**CODING SCHEME**

|  |  |
| --- | --- |
| **SAMPLE DESCRIPTION** | |
| 1. Case | Smith, R v (Rev 1) [2011] EWCA Crim 1296 |
| 2. Date of appeal hearing | 240511 |
| 3. Date of original trial/conviction | 181108 |
| 4. Keywords found in case | 8 |
| 5. Decision *Provide quote if short, otherwise summarise* | 2 |
| 6. Number of pages | 18 |
| **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)? | 1 |
| 11. Defendant’s education level (at time of offence)? | 99 |
| 12. Defendant’s relationship status (at time of offence)? | 3 |
| 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* | the difficulties faced by the defence at trial when a decision was made not to call the defence fingerprint analyst and the fresh fingerprint evidence had since become available |
| 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: 1  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? | 1 |
| 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? | 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)? | 2 |
| 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 disagreements between the experts in regards to: (1) the print ridges and furrows - what lines were the ridges and what lines were the furrows on the print or prints left on the door handle; (2) double touch - whether there had been one touch leaving a print or two touches leaving two prints; (3) clarity of the left side: whether the area to the far left was sufficiently clear so that reliance could be placed on it. |
| 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: Following an examination of the prints, the expert presented four points of similarity and six dissimilarity |
| 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: 1  Q32b: 6 |
| 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 Pendleton [2002] 1 WLR 72; R v Buckley (Robert John) (1999) 163 JP; HM Advocate v McKie 561 |
| 43. Name of appeal judge(s) | Lord Justice Thomas, Mr Justice Sweeney and Mr Justice Spencer |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Mr Paul Mann QC and Mr Adrian Reynolds for the Appellant. Mr Peter Joyce QC and Mr Steven Coupland for the Respondent |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 270207 |
| 46. Was defendant immediately treated as a suspect? **46b.** If no, then how was defendant immediately treated? | Q46: 2  Q46b: The defendant was initially treated as a witness |
| 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? | Murder |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: A will drafted by the deceased in the favour of the appellant; The appellants involvement in her affairs; The appellants financial difficulties – he was in severe debt; His opportunity to kill her; A previous partner eyewitness evidence that footprints found at the crime scene matched footwear he had purchased |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Pathology evidence; scene of the crime; opinions from several fingerprint analysts during the first hearing and second hearing: Two provided evidence during the 1st and 2nd hearing, two provided evidence during the second hearing only. |
| 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 with a minimum term of 30 years |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Judge Kramer |
| 57. Name of lawyer(s) in original trial | Mr Davies of Bilton Hammond for the appellant |
| **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? | 2  **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? | 2 |
| 62. How many Fingerprint/DNA samples were taken from crime scene? | 2 |
| 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? | 2 |
| 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? | Fingerprint analyst 3, Mr. M – Manager a police fingerprint bureau. He was commissioned by the prosecution. Fingerprint analyst 4, Mrs. W – employed by the same police fingerprint bureau. She was commissioned by the prosecution. Fingerprint analyst 5, Mr. G. a fingerprint officer employed by a police force was commissioned by the prosecution. He had more than 21 years of fingerprint experience. Fingerprint analyst 6, before retiring in 1998, Mr. F had worked as a fingerprint office since 1965 for a police fingerprint bureau. He had since practiced as an independent fingerprint expert. He had no further training other than checking prints as the bureau. Fingerprint analyst 7. Mr. Swann had qualified as a fingerprint officer in the “traditional way” (detailed in para 11). He was previously in charge of a bureau and had been an adviser to the Home Office. He retired in 1987. He had over 50 years of experience but no on-going training with exception to attending lectures and conference on fingerprinting |
| 69. How much experience did the defence examiner have? | Fingerprint analyst 1, Ms. T – commissioned by **defence** after being suggested by the consultancy. Employed by the consultancy as a forensic scientist since 1995 (16 years) and a first degree in biological science, other qualifications and instructed in anywhere between 55-65 criminal cases per year. She provided details of her own training experience. She had visited the Police fingerprint Bureau. Ms T’s qualifications were called into question in another CPS area. The police were asked to investigate her qualifications. The consultancy informed the CPS that she was very experienced. It was subsequently averred that she was not qualified as she claimed. Other CPS areas had been critical of her. It was noted that if she provided testimony she would be cross-examined about her shortcomings and about fundamental errors in her report. The challenge to her qualifications were that her training was American and not UK based. The consultancy confirmed that her level of `competence had been challenged in other cases. Ultimately the decision was taken not to rely on her evidence but to rely on Mr. B’s evidence (next). Fingerprint analyst 2, Mr. B – commissioned by **defence** also an employee of the consultancy had been working for 7.5 years for the police’s fingerprint bureau. He was the confirming expert. Notably, he had not seen the materials held by the fingerprint bureau. His work had not been validated by another expert since his role was to confirm Ms. T’s opinion. |
| 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? | 2  **Annotations:** |
| 74. Did initial examination of sample lead to conclusion that sample originated from defendant? | 1  **Annotations:** |
| 75. Was sample re-examined? **75b.** If yes, did re-examination change initial conclusion? | Q75. 1  Q75b. 2  **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)? | 12 |
| 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? | 1 |
| **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? | 1  **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? | 1  **Annotations:** |
| 87. Was concern expressed at original trial or appeal about quality of prosecution expert reports? | 1 |
| 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. 1  Q90b. "In forming my opinion I have considered the amount of detail, its relative position and sequence and general quality. I have no doubt that the area of friction ridge detail indicated in the photograph was made by [the appellant]."  **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? | 1 |
| 94. For Fingerprint evidence, how many points of similarity between sample and print were presented at original trial? | 12 |
| 95. For Fingerprint evidence, were any points of dissimilarity presented at original trial? | 2 |
| 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? | 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? | 1  **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/Digital evidence? *Provide quote if short, otherwise summarise* | In his summing up to the jury the judge emphasised that the jury should assess the evidence and not try to be amateur experts. He directed them that if they found that the evidence of Mr G, supported by Mr M and Mrs W (all commissioned by prosecution), accurate and reliable, then they were entitled to come to the conclusion that the fingerprint was that of the appellant; if in view of the evidence of Mr B (defence) they concluded that the evidence called by the Crown was not or might not be reliable, then they should discard it and ignore it |
| **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 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.** | Before explaining how the fingerprint evidence was obtained, the decision made at the trial not to call the expert, the evidence given at trial and the evidence before us in relation to the fingerprint, it is necessary to set out very briefly the nature of fingerprint evidence and the training of fingerprint examiners in England and Wales. The training methods we have described are rigorous; examinations have to be taken and portfolios of work are assessed. Details were provided about the nature of fingerprint evidence. Para 8. The evolution of the evidence; Para 10. The training of fingerprint examiners. With respect to the current case, the stages of identification used by the Nottingham fingerprint bureau prior to the trial were then disclosed. A consultancy providing experts in various forensic disciplines, including fingerprint analysis was consulted.  There was a level of disagreement about whether one of the fingerprint analysts proposed by the consultancy to the defence could be used based on the qualification of her credentials. After scrutinising and deliberating her credentials the defence opted against using her expertise.  Fingerprint analyst 1, Ms. T – commissioned by **defence** after being suggested by the consultancy. Employed by the consultancy as a forensic scientist since 1995 (16 years) and a first degree in biological science, other qualifications and instructed in anywhere between 55-65 criminal cases per year. She provided details of her own training experience. She had visited the Police fingerprint Bureau. Ms T’s qualifications were called into question in another CPS area. The police were asked to investigate her qualifications. The consultancy informed the CPS that she was very experienced. It was subsequently averred that she was not qualified as she claimed. Other CPS areas had been critical of her. It was noted that if she provided testimony she would be cross-examined about her shortcomings and about fundamental errors in her report. The challenge to her qualifications were that her training was American and not UK based. The consultancy confirmed that her level of `competence had been challenged in other cases. Ultimately the decision was taken not to rely on her evidence but to rely on Mr. B’s evidence (next)  Fingerprint analyst 2, Mr. B – commissioned by **defence** also an employee of the consultancy had been working for 7.5 years for the police’s fingerprint bureau. He was the confirming expert. Notably, he had not seen the materials held by the fingerprint bureau. His work had not been validated by another expert since his role was to confirm Ms. T’s opinion.  Fingerprint analyst 3, Mr. M – Manager a police fingerprint bureau. He was commissioned by the prosecution  Fingerprint analyst 4, Mrs. W – employed by the same police fingerprint bureau. She was commissioned by the prosecution.   1. Fingerprint analyst 5, Mr. G. a fingerprint officer employed by a police force was commissioned by the prosecution. He had more than 21 years of fingerprint experience. Para 20. Where he took no working notes experience, including the absence of a chart, he asserted that “"Such charts have never been produced for analysis or verification purposes. This is bad practice and would have a detrimental effect on the independence of the analysis, comparison and evaluation of the mark."   He furthered that if a chart had been produced by him, then the two other experts who verified his conclusion would not be able to reach their own independent conclusion.  The court opined, para 67 (iv) that no competent forensic scientist in other areas of forensic science these days would conduct an examination without keeping detailed notes of his examination and the reasons for his conclusions. That universal practice of other forensic scientists was not followed by the Nottinghamshire Fingerprint Bureau. There may be reasons for this, but they were not explained to us.  Ms T. complained that Mr Gore did not provide full and complete disclosure of any part of the fingerprint evidence and concluded that the print on the door did not possess 12 ridge characteristics for matching purposes.  Fingerprint analyst 6, before retiring in 1998, Mr. F had worked as a fingerprint office since 1965 for a police fingerprint bureau. He had since practiced as an independent fingerprint expert. He had no further training other than checking prints as the bureau.  Fingerprint analyst 7. Mr. Swann had qualified as a fingerprint officer in the “traditional way” (detailed in para 11). He was previously in charge of a bureau and had been an adviser to the Home Office. He retired in 1987. He had over 50 years of experience but no on-going training with exception to attending lectures and conference on fingerprinting  The court accepted that Mr. G, Mr. M and Mrs W. had sufficient experience in the examination of fingerprints, were well trained and utilised modern equipment. With respect to their opinions, the three prosecution experts tended to be in agreement. They did not tend to agree with the defence expert.  Para 43. At the second hearing Mr G. produced images of the appellant's prints which had been taken by "Livescan" – a method of taking prints by scanning each person who is arrested; such prints were stored on the National Automated Finger Print Identification System (NAFIS). The court was informed that individuals who operate at NAFIS do not permit digital images to be downloaded onto a disk and provided to the court to view on its screens; instead we were provided with a disk of photographs of the digital image which were shown to the courts on their screens along with photographs |