**CODING SCHEME**

|  |  |
| --- | --- |
| **SAMPLE DESCRIPTION** | |
| 1. Case | Lewis, R. v [2018] EWCA Crim 1101 |
| 2. Date of appeal hearing | 100418 |
| 3. Date of original trial/conviction | 241217 |
| 4. Keywords found in case | 8 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 9 |
| **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) | 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) The Recorder erred in finding that there was sufficient evidence on the issue of identification to allow the jury, properly directed, to return a guilty verdict. (2) The Recorder erred in permitting the jury to draw an adverse inference against the defendant under section 34 of the Criminal Justice and Public Order Act 1994 ("the 1994 Act"). |
| 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? | 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? | 2 |
| 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? | 1 |
| 38. Did appeal court raise concerns about judge’s instructions confusing jury at original trial? **38b.** If yes, who raised it? | 1 |
| 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? | 1 |
| 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: v Tsekiri [2017] EWCA Crim 40; R v Webber [2014] 1 WLR 404; R v Nickolson [1999] Crim LR 61 (CA) |
| 43. Name of appeal judge(s) | Lord Justice Davis, Mr Justice Morris and Judge Lodder |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Mr F McGrath appeared on behalf of the Applicant. Mr G Morrison appeared on behalf of the Crown |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 230916 |
| 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? | 1 |
| 50. What offence(s) was defendant convicted of/plead guilty to? | Count 1. Wounding with intent. Count 2. unlawful wounding Count 3. possession of an offensive weapon |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: Three DNA samples (1) swabs of bloodstaining from a wall at the crime sceen, (2) DNA on a lanyard, and (3) DNA on a glove |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Experts using specialist probabilistic genotyping software to assess the result |
| 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? | 13 years imprisonment |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | 99 |
| 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. 1  Q59b. The defence for the appellant conjecture that, although their client was from Liverpool not London, his DNA could have been deposited on the glove on a secondary basis by a family member who visited the estate in London. Where there was three DNA samples in part, at least matching the appellants profile (1) the glove was deemed a movable item, (2) the wall (unmovable) and (3) the lanyard (not highly movable).  **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? | 2 |
| 63. Was only one method used to collect the sample(s) or multiple methods? | 2 |
| 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? | 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? | 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? | 2  **Annotations:** |
| 71. Was concern expressed at original trial or appeal about there being a chance of the Fingerprint/DNA samples being degraded? | 1  **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 |
| 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? | 2 |
| 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? | 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? | 2  **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 |
| 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? | 1  **Annotations:** |
| 90. Did Fingerprint/DNA/Digital expert express his/her confidence in conclusion at original trial? **90b.** If yes, how? | Q90. 1  Q90b. The expert evidence went on to explain that the DNA could have resulted from direct transfer from the appellant or secondary transfer. It was not possible to say when the DNA was transferred to a particular surface, or for how long the DNA had been present on the surface. There was no expert evidence on the blood transfer. The evidence was that the blood could be transferred if wet, if dry, or if dried blood had become really animated because it had become wet.  **Annotations:** |
| 91. For DNA evidence, were probabilities of match presented by prosecution expert at original trial? | 1 |
| 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? | 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? | 2 |
| 101. How did judge instruct jury to deal with Fingerprint/DNA/Digital evidence? *Provide quote if short, otherwise summarise* | In our judgment the Recorder was not wrong to dismiss the submission of no case to answer…. First, this is not a case where the DNA evidence was the only evidence that the appellant was the assailant. There was the identification evidence of the assailant's appearance. The discrepancy in the evidence in relation to height is not sufficient to exclude the appellant as being the assailant. Secondly, the appellant maintains that here there was a movable item, namely the assailant's gloves, being an item left at the scene of the crime. However, the relevant DNA was not found on those gloves, rather it was found on (a) the wall (plainly not a movable item) and (b) the lanyard, again hardly an item left at the scene of the crime - but rather an item worn by one of the victims of the assault. Moreover, even on the appellant's theory of the DNA transfer the DNA (on the wall and on the lanyard) had been deposited in the course of the commission of the crime "by the assailant" and not some other point in time or other location. |
| **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.** | Para 13. The expert evidence went on to explain that the DNA could have resulted from direct transfer from the appellant or secondary transfer. It was not possible to say when the DNA was transferred to a particular surface, or for how long the DNA had been present on the surface. There was no expert evidence on the blood transfer. The evidence was that the blood could be transferred if wet, if dry, or if dried blood had become really animated because it had become wet. Para 31. Reference was made to case law R v Tsekiri: (1) Where it is clear that the DNA has been directly deposited in the course of the commission of a crime by the assailant, a very high DNA match with the defendant would be sufficient without more to give rise to a case for the defendant to answer: (see Tsekiri, paragraph 6). (2) Where the DNA found on movable articles left at the scene of a crime is the only evidence, nevertheless that can be sufficient without more to raise a case to answer where the match probability is 1: 1 billion or similar. (The conclusion to the contrary in the case of Bryon is not correct): Tsekiri paragraph 14. (3) In this second class of case, whether the DNA alone is sufficient to raise a case to answer will depend on the facts of the particular case. Relevant factors include non-exhaustively the following six factors (set out at Tsekiri paragraphs 15 to 20 and 21): (a) Is there any evidence of some other explanation for the presence of the defendant's DNA on the item other than involvement in the crime? (b) Was the article apparently associated with the offence itself? (c) How readily movable was the article (on which the DNA was found) in question? (d) Is there evidence of some geographical association between the offence and the assailant? (e) Where the case is one of mixed profile is the DNA profile which matches the defendant the major contributor to that profile? (f) Is it more or less likely that the DNA profile attributable to the defendant was deposited by primary or secondary transfer? (4) Finally, there is not evidential or legal principle which prevents a case, solely dependent on the presence of DNA on an article left at the scene of a crime being considered by a jury: Tsekiri at paragraph 21. DNA profiling was used with experts using specialist probabilistic genotyping software to assess the result. |