**CODING SCHEME**

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| **SAMPLE DESCRIPTION** | |
| 1. Case | *Wilkinson in* Chall, R. v [2019] EWCA Crim 865 |
| 2. Date of appeal hearing | 160519 |
| 3. Date of original trial/conviction | 1218 |
| 4. Keywords found in case | 5 |
| 5. Decision *Provide quote if short, otherwise summarise* | 1 |
| 6. Number of pages | 13 |
| **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)? | 41 |
| 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)? | 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)? | 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) | 2 |
| 18. What are the grounds/reason(s) for appeal? *Provide quote if short, otherwise summarise* | that the judge was wrong to find that the appropriate starting point in relation to count 2 was ten years' imprisonment because the offending charged in that count did not result in severe psychological harm and did not involve prolonged detention or amount to a sustained incident; secondly, that the judge was wrong to find that the appropriate starting point in relation to count 2 was ten years' imprisonment because the use of a drug as an aggravating factor was already taken into account in count 1, for which a separate and notionally consecutive sentence was passed; thirdly, that the judge was wrong to find that the appropriate starting point in relation to counts 1, 5, 8 , 10 and 13 was six years' imprisonment, because none of the offending covered by those counts resulted in severe psychological harm, or involved prolonged detention, or was a sustained incident; and lastly, that the consecutive sentences on counts 1 and 2 show that the judge did not pay sufficient regard to totality. |
| 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? | 1 |
| 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 Dalton [2016] EWCA Crim 2060, R v Egboujor [2018] EWCA Crim 159 and R v Boyle [2018] EWCA Crim 2567 |
| 43. Name of appeal judge(s) | Lord Justice Holroyde, Mr Justice Popplewell and Judge Rees |
| 44. Name of lawyer(s) in appeal hearing, including who they represent | Miss Kate Brunner QC appeared on behalf of the Applicant Nigel Brent Wilkinson Mr John Price 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) | 0214 |
| 46. Was defendant immediately treated as a suspect? **46b.** If no, then how was defendant immediately treated? | Q46: 2  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? | Nine counts of sexual offences |
| 51. Was there circumstantial evidence in the case? **51b.** If yes, what? | Q51: 99  Q51b: 99 |
| 52. Was there any other evidence in the case? **52b.** If yes, what? | Q52: 99  Q52b: 99 |
| 53. Did defendant provide an alibi for whereabouts at time of crime? **53b.** If yes, was it corroborated? | Q53: 99  Q53b: 99 |
| 54. What was the defendant’s original sentence? | 20.5 years imprisonment |
| 55. Was case originally tried in Crown court or magistrates’ court? | 1 |
| 56. Name of judge(s) in original trial | Judge Patrick |
| 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? | 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? | 99 |
| 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? | 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? | 99  **Annotations:** |
| 98. Was any bad character evidence presented at trial? | 1  **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. 2  Q116b. 99 |
| **NOTES – PLEASE WRITE ANYTHING THAT YOU THINK IS IMPORTANT BUT WHICH IS NOT CODED ABOVE. THIS MAY INCLUDE QUOTES.** | This was one of five cases heard together owing to the common issue as to the approach a sentencing judge should take when assessing for the purposes of a relevant sentencing guideline whether a victim of crime has suffered severe psychological harm. The questions raised for all five of these cases concerned whether: (1) the court should obtain expert evidence before making a finding of severe psychological harm? (2) If not, on what evidence can it act? (3) In particular, can the court make such a finding on the basis only of the contents of a Victim Personal Statement ("VPS")? Defence for one of the five appellant accepted that expert evidence was not necessary in every case but submitted that consideration should be given to obtaining a clinical assessment of the psychological state of a victim whenever there is scope for argument as to the degree of psychological harm. She submitted that the court should be able to identify exactly what harm has been caused and not rely on the mere assertion of the victim. She furthered that the court should therefore require a clinical assessment of the victim before making a finding of severe psychological harm. In response prosecution contended that there is no such requirement and that it is appropriate for judges to use their forensic experience to make the necessary judgment. Expert evidence may be received, but it is not a necessary requirement and will only rarely help a judge. Para 12. It is was subsequently submitted that in the absence of expert evidence a judge has no benchmark against which to assess whether psychological harm is severe. No guidance is given as to whether, for example, such an assessment can be made on the basis of a single adverse psychological impact or whether a combination of psychological impacts is necessary. The defence suggested a list of the common signs and symptoms of PTSD or of depression could be provided with a checklist to enable a court to assess the degree of psychological harm. She does not argue that a written report is necessary in every case, because she recognises that in some cases the process of clinical assessment might in itself add to the trauma suffered by the victim. But she argues that it should not be left to a sentencing judge to make a purely subjective assessment when a list of relevant considerations could and should be provided. Para 14. The prosecution submitted that such a list of categories of adverse impact or of commonly encountered signs and symptoms would be impracticable. He points out that the circumstances of cases vary and that no such list could foresee all possible combinations of adverse impacts. He submits that the sentencing guidelines are properly predicated upon an experienced judge being able to assess in a particular case whether the psychiatric harm suffered by a victim can properly be described as severe. The court subsequently agreed with the prosecution submissions furthering that when a sentencing guideline directs a sentencer to assess whether the victim of an offence has suffered severe psychological harm or to make any other assessment of the degree of psychological harm, a judge is not thereby being called upon to make a medical judgment. The judge is, rather, making a judicial assessment of the factual impact of the offence upon the victim. Thus, submissions to the effect that a judge who makes a finding of severe psychological harm is wrongly making an expert assessment without having the necessary expertise are misconceived. The judge is not seeking to make a medical decision as to where the victim sits in the range of clinical assessments of psychological harm, but rather is making a factual assessment as to whether the victim has suffered psychological harm and, if so, whether it is severe. Para 19. The courts made reference to the cases of R v Dalton [2016] EWCA Crim 2060, R v Egboujor [2018] EWCA Crim 159 and R v Boyle [2018] EWCA Crim 2567 provide recent examples of the application in practice of the principle that expert evidence is not a necessary precondition of a finding of severe psychological harm. |