**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | GS, R. v [2018] EWCA Crim 1824 |
| 2. Date of appeal hearing | 170718 |
| 3. Date of original trial/conviction | 301107 |
| 4. Keywords found in case | 7 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 17 |
| **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)? | 29 |
| 9. Defendant’s nationality (at time of offence)? | 2 |
| 10. Defendant’s employment status (at time of offence)? | 3 |
| 11. Defendant’s education level (at time of offence)? | 99 |
| 12. Defendant’s relationship status (at time of offence)? | 2 |
| 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* | The applicant wishes to adduce fresh evidence showing that culpability for the offence was diminished owing to intellectual and cognitive decline in her mental health. She contends that her vulnerable personality and was susceptible to committing the offence under duress. |
| 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 evidence from two psychologists |
| 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? | 99 |
| 22. Were new Fingerprint/DNA/Digital experts consulted by prosecution after original trial? | 99 |
| 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)? | 2 |
| 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? | 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 L; R v N [2017] EWCA Crim 2129; R v McCook [2014] EWCA Crim 734; R v Jogee [2016] UKPC 7; [2017] AC 387, at [100]; R v Johnson [2016] EWCA Crim 1613; [2017] 1 Cr App R 12; R v Mitchell (1977) 65 Cr App R 185; R v Roberts [2016] EWCA Crim 71; [2016] 1 WLR 3249; R v O [2008] EWCA Crim 2835; R v Ordu [2017] EWCA Crim 4; [2017] 1 Cr App R 21; Hollington v Hewthorn [1943] KB 587 grounds; R v M(L) and others [2010] EWCA Crim 2327; [2011] 1 Cr App R 12; R v N(A) and others [2012] EWCA Crim 189; [2012] 1 Cr App R 35; R v L(C) and others [2013] EWCA Crim 991; [2013] 2 Cr App R 23; R v Joseph (Verna) and others [2017] EWCA Crim 36; [2017] 1 Cr App R 33 |
| 43. Name of appeal judge(s) | Lord Justice Gross, Mrs Justice Mcgowan and Sir Brian Keith |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Francis FitzGibbon (instructed by Laura Janes, Scott Moncrieff and Associates) for the Appellant. Ben Douglas-Jones (instructed by James Boyd and Steve Alvarez) for the Crown Prosecution Service Appeals and Review Unit |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 090207 |
| 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? | Fraudulent Evasion of the Prohibition on the Importation of a Controlled Drug of Class A |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: Mobile phone calls; Appellants medical records |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: X-ray; medical examination; packages of drugs; forensic medical examiner; psychologist reports and other correspondence (collectively described as “the medical evidence”) for trial and as fresh evidence for the appeal |
| 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? | seven years imprisonment and recommended for deportation |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Judge Colgan |
| 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? | 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? | 99 |
| **ANALYSIS** |  |
| 68. How much experience did the prosecution forensic examiner have? | 99 |
| 69. How much experience did the defence examiner have? | One of the experts was reported as being a “Consultant” Clinical Psychologist, the second expert was reported as being a “Chartered and Consultant” Clinical Psychologist |
| 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? | 99  **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? | 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? | 99 |
| 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. 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? | 2 |
| 101. How did judge instruct jury to deal with Fingerprint/DNA/Digital 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: 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? | 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 30. The well-known test for the admissibility of fresh evidence is contained in s.23 of the 1968 Act and provides (so far as material) as follows: "(1) For the purposes of an appeal, or an application for leave to appeal, under this Part of this Act the Court of Appeal may, if they think it necessary or expedient in the interests of justice – (c) receive any evidence which was not adduced in the proceedings from which the appeal lies. (2) The Court of Appeal shall, in considering whether to receive any evidence, have regard in particular to – (a) whether the evidence appears to the Court to be capable of belief; (b) whether it appears to the Court that the evidence may afford any ground for allowing the appeal; (c) whether the evidence would have been admissible in the proceedings from which the appeal lies on an issue which is the subject of the appeal; and (d) whether there is a reasonable explanation for the failure to adduce the evidence in those proceedings." Para 71. there is no good reason why evidence of this nature could not have been obtained for use at trial. Para 72. there must be very real concern that the conclusions of the Psychologists go beyond the proper remit of expert witnesses and stray into the province of the jury. This concern is acute with regard to the questions from the Applicant's solicitors and the answers from the experts in 2015-2016 going to the Applicant's levels of compliance and suggestibility…the experts' conclusions would have been largely inadmissible at trial, albeit that their assessments of the Applicant would have been admissible, at least to some extent…the impact of the medical evidence falls necessarily to be reduced. Para 73. we have real misgivings that the evidence might afford any ground for allowing the appeal. Over and above the need to confine the experts to their proper province, the medical evidence was obtained some 7 – 10 years after the trial. Though different shades of opinion appear from the medical evidence….it is difficult to apply a 2014-2017 assessment of the Applicant to her condition in late 2007…it is also a reality that by the time of her assessment she had experienced a substantial period of imprisonment. It certainly cannot be excluded that the experience of imprisonment would have impacted on her condition when subsequently seen by the experts – but would of course not have been present at the time of trial and prior to her experience of custody. Para 74. For all these reasons, especially when considered cumulatively, we do not think that the reception of the medical evidence would be necessary or expedient in the interests of justice and we decline to admit it into evidence on the application. |