



[2026] EWCA 413

Benjamin Field

And

The King

SUMMARY OF THE DECISION OF THE COURT OF APPEAL CRIMINAL DIVISION, ON 16 APRIL 2026

(The Vice President, Mr Justice Goose and Mr Justice Butcher)

1. This is an appeal by Benjamin Field against his conviction at trial for the murder of Peter Farquhar following a reference by the Criminal Cases Review Commission (“CCRC”).
2. There have been two previous judgments of the Court of Appeal Criminal Division in this case. The appellant’s appeal was dismissed by the full court, in its judgment of 18 March 2021, [2021] EWCA Crim 380 (“CACD Judgment 1”). A differently constituted court refused his application to re-open that appeal in its judgment of 16 March 2022, [2022] EWCA Crim 316 (“CACD Judgment 2”). [2]
3. The CCRC considered that both bases advanced to the CCRC by Mr David Jeremy KC on behalf of the appellant deserved consideration by this court. These were put in these terms:-
 - i. There is a new argument - drawing on the authorities concerning consent procured by deception in the law of sexual offences - that the jury in Mr Field's case was misdirected in respect of causation
 - ii. There are exceptional circumstances which justify inviting the Court to reconsider the argument on causation made on Mr Field's appeal (section 13(2) of the Criminal Appeal Act 1995). [5]

The binding effect of previous CACD Judgments

4. The court noted that under s 9(2) of the Criminal Appeal Act 1995 a CCRC reference is not a reopening of an appeal, and should be treated as a fresh appeal against conviction. [11]
5. The court held that the correct position, following a reference under section 13(2) of the Criminal Appeal Act 1995, was to decide for itself whether the conviction is safe, giving due regard to CACD Judgment 1, but not being bound by it. [12]

Factual background

6. Mr Farquhar was 69 years old when he was found deceased by his cleaner on the sofa at his home address on the morning on 26 October 2015. The pathologist's evidence was that death was probably caused by the ingestion of Dalmane, a prescribed sedative, together with whisky. There was no expert evidence of smothering, although this did not rule out that it occurred. [13]
7. The amount of Dalmane found at post-mortem was consistent with a therapeutic dose. There was no direct evidence as to how that dose was administered. The most obvious possibilities were that Mr Farquhar took it voluntarily, or that it was given to him by the appellant without his knowledge. The appellant accepted that he had made the bottle of whisky available to Mr Farquhar. He said he left it as a temptation, whereas the prosecution alleged that they drank it together and that the appellant was present. On either account, Mr Farquhar drank the whisky knowingly and voluntarily. [13]-[14]
8. One of the appellant's journal entries contained what the prosecution alleged was a plan for murder. [15]
9. The appellant was convicted of murder on 9 August 2019, after being tried with two others on an indictment containing 8 counts. Those two others were acquitted of the offences alleged against them. [1]

Kennedy (No2)

10. The House of Lords in *R v Kennedy (No 2)* [2007] UKHL 38; [2008] 1 AC 269 ("*Kennedy (No 2)*") said that an act by someone other than the defendant (in this case the victim) will break the chain of causation between the alleged misconduct and the prohibited outcome (in this case the death of the victim) only if that act is free, deliberate and informed, "FDI". FDI is the test for establishing whether the act was "voluntary" in law so that it alone is treated as the cause of the prohibited outcome. [29]
11. Was Mr Farquhar's decision to drink the whisky "informed"? The prosecution submitted that it was not, for the reason given in CACD Judgment 1, namely that he was not informed of the fact that the person with whom he was drinking intended that he should die. This was true, as a matter of fact, because on the directions they were given the jury must have been satisfied that the appellant had directly provided the drink, which was consumed in his presence. They must also have been sure that the appellant did intend that Mr Farquhar would die, and that Mr Farquhar did not know this. The question, therefore, was whether that intention was legally relevant to the voluntariness of the decision of Mr Farquhar to drink the whisky. [29]

Decision of the court

12. The court identified three key questions which they needed to address:
 - a. Whether the judge and CACD Judgment 1 erred in finding that the undisclosed intention of the person with whom Mr Farquhar drank the whisky would, in law,

render his decision to drink it involuntary for the purposes of the rule explained in *Kennedy (No 2)*.

- b. If the undisclosed intention of the person with whom Mr Farquhar drank the whisky could, in law, render his decision to drink it involuntary for the purposes of the rule explained in *Kennedy (No 2)*, was this was a matter of fact for the jury to decide and did the judge's directions leave the issue properly to them?
 - c. In any event, were the judge's directions adequate to leave the issues clearly and accurately to the jury? [36]
13. On the first question, the court held that CACD Judgment 1 had misapplied *Kennedy (No2)*. The fact that the appellant secretly intended that Mr Farquhar should die did not change the act or, in law, mean that Mr Farquhar's decision to drink whisky was not free, deliberate and informed. There was no evidence that the appellant had 'administered' the alcohol. In legal terms, the appellant's conduct in relation to the whisky was not materially different from the conduct of the drug supplier in *Kennedy*, who was held not to have caused the victim's death. [38]-[43]
14. On the second question, the court considered the jury had not been properly directed to decide the relevant factual issues for themselves. In particular, the directions effectively withdrew from the jury the question whether Mr Farquhar's decision to drink had been voluntary in the legal sense, once they concluded that the appellant intended that he should die. [44]-[47]
15. On the final question, the court held that the legal directions were, in any event, defective. The repeated use of the expression "and/or", and the inclusion of three different alleged methods of causing death did not sufficiently direct the jury to consider and make findings as to the circumstances in which Dalmane was consumed. The directions also left it open to the jury to convict on the basis that Mr Farquhar had been killed by smothering, without requiring a finding that this had occurred and in circumstances where there was insufficient evidence to support such a conclusion. Finally, the jury was not directed in a way that correctly reflected the pathologist's evidence as to the cause of death, either in the route to verdict or in the judge's answer to the jury's question. [48]-[58]

Conclusion

16. For the reasons set out, the court found that the conviction for murder was unsafe and quashed it. Given that this resulted in two inconsistent decisions of the Court of Appeal Criminal Division in this case, the court considered it should certify that this decision involved a point of law of general public importance, and gave leave to the prosecution to appeal to the Supreme Court. [59]
17. The court also directed a re-trial. Whether that will take place, and what the law is which will apply at it if it does will be affected by the Supreme Court's decision on the appeal.