**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | R & Ors, R v [2015] EWCA Crim 1941 |
| 2. Date of appeal hearing | 191015 |
| 3. Date of original trial/conviction | 010515 |
| 4. Keywords found in case | 8 |
| 5. Decision *Provide quote if short, otherwise summarise* | 2 |
| 6. Number of pages | 32 |
| **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)? | 99 |
| 13. Did defendant have any children (at time of offence)? | 99 |
| 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) | 4 |
| 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* | This is an application by the prosecution for leave to appeal that decision on the grounds that the judge had adopted an incorrect approach to the issue of initial disclosure and, in any event, having regard to the issues in the case and all the circumstances, had been wrong to stay the entire prosecution. |
| 19. Was fresh evidence presented at appeal? **19b.** If yes, was it Fingerprint/DNA/Digital evidence? **19c.** If no, what was it? | Q19: 2  Q19b: 99  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? | 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? | 2 |
| 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? | 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? | 99 |
| 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? | 1 |
| 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: R v H [[2004] UKHL 3](https://www.bailii.org/uk/cases/UKHL/2004/3.html" \o "Link to BAILII version); R v H [2004]; R v Brendan Pearson and Paul Cadman [2006] EWCA Crim 3366; R v Jisl [[2004] EWCA Crim 696](https://www.bailii.org/ew/cases/EWCA/Crim/2004/696.html" \o "Link to BAILII version); R v M (Michael) [2003] EWCA Crim 3764; R v Olu [2010] EWCA 2975; [[2011] 1 Cr App R 33](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2010/2975.html" \o "Link to BAILII version); R v Malook [[2011] EWCA Crim 254](https://www.bailii.org/ew/cases/EWCA/Crim/2011/254.html); [[2012] 1 WLR 633](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2011/254.html); R v I-I [[2009] EWCA Crim 1793](https://www.bailii.org/ew/cases/EWCA/Crim/2009/1793.html" \o "Link to BAILII version); [[2010] 1 WLR 1125](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2009/1793.html); R v Horseferry Road Magistrates Court, ex p Bennett [[1994] 1 AC 42](https://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1993/10.html" \o "Link to BAILII version); R v Maxwell [[2011] 1 WLR 1837](https://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKSC/2010/48.html" \o "Link to BAILII version); R v Latif [[1996] 1 WLR 104](https://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKHL/1996/16.html); R v S (P) [[2006] 2 Cr App R 23](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2006/756.html" \o "Link to BAILII version); R v F (S) [[2011] EWCA Crim 1844](https://www.bailii.org/ew/cases/EWCA/Crim/2011/1844.html" \o "Link to BAILII version); R v Galbraith [1981] 1 WLR 1039 and Attorney General's Reference (No 1 of 1990) [1992] QB 630; R v B [2003] 2 Cr App R 197; R v Smolinksi [2004] 2 Cr App R 661; Spiers v Ruddy [[2008] 1 AC 873](https://www.bailii.org/cgi-bin/redirect.cgi?path=/uk/cases/UKPC/2007/D2.html" \o "Link to BAILII version); R v Mullen [[2000] QB 520](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2000/36.html" \o "Link to BAILII version); R v Boardman [[2015] EWCA Crim 175](https://www.bailii.org/ew/cases/EWCA/Crim/2015/175.html" \o "Link to BAILII version); R v S(D) and S(T) [[2015] EWCA Crim 662](https://www.bailii.org/ew/cases/EWCA/Crim/2015/662.html" \o "Link to BAILII version) |
| 43. Name of appeal judge(s) | Judge Brian Leveson, judge Gross and judge Fulford |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Charles Miskin, Tim Hannam and Hamish Common (instructed by Crown Prosecution Service) for the Appellant. Brendan Kelly and Faisal Osman (instructed by Blackfords LLP) for defendant 2. George Carter-Stephenson and Dermot Keating (instructed by Janes, Solicitors) for Defendant 3. Annette Henry and Stephan Alfred (instructed by Byrne & Partners LLP) for Defendant 4. Tony Shaw and Tom Foster (instructed by Bivonas LLP) for Jonathan Anwyl. Simon Mayo and Ben FitzGerald (instructed by Corker Binning) for Evdoros Demetriou. Helen Malcolm and Eloise Marshall (instructed by Russell Cooke LLP) for Defendant 5. Sean Larkin and Jocelyn Ledward (instructed by BCL Burton Copeland) for Defendant 6. Charles Sherrard (instructed by Bark & Co) for Defendant 7. Richard Whittam and Louis Mably (instructed by the Government Legal Department) for the Attorney General. Tim Owen and Miss Rachel Scott (instructed by the Government Legal Department) for the Legal Aid Agency |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 99 |
| 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)? | 1 |
| 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: 99  Q48b: 99 |
| 49. Was this the first trial? | 1 |
| 50. What offence(s) was defendant convicted of/plead guilty to? | Fraud |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: Hard copy materials and electronic material held on computers from a total of 85 digital devices |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: 7 terabytes of seized electronic material, the Digital Forensic Group of HMRC placed images of all the material onto their system before the computers were returned to those from whom they were seized. As a result, the prosecution was dealing only with 'imaged copies' of the computer drives; Expert reports from defence and prosecution. Opinion evidence from a professional jointly instructed by the respondents. |
| 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 | Judge Vivian Ramsey |
| 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? | 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? | 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? | 1  **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? | 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? | 3  **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? | 2  **Annotations:** |
| 83. Did (main) defence Fingerprint/DNA/Digital expert present evidence at original trial? | 2  **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? | 2  **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? | 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? | 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? | 1  **Annotations:** |
| **JUDGE’S INSTRUCTIONS/JURY BEHAVIOR** |  |
| 100. Were visual images used to present Fingerprint/DNA/Digital evidence at original trial? | 2 |
| 101. How did judge instruct jury to deal with Fingerprint/DNA/Digital evidence? *Provide quote if short, otherwise summarise* | The judge concluded, having heard from experts for the prosecution and the defence, that the dataset provided on 8 September 2014 had defects in it which were substantially those relied on by the respondents. The judge said: The dataset is […] not 'fit for purpose' in the respects in which Mr. Sebesta explained his view. That is, the functionality of the search process is compromised resulting in wholly inaccurate and in many instances perverse results and also that the product of the search process is inherently unreliable and incomplete. Whilst I would not go as far as to say that the dataset is 'wholly' unusable, it does not represent a dataset which, in my judgement, would allow proper and efficient searching and analysis of the dataset to take place. Equally of importance is Mr Sebesta's conclusion that the dataset lacks forensic integrity. The difficulties explained above, in particular with missing or corrupt metadata, mean that the export of data from FTK to Relativity deprived the dataset of that essential forensic integrity. " |
| **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. 1  Q102b. Para 102. the prosecution informed the court that it could not comply with a deadline imposed by them, citing the technical difficulties in relation to 'embedded LPP files' such that none of the product produced for disclosure up until that time could be guaranteed as free of privileged material. |
| **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? | 1 |
| 104. For Digital evidence were there any concerns about data being missed during investigation? | 1 |
| 105. For Digital evidence, was any data hidden over the network? | 1 |
| 106. For Digital evidence was any data hidden inside storage areas to make them invisible to the system commands and programs? | 2 |
| 107. For Digital evidence, was any data corrupted? | 1 |
| 108. For Digital evidence, was there any residual data wiping? | 2 |
| 109. For Digital evidence, was concern expressed at the original trial or appeal about data sources being damaged? | 1 |
| **ANALYSIS** | |
| 110. For Digital evidence was any data encrypted? | 2 |
| 111. For Digital evidence was any data hidden in a carrier file without modifying its outward appearance? | 1 |
| 112. For Digital evidence, was any techniques used to obfuscate the source of the attack? | 2 |
| 113. For Digital evidence, did the investigator have to analyse high volumes of data? | 1 |
| 114. For Digital evidence, were the investigators restricted to analysing only recent data stored on volatile memory? | 2 |
| 115. Were there any Co-defendants? 115b. If yes, how many? | Q115. 1  Q115b. 7 |
| 116. Where the case involved co-defendant/s, was there a mixed verdict? 116b. If Yes, what were the verdicts? | Q116. 2  Q116b. 99 |
| **NOTES – PLEASE WRITE ANYTHING THAT YOU THINK IS IMPORTANT BUT WHICH IS NOT CODED ABOVE. THIS MAY INCLUDE QUOTES.** | Para 101. the defence expert instructed by the respondents identified various problems with the dataset provided – including the presence of Legal Professional Privilege (LPP – concerning disclosure, the prosecution must explain what it is doing and what it will not be doing at this stage) material and missing or corrupted files. At a subsequent hearing, directions were given for the exchange of expert reports to address the issues identified. The Digital Forensic Group (DFG on behalf of the prosecution) advised that the removal of LPP duplicates meant that e-disclosure would take at least a further nine months. Para 102. the prosecution informed the court that it could not comply with a deadline imposed by them, citing the technical difficulties in relation to 'embedded LPP files' such that none of the product produced for disclosure up until that time could be guaranteed as free of privileged material. Para 103. Bespoken software, to be used on behalf of the prosecution subsequently failed to work. The judge identified various deficiencies with the dataset that DFG had produced using FTK. The most significant of these was that there was no tool to search for and place bookmarks on LPP. Additionally, a large number of files on the original hard drive were not present and emails and their attachments were not appropriately linked. There were also difficulties using FTK (forensic software used by the prosecution) with whole word searches and the failure to display some email addresses in full. The judge expressed the view that this meant that the prosecution had failed to provide disclosure in an acceptable form. Para 111. There was criticism of the ‘Relativity dataset’ particularly of a professional who had been jointly instructed by the respondents. The judge summarised the criticism as being that the CPIA dataset was 'wholly unusable' - that it lacked 'forensic integrity' because the functionality of the search process was compromised, which resulted in wholly inaccurate and perverse results. Para 112. The expert evidence the judge heard focussed on four main topics: i) 'parent/child determination', ii) the inadequacy of the metadata and missing metadata; iii) email threading and iv) duplicate documents. The email threading was only successful for between 60% to 80% of emails. In some instances, exact duplicate items were stored in modified formats, thereby hiding the duplicate nature of the documentation; this was a result of the manner in which the items were exported out of FTK. |