

QUESTION 6 THE ANSWER TO THIS QUESTION SHOULD GO IN BLUEBOOK II

Dan Defendant's house caught fire and suffered smoke damage. Dan was not present at the time of the fire, but was the last person home before it started. When Dan returned home, the fire department was putting out the fire. Dan told a fireman the fire was an accident. He claimed that he mistakenly left food on his stove and forgot to turn the stove off. The state has charged Dan with arson on account of the fire even though the report from the state's arson expert was inconclusive.

In a pre-trial motion, the prosecutor seeks to introduce evidence at trial of three other fires involving Dan which occurred over the last five years. In 2010, Dan's sailboat caught fire after he and a group of friends had been drinking and smoking cigarettes in the boat's cabin; when Dan stayed behind to lock up, he neglected to ensure that no lit cigarettes were left behind. In 2008, the engine of Dan's car erupted in fire immediately after he exited the vehicle. The car was completely destroyed, and Dan had to pay the balance owed on the car. In 2007, Dan's house was severely damaged by fire when Dan put his roommate's sweater on a propane heater to dry out. The fire started right after Dan and his roommate left the house. Dan claimed all three fires were accidents and was never charged with a crime relating to any of the previous fires. He filed for, and collected, insurance proceeds on the sailboat and house fires. He did not have comprehensive automobile insurance coverage and, therefore, did not file an insurance claim for the car engine fire.

The prosecutor argues that the evidence concerning the three prior fires is admissible to prove Dan's scheme, plan or system in doing a bad act, and absence of mistake or accident.

Dan's attorney has objected to the introduction of this proposed evidence on the grounds that: (1) Dan was not charged with a crime for any of the other fires; (2) Dan received little money as a result of the fires; (3) the events are not similar to each other or the fire now charged; and (4) there is no proof that Dan set any of the other fires.

Discuss the analysis the trial court should engage in when ruling on the prosecutor's motion, and address the grounds favoring, as well as weighing against, the admission of the evidence.

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