**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | Choudhuri, R v [2019] EWCA Crim 2341 |
| 2. Date of appeal hearing | 111219 |
| 3. Date of original trial/conviction | 120913 |
| 4. Keywords found in case | 8 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 20 |
| **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)? | 1 |
| 11. Defendant’s education level (at time of offence)? | 2 |
| 12. Defendant’s relationship status (at time of offence)? | 1 |
| 13. Did defendant have any children (at time of offence)? | 99 |
| 14. Was defendant homeless (at time of offence)? | 99 |
| **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) | 2 |
| 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 applicant was incapable of forming the specific intent necessary to commit the offence  2. Throughout the period of the criminal investigation and prosecution he was affected by a serious, undiagnosed psychotic illness, which adversely affected his engagement with police interviews and his conduct of the defence.  3. He was unfit to stand trial  4. In the absence of evidence of psychiatric illness the jury were presented with an incomplete picture of his mental state which undermines the safety of their findings of *mens rea* |
| 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 testimony from two psychiatrists |
| 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? | 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? | Q33: 99  Q33b: 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? | Q34: 99  Q34b: 99 |
| 35. Did appeal court raise concerns about judge at original trial misunderstanding fingerprint/DNA/Digital evidence? **35b.** If yes, Who raised it? | Q35: 99  Q35b: 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? | Q36: 2  Q36b: 99 |
| 37. Did appeal court raise concerns about errors in judge’s summing up of case at original trial? **37b.** If yes, who raised it? | Q37: 2  Q37b: 99 |
| 38. Did appeal court raise concerns about judge’s instructions confusing jury at original trial? **38b.** If yes, who raised it? | Q38: 2  Q38b: 99 |
| 39. Did appeal court raise concerns about how fingerprint/DNA/Digital evidence was presented at original trial? 39b. If yes, who raised it? | Q39: 99  Q39b: 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? | Q40: 99  Q40b: 99 |
| 41. Did appeal court raise concerns about inadmissible evidence being presented at original trial? **41b.** If yes, who raised it? | Q41: 2  Q41b: 99 |
| 42. Did appeal court refer to any existing case law? **42b.** If yes, which? | Q42a: 1  Q42b: R v Marcantonio [[2016] EWCA Crim 14](https://www.bailii.org/ew/cases/EWCA/Crim/2016/14.html); R v Pritchard (1836); R v Padola [1960] 1 QB 325, at 353; R v M (John) [[2003] EWCA Crim 3452](https://www.bailii.org/ew/cases/EWCA/Crim/2003/3452.html); R v Robertson (Eric John) (1968) 52 Cr App R 690; Erskine [[2009] EWCA Crim 1425](https://www.bailii.org/ew/cases/EWCA/Crim/2009/1425.html); [[2009] 2 Cr App R 29](https://www.bailii.org/cgi-bin/redirect.cgi?path=/ew/cases/EWCA/Crim/2009/1425.html); R v Gibbons (Andrew John) [2009] EWCA Crim 2988; R v Blackman [[2017] EWCA Crim 190](https://www.bailii.org/ew/cases/EWCA/Crim/2017/190.html" \o "Link to BAILII version); R v Challen [[2019] EWCA Crim 916](https://www.bailii.org/ew/cases/EWCA/Crim/2019/916.html" \o "Link to BAILII version) |
| 43. Name of appeal judge(s) | Judge Singh, Mr Justice Spencer and Judge Katz |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Add text Mr Christopher Daw QC appeared on behalf of the Applicant Mr Benjamin Douglas-Jones QC appeared on behalf of the Crown (Mr Johnson appeared on behalf of the Crown at the judgment) |
| **ORIGINAL CASE/TRIAL CHARACTERISTICS (code as 99 if not stated and cannot be inferred)** | |
| 45. Date of crime (first date) | 041010 |
| 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: 1 |
| 49. Was this the first trial? | 1 |
| 50. What offence(s) was defendant convicted of/plead guilty to? | Fraud and two counts of perverting the course of public justice |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 1  Q51b: a $1000 dollar bill with the victim’s fingerprint found in the possession of the appellant; testimony from eyewitnesses, cell site evidence |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 1  Q52b: Expert testimony from two psychiatrist (inclusive of reports) at the time of the appeal and prison medical records. Additionally, there were two expert opinions from two psychiatrists (including their reports) |
| 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? | 30 months imprisonment |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Judge Teare |
| 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? | 1 |
| 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? | 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? | Experts 1 and 2 proffered opinions during the trial proceedings. For the first expert there are no reports on his clinical professional background or experience. Expert 2 was instructed by the crown. Again, there were no reports on his clinical professional background or experience. |
| 69. How much experience did the defence examiner have? | Experts 2 and 3 provided expert opinions on behalf of counsel for defence in the form of fresh evidence at appeal. Expert 3 is a forensic psychiatrist but his level of experience is not reported. Expert 4 is a psychiatrist but his level of experience is not reported |
| 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? | 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? | 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? | 2  **Annotations:** Cell site evidence was used but there are no reports of whether a digital expert presented the evidence at the original trial |
| 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:** There are no reports of who provided or presented the cell site evidence |
| 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 |
| 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? | 1 |
| 89. Were probabilities of fingerprint/DNA match mentioned at original trial? | 2  **Annotations:** The fingerprints found on the $1000 bill was reported as matching the victim |
| 90. Did Fingerprint/DNA/Digital expert express his/her confidence in conclusion at original trial? **90b.** If yes, how? | Q90. 99  Q90b. 99 |
| 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? | 2 |
| 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:** The witness statements (including the appellants wife) were deemed as constituting hearsay evidence |
| 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:** There was no mention of a failure to share information with the defence team |
| **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? 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? | 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 they? | Q116. 99  Q116b. 99 |
| **NOTES – PLEASE WRITE ANYTHING THAT YOU THINK IS IMPORTANT BUT WHICH IS NOT CODED ABOVE. THIS MAY INCLUDE QUOTES.** | "(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."  Commenting on the quality of expert testimony/evidence from expert 2 (Paras 96, 98, 99, 100, 102, 103 and 104) proffered during the trial proceedings the appeal court found his evidence “impressive” that, “as an expert, he regards the issue of whether a defendant had the requisite intent to commit an offence as being essentially for the jury. He considers that experts can contribute to that, but he has always been very cautious about saying that somebody could not form the intent with any degree of certainty because there are so many things that need to be taken into consideration.” In relation to fitness to plead and stand trial, we found impressive Dr Cumming's evidence that the applicant was "a man really on form. He was really dealing with evidence, cross-examination ... really, really well". That accords with our own impression, having read the transcripts of the applicant's evidence at his trial.  The courts were also “impressed” by the fact that expert 2 appeared to give evidence which was specifically directed to the Pritchard criteria. He was clearly familiar with those criteria. They were also “impressed” with his evidence in regard to what he would have done had he been in the first experts at an earlier time. They furthered that in their view, that accords with what most responsible experts can be expected to do and would do. The expert in their view gave clear evidence in cross-examination that his opinion is that the applicant was fit to plead and stand trial from the information that he had seen. |