



JUDICIARY OF  
ENGLAND AND WALES

**Guildford Crown Court**

**R -v- Benjamin Curtis**

**Sentencing Remarks of Mr Justice Nicol**

**17th June 2013**

You may stay seated for the time being.

Benjamin Curtis you have pleaded guilty to the manslaughter of Ocean Elliott.

Ocean was 3 ½ months old in April 2007. She was your child and in your sole care. Like most babies, she cried. You picked her up and shook her 4 or 5 times. You may have been tired. You may have been uncertain as to how to placate Ocean. You may have been cross with your partner. But none of that is any excuse whatsoever for your loss of temper and mistreatment of that baby.

The results were catastrophic. A baby that young has undeveloped neck muscles. If shaken violently, her head will have swung back and forth and her brain will have knocked against the inside of her skull. The brain injury which resulted had devastating effects. She was severely disabled. She could not sit on her own, let alone walk. She was functionally blind. She could not clear her lungs properly in the way that everybody else takes for granted. She had to be fed through a tube inserted into her body. In the course of 2009 she contracted pneumonia and then later swine flu. She suffered from seizures. As time progressed these occurred every day and were difficult for even doctors to control. Her distress was clear to those who were caring for her.

You have already been prosecuted once for inflicting really serious harm on Ocean. You were acquitted of intentionally causing her really serious harm. I acknowledge that what you did not with intentional malice to that baby. The conviction for assault was in February 2008. But at that time, Ocean was still alive. The present case started after her death. Consequences matter and when the consequences become the more serious, they can lead, as in your case, to more serious charges.

You are now 30 years old. I have seen and taken into account the pre-sentence report which was prepared for the previous case. That notes you have a learning disability and a limited ability to understand verbal information. Your previous convictions and police record are not material to the task I have to perform with two qualifications. One is the assault on Ocean which I have already mentioned and to which I will return. The other is that you were cautioned in 2006 for hitting Ocean's step-brother on his bare bottom. That, too, was, it seems, in a fit of temper.

The pre-sentence report also recognised that you had taken full responsibility for your actions. You pleaded guilty to the assault on Ocean, although only on the day of your previous trial.

In these proceedings you have not resiled from your admission of responsibility for shaking Ocean. You did originally plead not guilty to the present charge, but, I accept that this was because of two matters which turned on expert evidence: whether your conduct was a significant contributory cause to Ocean's death 2 ½ years later; and whether Ocean's brain injury could possibly have been due to some other non-accidental injury. These were not matters within your own knowledge. It was only last week that your legal team obtained clear evidence from the experts they had commissioned to say that it was plain your shaking had been a contributory cause of death and it was not possible that the injury to Ocean's brain could have been the result of any earlier incident. This is therefore an unusual case where the lateness of your plea of guilty should not be held against you. I will give you full credit for it.

I also recognise that you have been previously prosecuted for the same wrongful act. I will, of course, make a reduction for the sentence which was then imposed. But over and above that, I should mark that this is the second time you have been through criminal proceedings and, as your counsel submitted, you did have to wait over 3 years after Ocean's death before you were charged with manslaughter and learned that you were indeed to face a second prosecution. In that interval, you were convicted of another offence, but it was of a quite different kind and the magistrates thought it could be dealt with adequately by a conditional discharge and a restraining order. It is therefore of little importance in my decision in the present matter.

Your counsel recognises that this offence is so serious that only a sentence of immediate imprisonment will be sufficient.

Taking all of this into account (including the sentence which was passed on you for the assault on Ocean) but assuming you had contested the present charge, my sentence would have been 3 years imprisonment. Because of your plea of guilty, the sentence will be one of 2 years imprisonment.

Stand up.

Benjamin Curtis for the manslaughter of Ocean Elliott you are sentenced to 2 years imprisonment.