent may use a summary, chart, or calculation to prove the content of voluminous writings, recordings, or photographs that cannot be conveniently examined in court. The proponent must make the originals or duplicates available for examination or copying, or both, by other parties at a reasonable time and place. And the court may order the proponent to produce them in court.

**Rule 1007. Testimony or Statement of a Party to Prove Content**

The proponent may prove the content of a writing, recording, or photograph by the testimony, deposition, or written statement of the party against whom the evidence is offered. The proponent need not account for the original.

**Rule 1008. Functions of the Court and Jury**

Ordinarily, the court determines whether the proponent has fulfilled the factual conditions for admitting other evidence of the content of a writing, recording, or photograph under Rule 1004 or 1005. But in a jury trial, the jury determines – in accordance with Rule 104(b) – any issue about whether:

- (a) an asserted writing, recording, or photograph ever existed;
- (b) another one produced at the trial or hearing is the original; or
- (c) other evidence of content accurately reflects the content.

**Article XI.**

**Rule 1101. Applicability of the Rules**

(a) **To Courts and Judges.** These rules apply to proceedings before all courts in the State of Midlands.

(b) **To Cases and Proceedings.** These rules apply in:

- civil cases and proceedings; and
- criminal cases and proceedings.

(c) **Rules on Privilege.** The rules on privilege apply to all stages of a case or proceeding.

(d) **Exceptions.** These rules – except for those on privilege – do not apply to the following:

- (1) the court's determination, under Rule 104(a), on a preliminary question of fact governing admissibility;
- (2) *omitted*; and
- (3) *omitted*.

(e) *Omitted.*

**Rule 1102. Amendments**

Amendments to the Midlands Rules of Evidence may be made at the annual AMTA Board Meeting or by special vote convened by the Board.



**Rule 1103. Title**

These rules shall be cited as the Midlands Rules of Evidence.

## SPECIAL INSTRUCTIONS

### **Witnesses and Witness Selection**

**1. Witness Availability.** The prosecution will call three of the following four witnesses: K. Jackson, Taylor Jeremiah, Kai Kalba, and Abi Angelo. The defense will call the following three witnesses: August Slaughter, Gail Thunstrom, and Chris Hubicki.

**2. Party Representatives.** August Slaughter is the only permissible party representative for the defense under Rule 615 of the Midlands Rules of Evidence (“MRE”) and must be designated as a party representative if Rule 615 is invoked. The prosecution does not have a party representative, and no other witnesses may be designated as party representatives under Rule 615.

### **Other Provisions**

**3. Authenticity.** Witnesses must acknowledge authorship of any document that purports to be authored by them and the authenticity of any signature that purports to be theirs. A witness whose affidavit, deposition, or report states that the witness is familiar with a particular document must acknowledge, if asked, that the witness is familiar with that document and that the referenced document is the same version as the corresponding document in the current case.

**4. Closed-Universe Problem.** The only legal materials that competitors may mention, or judges may rely upon, for any purpose are those set forth in the case packet and the Midlands Rules of Evidence. All participants must acknowledge such if asked.

**5. No Constitutional Issues.** The parties have raised all objections arising under the United States Constitution prior to trial and preserved them for appeal. Accordingly, no party may raise any objections specifically related to the United States Constitution at trial. Any such objections have previously been overruled, and no motion for reconsideration is permitted. Nothing in this Special Instruction precludes the making of timely objections during trial based on the Midlands Rules of Evidence.

**6. Fifth Amendment.** No witness may refuse to answer any question – and no attorney may instruct a witness not to respond – based on the witness’s Fifth Amendment rights.

**7. Attorney-Client and Spousal Privilege.** The parties have waived all objections based on privilege. No party may object based on any privilege (attorney-client, marital, physician-patient, or otherwise). Likewise, no witness may refuse to answer any question – and no attorney may instruct a witness not to respond – based on privilege.

**8. Best Evidence Rule Limited to Items in the Case Packet.** No attorney may object under MRE 1002 if the “original writing, recording, or photograph” in question is not among the documents contained in the case packet.

**9. Copies.** No objections may be raised on the grounds that a document, exhibit, or demonstrative is presented (1) in black and white or (2) electronically.

**10. Reading Counts Against Time.** If a team wishes to publish part or all of a document (including any stipulations) to the jury by reading it aloud, the team must do it after opening statements and before the close of the defense case-in-chief. Time spent reading will be deducted from direct examination time if the reading occurs during the proponent’s case-in-chief and from cross examination time if the reading occurs during the opponent’s case-in-chief. Directing the judge’s attention to documents during pretrial matters or objections does not count against time.

**11. Witnesses Must Be Able to Respond to Cross-Examination.** No student shall portray any witness in a manner that renders that witness unable or unwilling to respond to otherwise proper questions on cross examination.

**12. Speech Characteristics.** While teams may use accents and speech characteristics to develop a character, teams may not use such characteristics to invent material facts (e.g., to attack or support another witness’s identification of a speaker). This Special Instruction applies during examinations of witnesses, opening statements, and closing arguments.

**13. Characteristics of Defendant.** No person or team may argue that the physical characteristics of the student playing the Defendant make it more or less likely that the Defendant committed the crime charged.

**14. Final Versions (and Revision Dates).** All participants must acknowledge that all case documents are the final and only versions of those documents. If any case corrections are made, they will be indicated by dates at the top or bottom of corrected documents. For purposes of the trial, such dates do not indicate anything else about the history of the document. For instance, dates do not indicate that a witness has revised their affidavit, report, deposition, etc., or when such a revision occurred.

**15. Gender/Pronouns.** The prosecution will determine the gender of all callable prosecution witnesses and of Nickie Benton. The defense will determine the gender of all callable defense witnesses.

**22. Exhibit 12 (Photograph of Nickie Benton).** Subject to the Midlands Rules of Evidence, the prosecution may supply a photograph of Nickie Benton. The photograph may not contain any other person or anything specifically intended to evoke other persons, places, things, or events specifically mentioned or described in the case. The person portraying Nickie Benton in the photograph must not show any signs of death or injury, and the photograph may not contradict any facts in the case packet or introduce any material facts beyond what is in the case packet.

If the prosecution wishes to supply a photograph, the photograph must be shown to the defense during Captains' Meeting, and failure to do so shall constitute an absolute bar to using the photograph in any way during the trial. Any objection based on this Special Instruction to a properly disclosed photograph may be raised only at Captains' Meeting, not during trial.