



Final Judgment on Jack D.

///nos Aires, July 1st, 2024

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 judgment in the proceedings entitled: "Defendants: D. Jack and others. Offences: aggravated culpable homicide, serious injury and others", File No. CCC 123/2022.

The accused, Jack D., is represented by attorney María Eugenia Sagasta. The National Prosecutor's Office is represented by the Prosecutor General Dr Ricardo Narvárez. Oswald F., brother of the victim Olivia F., is represented by Dr Ariel Pellegrino. The Official Defender of Minors and People without Legal Capacity, Dr Juana Pérez, has intervened in the proceedings.

RESULTS:

I.- That by final judgment dated 10 June 2022, this Court found Jack D. criminally responsible for the crime of culpable homicide in concurrence with serious injuries aggravated for being committed by means of reckless and unregulated driving of a motor vehicle (articles 45, 54, 84 bis and 94 bis of the National Penal Code and article 4 of Law No. 22.278).

On 19 December 2022, a hearing was held under the terms of Section 4 of Act No. 22.278.

II.- Pleadings:

II.a.- The Defender of Minors and People without Legal Capacity applied for Jack D. to be acquitted under article 4 of Act No. 22.278, given that she considered that the imposition of a sanction was not necessary due to Jack D.'s progress in the tutelary treatment, his behaviour, and participation in the state approach .

In the event that this was not accepted and the application of a criminal sanction was considered necessary, subsidiarily, the Defender of Minors and People without Legal Capacity submitted that the penalty be the minimum penalty for the crime, in accordance with the provisions of article 4 of Act No. 22.278 and 44 of the Penal Code. In this case, she argued that the sentence should be suspended.

II.b.- The Prosecutor agreed with the Defender of Minors and People without Legal Capacity as to the progress shown by Jack D. in his tutelary treatment, but argued that Jack D. should not be acquitted of his crime, given the seriousness of the imputed act, his

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intention to assist his brother to avoid the action of justice regarding an extremely serious act, and his scarce family accompaniment.

Accordingly, he applied for the imposition of a reduced sentence under article 4 of Act No. 22.278 and in accordance with articles 40 and 41 of the Penal Code and article 37 paragraph d) of the Convention on the Rights of the Child. The Prosecutor submitted the appropriate sentence is one year and six months of suspended prison. The Prosecutor also submitted that Jack D. should be held liable for the costs of the proceedings.

II.c.- The attorney representing the brother of the victim, Olivia F., considered that Jack D. should not be exempted from criminal sanction due to the seriousness of the crime which had resulted in the death of a young mother whose three children were now orphans. In fact, he highlighted that, from his perspective, the defendant should have been found liable for voluntary homicide and not for culpable homicide.

Thus, the attorney submitted that the penalty be a 3-year and 2-months prison sentence. The attorney submitted that this was the appropriate sentence taking into account even the reduction of the penal scale of the crime for which Jack D. was declared criminally responsible for his age, the seriousness of the act, the legal interest (life) of Olivia F. and the physical integrity with respect to John D.

II.d.- Finally, the defence attorney of Jack D., Dr María Eugenia Sagasta, submitted that she agreed with the submissions made by the Official Defender of Minors and Incapable Persons because she understood that in the case of Jack D. it was evidently unnecessary to apply a penalty in accordance with the provisions of articles 3, 37, and 40 of the Convention on the Rights of the Child and the guidelines of the precedent "Maldonado" of the Supreme Court of Justice of the Nation. The defence recalled that in that case the Court stated that the punitive response is an exception that should only have a special preventive purpose that serves the purpose of resocialization.

The defence submitted that, in the event that the Court decides that a prison sentence is appropriate, the sentence should be suspended in accordance with Article 26 of the National Penal Code.

AND WHEREAS:

Judge Javier A. De Luca said:

According to file No. 234 corresponding to the tutelary treatment of Jack D., he intervened in the act when he was 17 years old and, since he turned 18, his guardianship was automatically extinguished. The tutelary treatment was carried out for one year.

In addition, the decision by which Jack D. was declared criminally responsible on 10 June 2022 is final.

Therefore, the requirements of article 4 of Act No. 22.278 have been met and the Court is in a position to analyse whether or not it is appropriate to impose a sentence and, if so, what is the appropriate sentence.

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To do so, we must take into account the rules governing the imposition of sentences on children in conflict with the criminal law (Article 37 paragraph b of the Convention on the Rights of the Child, Rules 5, 17 and 19 of the Beijing Rules, Article 4 of Act No. 22.278), in accordance with the principles of subsidiarity and proportionality that govern juvenile criminal justice.

In this context, the general principle is that the custodial sanction should be exceptional because of the harmful effects of imprisonment (see BELOFF, Mary; FREEDMAN, Diego, KIERSZENBAUM, Mariano and TERRAGNI, Martiniano, "La sanción en el derecho penal juvenil y el ideal de la educación", in BELOFF, Mary (Director), Nuevos problemas de la justicia juvenil, Ed. Ad Hoc., Buenos Aires, 2017, p. 122).

The first criterion to be considered is the seriousness of the act for which he was declared criminally responsible. In this regard, although Jack D.'s conduct had a very serious result (in particular, the death of a woman) he was found to have committed the offence due to his recklessness. Under the law, a reckless act is considered less wrongful than an intentional act. Furthermore, it is clear from the decision that his recklessness was caused by the purpose of helping his brother. This is not a purpose based on contempt for others.

Beijing Rule No. 17.c states that "Deprivation of personal liberty shall not be imposed unless the juvenile is adjudicated of a serious act involving violence against another person...". The same Rule prescribes that deprivation of personal liberty should only be imposed on a juvenile in circumstances where "there is no other appropriate response".

In the "Maldonado" case, the Supreme Court of Justice of the Nation decided that the seriousness of the act is a decisive criterion and that the "need for punishment" referred to in section 4 of Act No. 22.278 can be understood as the seriousness of the act (C.S.J.N., decision "Maldonado, Daniel Enrique", 07/12/2005, Judgments 328:4343).

However, the need for punishment cannot be determined exclusively on the basis of the seriousness of the act or the dangerousness of the accused but must also take into account the goals of re-socialization. This factor must be considered in all juvenile criminal proceedings and involves taking into account the possible harmful effects of imprisonment and a conviction.

The analysis must encompass the degree of submission of the juvenile to the readaptation process that he has undergone, taking into account the positive and negative aspects of the tutelary file.

Regarding this, the Inter-American Court of Human Rights has pointed out that when the State has to intervene in the case of infractions committed by children and adolescents, it must make every effort to guarantee rehabilitation (Inter-American Court of Human Rights, Case of the "Street Children" [Villagrán Morales et al. v. Guatemala, 19/11/1999, ap. 197).

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The Committee on the Rights of the Child has also held that one of the guiding principles of any juvenile penal system should be the best interests of the child (art. 3, Convention on the Rights of the Child), since children differ from adults in both their physical and psychological development; and, by virtue of these differences, they are recognized as less guilty. As such, a system with a differentiated and individualised approach should be applied to children (General Comment no. 24 (2019), para. 2; Inter-American Commission of Human Rights, 17/02, paras. 45-54).

The arguments developed in the aforementioned "Maldonado" case of the SCJN, lead to the conclusion that, in accordance with the provisions of Decree Law 22.278, the court has the duty to weigh the "necessity of the punishment". The Court must undertake this task as a first step, prior to the question of the measure of punishment. This step requires the Court to justify the imposition of the punishment itself.

Under art. 40, para. 1°, Convention on the Rights of the Child, these penalties should not primarily seek to punish the adolescent. Rather the penalties should be for the purpose of resocializing the young person involved in the crime. In this regard, it should be considered that, for a peaceful social coexistence and good personal development, the subject must mature affectively, morally, and psychologically, realise the wrongfulness of the act and reorient his life.

In short, the Court must verify here that during this special criminal proceeding that Jack D. went through, he has already fulfilled the purpose that, from the beginning, was proposed by this Court.

In this sense, we positively value the interdisciplinary reports added to the guardianship file, in which the achievement of the resocializing standards and the assumption of constructive behaviours are evidenced.

As to Jack D.'s personal circumstances, it should be noted that at the time of the incident Jack D. was living with his parents, had finished school and started his university studies; that he had never been involved in criminal acts before.

It is also noted that he showed socio-educational development and assumed constructive behaviours.

In addition, Jack D. has expressed his regret for his actions and great sorrow for the loss of life of the victim Olivia F. He has voluntarily undergone psychological treatment.

In these circumstances, I understand that there is no need for a criminal punishment, since the tutelary treatment has yielded positive and promising results for his good future social behaviour.

Thus, the special prevention purposes of the juvenile criminal process have been satisfied, and a punitive response would only have a merely retributive effect.

For the reasons stated in the analysis of this issue, I consider that it is not appropriate to apply a criminal sanction to the juvenile (arts. 3, 37 and 40 of the Convention

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on the Rights of the Child, Rules 5, 17 and 19 of the Beijing Rules; art. 4 last paragraph of Decree-Law 22.278 and arts. 398, 399, 400 and concordant of the National Code of Criminal Procedure).

In view of the foregoing, I propose the agreement to acquit Jack D., without costs of the proceeding (arts. 45, 54, 84 bis and 94 bis of the National Penal Code and Article 4 of Act No. 22.278).

B) Judges Gonzalo Guerrero and Daniela R. Part said: they agree with the preceding opinion to which they adhere in everything.

In view of the foregoing, the court,

RESOLVES:

To acquit Jack D., whose other personal conditions are in the file, of the crime of culpable homicide in concurrence with serious injuries, aggravated by being committed by means of reckless and unregulated driving of a motor vehicle, for which he had been declared criminally responsible, without costs (sections 45, 54, 84 bis and 94 bis of the Criminal Code and section 4 of law 22.278).

Insert, register, record, record, once final, make the pertinent notifications.

Javier A. De Luca
Chamber Judge

Gonzalo Guerrero
Chamber Judge

Daniela R. Part
Chamber Judge

Mariela Fernández
Clerk

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