**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | Wallace, R v [2018] EWCA Crim 690 |
| 2. Date of appeal hearing | 291117 |
| 3. Date of original trial/conviction | 201117 |
| 4. Keywords found in case | 7 |
| 5. Decision *Provide quote if short, otherwise summarise* | 2 |
| 6. Number of pages | 25 |
| **DEFENDANT DEMOGRAPHICS (code as 99 if not stated and cannot be inferred)** | |
| 7. Defendant’s gender? | 2 |
| 8. Defendant’s age (at time of offence)? | 45 |
| 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)? | 2 |
| 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) | 1 |
| 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* | The prosecution appeal against the ruling to terminating the indictment of murder |
| 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? | 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)? | 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? | 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? | 99 |
| 42. Did appeal court refer to any existing case law? **42b.** If yes, which? | Q42a: 1  Q42b: R v Hughes [2013] UKSC; R v Hennigan (1971) 1 All ER 133; Galoo Ltd v Bright Grahame Murray (a firm) [1994] 1 WLR 1360; March v E & MH Stramare Pty Ltd (1991) 171 CLR 506, 515; R v Maybin [2012] SCC 24; [2012] 2 SCR 30; R v Miller [1996] 2 Cr. App. R. 245; R v Cato [1976 1 All ER 260; R v Malcherek; R v Steel [1981] 1 WLR 690; R v Cheshire [1991] 93 Cr. App. R. 251; R v Jordan, [1956] 40 Cr. App. R 152; R v Pagett [1983] 76 Cr App R 279; R v Smith [1959] 2 Q.B. 35; Evans v Gardiner (No 2) [1976] V.R. 523; R v Dear (Rose LJ, Hidden and Buxton JJ) [1] [1996] Crim. LR 595; R v Roberts [1971] 56 Cr. App. R. 95; R v Williams & Davis [1992] Crim. LR 19; R v Latif R v Shahzad [1996] 2 Cr App R 92; R v Kennedy (No 2) [2007] UKHL 38, [2008] 1 AC 269; Corr v IBC Transport [2006] EWCA Civ 331, [2007] QB 46; R (Nicklinson) v Ministry of Justice [2014] UKSC 38; 3 ALL ER 843; R v Inglis [2011] 1WLR 1110; Pretty v Director of Public Prosecutions [2002] 1 AC 800; Airedale NHS Trust v Bland [1993] AC 789; Pitts (1842) C. & M. 284; Curley (1909) 2 Cr.App.R. 96; R v Dean Girdler [2009] EWCA Crim 2666 |
| 43. Name of appeal judge(s) | Lady Justice Sharp, Mr Justice Spencer and Mrs Justice Carr |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Adam Vaitilingam QC and Ms Rachel Drake (instructed by Crown Prosecution Service South West) for the Appellant. Richard Smith QC and Ms Fiona Elder (instructed by Elite Solicitors) for the Respondent |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 230915 |
| 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: 2  Q48b: 99 |
| 49. Was this the first trial? | 1 |
| 50. What offence(s) was defendant convicted of/plead guilty to? | Count 1. Murder. Count 2. Applying a corrosive substance with intent |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: Google searches conducted by the defendant on the use of acid |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Witnesses statements from members of the public and the victim’s father, partner, a medical doctor specialising in burns and plastic surgery who was victim’s treating consultant at the Hospital and some of the members of the public who assisted the victim at the scene; Photos of the deceased during admission to hospital and during treatment; two video recorded interviews from the victim given to the police whilst he was in Hospital. |
| 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 | Justice May |
| 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 |
| 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? | 99 |
| 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? | 2 |
| 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? | 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? | 2  **Annotations:** |
| **JUDGE’S INSTRUCTIONS/JURY BEHAVIOR** |  |
| 100. Were visual images used to present Fingerprint/DNA/Digital evidence at original trial? | 99 |
| 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: 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.** | Defendant cast/threw acid on the victim on 23.09.15. Victim died on 02.01.17 due to voluntary euthanasia, by lethal injection, lawfully administered to him in a hospital in Belgium. The act of euthanasia was deemed to be independent, free and voluntary act which broke the chain of causation between the defendant's conduct in throwing the acid, and victim's death. At the close of the prosecution case, at the invitation of the defence the judge withdrew the charge of murder from the jury - the central issue for decision in this appeal case is whether the trial judge was justified in doing this. Euthanasia is lawful in Belgium if carried out in accordance with the Belgian Act on Euthanasia of 28 May 2002. The Belgian authorities have refused to provide the Crown with medical records of the deceased's treatment in Belgium on the grounds of patient confidentiality. Para 25. Upon charging the defendant with murder, the jury would need to be sure that the defendant's act was a cause of death; it need not be the sole or principal cause, as long it was a substantial cause, which meant a more than minimal cause. The defence submitted that the act of voluntary euthanasia was a free, deliberate and informed decision – a new intervening act that broke the chain of causation, in circumstances where the victim could survive. The jury could be told that the evidence concerned only the victims state of mind and that it could not be treated as evidence of expert medical opinion. On that limited basis, the evidence was admissible hearsay. There was a passage in the father's witness statement that the judge was not prepared to allow. This was that: "Without the euthanasia [the victim] would only have lived for another 2-3 days but in an inhumane way." The judge's provisional view was that this evidence was inadmissible because it would be impossible for the jury to divorce the fact of the statement from the truth of its content. The victim's choice to die, combined with the actions of the Belgian doctors who ended his life, constituted an intervening cause, breaking the chain of causation as a matter of law. If the victim had been given a lethal injection by a doctor in this jurisdiction that doctor would have faced a charge of murder. Murder in this jurisdiction would be bound to have constituted an **independent act**. The fact that the killing was lawfully carried out in Belgium made no difference to the effect of the actions of the doctor in breaking the chain of causation. In the criminal context the proper approach was simply to ask the jury to consider the question whether the defendant's actions were a substantial and operating cause of death. The decision of the victim to apply for euthanasia, and the doctor's act in giving effect to that decision, were matters which the jury would need to consider in answering that question. The issue that the judge had to address was whether the charge of murder could properly be left to the jury on these facts. More specifically, could a jury properly directed find the conduct of the defendant in throwing acid over the victim was a legally sufficient cause of his death; or would the jury be bound to conclude (as, in the event, the judge decided) that the intervening actions of the victim in asking for euthanasia and actions of the Belgian doctors in complying with his request had severed the causal connection between her conduct and his death, thereby absolving her of the legal responsibility for his death? The central question…did the act of euthanasia sever, or break, the chain of causation leading to the victim’s death? or were actions of the defendant an operational and sufficiently significant cause of death? |