**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | Hussain, R v [2019] EWCA Crim 666 |
| 2. Date of appeal hearing | 020419 |
| 3. Date of original trial/conviction | 110713 |
| 4. Keywords found in case | 7 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 15 |
| **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)? | 26 |
| 9. Defendant’s nationality (at time of offence)? | 99 |
| 10. Defendant’s employment status (at time of offence)? | 3 |
| 11. Defendant’s education level (at time of offence)? | 2 |
| 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* | Ground 1.There was no proper evidential basis upon which the jury could reject the unanimous expert psychiatric evidence at trial. Accordingly, and exceptionally, the trial judge should have withdrawn the case from the jury at the close of the evidence. Ground 2.The judge's directions were inadequate |
| 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? | 2 |
| 42. Did appeal court refer to any existing case law? **42b.** If yes, which? | Q42a: 1  Q42b: R v Barry Pearce; R v Bailey (1961) 66 Cr App R 31; R v Brennan [[2014] EWCA Crim 2387](https://www.bailii.org/ew/cases/EWCA/Crim/2014/2387.html); R v Golds [[2016] UKSC 61](https://www.bailii.org/uk/cases/UKSC/2016/61.html); R v Jogee [[2016] UKSC 8](https://www.bailii.org/uk/cases/UKSC/2016/8.html); R v Matheson (1958) 42 Cr App R 145; R v Galbraith; R v Blackman [[2017] EWCA Crim 190](https://www.bailii.org/ew/cases/EWCA/Crim/2017/190.html); R v Khan (Dawood) [[2009] EWCA Crim 1569](https://www.bailii.org/ew/cases/EWCA/Crim/2009/1569.html), [[2010] 1 Cr App R 4](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2009/1569.html) |
| 43. Name of appeal judge(s) | Lady Justice Hallett, Ms Justice Russell and Mr Justice Goss |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Ms S Forshaw appeared on behalf of the Appellant. Mr P Wright 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) | 160113 |
| 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? | Murder |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: The elements of planning, in that the appellant had conducted map searches on the internet for routes on both 3 January and 15 January and afterwards he had deleted his internet searches. He selected days to travel to Nottingham and Manchester on which he had an alibi and attempted to rely upon those alibis when he was first questioned. He planned and conducted a dry run to attack Mr Kershaw.  CCTV footage showed him driving around Manchester for an hour before the attack and passing the deceased on five separate occasions in about 6 minutes. This was said to disprove the random nature of the attack as claimed by the appellant. CCTV footage showed the appellant's behaviour after the event and the fact he used cash to pay for his petrol, it was said to avoid detection. The appellant changed his clothing on his way home after the killing and placed a sweater underneath the front seat of his car. The appellant washed and wrapped the knife in tissue and then hid it. This was a knife that he had taken from his family home some time before and then used in the killing. The appellant lied to the police during his time in custody and was inconsistent in his account to various psychiatrists. There had been no previous reporting of mental health problems and no family history of psychosis. |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Expert opinion evidence from several medical practitioners and a psychiatric nurse on the appellants mental state before the index offence, immediate after and subsequently after. Seven consultant psychiatrists had seen the appellant ahead of the trial and one mental health nurse. |
| 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? | Life imprisonment with a minimum term of 23 years |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Judge Jeremy Baker |
| 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? | 99 |
| 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? | Described as being a very experienced and senior forensic psychiatris |
| 69. How much experience did the defence examiner have? | Described as being a very experienced and senior forensic psychiatrist |
| 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 |
| 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? | 2  **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: 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.** | It was reported that the appellant had been seen by several medical doctors many specialising in psychiatry and one psychiatric nurse. There was a difference in opinion as to whether he was psychotic at the material time and whether this, and to what extent, diminished his responsibility. The courts heard arguments individuals suffering from a paranoid schizophrenia may be too distressed, ashamed confused or embarrassed to admit their condition and that such a condition may affect the ability to form rational judgment and exercise control. Conversely it was posited that there is a misconception that someone suffering with schizophrenia may not be able to lie, think straight or plan. Consequently, whether the appellant was in fact malingering, level of impairment, ability to plan and exert self-control were the central points of contention.  Defence referred to passages of cross-examination where the prosecution had sought to test the evidence called by the experts. The crown’s case was described as “*simply a theory, a theory that was not supported by expert evidence. As a result, the jury were asked to reach their own conclusions as to the applicant's mental condition at the time of the killing. They were invited to act as amateur psychiatrists*.” Defence referring to two case law decisions opined that it is not sufficient for the prosecution to suggest theories. The theories may be attractive to the lay person but if they have been positively contradicted by expert opinion the prosecution must have more. They should not simply invite speculation that the experts had been successfully duped [by the appellant] that he was mentally ill at the material time (hence malingering). On the judge’s directions being inadequate (ground 2) defence contended that “*the judge's directions were tantamount to an invitation to the jury to substitute their personal opinions on a matter of psychiatric evaluation*”. In summing up the judge reminded the jury they were entitled to take into account all the other evidence in the case and if it conflicted or outweighed the medical evidence they were not bound to accept the doctors' opinions. Referring to case law the point was made that “*it is not open to the Crown in this kind of situation simply to invite the jury to convict of murder without suggesting why the expert evidence ought not to be accepted*.” *While he needs to make it clear to the jury that, if there is a proper basis for rejecting the expert evidence, the decision is theirs — that trial is by jury and not by expert — it will also ordinarily be wise to advise the jury against attempting to make themselves amateur psychiatrists, and that if there is undisputed expert evidence the jury will probably wish to accept it, unless there is some identified reason for not doing so.* Referring to another case, it was advanced that *the prosecution has right (if not duty) to assess the medical evidence and to challenge it, where there is a rational basis for so doing, but also on the primacy of the jury in determining the issue.* |