**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | Oliver v R [2016] EWCA Crim 1053 |
| 2. Date of appeal hearing | 050216 |
| 3. Date of original trial/conviction | 220311 |
| 4. Keywords found in case | 8 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 11 |
| **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)? | 50 |
| 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)? | 3 |
| 12. Defendant’s relationship status (at time of offence)? | 1 |
| 13. Did defendant have any children (at time of offence)? | 1 |
| 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* | (1) that the appellant was "effectively robbed" of his freedom of choice by his own legal team because they failed to disclose to him some relevant expert evidence, namely, an agreed expert report; and (2) that his former counsel put pressure on him to plead guilty. |
| 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? | 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)? | 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? | 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* | 2 |
| 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? | 1 |
| 35. Did appeal court raise concerns about judge at original trial misunderstanding fingerprint/DNA/Digital evidence? **35b.** If yes, Who raised it? | 1 |
| 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 McCarthy [[2015] EWCA Crim 1185](https://www.bailii.org/ew/cases/EWCA/Crim/2015/1185.html" \o "Link to BAILII version); R v Boal [1992] 95 Cr App R 272; R v Nightingale [[2013] EWCA Crim 405](https://www.bailii.org/ew/cases/EWCA/Crim/2013/405.html); R v Achogbuo [[2014] EWCA Crim 567](https://www.bailii.org/ew/cases/EWCA/Crim/2014/567.html" \o "Link to BAILII version); R v McCook [[2014] EWCA Crim 734](https://www.bailii.org/ew/cases/EWCA/Crim/2014/734.html); R v Oliver [2003] CA 28; R v Harris & ors [[2005] EWCA Crim 1980](https://www.bailii.org/ew/cases/EWCA/Crim/2005/1980.html" \o "Link to BAILII version) |
| 43. Name of appeal judge(s) | Judge Sharp, judge Edis and judge Munro |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Mr T. Forte (instructed by Olliers Solicitors) for the Appellant. Mr T. Wilkins (instructed by CPS) for the Respondent |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 070509 |
| 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? | One count of possession of indecent photos and fifteen counts of making indecent photographs of a child |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: Computer equipment seized from the appellants home which was found to have digitally stored indecent images (370). Specialist forensic officers examined the hard drives to ascertain what internet activity had taken place, and what had been downloaded. Unlawful websites accessed, saved on Favorites, bookmarks, webpage shortcuts showing physical routes decisions and commands entered by the appellant on his computer and the results in terms of indecent material that would have appeared on the Defendant's computer screen |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Expert opinion/report on the forensic examination of the appellants computer equipment by a computer forensic investigator (prosecution) and opinion evidence from an expert on electronics, computers and telecommunication |
| 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? | A community order on each count concurrent, with a requirement that he undertake 120 hours of unpaid work |
| 55. Was case originally tried in Crown court or magistrates’ court? | 2 |
| 56. Name of judge(s) in original trial | 99 |
| 57. Name of lawyer(s) in original trial | Mr. Knowles for the appellant  The prosecution team included Mr Brookes, and the Crown Advocate, Mr Martin McRobb |
| **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? | 2 |
| 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? | 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? | Reported as being a “computer forensic investigator, with an expertise in all aspects of computer crime investigation, including the forensic retrieval of computer evidence”. He was further reported as proffering “a highly clear explanation” and being “a very experienced prosecution expert” |
| 69. How much experience did the defence examiner have? | Reported as being an “expert on electronics, computers and telecommunications” |
| 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? | 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? | 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? | 2  **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? | 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)? | 1  **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? | 2 |
| 88. Was concern expressed at original trial or appeal about quality of defence expert reports? | 1 |
| 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. 1  Q90b. The defence expert commented on the legal merits or otherwise, as he perceived them to be, of the case against the appellant. He said for example, that in his opinion the Crown's case did not meet the burden of proof in relation to the counts on the Indictment; he said there was "no evidence" on the issue of possession; he said that one image was not indecent or unlawful in his understanding and experience and he said that "although it is not an area on which expert evidence can be given" he "would describe most of the images in Counts 3-16 as marginal in terms of lawful/unlawful age".  **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/Digital evidence? *Provide quote if short, otherwise summarise* | Where an agreement in furnishing a joint report between the defence and prosecution experts could not be found, when the legal counsel parties appeared before him after their discussion, the judge said in terms that he wanted a series of questions for the jury to concentrate on. He also said he would make no further order in relation to the production of a joint report. |
| **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. 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? | 2 |
| 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? | 2 |
| 108. For Digital evidence, was there any residual data wiping? | 1 |
| 109. For Digital evidence, was concern expressed at the original trial or appeal about data sources being damaged? | 2 |
| **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? | 2 |
| 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? | 2 |
| 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. 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 appellant was found guilty of accessing unlawful websites. He subsequently claimed Malware was responsible. However, his defence expert could find no malware on this computer. Where no malware was found the appellants former lawyer, from the trial, advised him that this attenuated his case and it was recommended that he pleaded guilt albeit to lesser charges. **Problems with expert evidence:** Where the trial court had made directions for a joint report between the prosecution and defence expert that would, reportedly, be easy for the jury to understand this was not possible. The experts could not agree however on the content of a joint report, and one was not produced either by the date directed by the judge. The report drafted by the defence expert was too long and did not fulfil the criteria as instructed by the court. It was reported that in an email (para 29) to the prosecution expert, that the defence expert understood was the court had requested albeit the draft produced did not reflect this. It was furthered that “*had this matter gone to trial, in our opinion the draft, which was complicated as well as lengthy, and which failed to boil down the issues in a suitable or comprehensible way, would have been of little assistance to the judge, let alone the jury*.” The courts expressed a further concern about the defence expert straying from his remit of expertise into legal matters. At para 30, the court remarked “*It has been well-recognised for many years that in the criminal jurisdiction, just as in civil litigation, it is central to the role of the expert, that he or she should provide independent, objective, unbiased opinion evidence in relation to matters within his or her expertise; and that he or she should never assume the role of advocate*”. Reference was made to Criminal Procedure Rules, Part 19, in particular, para 19.2 which sets out the expert's duties to the court. Commenting on the defence experts report, the court judged that the report had not “*confining itself, as it should have done, to matters within the proper purview of his expertise; in parts, it seemed to argue the appellant's case and "descend into the arena*”. Thus the courts opined that “*This failure to deal with evidence, which if true, was potentially disadvantageous to the appellant's case, served to reinforce the unfortunate impression given that the report, and therefore its author, was not objective*.” Para 47. The court highlighted that they had been “*told from the outset that Mr Campbell was a true expert in his field and his evidence had been relied upon across the country and had caused the Crown in other areas on more than one occasion to discontinue similar proceedings”*. |