



Judicial Power of the Nation

YOUTH TRIAL COURT No. 3
CCC 123/2022

////nos Aires, June 10, 2022

PROCEEDINGS AND SEEN:

This Youth Trial Court No. 3 of the Autonomous City of Buenos Aires, composed of Judges Javier A. De Luca, Gonzalo Guerrero, and Daniela R. Part, to render judgement in the case identified as: "Defendants: D. Jack and others. Offences: aggravated culpable homicide, serious injury and others", File No. CCC 123/2022 regarding the defendants Jack D., John D., and Mary J., defended by attorneys María Eugenia Sagasta, Octavia Botalla, and Glenda De la Cruz respectively.

Likewise, the Prosecutor General, Dr Ricardo Narváez, and the attorneys representing the plaintiffs, Ariel Pellegrino and Yamila Luzza, representing the victims Olivia F. and Bill G. respectively, take part in the proceedings.

DECISION AND REASONS:

Judge Javier A. De Luca said:

This proceeding was initiated by the intervention of Police Officers Greg D. and Cathy P., of the Police Station No. 1 of the Buenos Aires City Police, who on 26 March 2021, at approximately 22:35, went to the parking lot of the bar "Blue Moon", located on 670 Pellegrino Street, due to an emergency call made to 911, by a person who identified himself as Ben, who reported that his friend had been stabbed and that he was unconscious with a large haemorrhage in his neck and that his aggressors had fled. Upon arriving at the scene, the officers spotted a woman walking away and arrested her. The woman said her name was Mary J. and stated that she was going to get her brother, who was a paramedic, to help her assist the wounded man.

Upon arrival at the scene, the police officers found a man lying on the ground who was being assisted by medical personnel and was immediately transferred by a Emergency Medical Care System ambulance to the local hospital. Another man, who identified himself as Ben K., was also at the scene and said that he was the one who made the call to the emergency telephone number. The man stated that the attackers had fled in an old blue sports car heading towards Del Libertador San Martin Avenue.

At the same time, the police officers learned that the vehicle in which the aggressors had fled ran over a woman and then hit a light pole.

When a police car arrived at the intersection of San Martín and Belgrano streets, the officers observed a large number of people around a Ford, model Taunus,

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licence plate VAC 1031, which had crashed into a light pole. As they made their way through the crowd, they observed a woman of approximately 35 years of age on the ground, wearing a blue T-shirt, black sports shorts, and black sneakers. They requested the presence of the emergency ambulance service, and the medical personnel certified the death of the woman, who was determined to be Olivia F.

The driver of the vehicle that caused the incident was identified as Jack D., 17 years old, who was injured and was treated by health workers. The person in the passenger seat was identified as John D., 25 years old, who was rushed to the hospital with polytrauma.

The investigation of the case was delegated to the Public Prosecutor's Office (art. 196 of the National Code of Criminal Procedure).

During the investigation, the victim's brother Olivia F. and Bill G., with their respective legal representatives, acted as plaintiffs.

II. The proceedings were brought before this Trial Court due to the indictments filed by the public prosecutor (folios 248/253) and the plaintiffs (folios 254/312), under Article 347 of the National Code of Criminal Procedure, for the charges detailed below.

In the document containing the charges filed by the prosecutor's office, the events were described as follows:

"Fact No. 1: John D. is charged that on March 26, 2021, at approximately 22.35 h, in the parking lot of the bar "Blue Moon", located at 670 Pellegrino Street, by means of a screwdriver used as a weapon, he attempted to cause the death of Bill G.

The facts started with an argument between the defendant John B. and Bill G., together with his two friends Bob L. and Ben K. in the aforementioned bar. John D., who was in a state of significant drunkenness, was persuaded by his girlfriend Mary J. and his brother Jack D. to leave the place to stop the argument.

Already in the premise's parking lot, and about to leave, they met again a few minutes later. On that occasion, Bill G. took a screwdriver from his own car and drew a long, deep scratch across the hood of John's car.

Thereupon, Mary - John's girlfriend - pushed Bill and insulted him for provoking John. The latter, who had already entered his car, got out of it, threw himself at Bill, wrenched the screwdriver out of his hands and screamed, "I'm gonna kill you, you bastard!". He then stabbed him several times in the chest and stomach with the sharp

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tool, but missed him. Bill slipped and fell to the ground along with Mary, who fell on top of him.

At that moment, John drove the screwdriver through Bill's neck, which caused an injury to the external carotid artery. Bill began bleeding profusely from his neck. Ben and Bob attempted to stop the flow of blood, pushing Mary who was leaning over Bill with her hands on his neck.

Mary got up and ran away from the scene in search of help, more precisely, of her paramedic brother who lived a few blocks away from the bar.

Then Jack, John's younger brother, who did not have a driving licence, lifted him off the ground, put him in the passenger seat and started the vehicle with the intention of fleeing the scene.

Bob, noticing that the aggressors were attempting to run away, began to pursue them with his vehicle.

Ben continued trying to stop the bleeding and managed to call 911. The ambulance arrived at the scene within 7 minutes and transported the injured man to the local hospital. Bill underwent emergency surgery and managed to survive.

Fact No. 2: Jack D. is charged with causing the death of Olivia F. and serious injury to John D. on 26 March 2021, at approximately 11.00 p.m., by unlawful driving of a motor vehicle, under the conditions detailed below:

After the circumstances recounted in "Fact No. 1", being approximately 11.00 pm, Jack drove his brother's automobile, without having a driving licence and without experience in driving vehicles, with the intention of fleeing the scene and procuring the escape of his brother John. He drove the vehicle at an average speed of 130 km/h through the badly lit inner city streets.

While driving, he significantly exceeded the maximum speed limit, and repeatedly ignored red lights at major intersections, where he also failed to slow down.

Finally, while turning a bend in the avenue, Jack struck Olivia F., who was stepping across the road at the traffic light. Although Jack attempted to brake the vehicle, he was unable to avoid hitting the victim. The impact occurred at a speed of 120 km/h. The victim was ejected and hit the wall of a house with her head. She died instantly from multiple skull fractures and massive brain trauma.

Following the incident, Jack lost control of the vehicle and collided with a wrought-iron lamp post at a speed of 90 km/h. His brother John, who was on the

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passenger seat without a seatbelt, crashed through the windshield and suffered severe fractures to his skull, neck, arms, and ribs.

Jack was cushioned by the driver's airbag and suffered only fractures to five ribs and severe whiplash trauma.

The Prosecutor has submitted the case to trial in relation to the defendant John D. as the author of the crime of attempted intentional homicide (art. 45 and 79 of the Penal Code) and Jack D. as the author of the crime of culpable homicide aggravated by the unlawful driving of a motor vehicle, driven in excess of the speed limit of more than thirty kilometres above the maximum allowed, without driving licence and with recklessness (art. 84 bis of the PC), in concurrence with culpable serious injury aggravated by the circumstances described above (art. 94 bis of the PC), It should be noted that the Prosecutor did not press charges in relation to Mary J., who was acquitted for non-existence of a crime.

Furthermore, the plaintiff representing Oswalf F. - brother of the victim Olivia F. - requested the submission of the case to trial in relation to Jack D., whose conduct, he considered, qualifies as the crime of intentional homicide aggravated by having been carried out to cover up another crime and/or to procure impunity for himself or for another (art. 80 para. 7 of the PC).

According to what was proposed by the plaintiff, the Fact No. 2, was indicted as follows:

"Jack D. is charged with having caused the death of Olivia F., on March 26, 2021, at approximately 11.00 pm, while driving a motor vehicle unlawfully, with the purpose of procuring John's impunity.

After the attempted homicide committed by John, which is being investigated in the present proceedings, at approximately 11.00 pm, Jack drove with the purpose of procuring the escape of his brother. He did this without a driving licence and without driving experience. He drove the vehicle at an average speed of 130 km/h, through poorly lit streets in the city centre.

While driving, he significantly exceeded the maximum speed limit, and repeatedly ignored red traffic lights at major intersections, where he also failed to slow down.

Finally, with the certain representation of the probability of causing the death of a bystander, while turning a bend in the avenue, Jack struck Olivia F. who was

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stepping across the street at the traffic light. Although Jack attempted to brake the vehicle, he failed to avoid hitting the victim knowing that this was unlikely to happen. The impact occurred at a speed of 120 km/h. The victim was thrown up in the air and her head hit the wall of a house. She died instantly from multiple skull fractures and massive brain trauma.

Following the accident, Jack lost control of the vehicle and struck a wrought-iron light pole at a speed of 90 km/h. His brother John, who was seated on the passenger seat without a seat belt, crashed through the windshield and suffered severe fractures to his skull, neck, arms, and ribs.

Additionally, the plaintiff Bill G., assisted by his legal representative, described the charge as follows (identified here as Fact No. 1): "John D. and Mary J. are charged that on 26 March 2021, at approximately 10.35 p.m., in the parking lot of the "Blue Moon" bar, located at 670 Pellegrino Street, by means of a screwdriver used as a weapon, they attempted to cause the death of Bill G. with extreme cruelty. Jack D. is also charged with helping John D. to evade the investigation in relation to the act he and Mary J. are charged with.

The facts originated from an argument between the accused, who was in a significant state of alcohol intoxication, and the victim Bill G., together with his two friends Bob L. and Ben K. in the aforementioned bar, which continued in the bar's parking lot.

There, in the heat of the argument, Bill G. took a screwdriver with the sole purpose of damaging John's vehicle, which he did. John reacted angrily, got out of his vehicle, threw himself at Bill, ripped the screwdriver out of his hands and yelled, "I'm gonna kill you, you bastard!". He then stabbed Bill G. several times in the chest and stomach with the sharp tool, while Bill G. fortunately managed to avoid the attacks. However, Bill G. slipped and fell to the ground, Mary fell over him and John ran the screwdriver through Bill's neck, injuring an artery. After that, Mary B. stood over the victim's body which prevented his friends from assisting him, so they had to remove her from the place, after which she ran away.

John's younger brother Jack, who did not have a driving licence, then lifted John off the ground, put him in the passenger seat and started the vehicle with the intention of fleeing the scene. Bob, seeing that, began to pursue them with his vehicle.

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Ben continued to try to stop the bleeding and managed to call 911. The ambulance arrived at the scene within 7 minutes and transported the injured man to the local hospital. Bill underwent emergency surgery and managed to save his life.

The plaintiff charged John D. with attempted murder aggravated by extreme cruelty (art. 80, paragraph 2 of the PC), Mary J. as a necessary participant in attempted aggravated murder (art. 80, paragraph 2 and 45 of the PC) and Jack D. for the offence of concealment (art. 277 of the PC).

III. After the trial began, the accused Jack D made a statement (after being reminded of his rights to refuse to testify without this causing presumption against him and that he does not do so under oath to tell the truth). He acknowledged his intervention in the events as they were told to him. He said that, when he got into the vehicle all his mind was focused on escaping from the place so that his brother would not return to jail where he had served a sentence of one year and a half in prison, that the situation was unfair because Bill had previously provoked and assaulted him, that he was aware of the risks he was generating with his driving but that he was only thinking of his brother and that one of the friends of the injured person was chasing them with his vehicle. He stated that it was not his intention to cause Olivia's death and that he deeply regrets what happened.

In his statement, the accused John D. made use of his right to remain silent and did not make any statement regarding the alleged facts.

In turn, the defendant Mary J. also made a statement. She said that, at the time of the facts, she was in a relationship with John, who is a dog trainer and a volunteer at a home for the elderly. She related that her intention at all times had been to prevent a fight between John and Bill. That is why she persuaded him to leave the bar, seeing that John was drunk and that the argument was getting more and more intense. He recalled that outside the bar when he saw Bill scratching John's car, she insulted him for provoking John. On the other hand, she expressed that she has knowledge of first aid and that when she saw the flow of blood that Bill was losing, she knew that it was an injury to an artery and that the only manoeuvre indicated in such cases is to press down the artery to stop the bleeding and she immediately decided to do so. She mentioned that, when she was trying to stop the bleeding, Bill's friends pulled her out by force and that then, she ran in search of help from her brother, who is a paramedic and lives two blocks away from the place of the event, but that before arriving at her brother's house,

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she was arrested. She maintained that at no time did she participate in the aggression and that she does not understand why she is charged, if she did not commit any crime.

In the debate hearing, statements were received from witnesses and police personnel, under oath to tell the truth and under the provisions of the Penal Code on false testimony.

Witness-victim Bill G. referred that, on the day of the facts, he and his friends Bob L. and Ben K., had attended the bar "Blue Moon". There they had had an argument with a person whose name was John D. -as he later learned-, whom they did not know at the time. He recalled that when they left the bar, he had been very angry about it and decided to take revenge by damaging John's vehicle, for which he waited until he was about to get in and thus identify which was his vehicle. He said he never imagined that he would have such a disproportionate reaction. Moreover, he recalled that John said he would kill him and began to drive the screwdriver into his body. He stated that he managed to avoid the first stabs, but after that, he fell on the ground, where he was attacked to the neck, and he believes he lost consciousness given that he does not remember any more. He regained consciousness at the hospital, where he was told that he had to undergo emergency surgery and that he was "miraculously" alive because the wounds had affected vital areas.

Witness Ben K. then testified that he had gone to the "Blue Moon" bar that night with Bill G. and Bob L., and that around 10.35 p.m. they were leaving when his friend Bill scratched the car of a person with whom they had had an argument inside the bar. He recalled that the person, who he later learned was named John, yelled, "I'm gonna kill you, you bastard," and then stabbed Bill in the chest and stomach with the screwdriver several times. He then saw John run the screwdriver across Bill's neck and a large gush of blood began to flow out. Once on the ground, the woman, who he later learned was the aggressor's girlfriend, fell on top of his friend who was bleeding. He saw that the woman brought her hands to Bill's neck, and in his desperation and shock, pushed her away to try to stop the bleeding. He recalled that he was able to call 911 and the ambulance arrived immediately and rushed his friend to the hospital, where he underwent emergency surgery, and his life was saved.

Afterwards, Bob L. testified. He said he was a friend of Bill G. and Ben K. and recalled that on the night of the incident he had gone out with them. In a bar they had an argument with a guy who he later learned was named John. Later, in the parking lot

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of the bar, this John stabbed his friend Bill and, when he saw John and another male attempting to flee the scene in his own vehicle, he ran to his car and began chasing them to prevent their escape. The person who was with John was driving. He never saw the woman again. He remembered that, at a certain point in the chase, the fleeing car turned right. He heard braking and a loud noise. He saw a woman lying on the ground and the car embedded in a light pole.

Then, the witness Peter V. said that he is an automobile mechanic and that he has a garage in the city of Buenos Aires. He went on saying that he knows John D. because at the time of the facts he was his employee. He recalled that John had been in prison and that he saw him recovered and willing to work. Moreover, he stated that he has known him for 8 years and that since the age of 17, when he dropped out of school, he worked intermittently in his workshop. He said that John managed to buy a second-hand vintage sports car and that, in his spare time, he was always tuning and repairing it. He recalled that the last repair he had done to the vehicle was the installation of an airbag on the driver's side.

Next, Oswald F. gave testimony. He said he was the brother of Olivia F., who died when she was run over by Jack. He remembered his sister and expressed that she was a single mother and that her three children, aged three, five and ten, were in her sole care because the children's father had died a year before. Now her nephews were orphans. He pointed out that on the day of the incident her sister had gone for a walk and that he never imagined he was going through this. He added that he had nothing more to say, he just wants justice.

Next, police officers Greg D. and Cathy P., who conducted the proceedings on the day of the incident and arrested Mary J. on Rose Park Lane, testified.

Police investigator Arthur Z., in his statement, said that after Mary's arrest, she told him that she threw herself on Bill and fell over him when she tried to separate him from John, since she knows her boyfriend and she is aware that he is very temperamental and could have violent reactions. Arthur added that the defendant told him that she pressed on Bill's neck to stop the bleeding, for which she would have knowledge because she had completed a first aid training program and, given the complexity of the situation, she decided to look for her brother who lives nearby and is a paramedic. Finally, she expressed to him that this same version was the version that she had given to the police officers who arrested her.

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Police Officer Craig H. reported the criminal records of Jack, John and Mary. Specifically, he expressed that Jack and Mary had no criminal record and that John had two convictions for robbery, the first a fine imposed five years ago and the second consisted of a prison sentence of 1 year and 6 months, which was imposed three years ago.

As for the documentary evidence, the expert reports referring to John D.'s blood alcohol level were read into the debate and the medical expert Dr. Ellen A. and the accident expert Ernest B. testified during the debate.

Finally, Steve J., Mary's brother, testified. He stated that he is a paramedic and was therefore in a position to assist Bill in the situation in which he found himself and added that he lives on the street where he later learned that his sister had been arrested.

Mary J.'s first aid course certificate was incorporated.

IV. Arguments of the public and the private prosecution and of the defenders.

Pursuant to Section 393 of the National Code of Criminal Procedure, the pleadings of the parties were heard, which I will detail below:

A. Argument of the Public Prosecutor's Office

The prosecutor, Dr. Ricardo Narvez, considered that with the evidence produced during the trial, the facts of the present case were accredited, in the same way as they had been described by the prosecutor of the previous stage in the document containing the charges requiring the trial.

He pointed out that the materiality of the facts and the liability of John and Jack in each one of them was proven by the testimonial statements heard during the trial and the documentary evidence incorporated.

He described the conduct attributed to John D. as attempted voluntary homicide (art. 42, 45 and 79 of the PC) and expressed that the defendant mentally represented the possibility of causing the death of Bill G. since, moments before he told him that he would kill him and then attacked and/or injured him in vital areas, such as his chest and neck.

As for Jack, he pointed out that his conduct is legally considered the crime of culpable homicide aggravated by the unregulated driving of a motor vehicle, driven in excess of thirty kilometres above the maximum allowed speed, without driving licence

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and with recklessness (art. 84 bis of the PC), in concurrence with culpable serious injury aggravated by the circumstances previously described (art. 94 bis of the PC).

He went on saying that this is a culpable crime, in which the defendant created an impermissible risk and breached his duty of care, which caused the death of Olivia and serious injury to John.

The crimes of culpable homicide and culpable injury require that the perpetrator cause death or injuries by the unlawful driving of a motor vehicle and here there were several violations to them, such as speeding, loss of control over the motor vehicle, his lack of driving licence because he was a minor.

Regarding John D., he requested the Court to sentence him to 10 years imprisonment, legal accessories, and the burden of the costs of the trial.

As for Jack D., since he was a minor and was subject to the special criminal regime of the Act No. 22.278, he requested his declaration of criminal responsibility for the mentioned crimes and, as for the need or not of punishment, he explained that he would express his position after the tutelary treatment period established by the mentioned regime (art. 4 of the Youth Criminal Act).

B. Argument of the plaintiff representing the victim Olivia F.

The plaintiff, representing the brother of Olivia F., stated that the charges described in the indictment were proven, due to the evidence that he mentioned and assessed.

Unlike the prosecutor's proposal regarding Jack D.'s conduct, he considered that the act should be qualified as intentional homicide, because the perpetrator acted with the certain representation that he could kill someone and he went on disregarding the possible consequence. The attorney highlighted that the defendant himself had recognised that the risk of running over bystanders and the possibility of not being able to maintain control of the vehicle was represented and, nevertheless, he went ahead with his actions.

At the same time, he pointed out that in this case he could be charged with the aggravating circumstance foreseen in Article 80, paragraph 7 of the Penal Code, since the defendant had acted to conceal another crime and to seek impunity for himself or for another. He lastly added that once his responsibility had been declared, and once the legal term of treatment had passed, he would rule on the applicable prison sentence.

C. Argument of the plaintiff on behalf of Bill

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The lawyer representing the victim Bill considered the charged facts to be proven. And he demanded a 15-year prison sentence for John D. for being the author of attempted murder aggravated by extreme cruelty (Articles 42, 44 and 80 paragraph 2 of the Penal Code), Mary to 10 years in prison as a necessary accomplice (Articles 42, 44 and 80 paragraph 2 of the Penal Code) and Jack to 3 years in prison for being the author of the crime of concealment (Article 277).

The plaintiff's lawyer pointed out that John had used a screwdriver to try to kill Bill and that, after the potentially mortal wound he had inflicted on him, he had left the place with his brother. He asserted that this means and the specific circumstances of the case as presented during the trial showed that it was not only an attempt to kill him, but that John used means that led to the particular suffering of Bill, who would have been in agony and bled to death on the spot, had it not been for the quick intervention of his friends.

He argued that, in this context, Mary took part in the act, by assisting John in the struggles that took place prior to the attack with the screwdriver and, after the cut in the neck, by standing over the victim's body, which - at first - had prevented Ben from assisting him.

With regard to Jack, the plaintiff requested that the Court find him guilty of the crime of concealment because, after the attack, he had put his brother in the vehicle and escaped from the scene at high speed. It stated that the described conduct constituted a way of assisting and provoking John's escape, as well as the impossibility of carrying out essential evidentiary measures for the investigation since they had to be performed on his body (such as the breathalyser test).

D. Argument of John D.'s defence.

The floor was then given to John D.'s defence counsel to argue about the evidence. He stated that he did not question the materiality of the act, but he did question the responsibility of the defendant, for two reasons:

Firstly, because he did not have the mental capacity to be held responsible. He affirmed that his client had not been able to voluntarily direct his conduct, due to the state of drunkenness in which he was at the time of the facts. He pointed out that this had been amply demonstrated in the debate and led to the exclusion of his liability, and therefore, that he should be acquitted and submitted to detoxification and reeducation treatment to eliminate his addiction (art. 34 of the Penal Code).

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He argued that it was clear that, in this case, John had not got drunk to commit the criminal act, which ruled out the application of the *actio libera in causa* (ALIC) theory, but that he was already leaving the place when Bill and his friends went to look for him and provoke him, assaulted him and inflicted damage to his car.

Secondly, the defence argued that, in the event that the court considered that the defendant was criminally responsible, his defendant's actions were covered by one of the grounds for justification provided for in Article 34 of the Penal Code: self-defence. He pointed out that Bill G. had started an unlawful aggression against John, first in the bar and then by damaging John's car, so that John, with the limited margin of reflection he had due to his drunkenness, and because he was only with a woman and a minor in front of three young men, defended himself as best he could to repel the aggressions that did not cease. He argued that the doctrine and jurisprudence are unanimous in considering that property is a legal interest that can be defended by means harmful to the life of the aggressor and, in this case, John acted precisely in defence of his property. But, in addition, his defence was also against the threats of injury against him that continued to be made. He affirmed that these aggressions were still ongoing and that the means were proportionally used to repel them, because this element of self-defence should be evaluated *ex ante*, putting himself in the situation of the agent who defends himself. For these reasons, he should be acquitted.

Finally, and in third place, he stressed that if the court ruled out all these defences, it should take into account that John at no time had the intent to kill Bill, that his conduct was defensive and that therefore, if all the aforementioned arguments were ruled out, he should be reproached for an excess in self-defence, according to the provisions of Article 35 of the PC, and the penalty should be reduced twice, to the scale of culpable homicide (Article 84 PC) and then to that of attempted homicide (Article 44 PC).

Finally, if the court rejected all those arguments, and chose the legal description of attempted homicide (art. 42 and 79 of the PC), for the above considerations, the legal minimum should be applied. John did not go there to kill anyone, he was not carrying weapons, and only took what he found in the moment of emotion and excitement due to the provocation of the others. There are no aggravating circumstances in the case. This is not a quarrelsome person, but a worker, who was celebrating with his brother and girlfriend. The criminal record, according to the

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Argentine legislation, cannot be used as an aggravating circumstance due to the constitutional principle of liability for the act, and not for the character, and it only has as a consequence that he cannot be granted parole for the second offence (art. 14 CP). Therefore, the sentence could not exceed four years of imprisonment, from which the year he has already been detained in preventive detention should be considered for the purpose of calculating the time served.

E. Argument of the defence counsel for minors representing Jack D.

On the other hand, the defence counsel for minors who assisted Jack began her argument by warning that her defendant could not be charged with the crime of assisting an offender to avoid apprehension, for having tried to help his brother to leave the focus of the conflict, because he was aware of his criminal record and therefore, that everything that was to come would be unfavourable for him. In fact, art. 277, inc. 4, PC, provides that there is an exemption from criminal liability for helping a person who committed a crime when the helper is one of the relatives mentioned in the law, among which are the siblings.

But, in any case, their conduct could not be that of assisting an offender either because they did not help a criminal, but a person who defended himself legitimately, that is to say, one who did not commit a crime. There can be no concealment of someone who acts in accordance with the law.

Regarding the charge of homicide of Olivia F., he pointed out that at no time had he wanted to kill her, nor had he represented that this could happen. His driving was at excessive speed, but with the idea of moving his brother away from the scene of the conflict. At no time did he think that he could run over someone, that is to say, he trusted that nothing would happen. This ruled out the homicide with intention for which he was accused.

Regarding the culpable homicide, he considered that, in the first place, it could not be taken into account that Jack did not have a driving licence or registration, because in this crime what must be proved is the “determination nexus” between a conduct, the violation of the duties in his charge and the death. In this case, she expressed, Olivia's death did not occur because the driver did not have a driving licence, but because of the excessive speed that prevented him from controlling the driving and avoiding the victim's collision.

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The defence continued and admitted that her defendant had violated the duty of care by speeding and not braking at corners, and that it was this situation that made it impossible for him to control the car. Consequently, he could be charged with the culpable homicide of Olivia F.

She added that, however, the analysis of his conduct did not end there, because the breach of his duties of care and the non-observance of the rules that regulate the traffic of automobiles had had the purpose of helping his brother who had not committed a crime, but who had defended himself, and who was being unjustly persecuted by another of the brawlers who surely wanted to take revenge. This placed him in a situation of fulfilling a duty to help a person in danger. Therefore, he should be acquitted.

F. Mary J.'s defence counsel.

Mary's defence argued that during the debate it had been corroborated that her client had not committed any criminal act and therefore she should be acquitted, which she had been arguing since the beginning of the proceedings.

She recalled that Mary J.'s attitude on the night of the events was always to try to avoid any type of argument or fight involving her boyfriend John, whom she convinced to leave the place. That she had only insulted Bill for having provoked John when he scratched her car, because any person in those circumstances could react badly and, even more so, when drunk. And that, once Bill was wounded, it was she who tried to use her knowledge of first aid to try to save him and then, when one of Bill's friends pushed her out of the way, she ran in search of help from her paramedic brother, but did not reach her destination because she was apprehended by the police officers.

She pointed out that his client at all times acted in accordance with the law and moreover, with an altruistic attitude and actively carrying out behaviours tending to save Bill's life. She does not understand why the plaintiff has insisted on charging her and that even the public prosecutor did not press charges against her because he considered that her conduct did not constitute a crime.

For all of the above, he favoured the acquittal of his defendant.

V. Judge Javier A. De Luca said:

Assessing the elements of evidence incorporated to the trial, I consider:

The evidence gathered during the trial, in accordance with what is prescribed in Articles 382, 384, 389, 391 and 392 of the National Code of Criminal

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Procedure, allows me to conclude that the facts were proven and that the defendants are criminally liable as accused by the Public Prosecutor's Office.

The same does not occur with respect to Mary J., who was accused by the plaintiff. As I will now argue.

The defence attorneys have not questioned the materiality of the facts nor the intervention of John D. and Jack D. in them.

Fact No. 1: We consider it certain and legally proven that, on 26 March 2021, at approximately 10.35 pm, John stabbed Bill G. several times with a screwdriver in his chest and stomach and then seriously wounded him in an artery in his neck. Bill's life was saved by medical attention at the hospital to which he was transported by the ambulance that was on the scene within minutes. The medical examinations determined the nature and traits of the wounds, which are compatible with the use of the screwdriver that was seized, and the surgical operations that saved his life. The intervening police officers and the photographs taken by them determined the characteristics of the front of the bar, the parking lot and the scratches on John's vehicle. The vehicle's documents prove that it belonged to John. Laboratory tests showed that John's blood alcohol level exceeded 1.2 grams per litre.

It is also proven that his conduct was preceded by an argument that was generated with Bill, Ben and Bob in the bar where John had gone with his brother Jack and his girlfriend Mary. When Bill, Bob, and Ben left the bar, Jack, John and Mary were already outside (in the parking lot) and it was there that Bill damaged John's car with a screwdriver. John explicitly told him he would kill him for it. They got into a struggle, John took the screwdriver from Bill and wounded him with it. Then, John's younger brother, Jack, dragged him from the scene and forced him to get into the vehicle and sit in the passenger seat. Jack drove away from the scene.

John's conduct fulfils the objective elements of the crime and therefore falls within the category of attempted homicide, because Bill's death did not occur for reasons beyond his control (arts. 42 and 79 of the PC).

With respect to the subjective element, I consider that he acted with direct intention, since it is clear from the evidence produced that John had the will to reach the vital areas of the victim (chest and neck) with the short sharp element and undeniably knew that the action was suitable to cause death. At the same time, it was

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proven by the testimony of the witnesses that John said "I'm gonna kill you" to Bill, prior to the aggression.

Therefore, the result did not occur due to causes beyond the defendant's control, that is, due to the surgical operation that saved his life.

John D.'s defence argued that his client was non-labile at the time of the act due to his drunkenness, also argued that it was a case of self-defence and, finally, argued that the defendant had not acted with homicidal intent.

In relation to the state of drunkenness, I consider that it was not enough to prevent him from understanding the criminality of his actions and directing them in accordance with that understanding (art. 34, sub. 1°, PC). The defence attorney did not produce any evidence in this regard. I am guided by the classic tables of public knowledge, comparing the degrees of alcohol and the effects they regularly produce in people of John's sex and build. Although in this case the alcohol level was high, it allowed him to identify and understand the situation. Therefore, I conclude that he directed his actions guided by the purpose of killing him.

As for the allegation of self-defence, I consider that it cannot succeed, because Bill's aggression, that is, the scratching of John's car, had already ceased. John's conduct was subsequent, in response to the aggression to his property and not to avoid or repel it. Even if it were understood that the assault was ongoing, when they got into a scuffle and John disarmed Bill by taking the screwdriver from him, the latter's assault was already over. Thus, the requirement of ongoing attack provided by law (art. 34, sub. 6°, PC) is not met.

And, as I have already pointed out, John acted with intention. It was not an injury caused clumsily, unintentionally, in the middle of the quarrel, but a direct and repeated attack once he had taken the screwdriver from Bill.

Consequently, I consider that the accused John D. is criminally responsible for attempted intentional homicide (art. 42, 45, and 79 of the Penal Code).

In this case, the evidence produced during the hearing does not allow us to accuse Mary and Jack of any degree of participation. None of them took part in the quarrel.

Mary tried to dissuade them from fighting and tried to remove her boyfriend from the scene, without success. After producing the wound on Bill's neck, she placed her hands on him to prevent further bleeding. There is no evidence that she wanted to

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help her boyfriend. Therefore, she will have to be acquitted for this fact, for which she was only accused by the plaintiff.

And her brother Jack cannot be held responsible either for complicity with John's actions, because he did nothing, or for having taken him away from the scene and taken him in his vehicle. This is so because of one of the arguments mentioned by his defence counsel, that is, that between siblings this crime cannot be committed in the form of helping the offender to evade investigation (art. 277, sub. 4°, PC).

Fact No. 2: On the other hand, Jack D. is criminally responsible for culpable homicide and culpable serious injury, both aggravated by the unlawful driving of a motor vehicle (Articles 45, 84 bis, and Article 94 bis of the Penal Code).

It is fully proven that Olivia F. suffered a violent death when she was hit by the vehicle driven by Jack D., who was driving the car without a driving licence, at a speed of 130 km/h, and without turning on the lights. The accident also caused serious injuries to John D., who was in the passenger seat and suffered serious fractures to his skull, neck, arms, and ribs as a result of the impact.

Driving a motor vehicle is an activity regulated by the Traffic and Road Safety Act (Act No. 24,449). The imprudence, negligence, and/or violation of the duties in charge emanates from that law. Section 84 of the Criminal Code refers to it, because it is an open criminal offence.

Section 39, paragraph b) of the aforementioned law provides that "*drivers must drive with care and prevention, keeping at all times the effective control of the vehicle or animal, taking into account the risks inherent to the traffic and other traffic circumstances... without creating risk or affecting the traffic flow*".

On public roads, traffic signals must be respected, including: "*ROADS WITH TRAFFIC LIGHTS. On roads regulated by traffic lights: a) Vehicles must: With green light in front of them, move forward; 2. With red light, stop before the line marked for that purpose or the pedestrian path, avoiding then any movement (...); b) Pedestrians must cross the roadway when: 1. They have in front of them a pedestrian traffic light with a green or white enabling light;(...)*". (art. 44 of the Act)

Moreover, Article 50 of the Act states that "*the driver must always drive at such a speed that, taking into account his health, the condition of the vehicle and its load, the existing visibility, the road conditions and the time and density of traffic, he always*

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has full control of his vehicle and does not hinder the traffic. Otherwise, he must leave the road or stop".

The rule regulates the maximum speed allowed and it is 40 km/h on urban streets and 60 km/h on avenues.

Given this legislation and the result of the expert opinions, it can be concluded that Jack D. breached the duty of care because he did not adapt his conduct to the parameters established in the traffic law. Thus, it is demonstrated that Jack D. exceeded the regulatory speed by 100% (120 km/h on the avenue), crossed intersections without respecting the traffic lights, without turning on the regulatory lights and lost control of the vehicle.

Driving without a licence was not a determining factor for the result, but all the other circumstances mentioned were. They resulted in death (Olivia F.) and serious injuries (John D).

Since we are dealing with a 17-year-old minor, in this sentence we must only analyse his responsibility. The determination of a prison sentence and fine or acquittal will be subject to the outcome of the tutelary treatment.

VI. Having analysed the materiality of the facts, their legal characterisation and John's responsibility for them, it remains to establish the measure of sentence to be imposed on him. To do so, I will take into account the individualising guidelines set forth in Articles 40 and 41 of the Penal Code, the punitive framework of the scale of the crime of attempted homicide.

The nature of the action and the means used to carry it out are decisive guidelines to assess dangerousness. In this case they will be considered as circumstances that impose a sentence at least higher than the minimum possible sentence, that is to say, they are aggravating circumstances due to the violence that John deployed in his conduct and the use of a sharp tool to damage the victim's body in vital areas. This is due to the fact that I consider that the choice of an offensive means that diminishes the victim's possibility of defence or causes him special suffering aggravates the penalty.

On the other hand, I find that the liability of the defendant is diminished due to his age, his lack of education (incomplete high school), and his social background since, after his time in prison, John had been favourably reintegrated into society, had acquired a job, and was working in a car repair shop.

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For all the foregoing reasons, I propose to impose a sentence of 6 years imprisonment.

1) **HOLD** Jack D., already registered in the file, criminally responsible for the crime of culpable homicide in concurrence with culpable serious injury, aggravated by being committed through reckless and unregulated driving of a motor vehicle (arts. 45, 54, 84 bis and 94 bis of the CP, and art. 4° of law 22.278).

2) **SENTENCE** John D., already named in the file, for being considered criminally responsible for the crime of attempted homicide to 6 years of imprisonment, with legal costs (arts. 42, 44, 45, 79 of the Penal Code).

3) **ABSOLVE** Mary J., for non-existence of the crime (art. 402 of the CPPN).

B) Judges Gonzalo Guerrero and Daniela R. Part, said:

As we agree with the above opinion, we adhere to it in everything.

For these reasons and in view of the provisions of sections 396, 398, 399, 400, 402, 403, 530 and 531 of the Code of Criminal Procedure and 4° of Act No. 22.278, and concordant sections of the Code of Criminal Procedure of the Nation and law No 22.278, the Court unanimously **DECIDES**:

1) **TO HOLD** Jack D. criminally responsible for the crime of culpable homicide in concurrence with culpable serious injury, aggravated by being committed through reckless and unregulated driving of a motor vehicle (arts. 45, 54, 84 bis and 94 bis of the CP, and art. 4 of law No. 22.278).

2) **SENTENCE** John D. for being considered criminally responsible for the crime of attempted homicide (arts. 42, 44, 45, 45, 79 of the Penal Code) to 6 years of imprisonment and the payment of the procedural costs.

3) **ABSOLVE** Mary J, for non-existence of crime (art. 402 of the National Code of Criminal Procedure).

4) **BE PROTOCOLIZED, NOTIFIED AND, FINAL, COMMUNICATED.**

Javier A. De Luca
Chamber Judge

Gonzalo Guerrero
Chamber Judge

Daniela R. Part
Chamber Judge

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Mariela Fernández
Clerk

Five notification letters were issued to the parties. For the record.

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