**CODING SCHEME**

|  |  |
| --- | --- |
| **SAMPLE DESCRIPTION** | |
| 1. Case | Henderson v R. [2010] EWCA Crim 1269 |
| 2. Date of appeal hearing | 170610 |
| 3. Date of original trial/conviction | 121107 |
| 4. Keywords found in case | 7 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 25 |
| **DEFENDANT DEMOGRAPHICS (code as 99 if not stated and cannot be inferred)** | |
| 7. Defendant’s gender? | 2 |
| 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)? | 1 |
| 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)? | 1 |
| 14. Was defendant homeless (at time of offence)? | 99 |
| **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) | 2 |
| 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* | This appeal is concerned with fresh evidence from two experts which, it is contended, casts doubt on the reliability of the conclusion that this appellant unlawfully killed |
| 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: Expert testimony both oral and reports from other areas of forensic specialty paediatric neurosurgeon, paediatric neuroradiologist, Paediatric histopathologist, forensic pathologist, ophthalmic surgeon, neuro-ophthalmology, ophthalmic pathologist, neuopathologist |
| 20. Were new techniques used to re-examine old evidence at appeal? | 1 |
| 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? | 2 |
| 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? | 2 |
| 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? | 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? | 99 |
| 35. Did appeal court raise concerns about judge at original trial misunderstanding fingerprint/DNA/Digital evidence? **35b.** If yes, Who raised it? | 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? | 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? | 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? | 99 |
| 41. Did appeal court raise concerns about inadmissible evidence being presented at original trial? **41b.** If yes, who raised it? | 1 |
| 42. Did appeal court refer to any existing case law? **42b.** If yes, which? | Q42a: 1  Q42b: R v Stephen Jones [1997] 1 Cr App R 86, R v Meechan [2009] EWCA Crim 1701; R v Kai-Whitewind [2005] 2 Cr App R 31 [90]; R v Cannings [2004] 2 Cr App R 63, 97; R v Pendleton [2002] 1 Cr App R 441 [17]; R v Harris and Others [2006] 1 Cr App R 5; R v Reid & Ors [2009] EWCA Crim 2698 R v Holdsworth [2008] EWCA Crim 971; R v Bonython [1984] 38 SASR 45 |
| 43. Name of appeal judge(s) | Lord Justice Moses, Mrs Justice Rafferty and Mr Justice Hedley |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Mr M Topolski QC and Mr A Scott (instructed by William Bache & Co) for the Appellant. Miss J Glynn QC and Miss S Campbell (instructed by the Crown Prosecution Service) for the Respondent |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 040305 |
| 46. Was defendant immediately treated as a suspect? **46b.** If no, then how was defendant immediately treated? | Q46: 99  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? | 2 |
| 50. What offence(s) was defendant convicted of/plead guilty to? | Manslaughter |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: Medical expert evidence on the injuries sustained by the victim |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Character witness |
| 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? | 99 |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Mr Justice Keith |
| 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? | 2 |
| 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? | 99 |
| 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? | 25 |
| 69. How much experience did the defence examiner have? | 30 |
| 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. 2  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  **Annotations:** |
| 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? | 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? | 2  **Annotations:** |
| 90. Did fingerprint/DNA/Digital expert express his/her confidence in conclusion at original trial? **90b.** If yes, how? | Q90. 99  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? | 99 |
| 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? | 99 |
| 101. How did judge instruct jury to deal with fingerprint/DNA 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? 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. 1  Q115b. 2 |
| 116. Where the case involved co-defendant/s, was there a mixed verdict? 116b. If Yes, what were the verdicts? | Q116. 1  Q116b. Appellant 1 – appeal dismissed; Appellant 2- appeal allowed with both convictions quashed; Appellant 3 – appeal dismissed |
| **NOTES – PLEASE WRITE ANYTHING THAT YOU THINK IS IMPORTANT BUT WHICH IS NOT CODED ABOVE. THIS MAY INCLUDE QUOTES.** | Para 6. Whilst it is now commonly accepted that the triad is strong prima facie evidence of shaking, that depends upon the common acceptance of experts in the field and not upon the conclusion of courts which are only able to weigh the evidence presented before them. Previous legal authority cannot determine whether the conclusion of a medical report should be accepted or rejected. The most legal authority can do is present an accurate record of what was or was not accepted or propounded.  Para 7. We stress this problem because we feared that the medical profession may have looked to the courts to resolve medical controversy. But the difficulty the courts face, in an area of medical controversy, was demonstrated by the course of these appeals…However, renewed controversy in relation to post-mortem findings in cases of traumatic head injury in children led to a meeting at the Royal College of Pathologists on 10 December 2009. The controversy was a matter of concern to the courts as the President, Professor Furness, recognised. At the meeting a number of those recognised to have expertise in the field, who advanced opposing opinions, attended. Certain areas of agreement and disagreement were recorded. But they give rise to two difficulties. Those areas of agreement and disagreement should inform future opinions. It is difficult to see how any expert could advance an opinion to which those conclusions were relevant without at least reference to them.  Para 29. Professor Luthert is a Professor of Pathology and Consultant ophthalmologist at the UCL Institute of Ophthalmology. His distinguished career and qualifications were not the subject of any challenge by the prosecution and so it is unnecessary for us to give their detail.  Para 39. Reference was made to a case that was unknown at the time of trial and at the time the reports were prepared for the purposes of the appeal. This served to demonstrate “*the limits of knowledge at any given time in the field of medical science. The previously accepted proposition that only trauma can cause retinal folds was shown to be incorrect*”.  Para 47. The evidence of any expert in a particular field is inevitably limited to the field in which he professes expertise. That, of course, is why no expert can be in the position of a jury or, for that matter, of this court, able to put particular evidence in the context of the totality.  Para 61 “*In our judgment, Dr ‘X’ experience was more historic and far more limited than that of Dr ‘Y’. He has not conducted autopsies or given evidence in cases involved with baby-shaking for many years.*”  There were disagreement of opinions between the prosecution and defence medical experts.  The courts drew a distinction between the expertise of clinical vs pathological findings as well as the experts experience, i.e. Para 42 “But he does not seek to dispute Mr X clinical experience and, indeed, he is in no position to do so since he is a pathologist and not a clinician”  One of the experts also relied on his own research and published literature (Para 49). Additionally, another expert referred to some experimental data supporting a non-traumatic cause as the mechanism for retinal fold formation. This is a reference to correspondence from Dr Gardiner commenting on a paper by Dr Sturm in the American Journal of Ophthalmology of April 2008 (Para 33). There was a disagreement between the defence and prosecution experts with one rejecting the others challenge to an empirical paper on the basis of his clinical observation (Para 34)  One of the experts furnished three reports for this case, the last one being a consolidated report. There was a joint conference between him and another expert from which a document was produced, signed by both (para 29).  It was advanced that the experience of one expert was “more historic and far more limited than that of” another expert and that the latter “has not conducted autopsies or given evidence in cases involved with baby-shaking for many years”…“His lack of experience and his lack of appreciation of the importance of this point leads us to the conclusion that his evidence was fundamentally flawed…We reject his evidence insofar as it fails to attribute significance to that which the beta app staining revealed”\ (Para 61).  Upon providing expert testimony in the original trial, one expert offered an explanation of their examination before acknowledging that “there were other individuals who took a contrary view but suggested that they tended to be experts not involved in the day-to-day care and management of abused children” (Para 23) |