**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | Weston, R v [2010] EWCA Crim 1576 |
| 2. Date of appeal hearing | 230610 |
| 3. Date of original trial/conviction | 1196 |
| 4. Keywords found in case | 8 |
| 5. Decision *Provide quote if short, otherwise summarise* | 2 |
| 6. Number of pages | 15 |
| **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)? | 99 |
| 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) | 1 |
| 16. Who is appellant? (e.g., prosecution, defence, other) | 2 |
| 17. What is appeal against? (e.g., conviction, sentence, both, other) | 4 |
| 18. What are the grounds/reason(s) for appeal? *Provide quote if short, otherwise summarise* | New and compelling evidence surfacing. Para 3 The basis of the application was that a re-examination in 2008 of boots admitted to be those of the respondent had revealed a spot of blood where the match probability upon DNA analysis was 1 billion to 1 that the blood was that of the deceased. It was therefore accepted on behalf of the respondent for the purposes of the application that the blood was that of the deceased. It was further accepted for the purposes of the application that the blood had been deposited when wet. |
| 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: 2  Q19c: 99 |
| 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? | 2 |
| 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? | 2 |
| 24. Did new defence fingerprint/DNA/Digital experts present evidence at appeal hearing? | 2 |
| 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)? | 2 |
| 27. Did prosecution and defence fingerprint/DNA/Digital expert conclusions disagree at appeal hearing? | 2 |
| 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: 1  Q29b: As a result of STR profiling of the blood from areas 2, 3 and 4, a full STR profile that matched the profile of the deceased was obtained; the match probability was 1 billion to 1 |
| 30. Were any new probabilities of fingerprint/DNA match mentioned at appeal hearing? | 1 |
| 31. For DNA evidence, were any new contamination/error rates presented at appeal hearing? | 1 |
| 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? | 2 |
| 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? | 1 |
| 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: R v Erskine [2009] Crim 1425 |
| 43. Name of appeal judge(s) | Lord Justice Thomas, Mrs Justice Dobbs and Mrs Justice Sharp |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Miss A Levitt and Mr A Blake for the Applicant. Miss S O'Neill and Mr D Miller for the Respondent |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 120895 |
| 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: 2  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: Eyewitness testimony from several individuals, differing accounts given by the respondent of his movements on the day of the crime; footprints, debris from a bonfire, a bag containing women’s underwear with the respondents semen on them |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Expert evidence in relation to the cast of the footprint indentions, samples of soil and samples from a boot, recordings obtained from a device at the respondents home |
| 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? | The accused was acquitted |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Mr Justice Jowitt |
| 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? | 1  **Annotations:** |
| 59. For DNA evidence, was concern expressed at original trial or about where the DNA came from? **59b.** If yes, where? | Q59. 1  Q59b. The court examined several possibilities as to how a new blood (DNA sample) came to be deposited on the boots: (1) it was deposited after the attack but before seizure of the boots by the police; (2) the blood transferred through contamination after seizure of the boots; (3) there were other explanations, or there were ; (4) deposit of the blood following contact with the deceased  **Annotations:** |
| 60. Was concern expressed at original trial or appeal about there being potential for evidence tampering/planting? | 2 |
| 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? | 1 |
| 63. Was only one method used to collect the sample(s) or multiple methods? | 1 |
| 64. Was concern expressed at original trial or appeal about the method(s) used to collect the sample? | 1 |
| 65. Was the fingerprint/DNA sample or Digital evidence in question considered by either the prosecution or defence experts to be partial or ambiguous? | 1 |
| 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? | 25 years |
| 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? | 2  **Annotations:** |
| 72. Did analysis involve ‘cold’ match from a database or comparison against a suspect? | 1  **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. 1  Q75b. 1  **Annotations:** |
| 76. Was fingerprint/DNA/Digital examiner opinion/conclusion verified by another examiner? | 1 |
| 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? | 99  **Annotations:** |
| 84. Was concern expressed at original trial or appeal about the qualifications, knowledge, skills or experience of defence fingerprint/DNA/Digital expert(s)? | 2  **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? | 2 |
| 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? | 2  **Annotations:** |
| 90. Did fingerprint/DNA/Digital expert express his/her confidence in conclusion at original trial? **90b.** If yes, how? | Q90. 1  Q90b. Para 9. The assistance scientific officer tested the area now exposed using the KM test but the result was negative.  **Annotations:** |
| 91. For DNA evidence, were probabilities of match presented by prosecution expert at original trial? | 2 |
| 92. For DNA evidence, were contamination/error rates presented at original trial? | 2 |
| 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? | 2 |
| 97. Was hearsay evidence presented at trial? | 1  **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? | 99 |
| 101. How did judge instruct jury to deal with fingerprint/DNA evidence? *Provide quote if short, otherwise summarise* | The original case proceeded to trial without any forensic evidence of blood on the boots or on any other items of the respondent's clothing which had also been examined |
| **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: 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 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.** | The present case involves ‘double jeopardy’ with calls for the respondent to be retried for an offence committed more than a decade later after circumstantial evidence (blood stains) were found, which were not detected during the original investigation. Murder committed 12th August 1995. Suspect arrested 13th September 1995 – with items seized. In 1995 an item of clothing (boot) from the suspect was examined by the Forensic Science Service aided with light from a fluorescent tube and an ordinary domestic light bulb. The examination was conducted with both the naked eye and a microscope. After carrying out a Kastle-Meyer test on the boot to indicate the presence of blood – the test was negative. On the 1st of February 1996 the respondent was charged with the murder of the deceased. The suspect was acquitted in December 1996. The case was re-opened and re-investigated ten years later 2009 subsequent to the acquittal being quashed and an order for the respondent to be re-tried. In light of the discovery of the evidence that was missed, the court of appeal raised three issues: (i) Was the evidence new? (ii) Was the evidence compelling? (iii) Was a re-trial in the interests of justice? The boot was first examined for blood stains in 1995, 1996 and 2008. The forensic scientist/s used KM (or similar tests) to examine the boot for traces of blood. They highlighted the difficulties of the examination owing to the dark colour of the boot, the uneven surface and the process of examining it under a microscope itself. These difficulties (para 37 i) were cited as reasons why a ‘competent examiner’ may not have found visible traces of blood.The court was also expressed concern that in using ‘angle-poise lamp with an ordinary domestic light bulb’ to examine the boot originally, the Forensic Science Service laboratory was not sufficiently equip with more powerful lighting (i.e. halogen). The court also acknowledges that the microscope used in 1995 was less flexible in comparison to those used in 2008. The court acknowledged the difficulty in detecting the blood on the boot ant that it was “possible for competent scientists to miss blood”. However, the court mentioned that following examinations of the boot in 1995 and 1996 the boot was not re-checked on completion by the scientists. The court also indicated that there were four areas on the boot where blood had not been detected during the initial examination. In reaching a decision on whether it was in the best interests of justice to have a retrial the court considered: The memory of witnesses: the risk of cross-contamination of their recollection, the dimming of memories over a 15 year period; The destruction of the transcripts from the original trial; Some witnesses had since died; Original exhibits, that could be used as evidence had since been destroyed (i.e. the clothing seized from the respondent for examination had since been returned to him); The court later described a “failure of due diligence in the examination of the boots”; The delays in the investigation; Para 59. The fallibility of scientific investigation: there was insufficient understanding of the fallibility of testing for blood and the necessity of a second and thorough check.The court concluded “*we are satisfied that it is in the interests of justice that the acquittal be quashed and there be a re-trial*” |