**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | Burridge v R. [2010] EWCA Crim 2847 |
| 2. Date of appeal hearing | 021210 |
| 3. Date of original trial/conviction | 040308 |
| 4. Keywords found in case | 7 |
| 5. Decision *Provide quote if short, otherwise summarise* | 2 |
| 6. Number of pages | 35 |
| **DEFENDANT DEMOGRAPHICS (code as 99 if not stated and cannot be inferred)** | |
| 7. Defendant’s gender? | 1 |
| 8. Defendant’s age (at time of offence)? | 27 |
| 9. Defendant’s nationality (at time of offence)? | 99 |
| 10. Defendant’s employment status (at time of offence)? | 99 |
| 11. Defendant’s education level (at time of offence)? | 99 |
| 12. Defendant’s relationship status (at time of offence)? | 1 |
| 13. Did defendant have any children (at time of offence)? | 1 |
| 14. Was defendant homeless (at time of offence)? | 2 |
| **APPEAL CASE/HEARING FACTORS (code as 99 if not stated and cannot be inferred)** | |
| 15. When was appeal initiated? (e.g., post-trial, post-conviction, post-sentence, other) | 3 |
| 16. Who is appellant? (e.g., prosecution, defence, other) | 1 |
| 17. What is appeal against? (e.g., conviction, sentence, both, other) | 3 |
| 18. What are the grounds/reason(s) for appeal? *Provide quote if short, otherwise summarise* | Ground 1. That the conviction for murder (rather than manslaughter) was arguably unsafe on the basis that the evidence was insufficient to prove the necessary intent  Ground 2. That the jury "should have had the opportunity to hear the alternative scientific arguments and then decide whether the prosecution case had been made to the appropriate standard". Consequently, the failure to call another medical expert, who evidence was withdrawn from the original trial proceedings, was likely to have given the jury the wrong impression that there were no challenges the defence could have made to the Crown's expert evidence. |
| 19. Was fresh evidence presented at appeal? **19b.** If yes, was it Fingerprint/DNA/Digital evidence? **19c.** If no, what was it? | Q19: 1  Q19b: 99  Q19c: Medical evidence |
| 20. Were new techniques used to re-examine old evidence at appeal? | 2 |
| 21. Were new Fingerprint/DNA/Digital experts consulted by defence after original trial? | 99 |
| 22. Were new Fingerprint/DNA/Digital experts consulted by prosecution after original trial? | 99 |
| 23. Did new prosecution Fingerprint/DNA/Digital experts present evidence at appeal hearing? | 99 |
| 24. Did new defence Fingerprint/DNA/Digital experts present evidence at appeal hearing? | 99 |
| 25. Was concern expressed at appeal hearing about qualifications, knowledge, skills or experience of any new prosecution Fingerprint/DNA/Digital expert(s)? | 99 |
| 26. Was any concern expressed at appeal hearing about qualifications, knowledge, skills or experience of any new defence Fingerprint/DNA/Digital expert(s)? | 99 |
| 27. Did prosecution and defence Fingerprint/DNA/Digital expert conclusions disagree at appeal hearing? | 99 |
| 28. What were the main areas of disagreement between prosecution and defence Fingerprint/DNA/Digital experts at appeal hearing? *Provide quote if short, otherwise summarise* | 99 |
| 29. Did Fingerprint/DNA/Digital expert express his/her confidence in conclusion at appeal hearing? **29b.** If yes, how? *Provide quote if short, otherwise summarise* | Q29: 99  Q29b: 99 |
| 30. Were any new probabilities of Fingerprint/DNA match mentioned at appeal hearing? | 99 |
| 31. For DNA evidence, were any new contamination/error rates presented at appeal hearing? | 99 |
| 32. For Fingerprint evidence, were any (new) points of dissimilarity between sample and print presented at appeal hearing? **32b.** If yes, how many? | Q32: 99  Q32b: 99 |
| 33. Did appeal court raise concerns about prosecution or defence team misunderstanding fingerprint/DNA/Digital evidence? **33b**. If yes, who raised it? | Q33: 99  Q33b: 99 |
| 34. Did appeal court raise concerns about jury at original trial misunderstanding or having difficulty understanding fingerprint/DNA/Digital evidence? **34b**. If yes, who raised it? | Q34: 99  Q34b: 99 |
| 35. Did appeal court raise concerns about judge at original trial misunderstanding fingerprint/DNA/Digital evidence? **35b.** If yes, Who raised it? | Q35: 99  Q35b: 99 |
| 36. Did appeal court raise concerns about application of either wrong case law at original trial or ignoring right case law? If yes, who raised it? | Q36: 1  Q36b: 99 |
| 37. Did appeal court raise concerns about errors in judge’s summing up of case at original trial? **37b.** If yes, who raised it? | Q37: 1  Q37b: Counsel for defence |
| 38. Did appeal court raise concerns about judge’s instructions confusing jury at original trial? **38b.** If yes, who raised it? | Q38: 1  Q38b: Counsel for defence |
| 39. Did appeal court raise concerns about how fingerprint/DNA/Digital evidence was presented at original trial? 39b. If yes, who raised it? | Q39: 99  Q39b: 99 |
| 40. Did appeal court raise concerns that weight of fingerprint/DNA/Digital evidence was overstated in court by either prosecution/defence/judge at original trial? **40b.** If yes, who raised it? | Q40: 99  Q40b: 99 |
| 41. Did appeal court raise concerns about inadmissible evidence being presented at original trial? **41b.** If yes, who raised it? | Q41: 2  Q41b: 99 |
| 42. Did appeal court refer to any existing case law? **42b.** If yes, which? | Q42a: 1  Q42b: R v Steven Jones [1997] 1 Cr. App. R. 86 ; R v. Kai-Whitewind [[2005] 2 Cr App R 31](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2005/1092.html" \o "Link to BAILII version) ; R v. Meechan [[2009] EWCA Crim 1701](https://www.bailii.org/ew/cases/EWCA/Crim/2009/1701.html) ; R v. Henderson [[2010] EWCA Crim 1269](https://www.bailii.org/ew/cases/EWCA/Crim/2010/1269.html) ; R v. Pendleton [[2001] UKHL 66](https://www.bailii.org/uk/cases/UKHL/2001/66.html" \o "Link to BAILII version); [[2002] 1 Cr App R 34](https://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/2001/66.html); [[2002] 1 WLR 72](https://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/2001/66.html) ; R v. Hakala [[2002] EWCA Crim 730](https://www.bailii.org/ew/cases/EWCA/Crim/2002/730.html) ; R v. Hanratty [[2002] EWCA Crim 1141](https://www.bailii.org/ew/cases/EWCA/Crim/2002/1141.html), [[2002] 2 Cr App R 30](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2002/1141.html) ;Dial & anor v. State of Trinidad and Tobago [2005] UKBC 4; [[2005] 1 WLR 1660](https://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKPC/2005/4.html) ; R v Ishtiaq Ahmed [[2002] EWCA Crim 2781](https://www.bailii.org/ew/cases/EWCA/Crim/2002/2781.html); R v. Dunn & ors [[2009] EWCA Crim 1371](https://www.bailii.org/ew/cases/EWCA/Crim/2009/1371.html) per Goldring LJ at para. 111; R v. Harris [[2006] 1 Cr App R 5](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2005/1980.html" \o "Link to BAILII version) ; R v Yates [2001] Cr App R (S) 428 ; R v Owen [[2009] EWCA Crim 702](https://www.bailii.org/ew/cases/EWCA/Crim/2009/702.html) ; R v Wood [[2010] 1 Cr App R(S) 2](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2009/651.html" \o "Link to BAILII version) |
| 43. Name of appeal judge(s) | Judge Leveson, Judge Irwin and Judge Holroyde |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Mr Henry Blaxland and Dr David Thomas (instructed by William Bache & Co)  for the Appellant and Mr William Boyce and Ms Jo Martin (instructed by Crown Prosecution Service, Plymouth) for the Respondent |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 021006 |
| 46. Was defendant immediately treated as a suspect? **46b.** If no, then how was defendant immediately treated? | Q46: 1  Q46b: 99 |
| 47. Were there other suspects (arrests)? | 2 |
| 48. Did the defendant plead guilty or was he/she convicted at trial? **48b.** If convicted, then was the jury verdict unanimous or other? | Q48: 1  Q48b: 99 |
| 49. Was this the first trial? | 1 |
| 50. What offence(s) was defendant convicted of/plead guilty to? | Murder |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: X-rays ; ABE ; evidence from radiology ; call billing records |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Medical evidence |
| 53. Did defendant provide an alibi for whereabouts at time of crime? **53b.** If yes, was it corroborated? | Q53: 2  Q53b: 99 |
| 54. What was the defendant’s original sentence? | Life imprisonment for 13 years |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Judge Leveson, Mr Justice Irwin and Mr Justice Holroyde |
| 57. Name of lawyer(s) in original trial | Mr Henry Blaxland and Dr David Thomas (instructed by William Bache & Co)  for the Appellant and Mr William Boyce and Ms Jo Martin (instructed by Crown Prosecution Service, Plymouth) for the Respondent |
| **INVESTIGATIVE STAGE (code as 99 if not stated and cannot be inferred)** | |
| **COLLECTION** |  |
| 58. Was concern expressed at original trial or appeal about there being a chance of contamination of Fingerprint/DNA evidence prior to sample collection from the crime scene? | 99  **Annotations:** |
| 59. For DNA evidence, was concern expressed at original trial or about where the DNA came from? **59b.** If yes, where? | Q59. 99  Q59b. 99  **Annotations:** |
| 60. Was concern expressed at original trial or appeal about there being potential for evidence tampering/planting? | 99 |
| 61. Was there over a week delay between crime being committed and collection of Fingerprint/DNA or Digital evidence from crime scene? | 99 |
| 62. How many Fingerprint/DNA samples were taken from crime scene? | 99 |
| 63. Was only one method used to collect the sample(s) or multiple methods? | 99 |
| 64. Was concern expressed at original trial or appeal about the method(s) used to collect the sample? | 99 |
| 65. Was the Fingerprint/DNA sample or Digital evidence in question considered by either the prosecution or defence experts to be partial or ambiguous? | 99 |
| 66. Were evidence requests made according to the legal rules? | 1 |
| 67. Was concern expressed at original trial or appeal about broken chain of custody i.e., who was looking after the Fingerprint/DNA sample(s) or Digital evidence after they were collected? | 99 |
| **ANALYSIS** |  |
| 68. How much experience did the prosecution forensic examiner have? | Expert 1 - reported as being a professor who spent most of his career as a senior Paediatric Pathologist at Great Ormond Street, with a particular interest in sudden death in infants in their first year of life. Since his retirement from the NHS in 2004, he has practised as a forensic pathologist. Expert 2 – reported as being a Consultant Neuro-Radiologist with a special interest in paediatric brain injuries. Expert 3 – reported as being a consultant neonatologist. Expert 4 - Reported as being a Consultant Neuro-pathologist at Great Ormond Street since 1983, and is the only full-time paediatric neuro-pathologist in Britain. Expert 5 – Reported as being a professor of Osteoarticular Pathology at a university. Reported as being “extremely well qualified”. Expert 6 – Reported as being the Consultant Paediatric and Neo-natal Intensivist at Great Ormond Street Hospital. He was reported as having worked in tertiary paediatric intensive care since 1994 and has been involved in the care of 1,500–2000 episodes of critical illness in children every year. He and his team have “very frequent…literally hands-on, involvement” in resuscitation of critically ill neo-nates and young babies. Expert 7 – Reported as being a Professor of Clinical Pathology at a University and, as a Consultant Histopathologist, an expert in bone pathology. It was common ground that this expertise (rather than that based on radiographic or other imaging of fractures) provided the best evidence on rib fractures. |
| 69. How much experience did the defence examiner have? | Expert 8 – reported as being a Consultant Neuro-pathologist. Expert 9 – no reports on level or type of experience. It was stated that experts 8 and 9 had been the subject of serious judicial criticism in an unrelated case in which they had given evidence, and the Applicant's representatives understandably felt that they could no longer rely on them as witnesses, and so sought an opportunity to instruct other experts. Expert 10 – Reported as being a Professor of Pathology at the Institute of Ophthalmology at University College (unclear if this expert was commissioned on behalf of defence of the crown). Expert 11 - Reported as being a Consultant Ophthalmic surgeon (unclear if this expert was commissioned on behalf of defence of the crown). Expert 12 – Reported as being a Professor and Consultant Histopathologist and a retired Consultant Physiologist. Reported by the court as being “extremely well qualified”. Expert 13 - Reported as being a retired Consultant Physiologist. Of this expert, counsel for the prosecution challenged his expertise. However, the courts concluded that he did have relevant experience. His background is as a medical practitioner with early experience (in the 1960s) of neo-natology, including neonatal intensive practice. Much of this experience was in the United States, but in 1968 he returned to England as a research officer in peri-natal physiology based at Oxford University. Between 1981–2005, he held a consultancy at the Department of Obstetrics and Gynaecology in Oxford University, where he set up and ran the "Maternal Infant Healthcare and Telemonitoring Research Centre" at the John Radcliffe Hospital, Oxford. At para 67 it was noted that the expert proffered that he could offer expertise as to the causes/potential causes of damage sustained to the deceased’s brain. However, the courts remarked that although he puts himself forward as an expert in that particular area of expertise he does not even suggest that he is an expert on the causes of subdural haemorrhage. It was the courts judgment, that he was wise to disclaim such expertise in oral evidence: it was not a disclaimer he had entered at the time of any of his written reports, or indeed before giving evidence. The court subsequent stipulated that he was a “most unsatisfactory witness”. His reports were “*diffuse, poorly sourced where they are sourced, hard to interpret, infused by arrogance, and quite unnecessarily combative and dismissive of other experts, including those in fields which are not his own. In order to understand what he was contending, it was necessary for us to ask him to summarise his essential thesis on two sides of A4. Discounting his definition of terms, he did so*.” Expert 14 – Professor of clinical pathology |
| 70. Was concern expressed at original trial or appeal about the methods of Fingerprint/DNA/Digital analysis used? | 99  **Annotations:** |
| 71. Was concern expressed at original trial or appeal about there being a chance of the Fingerprint/DNA samples being degraded? | 99  **Annotations:** |
| 72. Did analysis involve ‘cold’ match from a database or comparison against a suspect? | 2  **Annotations:** |
| 73. Did initial examination of sample lead to conclusion that origin could not be determined? | 99  **Annotations:** |
| 74. Did initial examination of sample lead to conclusion that sample originated from defendant? | 99  **Annotations:** |
| 75. Was sample re-examined? **75b.** If yes, did re-examination change initial conclusion? | Q75. 99  Q75b. 99  **Annotations:** |
| 76. Was Fingerprint/DNA/Digital examiner opinion/conclusion verified by another examiner? | 99 |
| 77. For Fingerprint examination, how many points of similarity were found (if any)? | 99 |
| 78. Was Fingerprint/DNA/Digital evidence destroyed before trial? | 99  **Annotations:** |
| 79. Was concern expressed at original trial or appeal about the quality of notes taken/report of the Fingerprint/DNA/Digital examiner? | 99 |
| **EVIDENTIARY STAGE (code as 99 if not stated and cannot be inferred)** | |
| **EXPERT TESTIMONY** |  |
| 80. Did (main) prosecution Fingerprint/DNA/Digital expert present evidence at original trial? | 99  **Annotations:** |
| 81. Was concern expressed at original trial or appeal about the qualifications, knowledge, skills or experience of prosecution Fingerprint/DNA/Digital expert(s)? | 99  **Annotations:** |
| 82. Was prosecution Fingerprint/DNA/Digital expert witness cross-examined by defence at original trial? | 99  **Annotations:** |
| 83. Did (main) defence Fingerprint/DNA/Digital expert present evidence at original trial? | 99 |
| 84. Was concern expressed at original trial or appeal about the qualifications, knowledge, skills or experience of defence fingerprint/DNA/Digital expert(s)? | 99  **Annotations:** |
| 85. Was defence Fingerprint/DNA/Digital expert witness cross-examined by prosecution at original trial? | 99  **Annotations:** |
| 86. Was there a disagreement in conclusions made by prosecution and defence Fingerprint/DNA/Digital experts at original trial? | 99  **Annotations:** |
| 87. Was concern expressed at original trial or appeal about quality of prosecution expert reports? | 99 |
| 88. Was concern expressed at original trial or appeal about quality of defence expert reports? | 99 |
| 89. Were probabilities of fingerprint/DNA match mentioned at original trial? | 99  **Annotations:** |
| 90. Did Fingerprint/DNA/Digital expert express his/her confidence in conclusion at original trial? **90b.** If yes, how? | Q90. 99  Q90b. 99 |
| 91. For DNA evidence, were probabilities of match presented by prosecution expert at original trial? | 99 |
| 92. For DNA evidence, were contamination/error rates presented at original trial? | 99 |
| 93. For Fingerprint evidence, did the prosecution expert declare a match/individualisation at original trial? | 99 |
| 94. For Fingerprint evidence, how many points of similarity between sample and print were presented at original trial? | 99 |
| 95. For Fingerprint evidence, were any points of dissimilarity presented at original trial? | 99 |
| 96. Did (prosecution or defence) Fingerprint/DNA/Digital experts try to explain any inconsistencies in evidence at original trial? | 99 |
| 97. Was hearsay evidence presented at trial? | 1  **Annotations:** A recorded interview from the appellants wife / mother of the deceased on an injury sustained to the baby was deemed hearsay and not accepted by the crown as being truthful or accurate. The courts asserted that had the defence wished to put that demonstration forward as an accurate representation of what had happened, so as to provide a basis for an expert witness to opine on issues in the case, a hearsay application would have been necessary. Given that Donna could have been called to give the evidence herself, we see no basis on which it could be argued that such a hearsay application could have succeeded. |
| 98. Was any bad character evidence presented at trial? | 2  **Annotations:** There was mention of the appellant’s behaviour (towards other drivers) which led to him going on an anger management course although he only attended an assessment and one session; an extramarital affair, arguments with his wife when she learnt of the affair – however there was no bad character application ever made (it is submitted) any such application would have been bound to fail because the evidence could not possibly be regarded as showing a propensity for violence towards a child, and so could not satisfy the criteria for admissibility |
| 99. Did prosecution team fail to share relevant information with defence team before original trial? | 2  **Annotations:** |
| **JUDGE’S INSTRUCTIONS/JURY BEHAVIOR** |  |
| 100. Were visual images used to present Fingerprint/DNA/Digital evidence at original trial? | 99 |
| 101. How did judge instruct jury to deal with Fingerprint/DNA/Digital evidence? *Provide quote if short, otherwise summarise* | 99 |
| **ADDITIONAL DIGITAL QUESTIONS** | |
| **APPEAL CASE/HEARING FACTORS (code as 99 if not stated and cannot be inferred)** | |
| 102. For Digital evidence, were any technical problems presented at the appeal hearing? 102b If yes, what? Provide a quote if short, otherwise summarise | Q102. 99  Q102b. 99 |
| **DIGITAL - INVESTIGATIVE STAGE (code as 99 if not stated and cannot be inferred)** | |
| **COLLECTION** | |
| 103. For Digital evidence, was concern expressed at original trial about problems securing the data? | 99 |
| 104. For Digital evidence were there any concerns about data being missed during investigation? | 99 |
| 105. For Digital evidence, was any data hidden over the network? | 99 |
| 106. For Digital evidence was any data hidden inside storage areas to make them invisible to the system commands and programs? | 99 |
| 107. For Digital evidence, was any data corrupted? | 99 |
| 108. For Digital evidence, was there any residual data wiping? | 99 |
| 109. For Digital evidence, was concern expressed at the original trial or appeal about data sources being damaged? | 99 |
| **ANALYSIS** | |
| 110. For Digital evidence was any data encrypted? | 99 |
| 111. For Digital evidence was any data hidden in a carrier file without modifying its outward appearance? | 99 |
| 112. For Digital evidence, was any techniques used to obfuscate the source of the attack? | 99 |
| 113. For Digital evidence, did the investigator have to analyse high volumes of data? | 99 |
| 114. For Digital evidence, were the investigators restricted to analysing only recent data stored on volatile memory? | 99 |
| 115. Were there any Co-defendants? 115b. If yes, how many? | Q115. 2  Q115b. 99 |
| 116. Where the case involved co-defendant/s, was there a mixed verdict? 116b. If Yes, what were they? | Q116. 99  Q116b. 99 |
| **NOTES – PLEASE WRITE ANYTHING THAT YOU THINK IS IMPORTANT BUT WHICH IS NOT CODED ABOVE. THIS MAY INCLUDE QUOTES.** | Para 102. In regards to the Criminal appeals act (1968) and the admission on fresh evidence the courts commented that 'expert shopping' was always to be discouraged and although public funds should always be available to instruct suitable experts when defending a criminal prosecution, it is less clear whether such funds should continue to be expended in seeking further expert evidence (in the hope of finding someone to say something different) after conviction. Thus, in this case, four experts were instructed at the time of the trial; at least six experts (five of whom were new to the case) have provided further evidence for the Applicant's present advisers, of whom two have been called. On the other hand, if fresh credible expert evidence has, in fact, been obtained which does provide a real argument as to the safety of a conviction, it is almost inconceivable that the court should not fully consider that evidence and its implications, not least to avoid the risk of what would be a miscarriage of justice. Ultimately, the court will evaluate the material placed before it. At para 94, the courts highlighted a “valid point” made by one of the medical experts: *"[T]here is a huge difference in the legal approach to a problem and the medical one. The lawyer always takes each component of a problem and then tries to beat it to death. Could this happen in other circumstances? Yes. But the doctor does exactly the opposite. They take the components of the problem and they try and assemble it into a plausible whole. That is where the difference is."* At para 95 the courts discussed the principles set out in the criminal appeal 1968 statute for admitting fresh evidence and president case laws. |