**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | O' Shea v R. [2010] EWCA Crim 2879 |
| 2. Date of appeal hearing | 111110 |
| 3. Date of original trial/conviction | 131005 |
| 4. Keywords found in case | 7 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 14 |
| **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)? | 99 |
| 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)? | 99 |
| 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) | 1 |
| 18. What are the grounds/reason(s) for appeal? *Provide quote if short, otherwise summarise* | Ground 1. Subsequent forensic examination of Landslide's computer records showed that the appellant was the victim of identity theft; that the computer records on which the prosecution relied were rife with fraud; that the specific subscriptions said to have been taken out by the appellant were contaminated with fraud. Ground 2. The jury had been presented with a misleading and prejudicial account about the nature of Landslide and its website. They were told that Landslide advertised itself as a gateway to child pornography and that it denied access to anyone who did not specifically confirm that they wanted to view child pornography. This caused such prejudice to the appellant that he did not have a fair trial and his conviction is unsafe. |
| 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: 3  Q19c: Opinion evidence from computer experts on behalf of the defence on fraudulent transactions (subscriptions and debits to customer credit cards) committed online. Opinion evidence from a computer expert on behalf of the prosecution. |
| 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? | 1 |
| 22. Were new fingerprint/DNA/Digital experts consulted by prosecution after original trial? | 1 |
| 23. Did new prosecution fingerprint/DNA/Digital experts present evidence at appeal hearing? | 1 |
| 24. Did new defence fingerprint/DNA/Digital experts present evidence at appeal hearing? | 1 |
| 25. Was concern expressed at appeal hearing about qualifications, knowledge, skills or experience of any new prosecution fingerprint/DNA/Digital expert(s)? | 2 |
| 26. Was any concern expressed at appeal hearing about qualifications, knowledge, skills or experience of any new defence fingerprint/DNA/Digital expert(s)? | 1 |
| 27. Did prosecution and defence fingerprint/DNA/Digital expert conclusions disagree at appeal hearing? | 1 |
| 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* | There were two areas of disagreement in relation to online identity theft:  Disagreement 1. Making reference to internet Protocol (IP) address/es One of the computer experts, for defence, advanced the possibility that the appellant “Did not Visit” a particular website. However, the Prosecution computer expert counter contended that IP addresses normally change when a user logs off the internet. Disagreement 2. The prosecution computer expert proffered that while it was possible for an Internet user to disguise his IP address, it was not possible for him to assume the IP address allocated to someone else, specifically another proxy server. |
| 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: 1  Q29b: The contention for the defence was that the appellant had been a victim of online identity theft. In relation to the transaction from the appellants account, the Digital expert’s view was that “it was entirely fraudulent” |
| 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? | 1 |
| 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? | 2 |
| 35. Did appeal court raise concerns about judge at original trial misunderstanding fingerprint/DNA/Digital evidence? **35b.** If yes, Who raised it? | 2 |
| 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? | 2 |
| 37. Did appeal court raise concerns about errors in judge’s summing up of case at original trial? **37b.** If yes, who raised it? | 2 |
| 38. Did appeal court raise concerns about judge’s instructions confusing jury at original trial? **38b.** If yes, who raised it? | 2 |
| 39. Did appeal court raise concerns about how fingerprint/DNA/Digital evidence was presented at original trial? 39b. If yes, who raised it? | 2 |
| 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? | 2 |
| 41. Did appeal court raise concerns about inadmissible evidence being presented at original trial? **41b.** If yes, who raised it? | 2 |
| 42. Did appeal court refer to any existing case law? **42b.** If yes, which? | Q42a: 1  Q42b: Moses LJ in Martin T [2008] EWCA Crim 3229 |
| 43. Name of appeal judge(s) | Lord Justice Stanley Burnton, Mr Justice King and Mr Justice Nicol |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Tania Griffiths (instructed by Chris Saltrese) for Anthony O'Shea. Miranda Moore and Philip Bown for the CPS |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 240499 |
| 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? | Two counts of incitement to distribute an indecent photograph of a child contrary to common law and three counts of attempting to incite another to distribute an indecent photograph of a child contrary |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: Computer files/records (or copies) from an unlawful company containing the credit card details of the appellant and IP address of the appellant which he used to access the internet; seven financial transactions including the appellants - name, credit card number (which had been debited by the company complicit in the crime, address, email addresses and passwords; Appellants credit card statements; testimony from the appellants wife; email complaints from the appellant that his credit card had been wrongly debited. |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Fresh evidence from computer experts. Defence provided opinion evidence from two computer experts; Opinion evidence from a computer expert on behalf of the prosecution. Two computer experts gave evidence on behalf of either the defence of prosecution counsel as part of the original trial. |
| 53. Did defendant provide an alibi for whereabouts at time of crime? **53b.** If yes, was it corroborated? | Q53: 1  Q53b: 2 |
| 54. What was the defendant’s original sentence? | 5 months' imprisonment on each count concurrent. He was also disqualified from working with children |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Judge Eccles |
| 57. Name of lawyer(s) in original trial | 99 |
| **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? | 1 |
| 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? | 2 |
| 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? | 2 |
| **ANALYSIS** |  |
| 68. How much experience did the prosecution forensic examiner have? | 99 |
| 69. How much experience did the defence examiner have? | 99 |
| 70. Was concern expressed at original trial or appeal about the methods of fingerprint/DNA/Digital analysis used? | 2  **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? | 99  **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? | 2 |
| 77. For fingerprint examination, how many points of similarity were found (if any)? | 99 |
| 78. Was fingerprint/DNA/Digital evidence destroyed before trial? | 2  **Annotations:** |
| 79. Was concern expressed at original trial or appeal about the quality of notes taken/report of the fingerprint/DNA/Digital examiner? | 2 |
| **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? | 1  **Annotations:** |
| 81. Was concern expressed at original trial or appeal about the qualifications, knowledge, skills or experience of prosecution fingerprint/DNA/Digital expert(s)? | 2  **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? | 1  **Annotations:** |
| 84. Was concern expressed at original trial or appeal about the qualifications, knowledge, skills or experience of defence fingerprint/DNA/Digital expert(s)? | 1  **Annotations:** |
| 85. Was defence fingerprint/DNA/Digital expert witness cross-examined by prosecution at original trial? | 1  **Annotations:** |
| 86. Was there a disagreement in conclusions made by prosecution and defence fingerprint/DNA/Digital experts at original trial? | 2  **Annotations:** |
| 87. Was concern expressed at original trial or appeal about quality of prosecution expert reports? | 2 |
| 88. Was concern expressed at original trial or appeal about quality of defence expert reports? | 2 |
| 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. 2  Q90b. 99  **Annotations:** |
| 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? | 1 |
| 97. Was hearsay evidence presented at trial? | 2  **Annotations:** |
| 98. Was any bad character evidence presented at trial? | 2  **Annotations:** |
| 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? | 1 |
| 101. How did judge instruct jury to deal with fingerprint/DNA evidence? *Provide quote if short, otherwise summarise* | Para 33 (vii) ‘At the appellant's trial, the prosecution case was that there were not and could not have been fraudulent transactions on the Landslide computer. The judge summed up to the jury to this effect.’ |
| **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? If yes, what? *Provide a quote if short, otherwise summarise* | Q102: 2  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? | 2 |
| 104. For Digital evidence were there any concerns about data being missed during investigation? | 2 |
| 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? | 2 |
| 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 the verdicts? | Q116. 99  Q116b. 99 |
| **NOTES – PLEASE WRITE ANYTHING THAT YOU THINK IS IMPORTANT BUT WHICH IS NOT CODED ABOVE. THIS MAY INCLUDE QUOTES.** | Para 9. (2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to – (a) whether the evidence appears to the Court to be capable of belief; (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal; (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings." Para 11 on the issue of an appellant seeking to call fresh evidence the testimony of an expert: It is not unknown for appellants to seek to call on appeal the testimony of an expert other than one who gave evidence at trial. Such evidence may not have been available at the trial, particularly in cases in which scientific knowledge has progressed since the trial. In some cases, however, an appellant seeks to call as fresh evidence the testimony of an expert who could have given evidence at his trial. The Court will not readily allow such evidence to be adduced. The applicable principles were explained by Moses LJ in Martin T [2008] EWCA Crim 3229: *"33 The second observation we make relates to the expert evidence and relates to the importance of recognising that the criminal justice system does not allow two trials, first by a jury with one team of lawyers and secondly, possibly years later in the Court of Appeal, by a second who have managed to find an expert who would have said something different had that expert been called at the trial. The time to deploy expert assistance is at trial and not later. Of course there will be cases where the Court of Appeal will out of justice admit and rely upon evidence which might have been obtained at trial but was not, when that evidence falsifies and destroys the basis on which the earlier conviction was obtained. Justice may demand no less and many serious injustices by that means have been cured in the past, all the more so where scientific research and thought has developed. But that fresh evidence must have the impact which the statutory jurisdiction of this court dictates. It must be such as to undermine the safety of the verdict. It is not sufficient that it merely demonstrates that the original evidence from experts might have been assessed in a different way or a different conclusion on the expert evidence part of the case might have been reached unless it strikes at the fundamental basis upon which the verdict rested."* Para 41. In deciding whether the application to adduce fresh evidence should be permitted the court considered whether the evidence appeared to be capable of belief. The court subsequently rejected that the evidence was incapable of belief. Para 46/62. It was noted that one of the defence experts had been instructed for the trial, produced a report for the trial and present at the trial. Therefore, he could have contradicted the evidence advanced by prosecution, but did not do so. Para 46/67. The court also judged that his expert’s evidence should be “considered with caution” because, although he had signed a confidentiality agreement in another legal case (the court later adverted that there was evidence that he had broken the agreement signed in this case) he had refused to sign the agreement for the current case. Moreover, the expert had reported been convicted of perjury by misrepresenting his qualifications when giving evidence. |