

Cruelty to a child under sixteen years

This file contains two directions;

- 1, Cruelty to a child under sixteen years – whether or not there was neglect
- 2, Cruelty to a child under sixteen years - whether D had responsibility and whether there was an assault

Cruelty to a child under sixteen years (2) (Issues, whether act of cruelty and responsibility)

The prosecution case in relation to Count * is that D** neglected C** by failing to provide adequate medical aid and failed to take her to a doctor or hospital on **. She denies this, saying that she herself gave adequate medical treatment.

Someone is guilty of an offence, if having attained the age of sixteen and having responsibility for a child under that age she wilfully neglects that child, in a manner likely to cause her unnecessary suffering or injury to health. Breaking that down into the various elements of the charge, you would have to be sure of the following before the offence is proved:

a person having attained the age of sixteen

There is no dispute that D** is aged over sixteen.

having responsibility for the child under sixteen

Again, there is no dispute either, that as her mother, D** had responsibility for C**, or that C** was aged under 16.

wilfully neglected C** in a manner likely to cause unnecessary suffering or injury to health

A parent liable to maintain a child, as D** was, is deemed to have neglected her in a manner likely to cause injury to her health if she has failed to provide adequate medical aid or has failed to take steps to procure that it be provided.

The word “wilfully” means that there must have been deliberate neglect of the child. A parent “wilfully” fails to provide adequate medical attention for a child if she *either* deliberately fails to do so, knowing that there is some risk that the child’s health may suffer unless she receives such attention, *or* does so because she does not care whether the child may be in need of medical treatment or not. There is no suggestion in this case that D** did not care whether or not C** needed medical treatment, so the issue is whether or not D** deliberately failed to do obtain medical aid, knowing that there was some risk that the C**’s health might suffer unless she received such attention.

A parent, who knows that her child needs medical care and deliberately, that is by a conscious decision, refrains from calling a doctor or taking her to hospital, is guilty. But a parent who has genuinely failed to appreciate that her child needs medical care, whether through personal inadequacy, stupidity, or some other reason, is not guilty.

So, the questions which you must answer, having regard to all the evidence and the directions which I give you, in relation to Count * are:

1. After being burnt, did C** need more medical aid than D** gave and/or did she need to see a doctor or be taken to hospital?

If you are sure that the answer to this question is yes, move on to question 2. If you consider that it may be that the defendant's treatment was adequate and that there was no need for C** to see a doctor, she is not guilty and you do not need to consider any of the further questions.

2. Did D** know that C** needed more medical aid than she provided and/or needed to see a doctor or be taken to hospital and that her health might be at risk if she were not provided with it?

If you are sure that the answer to this question is yes, move on to question 3. If the answer may be no, she is not guilty and you do not need to consider the last question.

1. Did D**, by a conscious decision, decide not to give C** more medical aid or not to take her to a doctor or to hospital?

If you are sure that the answer to this question is yes, she is guilty of Count *. If the answer may be no, she is not guilty of Count *.

Cruelty to a child under sixteen years (2) (Issues, whether act of cruelty and responsibility)

Someone is guilty of an offence, if having attained the age of sixteen and having responsibility for a child under that age, she wilfully assaults or ill treats that child, in a manner likely to cause her unnecessary suffering or injury to health.

Breaking that down into the various elements of the charge, you would have to be sure of the following before the offence is proved:

a person having attained the age of sixteen

There is no dispute that D** is aged over sixteen.

having responsibility for the child under sixteen

There is no doubt that at the relevant times C** and C** were aged under sixteen.

You do though have to consider whether or not D** had responsibility for C**.

Obviously, a parent or step-parent has responsibility for a child. Similarly, someone who is legally liable to maintain a child has responsibility for her. D** does not come within either of those categories.

However, in addition, a person has responsibility for a child under sixteen if she has care of her. Did D** have care of C**? That is something you have to decide. The words "care of" are ordinary English words which have no special meaning. Such "care" may be shared between more than one person, for example, between a parent and another person or partner. There is no need for any formal or legal family relationship. Or another person may have care of a child during periods when a

parent is absent. So, to take a completely unrelated example, if parents go out to the cinema leaving a child with a baby-sitter, that baby-sitter has care of the child.

The prosecution say that D** and M** lived together with their children in such a way that they both shared care of the other's children or step-children, both when they were together in the house and when M** was out – e.g. when she was working. D** denies this. She says that ***

So the first key question which you have to answer, having regard to all the evidence and the directions which I give you, is

During the relevant periods specified in each count, did D** have care of C**?

If the answer to that question may be “no” she is not guilty of the offence charged and you do not have to consider the remaining key questions. However, if you are sure that the answer is “yes”, please go on to consider the other aspects of the offences and the remaining key questions.

wilfully assaulted or ill-treated C** in a manner likely to cause unnecessary suffering or injury to health

The word “wilfully” simply means that there must have been a deliberate act.

An assault is the unlawful use of force - for example beating, punching or kicking a victim.

Any suffering or injury or injury to health must be more than a slight fright or some small mental anxiety.

In this case, D** does not dispute that if a person did what C** says she did, it is likely to have caused unnecessary suffering or injury to health.

The punishment of a child, whether or not she or he has been naughty, cannot provide a defence. In other words, saying that C** had been naughty and that she was being punished is no excuse.

The prosecution case is that D**

If what C** described when giving evidence happened, then D** is guilty of cruelty.

She simply says that none of this happened, that C** has fabricated her account.

If what D** says may be true, then she is not guilty.

So, essentially, this case boils down to one further question in relation to each count. Do you believe the evidence of C** and the other prosecution witnesses, or do you believe the evidence of D** and the other defence witnesses?

So, the remaining key question for you to answer, having regard to all the evidence and the directions which I give you, is

Did D**?

If you are sure that the answer is “yes”, the defendant is guilty. If the answer may be “no”, she is not guilty.