IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS,	*	**CASE NO.: CR2021-10-70**
Plaintiff,	*	
	*	
v.	*	
	*	
DAKOTA SUTCLIFFE,	*	
Defendant.	*	
	*	

INDICTMENT AND BILL OF PARTICULARS

STATE OF MIDLANDS,
COUNTY OF BRECKINRIDGE, SS:
In the Year 2021

THE JURORS OF THE GRAND JURY OF THE STATE OF MIDLANDS*, within and for the body for the County aforesaid, on their oaths, in the name and by the authority of the State of Midlands, do find and present that:*

COUNT ONE

AGGRAVATED ARSON

On or about August 1, 2020, in Breckinridge County, Midlands, Dakota Sutcliffe by means of an act of arson did knowingly create a substantial risk of serious physical harm to any person other than the offender, which constitutes the offense of AGGRAVATED ARSON, a Class 1 Felony, in violation of Midlands Penal Code 18-402, and against the peace and dignity of the State of Midlands. To wit: Dakota Sutcliffe ignited paint thinner within Chuggie's Bar that caused a fire in a manner that violated Midlands Penal Code 18-403, and Jaylen Williams, a Midlands Center Fire and Rescue Department firefighter, and thus "emergency personnel" under Midlands Penal Code 18-401, died in the course of fighting the fire at Chuggie's Bar.

E. Grant
E. Grant (00341049)
ASST. PROSECUTING ATTORNEY
BRECKINRIDGE COUNTY

A TRUE BILL
A. Jammohamed
FOREPERSON, GRAND JURY
Date Signed: July 21, 2021

IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS, Plaintiff,	*	**CASE NO.: CR2021-10-70**
v.	*	
	*	**JURY INSTRUCTIONS**
DAKOTA SUTCLIFFE, Defendant.	*	

The defendant, Dakota Sutcliffe, is charged with aggravated arson in violation of §18-402 of the Midlands Penal Code. You must find the defendant not guilty unless you find that the government has proven beyond a reasonable doubt that the defendant is guilty of aggravated arson as set forth in Instruction No. 1.

INSTRUCTION NO. 1: AGGRAVATED ARSON

You will find the defendant, Dakota Sutcliffe, guilty if, and only if, the government has proven beyond a reasonable doubt all of the following:

A. The defendant committed an act of arson as defined by §18-403 of the Midlands Penal Code.
    1. An act of arson may be proven by showing the defendant engaged in an action that is prohibited by §18-403(A) or §18-403(B).
    2. Sections 18-403(A) and 18-403(B) of the Midlands Penal Code require that the defendant act knowingly.
B. AGGRAVATING FACTOR: The defendant knowingly did any of the following:
    1. Created a substantial risk of serious physical harm to any person, other than the defendant;
        i. Specifically, that defendant created a substantial risk of harm to emergency personnel who were acting in the course of fighting the fire.
    2. Caused physical harm to any occupied structure;
    3. Created, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure.

INSTRUCTION NO. 2: STATE OF MIND DEFINITION

A. Knowledge: A person acts knowingly if they are aware that their conduct will result in a certain outcome. In other words, a defendant acts knowingly if they are aware that it is practically certain that their conduct will cause a specific result.

INSTRUCTION NO. 3: OTHER RELEVANT DEFINITIONS

A. Substantial risk: A strong possibility that a certain result may occur or that certain circumstances may exit. The opposite of a remote or significant possibility.
B. Serious physical harm to any person: Any injury, illness, or other physiological impairment, regardless of its gravity or duration, that carries a substantial risk of death.
C. Physical harm: In arson cases, "physical harm" means to explode, burn, char, or otherwise cause physical damage to the interior structure or supports of a building via fire or explosion. This does not include mere smoke damage or slight charring of a wall, roof, or other non-support structures.
D. Occupied structure: A dwelling or place of residence where a person or persons are permanently or temporarily dwelling even if no one is actually present at the time of the offense. A structure will still be considered to be an occupied structure if at the time of the offense any person was present or was likely to be present in it.
E. Intent to defraud: An offender acts with the "intent to defraud" if they knowingly obtain or attempt to obtain some benefit for theirself or another person by deception, or they knowingly caused or attempted to cause some detriment to another person or entity by deception.

INSTRUCTION NO. 4: EMERGENCY PERSONNEL

The government has charged Defendant Dakota Sutcliffe with aggravated arson. The aggravating factor is that the government alleges that Jaylen Williams was considered to be "emergency personnel" under §18-401(C)(2) of the Midlands Penal Code. The relevant law defines "emergency personnel" as "a member of a fire department or other firefighting agency of a municipal corporation." Both parties have already agreed that Midlands Center Fire and Rescue Department is operated by the municipal corporation of Midlands Center, Breckinridge County, Midlands. If you find that Jaylen Williams was a member of the Midlands Center Fire and Rescue Department, then you must find that Jaylen Williams was considered to be "emergency personnel" pursuant to §18-401(C)(2).

INSTRUCTION NO. 5: COURSE OF CONDUCT (EMERGENCY PERSONNEL)

As charged, the government must prove the defendant "created a substantial risk of serious physical harm to any person." In order to prove this element, the government has alleged that the defendant "created a substantial risk of serious physical harm" to "emergency personnel." "Emergency personnel" must be "acting in the course of fighting or investigating the fire" to satisfy the government's essential element of creating "a substantial risk of serious physical harm." Thus, if you find that Jaylen Williams was "emergency personnel," and if you find that the government has argued the defendant is guilty of aggravated arson because of a substantial risk of serious physical harm to any emergency personnel, you must next determine if the government has satisfied its burden of proving that Jaylen Williams was "acting in the course of fighting or investigating the fire," pursuant to §18-401(B). Emergency personnel must act within the scope of their employment. In other words, if emergency personnel are off-duty or deviate from the standard operating procedure for their profession, then you can use that evidence in determining if the act was done within the scope of (i.e., as part of) their employment. If you believe the emergency personnel was acting outside the scope of their employment, then the government would not be able to satisfy its burden of proving the defendant "created a substantial risk of serious physical harm to any person." An employee is within the scope of their employment if they are in substantial compliance with the standard operating procedures of their applicable profession or code. Strict compliance is not required.

INSTRUCTION NO. 6: 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.

INSTRUCTION NO. 7: RIGHT TO REMAIN SILENT

The defendant is not required to testify, and the fact that a defendant does not testify cannot be used as an inference of guilt.

INSTRUCTION NO. 8: DEFENDANT MAY ELECT TO TAKE ON BURDEN

The burden of proving the essential elements of the charge beyond a reasonable doubt rests with the prosecution alone. However, as charged, the defendant may, though is not required to, elect to take on a burden as well. If the defendant elects to challenge that Jaylen Williams was acting within the scope of his employment as emergence personnel while fighting or investigating the fire at Chuggie's Bar on July 31-August 1, 2020, then the defendant must prove that claim by the preponderance of the evidence, or simply put, by the greater weight of the evidence. It is a lesser burden that beyond a reasonable doubt, but the claim must still be more likely than not for the defendant to have met their burden. If the defendant does not elect to take on this burden, then you need not consider whether Jaylen Williams was acting within the scope of his employment on July 31-August 1, 2020, and you will proceed in assessing Dakota Sutcliffe's guilt consistent with the other instructions given to you by the court.

INSTRUCTION NO. 9: ARGUMENTS AND REMARKS OF COUNSEL

Remarks of the attorneys are not evidence. If the remarks suggest certain facts not in evidence, disregard those remarks. However, you are to consider carefully the closing arguments of the attorneys. Ultimately you must draw your own conclusions and decide your verdict according to the evidence, under the instructions given to you by the court.

INSTRUCTION NO. 10: CREDIBILITY OF WITNESSES

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 of clearness of the witness's recollections;

D. the opportunity the witness had for observing and for knowing the matters the witness testified about;

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.

INSTRUCTION NO. 11: EVIDENCE; INTERPRETING 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.

INSTRUCTION NO. 12 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.

DATE: _____ _____

JUDGE

IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS,	*	**CASE NO.: CR2021-10-70**
Plaintiff,	*	
	*	
v.	*	
	*	
DAKOTA SUTCLIFFE,	*	
Defendant.	*	
	*	

SPECIAL VERDICT FORM

The Defendant is charged with Count I, AGGRAVATED ARSON, in violation of Midlands Penal Code 18-402.

To prove that the Defendant is guilty of this crime, the State of Midlands – the Prosecution – must prove the Defendant is guilty beyond a reasonable doubt. If you are not convinced beyond a reasonable doubt that the **defendant is guilty of a charged crime**, you must find the defendant not guilty of that crime. If you are convinced beyond a reasonable doubt that the defendant is guilty of a charged crime, you must find the defendant guilty of that crime.

The questions on this special verdict form ask whether the State of Midlands has proven each element of the crime of AGGRAVATED ARSON. A "YES" answer to a question means that the State of Midlands did prove the element. A "NO" answer means that the State of Midlands has failed to prove that element. Each answer must be unanimous.

Question 1

Did the State of Midlands establish proof beyond a reasonable doubt that the Defendant, Dakota Sutcliffe, knowingly caused a fire or explosion on July 31-August 1, 2020 that caused or created a substantial risk of physical harm to Chuggie's Bar?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY".
If you answered YES, proceed to Question 2.

Question 2

Did the State of Midlands establish proof beyond a reasonable doubt that the Defendant, Dakota Sutcliffe, committed an act of arson pursuant to Midlands Penal Code 18-403?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY".
If you answered YES, proceed to Question 3.

Question 3

Did the State of Midlands establish proof beyond a reasonable doubt that Jaylen Williams was "emergency personnel" pursuant to Midlands Penal Code 18-401?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY."
If you answered YES, proceed to Question 4

Question 4

Did the State of Midlands establish proof beyond a reasonable doubt that the Defendant, Dakota Sutcliffe, knowingly created a substantial risk of serious harm to another person? Specifically, did the Defendant knowingly create a substantial risk of serious harm to Jaylen Williams while he was acting "in the course of fighting or investigating the fire "at Chuggie's Bar on July 31-August 1, 2020?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY."
If you answered YES, proceed to Question 5

Question 5

While the Defendant was not required to do so, did the Defendant take on the burden of arguing that Jaylen Williams was not acting within the scope of his employment as "emergency personnel"?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "GUILTY AS CHARGED."
If you answered YES, proceed to Question 6

Question 6

Did the Defendant prove by a preponderance of the evidence (i.e. the greater weight of the evidence) that Jaylen Williams was acting outside the scope of his employment as "emergency personnel" on July 31-August 1, 2020 while fighting or investigating the fire at Chuggie's Bar?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "GUILTY AS CHARGED."
If you answered YES, proceed to JUDGMENT section below and select "GUILTY OF ARSON."

JUDGMENT

On COUNT I, we the Jury find the Defendant, Dakota Sutcliffe:

____ GUILTY AS CHARGED

____ GUILTY OF ARSON

____ NOT GUILTY

Please sign and date the form and tell the bailiff that you have reached a verdict.

_____ _____
Date Foreperson

IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS, Plaintiff,	*	**CASE NO.: CR2021-10-70**
v.	*	
DAKOTA SUTCLIFFE, Defendant.	*	**ORDERS ON MOTIONS IN LIMINE**

This matter is before the Court on several pre-trial motions filed by the State of Midlands and Defendant. The Court rules on the following issues and reserves ruling on all other evidentiary issues until proper objection at trial. The rulings set forth herein may not be revisited at trial.

Relevant Background Facts

Dakota Sutcliffe was indicted for felony murder on September 1, 2020 in case number CR2020-19-85 for the death of firefighter Jaylen Williams on August 1, 2020. Sutcliffe pled not guilty, and a jury trial was held for most of February 2021. The jury convicted Sutcliffe and Sutcliffe was sentenced to 50 years to life. Sutcliffe filed a notice of appeal on March 24, 2021. While all appellate briefs were filed by May 14, 2021, the 12th District Court of Appeals had not yet set Sutcliffe's case for oral arguments when the Midlands Supreme Court issued its landmark ruling overturning the felony murder rule on June 19, 2021 in *State v. Shahnazary*.

The 12th District Court of Appeals filed an opinion in Sutcliffe's case consistent with *Shahnazary* wherein it reversed Sutcliffe's felony murder conviction and remanded the case back for further proceedings. On July 15, 2021, the above-captioned case was opened. CR2020-19-85 was merged into the CR2021-10-70. A superseding indictment was issued on July 21, 2021, charging Sutcliffe with one count of aggravated arson.

Preemptory Character Evidence

The court first addresses a pretrial motion by the State of Midlands to compel notice from defendant, Dakota Sutcliffe, of any character evidence of the accused or of

the victim that Defendant intends to offer under Mid. R. Evid. 404(a). Defendant objected to the State's request for notice.

In other jurisdictions, if the Defense elected to introduce character evidence under Mid. R. Evid. 404(a)(2), the State would be afforded the opportunity to offer rebuttal witness testimony following Defense case-in-chief. However, for better or worse, Midlands' focus on judicial economy has created a unique local rule that prohibits the State from calling rebuttal witnesses. Therefore, this Court GRANTS the State's motion to compel and orders as follows:

1. Defendant must provide the State of Midlands with notice of any intent by defendant to offer evidence of the character of Defendant or victim pursuant to R. 404(a)(1). Defendant must indicate the specific traits, including pertinent traits, of character intended to be pursued.

2. Upon receipt of notice by Defendant that Defendant intends to offer evidence under R. 404(a)(2), the State of Midlands may elect to pursue "preemptory rebuttal evidence" of competing traits during its case-in-chief. If Defendant does not provide notice of its intent to offer R. 404(a)(2) evidence, neither party may introduce such evidence at trial.

3. The State of Midlands must, as always, offer similar notice to Defendant regarding its intent to offer any evidence of prior crimes, wrongs, or acts, pursuant to R. 404(b), and whether it will offer evidence of the alleged victim's trait of peacefulness to rebut evidence that the victim was the first aggressor under R. 404(A)(2)(c).

Tarot Readers Assoc. Ruling

The court held an evidentiary hearing regarding pretrial motions related to the admissibility of expert testimony that were filed by both parties pursuant to *Tarot Readers Association of Midlands v. Merrell Dow* (1994). The Court finds that all listed experts in this case, D. Weber, I. Syed, Nour Khan, and Dr. Mel Jelani, meet the general threshold of *Tarot Readers Assoc.* In other words, this Court finds that none of the methods or sciences used by the experts are "junk science" *per se;* therefore, Mid. R.

Evid 702(a), (b), and (c) have been satisfied. However, this Court will reserve ruling on the admissibility of the case-specific opinions of each expert pending the appropriate foundation being laid in trial pursuant to Mid. R. Evid. 702(d).

Admissibility of Trial Transcript

Both parties raised concerns about the use of the transcripts from defendant's prior trial as exhibits in the case *sub judice* for a myriad of reasons. The concerns raised by both parties are well taken given that the defendant is no longer charged with felony murder and the Court of Appeals never addressed the merit of the defendant's assignments of error because of the reversal and remand ordered by the Midlands Supreme Court in *State v. Shahnazary* for all pending felony murder appeals.

Accordingly, the Court rules as follows: at trial, (1) the excerpts from the trial transcript may not be admitted as evidence if the witness that testified at the first trial has been called to testify in the trial *sub judice*. Nothing about this Court's ruling limits a party from using the prior trial transcript as impeachment evidence; and (2) excerpts from the trial transcript for a witness that has not been called to testify in the trial *sub judice* may be read onto the record by counsel for either party or through a witness without additional foundation and at any point once the record is open. However, because the Court of Appeals never addressed defendant's assignments of error the parties may object to particular parts of the transcript on other evidentiary grounds. Any error that may have occurred during the first trial was not waived.

Reference to Trial Transcript

A secondary concern of both parties was the proper method of referring to Dakota Sutcliffe's first trial without prejudicing Sutcliffe's due process rights or creating a bias or confusion in the current jury given the substantially different nature of the charge in the case *sub judice* from Sutcliffe's original charge. All parties agree that the Midlands and the United States Constitution prohibit any party or witness from referring to Sutcliffe's prior charge of or conviction for felony murder. In the interests of justice and in making sure that we do not have a third Sutcliffe trial based on the same events, the court rules as follows:

1. No party or witness may reference Dakota Sutcliffe's prior charge of or conviction for felony murder.
2. All parties and witnesses may refer to prior trial testimony so long as it is done in a manner that avoids prejudice to Sutcliffe, and so long as the excerpts from the transcripts are allowed onto the record in accordance with the Midlands Rules of Evidence. For example, an attorney would be permitted to ask a witness a question that refers to that witness having "testified under oath in a prior proceeding relevant to this matter." There is no harm in referencing "prior proceedings" or "transcripts of prior proceedings" relevant to this case; however, counsel and witnesses are not permitted to reference Sutcliffe's prior charge or conviction.
3. During constructive sidebars or pretrial conferences with the court, parties may refer to the partial transcripts without restrictions as no prejudice will occur.

Preemptory Challenges to Defense Expert Testimony

The State of Midlands filed two Motions in Limine requesting this Court limit the testimony of defense experts Dr. Mel Jelani and Investigator Syed. With respect to Dr. Jelani, the State argued that Dr. Jelani should be prohibited from testifying about whether a particular witness's statements or memory are "credible." It is axiomatic that in the American criminal legal system the jury is the sole interpreter of credibility; in fact, our standard Midlands jury instructions explicitly discuss that issue. While it is proper for an expert witness to provide factors, examples, principles, and the like to educate a jury on how to properly assess certain types of testimony, memory, or events, this Court holds that it is improper for any witness, including Dr. Mel Jelani, to provide a conclusory opinion on whether witnesses' statements, testimony, or identifications are "credible," "not credible," or any similar phrasing. Such determinations of overall credibility are to be left solely to the jury. Accordingly, Dr. Jelani may provide testimony consistent with the holding above.

Finally, regarding Investigator Syed, the State asked this Court to prohibit Syed from offering an expert opinion. The State argued that Syed lacked sufficient and

reliable data to form an expert conclusion. Consistent with this Court's *Tarot Card Readers* ruling cited *supra*, Syed may not be prohibited from offering expert testimony pursuant to Mid.R.Evid 702(a), (b), or (c). This Court further finds that the State's arguments regarding Syed go more to weight than admissibility and the State's objections are matters better addressed via cross-examination

So Ordered,

E. V. Lynne

Hon. E. V. Lynne

DATE: August 1, 2021

IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS,	*	**CASE NO.: CR2021-10-70**
Plaintiff,	*	
	*	
v.	*	STATE'S INITIAL DISCOVERY
	*	RESPONSE TO DEFENDANT'S
DAKOTA SUTCLIFFE,	*	MOTION FOR DISCOVERY
Defendant.	*	

Now comes the Breckinridge County Prosecuting Attorney ("BCP"), who provides the following attached discovery, described below:

Request 1: All statements of the Defendant.

Response 1: Responsive documents are attached. BCP does not possess any other documents responsive to this request.

Request 2: Defendant's Prior Criminal Record.

Response 2: BCP does not possess any documents responsive to this request.

Request 3: Any books, maps, papers, documents, recordings, data, photographs, tangible objects, building or location photos or diagrams, within the State's possession and/or control. This request extends to any of the same items in the control or possession of the Midlands Police Department.

Response 3: BCP has a policy of "open file discovery." The Defendant's counsel may freely inspect all documents within the control of BCP, whether or not such documents or objects would be able to aid in the defense. As such, BCP has turned over all documents, objects, photographs and materials responsive to this request. A list of exhibits and evidence is attached. (Exhibit List, 1-35). Additionally, Defense Counsel was permitted to inspect the entire file in BCP's possession and has agreed that all existing material in possession of BCP have been disclosed.

Request 4: Expert Testimony. Defendant has requested a list of names, addresses, qualifications, conclusions, and reports prepared by anyone the prosecution believes will be used at trial.

Response 4: The reports of D. Weber and Nour Khan. These documents represent the entirety of any conclusions reached by expert witnesses for the State.

Request 5: Any other documents in the prosecution's possession or control that the prosecution contemplates using at trial.

Response 5: BCP has permitted Defense Counsel to review and copy all documents, witness statements, and evidence in its possession and control, including the affidavits of Det. Nour Khan, Kiran Singh, Skylar De Jong, Tobin Johnson, Maddox Vaughn, and Alex Silva.

Request 6: Any evidence, exhibits, or materials that could exonerate Defendant or assist in his or her defense, including any impeachment evidence, known as "*Brady* Evidence".

Response 6: BCP does not believe there are any exonerating documents responsive to this request and there is no impeachment evidence (plea deals, conviction records of testifying witnesses, or alternate suspects) within the State's possession. In an abundance of caution, however, BCP has disclosed all evidence it has obtained through investigation in this case and provided all witness statements in its possession.

In addition to these requests, BCP and Defense Counsel have agreed to share witness lists and show any new enlargements and/or new demonstrative aides to the respective opposing party. This exchange of witness lists and enlargements and demonstrative aides will occur in a meeting among counsel just prior to the start of trial.

BCP does not currently possess any additional evidence relating to this case.

BCP also makes a reciprocal demand for discovery.

NOTICE

The undersigned represents that the foregoing list of evidence will be considered as notice of intent to use such evidence in this case in chief at trial, as requested.

E. Crook

E. Crook
Breckinridge Co. Asst. Prosecutor

IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS,	*	**CASE NO.: CR2021-10-70**
Plaintiff,	*	
	*	
v.	*	DEFENDANT'S INITIAL DISCOVERY
	*	RESPONSE TO STATE'S
DAKOTA SUTCLIFFE,	*	MOTION FOR RECIPROCAL
Defendant.	*	DISCOVERY

Now comes Defendant, by and through Defendant's counsel of record, who provides the following attached discovery, described below:

Request 1: Any books, maps, papers, documents, recordings, data, photographs, tangible objects, building or location photos or floorplans, within the Defendant's possession and/or control that Defense Counsel believes would be used at trial.

Response 1: Defendant objects to the extent it includes any conversations between Defendant and Defense Counsel. Defendant further responds that all responsive documents, evidence, and photos are included in Exhibit List 1-32. Defendant does not possess and is not aware of any other relevant documents, evidence, or photographs that must be disclosed.

Request 2: Expert Testimony.

Response 2: The reports of I. Syed and Dr. Mel Jelani have been turned over to the State. This document represents the entirety of any conclusions reached by expert witnesses for the Defense.

Request 3: Any other documents in the Defendant's possession or control that the defense contemplates using at trial.

Response 3: Exhibit List 1-35 includes all physical documents and evidence for the Defendant.

NOTICE

The undersigned represents that the foregoing list of evidence will be considered as notice of intent to use such evidence in this case in chief at trial, as requested.

I. Elkind
I. Elkind
Defense Counsel

IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS, Plaintiff,	*	**CASE NO.: CR2021-10-70**
v.	*	
	*	**JURY INSTRUCTIONS**
DAKOTA SUTCLIFFE, Defendant.	*	

The defendant, Dakota Sutcliffe, is charged with aggravated arson in violation of §18-402 of the Midlands Penal Code. You must find the defendant not guilty unless you find that the government has proven beyond a reasonable doubt that the defendant is guilty of aggravated arson as set forth in Instruction No. 1.

INSTRUCTION NO. 1: AGGRAVATED ARSON

You will find the defendant, Dakota Sutcliffe, guilty if, and only if, the government has proven beyond a reasonable doubt all of the following:

A. The defendant committed an act of arson as defined by §18-403 of the Midlands Penal Code.
    1. An act of arson may be proven by showing the defendant engaged in an action that is prohibited by §18-403(A) or §18-403(B).
    2. Sections 18-403(A) and 18-403(B) of the Midlands Penal Code require that the defendant act knowingly.
B. AGGRAVATING FACTOR: The defendant knowingly did any of the following:
    1. Created a substantial risk of serious physical harm to any person, other than the defendant;
        i. Specifically, that defendant created a substantial risk of harm to emergency personnel who were acting in the course of fighting the fire.
    2. Caused physical harm to any occupied structure;
    3. Created, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure.

INSTRUCTION NO. 2: STATE OF MIND DEFINITION

A. Knowledge: A person acts knowingly if they are aware that their conduct will result in a certain outcome. In other words, a defendant acts knowingly if they are aware that it is practically certain that their conduct will cause a specific result.

INSTRUCTION NO. 3: OTHER RELEVANT DEFINITIONS

A. Substantial risk: A strong possibility that a certain result may occur or that certain circumstances may exit. The opposite of a remote or significant possibility.
B. Serious physical harm to any person: Any injury, illness, or other physiological impairment, regardless of its gravity or duration, that carries a substantial risk of death.
C. Physical harm: In arson cases, "physical harm" means to explode, burn, char, or otherwise cause physical damage to the interior structure or supports of a building via fire or explosion. This does not include mere smoke damage or slight charring of a wall, roof, or other non-support structures.
D. Occupied structure: A dwelling or place of residence where a person or persons are permanently or temporarily dwelling even if no one is actually present at the time of the offense. A structure will still be considered to be an occupied structure if at the time of the offense any person was present or was likely to be present in it.
E. Intent to defraud: An offender acts with the "intent to defraud" if they knowingly obtain or attempt to obtain some benefit for theirself or another person by deception, or they knowingly caused or attempted to cause some detriment to another person or entity by deception.

INSTRUCTION NO. 4: EMERGENCY PERSONNEL

The government has charged Defendant Dakota Sutcliffe with aggravated arson. The aggravating factor is that the government alleges that Jaylen Williams was considered to be "emergency personnel" under §18-401(C)(2) of the Midlands Penal Code. The relevant law defines "emergency personnel" as "a member of a fire department or other firefighting agency of a municipal corporation." Both parties have already agreed that Midlands Center Fire and Rescue Department is operated by the municipal corporation of Midlands Center, Breckinridge County, Midlands. If you find that Jaylen Williams was a member of the Midlands Center Fire and Rescue Department, then you must find that Jaylen Williams was considered to be "emergency personnel" pursuant to §18-401(C)(2).

INSTRUCTION NO. 5: COURSE OF CONDUCT (EMERGENCY PERSONNEL)

As charged, the government must prove the defendant "created a substantial risk of serious physical harm to any person." In order to prove this element, the government has alleged that the defendant "created a substantial risk of serious physical harm" to "emergency personnel." "Emergency personnel" must be "acting in the course of fighting or investigating the fire" to satisfy the government's essential element of creating "a substantial risk of serious physical harm." Thus, if you find that Jaylen Williams was "emergency personnel," and if you find that the government has argued the defendant is guilty of aggravated arson because of a substantial risk of serious physical harm to any emergency personnel, you must next determine if the government has satisfied its burden of proving that Jaylen Williams was "acting in the course of fighting or investigating the fire," pursuant to §18-401(B). Emergency personnel must act within the scope of their employment. In other words, if emergency personnel are off-duty or deviate from the standard operating procedure for their profession, then you can use that evidence in determining if the act was done within the scope of (i.e., as part of) their employment. If you believe the emergency personnel was acting outside the scope of their employment, then the government would not be able to satisfy its burden of proving the defendant "created a substantial risk of serious physical harm to any person." An employee is within the scope of their employment if they are in substantial compliance with the standard operating procedures of their applicable profession or code. Strict compliance is not required.

INSTRUCTION NO. 6: 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.

INSTRUCTION NO. 7: RIGHT TO REMAIN SILENT

The defendant is not required to testify, and the fact that a defendant does not testify cannot be used as an inference of guilt.

INSTRUCTION NO. 8: DEFENDANT MAY ELECT TO TAKE ON BURDEN

The burden of proving the essential elements of the charge beyond a reasonable doubt rests with the prosecution alone. However, as charged, the defendant may, though is not required to, elect to take on a burden as well. If the defendant elects to challenge that Jaylen Williams was acting within the scope of his employment as emergence personnel while fighting or investigating the fire at Chuggie's Bar on July 31-August 1, 2020, then the defendant must prove that claim by the preponderance of the evidence, or simply put, by the greater weight of the evidence. It is a lesser burden that beyond a reasonable doubt, but the claim must still be more likely than not for the defendant to have met their burden. If the defendant does not elect to take on this burden, then you need not consider whether Jaylen Williams was acting within the scope of his employment on July 31-August 1, 2020, and you will proceed in assessing Dakota Sutcliffe's guilt consistent with the other instructions given to you by the court.

INSTRUCTION NO. 9: ARGUMENTS AND REMARKS OF COUNSEL

Remarks of the attorneys are not evidence. If the remarks suggest certain facts not in evidence, disregard those remarks. However, you are to consider carefully the closing arguments of the attorneys. Ultimately you must draw your own conclusions and decide your verdict according to the evidence, under the instructions given to you by the court.

INSTRUCTION NO. 10: CREDIBILITY OF WITNESSES

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 of clearness of the witness's recollections;

D. the opportunity the witness had for observing and for knowing the matters the witness testified about;

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.

INSTRUCTION NO. 11: EVIDENCE; INTERPRETING 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.

INSTRUCTION NO. 12 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.

DATE: _____ _____

JUDGE

IN THE CIRCUIT COURT, CRIMINAL DIVISION
BRECKINRIDGE COUNTY, MIDLANDS

STATE OF MIDLANDS,	*	**CASE NO.: CR2021-10-70**
Plaintiff,	*	
	*	
v.	*	
	*	
DAKOTA SUTCLIFFE,	*	
Defendant.	*	
	*	

SPECIAL VERDICT FORM

The Defendant is charged with Count I, AGGRAVATED ARSON, in violation of Midlands Penal Code 18-402.

To prove that the Defendant is guilty of this crime, the State of Midlands – the Prosecution – must prove the Defendant is guilty beyond a reasonable doubt. If you are not convinced beyond a reasonable doubt that the **defendant is guilty of a charged crime**, you must find the defendant not guilty of that crime. If you are convinced beyond a reasonable doubt that the defendant is guilty of a charged crime, you must find the defendant guilty of that crime.

The questions on this special verdict form ask whether the State of Midlands has proven each element of the crime of AGGRAVATED ARSON. A "YES" answer to a question means that the State of Midlands did prove the element. A "NO" answer means that the State of Midlands has failed to prove that element. Each answer must be unanimous.

Question 1

Did the State of Midlands establish proof beyond a reasonable doubt that the Defendant, Dakota Sutcliffe, knowingly caused a fire or explosion on July 31-August 1, 2020 that caused or created a substantial risk of physical harm to Chuggie's Bar?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY".
If you answered YES, proceed to Question 2.

Question 2

Did the State of Midlands establish proof beyond a reasonable doubt that the Defendant, Dakota Sutcliffe, committed an act of arson pursuant to Midlands Penal Code 18-403?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY".
If you answered YES, proceed to Question 3.

Question 3

Did the State of Midlands establish proof beyond a reasonable doubt that Jaylen Williams was "emergency personnel" pursuant to Midlands Penal Code 18-401?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY."
If you answered YES, proceed to Question 4

Question 4

Did the State of Midlands establish proof beyond a reasonable doubt that the Defendant, Dakota Sutcliffe, knowingly created a substantial risk of serious harm to another person? Specifically, did the Defendant knowingly create a substantial risk of serious harm to Jaylen Williams while he was acting "in the course of fighting or investigating the fire "at Chuggie's Bar on July 31-August 1, 2020?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "NOT GUILTY."
If you answered YES, proceed to Question 5

Question 5

While the Defendant was not required to do so, did the Defendant take on the burden of arguing that Jaylen Williams was not acting within the scope of his employment as "emergency personnel"?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "GUILTY AS CHARGED."
If you answered YES, proceed to Question 6

Question 6

Did the Defendant prove by a preponderance of the evidence (i.e. the greater weight of the evidence) that Jaylen Williams was acting outside the scope of his employment as "emergency personnel" on July 31-August 1, 2020 while fighting or investigating the fire at Chuggie's Bar?

YES ____ NO ____

If you answered NO, proceed to the JUDGMENT section below and select "GUILTY AS CHARGED."
If you answered YES, proceed to JUDGMENT section below and select "GUILTY OF ARSON."

JUDGMENT

On COUNT I, we the Jury find the Defendant, Dakota Sutcliffe:

____ GUILTY AS CHARGED

____ GUILTY OF ARSON

____ NOT GUILTY

Please sign and date the form and tell the bailiff that you have reached a verdict.

_____ _____
Date Foreperson

RELEVANT MIDLANDS LAW

The statutes and cases listed below, along with the Midlands Rules of Evidence, are the only legal authorities that may be cited in trial.

Applicable Provisions from Midlands Penal Code

Midlands Penal Code §18-401 Arson Related Definitions

As used in sections 18-402 and 18-403 of the Midlands Penal Code:

(A) "Occupied structure" means any house, building, outbuilding, watercraft, aircraft, railroad car, truck, trailer, tent, or other structure, vehicle, or shelter, or any portion thereof, to which any of the following applies:

1) It is maintained as a permanent or temporary dwelling, even though it is temporarily unoccupied and whether or not any person is actually present.
2) At the time, it is occupied as the permanent or temporary habitation of any person, whether or not any person is actually present.
3) At the time, it is specially adapted for overnight accommodation of any person, whether or not any person is actually present.
4) At the time, any person is present or likely to be present in it.

(B) To "create a substantial risk of serious physical harm to any person" includes the creation of a substantial risk of serious physical harm to any emergency personnel who are acting in the course of fighting or investigating the fire.

(C) "Emergency personnel" means any of the following persons:

1) A peace officer, which is defined as a sheriff; deputy sheriff; marshal; deputy marshal; member of the organized police department of any municipal corporation, including members of organized police departments in adjoining states serving in Midlands under contract; employees of the department of natural resources who is a law enforcement officer; a forest-fire investigator; police constable or officer of any township or joint police district; troopers of the state highway patrol; and state fire marshal law enforcement officers;
2) A member of a fire department or other firefighting agency of a municipal corporation, township, township fire district, joint fire district, other political subdivision, or combination of political subdivisions;
3) A member of a private fire company or a volunteer firefighter;
4) A member of an emergency medical services district;
5) An emergency medical technician, paramedic, ambulance operator, or other member of an emergency medical service that is owned or operated by a political subdivision or a private entity;
6) The state fire marshal, the chief deputy fire marshal, or an assistant fire marshal;
7) A fire prevention officer of a political subdivision or an arson, fire, or similar investigator of a political subdivision.

Midlands Penal Code §18-402 Aggravated Arson

(A) No person, by an act of arson, pursuant to §18-403, shall knowingly do any of the following:
   1) Create a substantial risk of serious physical harm to any person, other than the offender;
   2) Cause physical harm to any occupied structure;
   3) Create, through the offer or acceptance of an agreement for hire or other consideration, a substantial risk of physical harm to any occupied structure.

(B) Whoever violates this section is guilty of aggravated arson.
   1) A violation of division (A)(1) or (A)(3) of this section is a class 1 felony;
   2) A violation of division (A)(2) of this section is a class 2 felony.

Midlands Penal Code §18-403 Arson

(A) No person, by means of fire or explosion, shall knowingly do any of the following:
   1) Cause, or create a substantial risk of, physical harm to any property of another without the other person's consent;
   2) Cause, or create a substantial risk of, physical harm to any property of the offender or another, with the intent to defraud;
   3) Cause, or create a substantial risk of, physical harm to the statehouse or a courthouse, school building, or other building or structure that is owned or controlled by the state;
   4) Cause, or create a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any property of another without the other person's consent or to any property of the offender or another with the intent to defraud;
   5) Cause, or create a substantial risk of, physical harm to any park, preserve, wildlands, forest, greenlands, woods, or similar real property that is owned by another person or the state.

(B) No person, by means of fire or explosion, shall knowingly do any of the following:
   1) Cause, or create a substantial risk of, physical harm to any structure of another that is not an occupied structure;
   2) Cause or create a substantial risk of, physical harm, through the offer or the acceptance of an agreement for hire or other consideration, to any structure of another that is not an occupied structure.

(C) It is an affirmative defense to a charge under division (B)(1) or (2) of this section that the defendant acted with the consent of the other person.

(D) Whoever violates this section is guilty of arson.
   1) Except as provided in division (D)(2), (3), or (4), a violation of division (A)(1) or (B)(1) of this section is a class 1 misdemeanor;
   2) If the value of the property or the amount of the physical harm involved is one thousand dollars or more, a violation of this section is a class 4 felony;
   3) A violation of division (A)(2), (3) or (5) of this section is a class 4 felony;
   4) A violation of division (A)(4) or (B)(2) of this section is a class 3 felony.

Midlands Penal Code §18-103 Knowingly Defined

(A) A person acts knowingly with respect to a material element of an offense when: (i) if the element involves the nature of the person's conduct or the attendant circumstances, the person is aware that their conduct is of that nature or that such circumstances exist; or (ii) if the element involves a result of their conduct, the person is aware that it is practically certain that their conduct will cause such a result.

Midlands Penal Code §2-201 Causation

(A) A defendant's conduct is the legal cause of the result when: (1) the result would not have occurred but for the defendant's conduct; and (2) the risk of that result was the natural and foreseeable result of the defendant's conduct.

Midlands Penal Code §18-901 Penalties [Selected Provisions]

The following penalties shall apply:
Class 1 Felony: No less than 20 years imprisonment. No greater than life without parole.
Misdemeanor: Up to 1 year of imprisonment.

Midlands Penal Code §18-613 Possession of Criminal Tools

(A) No person shall possess or have under the person's control any substance, device, instrument, or article, with purpose to use it criminally.

(B) Each of the following constitutes prima-facie evidence of criminal purpose:

1) Possession or control of any dangerous ordnance, or the materials or parts for making dangerous ordnance, in the absence of circumstances indicating the dangerous ordnance, materials, or parts are intended for legitimate use;
2) Possession or control of any substance, device, instrument, or article designed or specially adapted for criminal use;
3) Possession or control of any substance, device, instrument, or article commonly used for criminal purposes, under circumstances indicating the item is intended for criminal use.

(C) Whoever violates this section is guilty of possessing criminal tools. Except as otherwise provided in this division, possessing criminal tools is a misdemeanor of the first degree. If the circumstances indicate that the substance, device, instrument, or article involved in the offense was intended for use in the commission of a felony, possessing criminal tools is a felony of the fifth degree.

Relevant Cases

All cases are rulings of the Midlands Supreme Court, the highest court in Midlands, unless otherwise specified.

Mens Rea & Actus Reus

State v. Shapiro (1975)
Defendant charged with offense requiring a mental state of "knowingly" argued that the evidence was insufficient because there was no indication she desired or hoped for a particular result. Held: Conviction affirmed. Although a defendant who acted purposefully or who intended a particular result certainly acted knowingly, MPC 18-103 makes clear there is no such requirement.

State v. Bladow (2019)
Defendant argued that his conviction for aggravated arson MPC 18-402 was not supported by the manifest weight of the evidence and that the State had not offered sufficient evidence of an intent to cause physical harm to another person when he acted. Held: Conviction affirmed. The General Assembly conspicuously used the "knowingly" mens rea in MPC 18-402, not "purposeful" or language that mandates a specific intent to harm. Moreover, all that is needed for a conviction for aggravated arson is "to create a substantial risk of serious physical harm to any person other than the offender." While actual harm is sufficient to satisfy MPC 18-402, it is not a necessary element if a substantial risk of serious physical harm is present.

State v. Baker (2000)
As used in MPC 18-402, "substantial risk" means a strong possibility, as contrasted with a remote or significant possibility, that a certain result may occur or that certain circumstances may exist.

State v. Abress (2003)
Under MPC 18-402, "serious physical harm to any person" means any injury, illness, or other physiological impairment, regardless of its gravity or duration, that carries a substantial risk of death. "Substantial risk" was previously defined by this Court in *State v. Baker*.

State v. Knox (2018)
As used in MPC 18-402 and 18-403, "create" is synonymous with "cause." Accordingly, "create" has the same definition as "causation" pursuant to MPC 2-201.

State v. Egloff (1999)
As used in MPC 18-402 and 18-403, "physical harm" means to explode, burn, char, or otherwise destroy or cause damage to the interior structure of a building (e.g., the foundation, support beams, or other apparatus that hold the building up) via fire or explosion. Mere smoke damage or slight charring of a wall does not constitute arson or aggravated arson. Such actions are better charged as criminal damaging or vandalism as appropriate.

State v. Schoppman (2012)
As used in MPC 18-403, "defraud" means the act of knowingly obtaining some benefit for oneself or another by deception, or knowingly cause some detriment to another person or entity by deception.

State v. Lazzaro (2005)
Defendant charged with aggravated arson under MPC 18-402(A)(2) argued there was no evidence he knew physical harm to an occupied structure by means of fire was likely to result. Held: Conviction affirmed. The defendant's responsibility is not limited to the immediate or most obvious result of the defendant's act or failure to act. The defendant is also responsible for the natural and foreseeable results that follow in the ordinary course of events from the act or failure to act.

State v. Sanford (2018)
Defendant charged with aggravated arson under MPC 18-402(A)(1) for injuries suffered by a law enforcement officer responding to the scene. Held: Conviction reversed, and case remanded. The trial court failed to instruct the jury on what MPC 18-401(B) means by "any emergency personnel who are acting in the course of fighting or investigating the fire." Here the law enforcement officer was off duty when she entered the dwelling to save the occupants. As she was not acting within the scope of her job as emergency personnel when she entered the dwelling, the jury should have been instructed to consider that fact in deciding whether MPC 18-401(B) was satisfied.

State v. Weinman (2020)
The General Assembly failed to define "in the course of fighting or investigating the fire" in MPC 18-401. Applying the standard practices of statutory interpretation to the phrase leaves us with only one conclusion: MPC 18-402(A)(1) only applies to emergency personnel arriving on the scene if the personnel are acting within the scope of their employment. Deviations from standard operating procedure presents an opportunity for a defendant to argue that the emergency personnel were not acting within the scope of their employment, and thus not the class of victim contemplated by the General Assembly when drafting MPC 18-401(B). If a defendant elects to take on this argument, it must be proven by a preponderance of the evidence. Moreover, even if proven, acting outside the scope of employment is not an absolute defense, and, therefore, may only result in disproving the aggravating factor necessary for aggravated arson.

State v. Ullrich (2021)
Expanding upon our decision in *State v. Weinman* (2020), we hold that "emergency personnel" are within the scope of their employment if they act in substantial compliance with the applicable professional code of conduct, rules, or standard operating procedure. While certainly braver than the average citizen, they are still human; thus, emergency personnel shall not be held to the impossible standard of strict compliance with all applicable professional code of conduct, rules, or standard operating procedure while they are dealing with emergency situations.

State v. French (2015)
Defendant convicted of arson under MPC 18-403(A)(2) argued that the conviction should be overturned because he did not own the property in question because there was a lien on the property. Conviction affirmed. MPC 18-403(A)(2) is conspicuous in its language that the property may be the property of the offender or another. Defendant's argument is not well taken and is overruled.

State v. CLAM Rental Properties, Inc. (2021)
With respect to Midlands Penal Code 18-403(A), the element "intent to defraud" does not require the government to prove fraud occurred. A specific intent crime need not result in success of the crime, but merely that the defendant had the intent to commit the wrongful act. In this case, overwhelming evidence existed that the property manager set fire to her rental properties and then filed a claim for an insurance policy payout. Even though the claim was denied, the evidence was sufficient to prove the "intent to defraud" element in 18-403(A).

Burden of Proof / Presumption of Innocence

State v. Bainbridge (1904)
In a criminal case, the burden is proof beyond a reasonable doubt with respect to each and every element of the charged offense(s). The burden is on the State and never shifts to the defendant.

State v. Thompson (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. Ball (2015)
A criminal defendant is never required to present evidence or offer an alternative theory of the crime. If a defendant does so, however, a prosecutor may note the defense's failure to offer evidence in support of its theory of the case. Such comments do not imply that the burden of proof has shifted to the defense, nor do they necessarily constitute an infringement on a defendant's exercise of the right to remain silent.

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. Homel (2010)
It is axiomatic that identification of the defendant is an essential element of the charge in a criminal trial. Whether or not the statute explicitly requires identification as an element of the offense is a nonstarter. Common law tradition requires the identification of the defendant to assure that the government has not charged the wrong person. Identification is a necessary function to aid the government in its attempt to overcome the presumption of innocence that is afforded every criminal defendant.

Trial Procedures

State v. Friedman (2007)
In Midlands, all criminal trials are bifurcated with a guilt phase followed by a penalty phase.

State v. Johnson (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. Chintakayala (2002)
Under Midlands practice, both sides may always present evidence to prove or 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.

State v. Joseph (1945)
Unlike some jurisdictions, MRE 615 allows for the sequestration of the lead investigating officer in a criminal case if that police officer is not elected to be the State's representative during pretrial matters.

Kwon v. Mabry (2014)
Civil case arising from alleged assault. The plaintiff was called as a witness and testified fully on direct examination. On cross examination, however, the plaintiff failed to respond to some questions, purportedly because of a condition arising from the assault. Held: The judgment for the plaintiff must be reversed. The reason why the witness failed to respond to questions on cross examination is immaterial. If a witness becomes unable or unwilling to respond to otherwise proper questions on cross examination, the trial court must strike the witness's testimony in its entirety.

Character Evidence

State v. Gaul (1986)
Under MRE 404, general evidence of a defendant's good character is not admissible. However, under MRE 404(a)(1), a criminal defendant may offer certain evidence of a "pertinent" character trait. The requirement that evidence be "pertinent" significantly exceeds the comparably low bar of relevancy. "Pertinence" is a more exacting standard by which the trait itself must directly relate to a particular element or facet of the crime charged.

State v. Ward (2013)
Given the complex nature of the arson sections of the Midlands Penal Code, the courts have been split on what constitutes a "pertinent trait" under MRE 404 and *State v. Gaul* in arson cases. Accordingly, while this list is not exhaustive and every arson case has different elements and motives, we find that character traits pertinent to arson cases to include being law-abiding, non-violent, and a community caretaker.

State v. Threadgill (2016)
Appellants challenge the decision of the district court to allow testimony by the State's witness rebutting properly noticed "good character" evidence from the defense under MRE 404(a) during the State's case-in-chief. Due to the lack of rebuttal witnesses in the State of Midlands, our rules differ from other jurisdictions, particularly with respect to the presentation of character evidence. We hold that the language of MRE 404(a) is clear, that if the defense "opens the door, by noting its intention before trial to offer "good character" evidence, the State may use its case in chief to offer "bad character" evidence of the defendant regarding the same traits enumerated by the defendant, pursuant to the procedures outlined in MRE 405.

State v. Murray (2010)
MRE 609 does not categorically exclude evidence of a witness's prior criminal conviction punishable by less than one year of imprisonment, especially when the offense was a crime of moral turpitude like fraud, theft, or other crimes of dishonesty. Such evidence may still be admissible, subject to the MRE, on a case-by-case basis.

State v. Smith (2010)
In accordance with this Court's reasoning and holding in the civil action of *Estate of Hamilton v. Walton* last year, this Court hereby adopts the same reasoning and holding for criminal actions as well. Testimony about a psychological condition does not constitute "[e]vidence of a person's character or character trait," the only evidence excluded by MRE 404(a)(1).

Grounds and Basis for Evidentiary Rulings

State v. Harper (1975)
The beyond-a-reasonable-doubt burden does not apply to threshold matters involving the admissibility of evidence. In Midlands, the proponent of evidence need only prove these evidentiary matters by a preponderance of the evidence (i.e., it must establish that all elements are more likely than not true).

Demsky v. Jacoby (2012)
Under MRE 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 permitted to consider the underlying inadmissible evidence 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. Previously upheld examples included using character evidence to make 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.

Somani v. Young (1998)
Under MRE 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.

State v. Geasey (2021)
This case was taken to settle a circuit split that has arisen in Midlands regarding the applicability of MRE 411 in criminal cases. The committee notes for MRE 411 are focused on tort law and avoiding the improper use of a property owner's insurance coverage to prove negligence or recklessness claims. While the wording of MRE 411 and the committee notes do not bar the use of the rule in criminal trials, we hold that MRE 411 does not preclude evidence that the defendant owned an insurance policy or evidence that the policy included a payout for loss of property. Such evidence is admissible as proof of motive. MRE 411's language would prohibit the government from drawing an impermissible nexus between mere ownership of an insurance policy and an assertion that the defendant must have committed the offense(s) charged.

Authentication

Gaskins v. Azari (2002)
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, a court assessing admissibility must assume that the statement was made by that person.

Ginger v. Heisman (2015)
Absent particularized reason to believe that the communication may have been sent by someone else, the fact that an electronic communication (an email, text, or social media post) is listed as coming from a number or account that is either known or purports to belong to a particular person is sufficient foundation that the communication was sent by the person.

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, and 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)
Midlands Rule of Evidence 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. Of course, statements that would otherwise be admissible are not inadmissible simply because they are offered by or through an expert witness.

State v. Richardson (2017)
It was not an abuse of discretion for the trial court to allow the forensic pathologist to testify to the cause and manner of death even though the pathologist was not tendered as an expert prior to providing her testimony. Unlike other jurisdictions, Midlands does not require a party to "tender an expert" before eliciting an expert opinion. Whether MRE 702 foundational requirements have been satisfied is an evidentiary determination that rests within the sound discretion of the trial court.

Kane Software Co. v. Mars Investigations (1995)
Midlands does not permit parties to use their experts as weapons in a trial by ambush or for 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 or 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.

State v. Dawson (2012)
The historical practice of all Midlands circuit court criminal divisions has been proven to be consistent with the holding of *Kane Software Co. v. Mars Investigations* (1995) for criminal trials. We interpret the Midlands Rules of Criminal Procedure to be consistent with *Kane* as well. Thus, there can be no doubt that our holding in *Kane* applies to criminal trials.

State v. Berzon and Jensen (2020)
Appellant-Defendants appeal their conviction. Specifically, Appellants argue that the trial court improperly excluded testimony from the defense expert on the basis that certain testimony amounted to "trial by ambush" under the precedent set by *Kane Software v. Mars Investigations* (1995) and *State v. Dawson* (2012). Appellants admit that the defense expert was attempting to testify to certain underlying facts that were not expressly disclosed in the expert report and that such facts contributed to the expert's conclusion, but they argue that the conclusion itself was disclosed and thus it was unnecessary for every underlying detail to be disclosed. We believe that the Appellants' argument has merit. Experts should not be expected to include in their reports every basic scientific fact and known realities that support their conclusion. Such a requirement 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 her 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. Reversed and remanded to the trial court for reconsideration consistent with this decision.

Hearsay

America's Best Cookie v. International House of Waffles (2009)
The Court recognizes that practices differ in other jurisdictions. But, in Midlands, the definition of "hearsay" includes out-of-court statements by a witness who is on the stand or by another person who has or will be testifying in a particular trial.

State v. Hsi (1997)
MRE 801(d)(2) may be invoked in only one direction in a criminal case. Specifically, MRE 801(d)(2) permits the State to offer statements by a criminal defendant. Subject to MRE 106, MRE 801(d)(2) does not permit the defense to offer the defendant's own statements, even if the State has already elicited other out-of-court statements by a defendant during a preceding examination.

Branham v. Chancellor (2015)
For purposes of MRE 801(d)(2), police officers, prosecutors, informants, and others working with law enforcement officials are not an "opposing party" of a criminal defendant.

State v. Al Ekri (2012)
The business-records hearsay exception (MRE 803(6)) cannot be used to "back door" evidence that would not be admissible in a criminal case under the public-records hearsay exception of MRE 803(8)(ii).

State v. Orr (2015)
A public record of a criminal conviction is not a police report and, thus, is not excluded by MRE 803(8)(A)(ii).

State v. Brew (1985)
MRE 801(d)(2) governs statements "offered against an opposing party." This rule does not require the proponent of the evidence to offer the statement "against the party's interests" in order to qualify as an exemption to hearsay under MRE 801(d)(2)—that language is notably only found in MRE 804(b)(3). If the drafters of the MRE had wanted 801(d)(2) to only apply if the statement was "against the party's interest," it would have drafted the rule as such.

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

1. **Witness Selection and Captains' Meeting Procedures.** The Captains' Meeting Form explains the procedures regarding witness selection, character pronouns, and characters' personal traits.
2. **Revision Dates.** Revision dates do not indicate anything about the history of case documents. They exist solely to ensure participants use the most recent version at trial. Parties may not use these dates to introduce facts about the case.
3. **Documents and Characters Are What and Who They Purport to Be.** 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, report, or trial transcript states a witness is familiar with a particular document must acknowledge 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. In addition, a witness whose affidavit, report, or trial transcript states that a witness is familiar with or recognizes a particular person must acknowledge that the student portraying any witness of the same name during a given round is the same person referenced in the affidavit, report, or transcript.
4. **Reports.** The reports of Weber, Khan, Syed, and Jelani are "affidavits" for the purposes of AMTA Rules 8.9 (Invention of Fact) and 8.17 (Admission).
5. **Trial Transcripts.** The trial transcripts from Dakota Sutcliffe's felony murder trial are "affidavits" for the purposes of AMTA Rules 8.9 (Invention of Fact) and 8.17 (Admission). See the pretrial Orders on Motions in Limine for further instructions regarding the transcripts.
6. **Defendant's Invocation of Right Against Self-Incrimination.** Dakota Sutcliffe is not available as a witness because they are invoking their Fifth Amendment right to not testify. However, Dakota Sutcliffe must be present throughout the entire trial even though they may not testify. Teams that have more than six members on their rosters must have a Dakota Sutcliffe seated at defense counsel table for in-court identification purposes. If the defense team does not have enough members to seat someone at defense counsel table as Dakota Sutcliffe, then Dakota Sutcliffe will be constructively present at trial. The defense team must let the prosecution team know what Dakota Sutcliffe is constructively wearing for in-court identification purposes by the witnesses.
7. **Party Representatives.** As the defendant, Dakota Sutcliffe is the only permissible "party representative" pursuant to Rule 615 of the Midlands Rules of Evidence. The prosecution does not have a party representative.
8. **Expert Availability.** If the prosecution elects to call Weber, then the defense **must** call Syed. If the prosecution does not call Weber, then the defense **cannot** call Syed. If Weber is not called, then the expert reports, including Exhibit 33, for Weber and Syed do not exist and may not be referenced at trial.
9. **Stipulations Toggle.** If the prosecution elects to call Weber, then Exhibits 6, 7, and 33 are automatically preadmitted and may be referenced during opening statements. If the prosecution does not elect to call Weber, then the fire at Chuggie's on August 1, 2020 was man-made and paint thinner accelerated the fire. See Stipulation 12.

10. **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 "Relevant Midlands Law" and the Midlands Rules of Evidence. All participants must acknowledge such if asked by a judge.
11. **Bill of Particulars.** The prosecution must pursue the charges as alleged in the indictment and bill of particulars. The bill of particulars is the language within the indictment after "to wit." No prosecution team may amend the indictment or bill of particulars before or during the trial, nor may a defense team stipulate to certain aspects of the bill of particulars or object based on relevance to the prosecution's attempts to prove the elements of the offense charged.
12. **No Affirmative Defenses.** The defense must argue that Dakota Sutcliffe is not guilty. No affirmative defenses may be offered by the defendant.
13. **Identification of Sutcliffe**. Identification of a criminal defendant is an essential element of the charge and, therefore, must be presented by the prosecution as part of its burden of proof. *See State v. Homel* (2010). Accordingly, prosecution teams **must** call a witness that can identify Sutcliffe.
14. **Using Jury Instructions and Special Verdict Form.** The jury instructions and special verdict form are provided as educational tools. They are not exhibits or evidence to be admitted at trial. These documents are designed to help you understand the law and how juries are instructed before deliberation. Closing attorneys may not contradict the jury instructions or special verdict form; however, they are not required to use or reference the jury instructions or special verdict form during their closing arguments.
15. **Arson/Damage Picture Exhibits**. Attorneys and witnesses are prohibited from stating, arguing, implying, or insinuating in any manner that Exhibits 11 through 28 are not an accurate reflection of the damage that occurred at Chuggie's Bar on August 1, 2020.
16. **Fifth Amendment (Witnesses)**. No available 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.
17. **Best Evidence Rule Limited to Items in the Case Packet.** No attorney may object under Rule 1002 of the Midlands Rules of Evidence if the "original writing, recording, or photograph" in question is not among the documents contained in this case packet.
18. **Black-and-White Copies.** No objection may be raised on the ground that a document, exhibit, or demonstrative was altered by printing it in black-and-white.
19. **Time Limits.** Should a team wish to publish part or all of a document by reading it onto the record, the time spent reading shall be deducted from the publishing team's total direct or cross time, depending on whether the reading occurs during the publisher's case-in-chief or that of the other team. Publication may not occur before opening statements or after the defense team closes its case-in-chief.
20. **Demonstrative Aids.** Please review AMTA Rule 8.5, especially 8.5(1) when crafting your demonstrative aids for this case.