

Santiago, March 14<sup>th</sup>, 2023<sup>1-2</sup>.

**AFTER RECEIVING THE EVIDENCE, HAVING HEARD THE INTERVENING PARTIES AND CONSIDERING THE FOLLOWING:**

**FIRST:** Court and intervening parties. That on March 9<sup>th</sup>, 2023, before the judges Mrs. Rosa González Torres, Mrs. Cristina Morales Gómez and Mr. Carlos Soto Aguilar, of the second chamber of the Fourth Oral Trial Court in Criminal Matters of Santiago, the oral trial hearing took place in this Internal Court Case (RIT for its acronym in Spanish for *Rol Interno del Tribunal*) No. 231-2022, case docket (RUC for its acronym in Spanish for *Rol Único de Causa*) No. 200654354-0, conducted against John D., 25 years old, identity card No. 19,143,865-1, domiciled at Los Perales Street No. 2028, Santiago, legally represented by the public defender Mr. Juan Soto Contreras, whose domicile and way of notification are registered in this Court; against Mary J., 23 years old, identity card No. 19,705,824-1, domiciled at Los Perales Street No. 2028, Santiago, legally represented by the public defender Paz Arancibia Galdámez, whose domicile and way of notification are registered in this Court, and against Jack D., 17 years old, identity card No. 20,993,741-1, domiciled at Pasaje Montana No. 143, municipal district of Santiago, legally represented by the public defender for adolescents Manuel Correa Pérez, whose domicile and way of notification are already registered in the Court.

The Public Prosecutor's Office, represented by the Criminal Prosecutor Paula Silva del Canto, whose information is also included in the Court's registry, was the prosecuting party in this trial.

**SECOND:** Indictment. The Public Prosecutor's Office based its accusation against the defendants, according to the oral trial opening resolution<sup>3</sup>, on the following facts:

Event 1: On March 26<sup>th</sup>, 2021, at around 10:40 p.m., Bill G., Bob L. and Ben K. leave the Blue Moon bar, located at Los Republicanos Street No. 1538, Santiago, to catch up with John D., who was in the bar's parking lot inside his car with Mary J. and Jack D., and was about to leave the place.

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<sup>1</sup> Chilean Criminal Case written by Carlos del Río Ferretti, Professor of Procedural Law, Universidad Nacional Andrés Bello, Bellavista 0121, Providencia, Santiago, Postal Code 7520327 Chile. Email: [carlos.delrio@unab.cl](mailto:carlos.delrio@unab.cl)

English translation by Carolina Aguilera Marinovic.

<sup>2</sup> All names, personal data, site and address references, agencies and other background information mentioned in this text are fictitious.

<sup>3</sup> A resolution issued by the Criminal Judge in the preparatory hearing of the Oral Trial, where the subject matter of the trial, the facts of the accusation, the accused party and the means of evidence that will be admitted are defined.

Bill G., who had argued a few minutes earlier with John D. inside the bar, took a screwdriver out of his car and made a long scratch with it on John D.'s car, for which reason John D. got out of his car, threw himself on Bill G. and snatched the screwdriver from him, with which he tried to hurt him several times without succeeding. Mary J., at the same time, rebuked and pushed Bill G. Then, the latter slipped and fell to the ground and Mary threw herself on top of him with the purpose of attacking him. John, in that circumstance, stabbed the screwdriver into Bill's neck and severed his carotid artery. Bill received medical assistance, otherwise he would have died.

Event 2: After this confrontation, Jack D. and John D. left in John D.'s car, driven by Jack. Jack drove away at high speed on Avenida Los Heroes, without turning on his lights. He drove at an average speed of 130 km/h, repeatedly ignoring red lights without slowing down.

Upon reaching the intersection of Avenida Los Héroes and Villaseca Street, Jack attempted to turn onto Villaseca Street, but just at that moment, a few meters ahead, Olivia F. was crossing that street at a traffic light that was green for pedestrians, and in that circumstance impacted her at 120 km/h. As a result of the impact, Olivia F. suffered multiple skull fractures and massive brain trauma and died instantly.

After impacting Olivia, Jack lost control of the car and crashed into a pole. John, who was not wearing a seat belt, crashed into the windshield and suffered severe fractures to his skull, neck, arms and ribs, which caused him to be unable to work for more than 60 days.

The Public Prosecutor's Office classifies act 1 as a frustrated simple murder<sup>4</sup> described and punished in Article 391 No. 2 of the Criminal Code. It attributes participation in this to John D. and Mary J. as co-perpetrators, since they would have taken part in the execution of the facts in an immediate and direct manner.

The prosecutor adds that with respect to John there are no mitigating circumstances of criminal responsibility, but he is affected by the aggravating circumstance of recidivism provided for in Article 12 of the Criminal Code. Mary is covered by the mitigating circumstance of not having a criminal record, Article 11 No. 6 of the Criminal Code.

Regarding event 2, the Public Prosecutor's Office argues that there are concurrent offences, in which the crime of homicide is consummated as a result of the death of Olivia F., and a criminal offense of bodily harm is consummated as a result of the injuries suffered by John D., in accordance with the provisions of Articles 391 No. 2 and 397 No. 2 of the Criminal

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<sup>4</sup> A murder that does not constitute parricide and does not involve premeditation, malice aforethought, deliberate and unnecessary increase of the harm caused, use of poison, and that is not motivated by a reward or promise of remuneration.

Code, respectively, and in which the Public Prosecutor's Office attributes to Jack D. guilty participation as direct perpetrator, crimes that must be punished according to the rules provided in the Criminal Code, in Article 351 of the Code of Criminal Procedure and in Law 20,084 on Juvenile Criminal Liability, given the status as such of the accused minor.

On the other hand, the Public Prosecutor's Office states that these crimes have been perpetrated with *dolus eventualis*<sup>5</sup>. The Public Prosecutor's Office adds that Jack D. is covered by the mitigating circumstance of not having a criminal record provided for in Article 11 No. 6 of the Criminal Code.

Due to the foregoing and after citing the legal standards applicable to the case, the Public Prosecutor's Office requests that the following persons be convicted:

- a) The defendant John D., to the penalty of 7 years of imprisonment, and to the accessory penalties of Article 28 of the Criminal Code.
- b) The defendant Mary J., to the penalty of 3 years of imprisonment, and to the accessory penalties of Article 29 of the Criminal Code.
- c) The defendant Jack D., to the penalty of five years of imprisonment in a prison facility for minors with a social reintegration program.

**THIRD:** Opening arguments. I) When the trial was initiated, the Public Prosecutor's Office indicated that by means of the testimony of witnesses, the report of experts, together with the physical evidence, and corroborated by the testimonies of the apprehending officers, the facts set forth in the indictment would be proven beyond all reasonable doubt.

II) That the defense of John D. indicates that his client will exercise his right to remain silent regarding the facts he is accused of, but anticipates that he will formulate legal arguments in order to support his petition for acquittal. In summary, he argues that the crime of frustrated simple homicide has not been committed, because there was no homicidal intent as required by the crime of intentional homicide. On the other hand, he points out that it is not possible to punish John D. for frustrated negligent homicide either, because in order to punish a frustrated crime, i.e., one that has not been consummated, the behavior is required to be intentional, as is clear from the legal definition of frustration.

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<sup>5</sup> Where the perpetrator perceives the unintended criminal outcome as a possibility and, notwithstanding this perception, engages in the conduct.

Finally, he argues that he could not be convicted for the crime of intentional injury, since the indictment only accused him of the homicide. The duty of consistency<sup>6</sup> would prevent punishment for acts other than those specifically charged in the indictment.

III) That Mary J.'s defense indicates that she will not question the existence of the facts and that his client will testify in order to cooperate in the clarification of the facts, and that she will prove in trial that she has not had any blameworthy participation in the criminal act of which she has been accused, since her participation in the events does not constitute any of the forms of participation that can be prosecuted in accordance with the criminal law.

IV) That the defense of the accused juvenile Jack D. states that he will not question the existence of the facts of the accusation and that his client will testify in order to cooperate in the clarification of the events, without prejudice to the legal arguments that may be formulated in the appropriate time and in the event of a conviction, given that there are circumstances that must be considered if a conviction is handed down against him.

**FOURTH:** Testimony of the accused parties. A) Testimony of the accused juvenile Jack D., who in the presence of his defense lawyer, duly and legally informed of the facts in which the accusation is based and advised of his rights and of the provisions of Articles 302 and 326 of the Code of Criminal Procedure, waived his right to remain silent, and urged to tell the truth states, in summary, that on March 26<sup>th</sup>, 2021, together with John D. and Mary J., he went to the Blue Moon bar, to celebrate the salary increase that his brother John had been given at work. He says that they arrived together around 8 pm, in John's car. At the bar they had food and drinks, although he only drank several Cokes. He says that during the night John was involved in a dispute with other people. A few minutes later they left the bar and went to the parking lot, and at the moment John was about to start the car he saw the people with whom the dispute had occurred appear. One of them (he believes the one whose name was Bill) approached the car and with a screwdriver made a deep and long scratch on the hood of John's car. John got out of the car, rebuked him, snatched the screwdriver from him and tried to hurt him with it. At the same moment, Mary also rebuked Bill and pushed him, and in the scuffle Bill slipped and fell to the ground, and Mary fell on top of him, and at that moment John wounded Bill in the neck with the screwdriver, and Bill began to lose a lot of blood. Mary left the scene.

He affirms that he immediately picked up his brother, put him in the passenger seat of the car, and left the place driving John's car. He drove along Los Héroes Avenue until he reached

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<sup>6</sup> Principle according to which the formal communication of the investigation, the indictment and the final judgment must refer to the same facts and persons.

the intersection with Villaseca Street, where, upon turning onto Villaseca Street, he noticed that about 20 meters away a woman was crossing Villaseca Street at a crosswalk with a traffic light with a green light for pedestrians. He said that he tried to brake, but still hit the woman. The impact threw her against the wall of the house located in that place.

In this circumstance, he says she lost control of the car and crashed into a light pole on the sidewalk. His brother suffered serious injuries as a result of the collision.

He later learned that the woman's name was Olivia F. and that she had died as a result of the accident.

In the interrogation conducted by the criminal prosecutor, Jack acknowledges that he does not have a driver's license and lacks experience in driving a car. He also points out that he drove at excessive speed and that in his attempt to flee he did not respect the traffic signals, mainly the red lights of the traffic lights that exist in the route along which he was driving in his escape. In these circumstances, he finally acknowledges that he considered as possible the occurrence of an accident and of causing damage to third parties or to his brother, aware of the fact that he was not in a position to avoid the probable results, but that the intention of avoiding a new conviction and a return to prison for his brother John prevailed.

In the same interrogation, the criminal prosecutor asks him about the alcohol intake of his brother John, at the moment of leaving the bar. He declares that John had drunk several beers and that the effects of alcohol were noticeable, although he could not affirm that he was drunk.

The criminal prosecutor also asks him about Mary's involvement in the fight, and in particular whether Mary falls on top of or throws herself on top of Bill in order to assault or restrain him. Jack D. responds that she falls on top because she trips over Bill's body when he falls to the floor.

On examination by Jack's defense lawyer, the latter asks Jack D. if in the flight he considered the possibility of running over and killing a young mother and seriously injuring his brother, to which the defendant responds that he did not; that he considered the possibility that the flight might be dangerous, but he did not consider the possibility of those specific outcomes occurring.

B) Testimony of the accused party Mary J., who in the presence of her defense lawyer, duly and legally informed of the facts in which the accusation is based and advised of her rights and of the provisions of article 326 of the Code of Criminal Procedure, waived her right to remain silent, and urged to tell the truth states, in summary, that on March 26<sup>th</sup>, 2021, together with John D. and Jack D., she went to the Blue Moon bar, to celebrate the salary increase

given to her boyfriend John D. at his job. She says that they arrived together around 8 p.m., in John's car and that during the night John was involved in a dispute with other people in the bar. After the dispute she convinced John to leave and then they left the bar, and headed to the parking lot. Just as John was getting ready to start the vehicle he saw the people from the dispute appear. One of them (she recalls that his name was Bill) approached the car and with a screwdriver made a scratch on the hood of John's car. The latter got out of the car and snatched the screwdriver from him and tried to hurt him with it. She admits that she herself rebuked and pushed Bill G. with the purpose of separating him from John D., and to avoid the fight, and then Bill lost his balance and fell to the ground and she tripped over Bill's body and fell on top of him, and, while they were both on the ground, John wounded Bill in the neck. She further states that upon seeing the wound and the flow of blood she put her hands on Bill's neck in an attempt to stop the flow of blood, but as soon as she noticed the severity of the wound she quickly left the scene in the direction of her brother's house, who lives nearby, and who is a paramedic, so that he could help Bill, but the police stopped her just before she arrived at her brother's apartment.

Questioned by the prosecutor's office, she adds that it was not her intention to attack or participate in the aggression against Bill, but, on the contrary, to prevent John from seriously injuring Bill.

Questioned by her defense attorney, she states that she placed her hands on the victim's neck in an attempt to stop the bleeding; not in order to attack or restrain him and facilitate John's attack on Bill.

**FIFTH:** Evidentiary agreements between the criminal prosecutor and the defendants. According to the oral trial opening resolution, the parties agreed to the following evidentiary agreements, in accordance with Article 275 of the Code of Criminal Procedure:

A) That Mary J. has a first aid course given by the Preventive Health Training Center of the Municipality of Santiago, as evidenced by the respective certificate.

B) That the basic cause of the accident in which Olivia F. was run over and killed and in which Jack D. was injured, was the excessive speed, given that it was determined that the impact on Olivia F. occurred at a speed of 120 km/h, in an area where the maximum speed allowed is 50 km/h, and that the impact against the light pole occurred at a speed of 90 km/h. It is also determined that Olivia F. was hit on the crosswalk. These facts were verified in the accident investigation report prepared by the Traffic Accident Investigation Section (SIAT for its acronym in Spanish for *Sección de Investigación de Accidentes de Tránsito*) of the Chilean Police (Carabineros de Chile), Metropolitan Prefecture.

**SIXTH:** Evidence. I) In order to prove the facts on which the accusation is based, the Public Prosecutor's Office submitted the following evidence:

A) Testimonial and physical evidence:

1.- Testimony of Bill G, national identity card No. 19,077,669-2, born in Santiago on September 15<sup>th</sup>, 2000, 22 years old, single, construction worker, who, under oath, states, during the prosecutor's interrogation, that on the night of March 26<sup>th</sup>, 2021 he was with his friends Bob L. and Ben K. at the Blue Moon bar, having a few drinks, as they often did on Fridays of each week. He states that at about 10:30 p.m. he had an argument with an individual, who he later learned was named John D. He says that the argument was generated by a push that John allegedly gave him at the bar for no reason.

He says that shortly thereafter, John D. and the people he was with left the bar, and then he and his friends followed them in order to confront John to demand explanations for his aggressive behavior. He states that upon arriving at the parking lot, he noticed that John was about to drive his vehicle. He admits that at that moment he took a screwdriver out of his vehicle from his glove compartment and with it he quickly approached John's vehicle and made a long scratch on the hood. John got out and snatched the screwdriver from him. He then attempted to assault Bill with the same instrument. At that point Mary J. also lunged at him and pushed him. He says he lost his balance and fell to the ground, and Mary J. threw herself on top of him. In that circumstance, John took the opportunity to plunge the screwdriver into his neck, after which he noticed that he was bleeding out. Mary J. fled the scene, and his friend Ben K. assisted him, called the ambulance, and within minutes the ambulance arrived and took him to the hospital, where he underwent emergency surgery that saved him from dying of exsanguination.

The criminal prosecutor asks him about the characteristics of the object used by John to cause his injuries, to which the victim says that he remembers it well; that it was with a screwdriver with a black rubber grip, with a long metal rod of about 30 centimeters and a very sharp flat tip. The criminal prosecutor then shows him an object (physical evidence duly marked as Evidence No. 001), which the victim recognizes as the screwdriver that he kept in the glove compartment of his car and that was used by John to inflict the wound in his neck.

When asked by the criminal prosecutor, he said that he recognized the people who assaulted him as the defendants in this case.

On cross-examination by Mary J.'s defense, he notes that Mary J. pushed him and jumped on him when he was on the ground, and he struggled with her to try to get her off of him, but

she had him by the throat, and it is at that moment that he feels John stab him with the screwdriver.

2.- Testimony of Bob L., national identity card No. 20,716,684-1, born in Paine on December 3<sup>rd</sup>, 2001, 21 years old, electrical technician, who, under oath, is interrogated by the prosecutor of the Public Prosecutor's Office, and expresses in what is relevant that on March 26<sup>th</sup>, he went with his friends, Bill G. and Ben K., to the Blue Moon bar, to have a few drinks. That at approximately 10:30 p.m. Bill G. and John D. had a dispute at the bar.

He adds that shortly thereafter John and the people he was with left the bar, and he, Ben K. and Bill G. follow him to demand explanations from John for his aggressive behavior. In those circumstances, in the parking lot of the bar, they notice John, noticeably drunk, trying to start his vehicle. He says that Bill G. took out of his car a screwdriver with which he scratched the hood of John's car. John got out of his car and managed to snatch the screwdriver from him. He then repeatedly tried to stab him with the screwdriver, but was unsuccessful. At that point Mary J. rebuked him and pushed him, after which Bill fell to the ground and Mary J. jumped on top of Bill and pinned him down. John then drove the screwdriver into Bill's neck, after which Bill began to bleed out, and Mary fled the scene.

He claims, on the other hand, that Jack D. immediately got John into the car and they drove off down Avenida Los Héroes together, in the vehicle Jack was driving. He chased them in his own vehicle. He says that Jack drove down the Avenue at excessive speed, that he did not respect the traffic signals, nor the red lights that were on the way, and that when he reached the intersection with Villaseca Street, where he tried to turn, he did not stop at the red light, and he could see that he braked and ran over a woman in the crosswalk that is in the place. Jack then lost control of the vehicle and ended up crashing into a light pole on the side of the street.

On cross-examination by Mary J.'s defense, the witness notes that Mary J. pushed Bill and then lunged at him with the clear intention of attacking Bill, excluding that her intention was to separate him from John or to prevent him from attacking her with the screwdriver.

3.- Testimony of Ben K, national identity card No. 20,738,447-K, born in Chillán on September 3<sup>rd</sup>, 2000, 22 years old, single, salesman, domiciled at Serrano Street No. 220, Santiago, who, under oath, in the interrogation of the criminal prosecutor of the Public Prosecutor's Office, indicates that on March 26<sup>th</sup> he went with his friends Bill G. and Bob L. to the Blue Moon bar to have a few drinks. That at approximately 10:30 p.m. there was a dispute at the bar between Bill G. and an individual, who he later learned was called John D., although he does not remember the reason for the dispute.



He notes that shortly thereafter John and the people he was with left the bar, who he later learned that were named Mary J. and Jack D., and he, Bob L. and Bill G. followed them to the parking lot of the bar. Under these circumstances, they notice that John, noticeably drunk, was attempting to start his vehicle. He says that Bill G. took a screwdriver out of his car with which he scratched the hood of John's car. John got out of his car and managed to snatch the screwdriver from Bill. Then John repeatedly tried to stab Bill with the screwdriver. At that point he saw Mary J. push Bill, whereupon Bill lost his balance and fell to the ground, and Mary J. jumped on top of him and tried to pin him down. Immediately after, John drove the screwdriver into Bill's neck, after which Bill began to bleed profusely. Mary fled the scene, and Jack D. got John into the car and they drove off together in the vehicle Jack was driving.

He adds that he stayed by Bill's side, and while trying to stop the flow of blood he called the emergency service to get an ambulance sent to the scene. Within minutes, an ambulance arrived on the scene and transported Bill to Metropolitan Hospital where he underwent immediate life-saving surgery, according to the physicians who performed the surgery.

There is no cross-examination.

4.- Testimony of Greg D., national identity card No. 16,130,258-k, born in Curicó on May 21<sup>st</sup>, 1985, 37 years old, police sergeant of the Santiago Centro prefecture, domiciled at Los Rosales street No. 280, La Florida, who, under oath, and interrogated by the prosecutor of the Public Prosecutor's Office testifies that on March 26<sup>th</sup>, 2021 he was on duty together with the police officer Cathy P., and at approximately 10:45 p.m., they received information through the Chilean Police Communications Center (CENCO for its acronym in Spanish for *Central de Comunicaciones de Carabineros*) that an aggression with a sharp-pointed weapon had been verified in the parking lot of the Blue Moon bar and that there was an injured person. They went to a place which is two blocks away from the police station, and there they were informed by Ben K. that the individuals who had been involved in the incident had fled the place just a few minutes before. Ben gave them the main physical characteristics of the woman and the two men, and they immediately went out to explore the vicinity, and when they arrived at Las Rosas del Parque street, they found a woman who matched the characteristics given minutes before, with her hands and clothes stained with what at first sight was evidenced as traces of blood. They proceeded to arrest her immediately, informed her of her rights and transferred her to the Second Police Station of Santiago.

There is no cross-examination.

5.- Testimony of Cathy P., national identity card No. 18,130,820-1, born in Concepción on June 12<sup>th</sup>, 1995, 27 years old, police officer of the Santiago Centro prefecture, domiciled at

Las Camelias Street No. 130, Puente Alto, who, under oath, and interrogated by the criminal prosecutor of the Public Prosecutor's Office, declares that on March 26<sup>th</sup>, 2021, she was on duty with her superior, police sergeant Greg D., and at approximately 10:45 p.m., he received information through the Chilean Police Communications Center (CENCO) that an aggression with a sharp-pointed weapon had been verified in the parking lot of the Blue Moon bar and that there was an injured person. Sergeant Greg D. ordered her to go with him to the police procedure. They went to the site located two blocks away from the police station, where they were informed by Ben K. that the individuals involved in the incident had fled the scene just a few minutes earlier. Ben gave them the main physical characteristics of the woman and the two men, and they immediately went out to explore the surrounding streets. On Calle Las Rosas del Parque, they found a woman who matched the description given minutes earlier, with her hands and clothes stained with blood. They proceeded to arrest her immediately, informed her of her rights and transferred her to the second police station in Santiago.

There is no cross-examination.

6.- Testimony of Arthur Z, national identity card No. 15,308,820-1, born in Concepción on June 20<sup>th</sup>, 1985, 37 years old, senior police officer of the Criminal Investigations Department O.S.9. of the Chilean Police, of the first prefecture of Santiago Centro, domiciled at El Morro Street No. 130, Maipú, who, under oath, and interrogated by the criminal prosecutor of the Public Prosecutor's Office, declares that at about 8:00 am on March 27<sup>th</sup>, by instruction of the criminal prosecutor on duty, he recorded the testimony from the accused party Mary J., who requested to do so voluntarily. On that occasion, along with narrating the events related to the aggression against Bill G., she indicated that her intervention in them was limited to trying to prevent John D. from injuring Bill G., that she tried by all means to separate them, and that for that reason she rebuked and pushed Bill G., so that he would leave the place.

There is no cross-examination.

## B) Expert evidence

1.- Expert testimony of Dr. Michael F., national identity card No. 15,657,870-1, born in Concepción on June 20<sup>th</sup>, 1982, 40 years old, forensic physician of the Medical Institute of Forensic Medicine, domiciled in Tomás Moro street No. 208, Las Condes, who, under oath, declares on the respective expert report, and indicates that the injury inflicted in the neck of the victim -Bill G.- caused the complete severing of the carotid artery that goes down the neck exactly at the point where the wound was produced with a sharp element, which is of those necessarily fatal, if there had been no prompt medical assistance and surgical intervention to avoid hypovolemic shock. He points out that the result of death was not

verified precisely because the assistance was quick and the pertinent medical intervention could be performed.

Cross-examined by the defense of the accused party John D., the expert states that despite having examined the victim one month after the events occurred, he has no doubt about the conclusions he reached at the time and that he has just explained, because the expert procedure used and the forensic examinations applied allow to determine that there was a complete severing of the carotid artery and that this injury is necessarily fatal under the conditions indicated. That the statistics regarding the mortality rates of this injury, which would be in the range of 20 to 40% mentioned by the defense attorney, are the result of studies in which the variable of timely medical assistance is integrated.

2.- Expert testimony of Dr. Charles R., national identity card No. 10,186,345-k, born in Santiago on May 21<sup>st</sup>, 1962, 60 years old, forensic physician of the Medical Institute of Forensic Medicine, domiciled at Las Moras street No. 569, Santiago, who, under oath, testifies about the autopsy report of Olivia F., and refers that with the autopsy he was able to determine that the cause of death was a cranial fracture and massive cerebral traumatism that caused her death in the same place of the events, injuries consistent with being hit by a vehicle traveling at high speed, which was able to throw the body violently against the wall of a house in the area.

There is no cross-examination.

3.- Expert testimony of Dr. Gustav M., national identity card No. 15,861,453-1, born in San Fernando, on January 20<sup>th</sup>, 1978, 45 years old, forensic physician of the Medical Institute of Forensic Medicine, domiciled at Independencia street No. 569, Santiago, who, under oath, testifies on the forensic report of John D.'s injuries, and states that the injuries suffered by him are fractures of the skull and four ribs, and cervical hyperextension, with severe damage of the ligaments in the neck area, which are injuries regularly observed in collisions or accidents of vehicles moving at high speed. He adds that the injuries described have a convalescence time and incapacity for work of more than 60 days.

There is no cross-examination.

## II) Defense evidence

### A) Testimony of Mary J.'s defense.

1.- Testimony of Steve J., national identity card No. 18,125,890-2, born in Santiago on May 18<sup>th</sup>, 1990, 32 years old, paramedic, domiciled in El Manzano street No. 1443, Santiago, after promising to tell the truth, interrogated by the defense attorney, he declares that he is Mary

J.'s brother and that he lives very close to the place where his sister was arrested. He states that on the night of March 26<sup>th</sup>, 2021, he received a call from his sister, who told him that she had been arrested and was at the police station. She gave him a brief description of what had happened and said that her intention was not to hurt the victim and that after the incident she ran to his home to ask him to give first aid to the victim, in his capacity as a paramedic specializing in emergency services. He says that in that telephone conversation Mary J. was very distressed and worried about the victim's health.

**SEVENTH:** Closing arguments. D) The Public Prosecutor's Office stated in its closing argument that with respect to the event 1 charged, the injurious conduct of the accused parties John D. and Mary J. has been fully proven, as well as the homicidal nature of the wounds inflicted on Bill G., a result that did not occur due to the timely assistance and medical intervention received by the victim.

He affirmed that the conduct of John D. clearly constitutes the authorship of Article 15 No. 1 of the Criminal Code, as he directly and personally carried out the action that resulted in the necessarily mortal wound inflicted on Bill. Regarding Mary J., the authorship is also configured because she deployed a complementary conduct to that carried out by John, which involved participation in the fight, intervention in knocking down the victim, and taking advantage of the situation to throw herself on top of him while he was on the floor, thus giving John the opportunity to stick the screwdriver into the victim when he was helpless on the floor and practically immobilized.

He also added that from the proven facts it can be inferred that the co-perpetrators had the *animus necandi* ("will to murder"), insofar as the *dolus eventualis* of the conduct deployed can be considered fully proven, at the very least. Thus, the commission of the crime of frustrated homicide, established and punished in Article 391 No. 2 of the Criminal Code, in relation to Articles 7 and 51 of the same Code, has been proven beyond any reasonable doubt.

With respect to the event 2 charged to Jack D., the Public Prosecutor's Office pointed out that the event and the guilty participation has been proven with the evidence provided and by the defendant's own testimony, thus, in this case there are concurrent offences for the criminal offense of simple homicide against Olivia F. and for the criminal offense of serious injury against John D., provided for in Articles 391 No. 2 and 397 No. 2 of the Criminal Code, which must be punished according to the rules set forth in article 351 of the Code of Criminal Procedure and in Law No. 20,084 on juvenile criminal liability.

The Public Prosecutor's Office also held that the illegal acts were committed with *dolus eventualis*, because the conduct was carried out perceiving the risk it entailed and the risk of

the occurrence of results such as those that ultimately took place, in which the defendant was in a situation where it was entirely impossible to avoid them.

II) The defense of the defendant for event 1, John D., in its closing argument points out that the evidence is not sufficient to prove the criminal offense of frustrated homicide, because the *animus necandi*, i.e. the intention to kill attributed to the defendant, is not proven and, therefore, the *mens rea* that allows punishing the defendant for the criminal offense of murder is not present in this case.

He adds, on the other hand, that neither can he be convicted of the frustrated negligent murder, since in order to punish a frustrated criminal offense the respective conduct must be intentional, as is clear from the legal definition of frustration contained in Article 7 of the Criminal Code.

Finally, he points out that he cannot even be punished for serious injuries, since in that case he would be judged and sentenced for a punishable act different from the one accused in the indictment, since the indictment was limited to charging frustrated intentional murder, thus, the Court must rule on this unlawful conduct and not for others, since this is what is required by Article 341 of the Procedural Code, which establishes the so-called duty of consistency of the final judgment with the indictment.

He therefore requests that his defendant be acquitted.

III) The defense of the female defendant for event 1, Mary J., in her closing argument points out that the evidence has not proven that her defendant participated in the commission of the crime of frustrated homicide either as perpetrator (author) or under any other form of participation. On the contrary, it can be inferred from the evidence, as the defense has argued, that Mary J.'s conduct was always oriented to avoid the confrontation and aggression between victim and perpetrator, and later to provide medical assistance to the victim.

If the Court were to discard this theory of the case, it would not be able to convict for the crime of homicide as the accusation claims, since the evidence does not provide reliable proof of the intention to kill, and therefore in this case the factual support that configures the *mens rea* of the aforementioned crime is not proven.

She therefore requests that her defendant be acquitted.

IV) The defense of the defendant for event 2, Jack D., in its closing argument points out that his/her defendant has decided to substantially collaborate with the judicial action in the clarification of the facts and has voluntarily given a testimony on the events he is accused of, which he has admitted, thus, in this case substantial collaboration has been configured as a

mitigating factor of liability, which is added to the mitigating factor of not having a criminal record, which will be alleged and proven at the appropriate time, in the event of a probable decision of conviction.

**EIGHTH:** That having offered the floor to the defendants, in accordance with the terms of Article 338, final paragraph, they abstained from speaking.

**NINTH:** Evaluation of the evidence. That it is now necessary to evaluate the evidence presented in the trial, for which it must be considered that Article 297 of the Code of Criminal Procedure establishes a regime of rational weighting of the evidence, meaning that the evidential efficacy of each means of proof lawfully incorporated to the process must be determined by the competent court, which must carry out an evidentiary reasoning that, free from legal rules that pre-determine the value of each means of proof, must be adjusted in any case to the criteria of rationality established by law such as the principles of logic, the principles of experience<sup>7</sup> and scientifically established knowledge, which must guide such reasoning.

**TENTH:** Individual evaluation of the evidentiary elements.

D) On the punishable act and the circumstances that configure the participation of the accused party John D.

A) About the punishable act. It should be noted that the defendant Jack D., in his testimony at trial indicated that during the night of March 26<sup>th</sup>, 2021, while they were at the Blue Moon bar, John had a dispute with other people. He further recalls that within a few minutes they left the bar, and went to the parking lot, and just as John was getting ready to start the vehicle he saw the individuals of the dispute appear. He states that Bill G. approached the car and with a screwdriver made a scratch on the hood of the car of John D. The latter got out of the car, rebuked him and snatched the screwdriver from him and attempted to injure him with it. He observed that Mary J. also rebuked Bill and pushed him, and in the scuffle Bill slipped and fell to the ground, and Mary fell on top of him, at which point Jack wounded Bill in the neck with the screwdriver, and Bill began to lose a lot of blood.

That in the testimony of the co-defendant Mary J., the facts substantially match those in the testimony of Jack D. Indeed, Mary J. in her testimony recalled that during the night John had a dispute with other individuals in the bar. After the dispute, she persuaded John to leave and then they left the bar, and went to the parking lot. Just as John was about to start the vehicle, she saw the individuals from the dispute appear. She also -like Jack- recalls that Bill G.

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<sup>7</sup> Conclusions acquired from general life experience or special technical knowledge

approached the car and with a screwdriver made a scratch on the hood of John's car. She adds that John got out of the car, rebuked him, snatched the screwdriver from him and tried to hurt him with it. She says that she rebuked and pushed Bill G. with the purpose of separating him from John D. and to avoid the fight, and then Bill lost his balance and fell to the ground and she tripped over Bill's body and fell on top of him, and, while they were both on the ground, John wounded Bill in the neck. She further states that upon seeing the wound and the flow of blood she put her hands on Bill's neck to try to stop the flow of blood, but as soon as she noticed the severity of the wound she quickly left the scene in the direction of her brother's apartment, who is a paramedic and who lives near the scene, so that he could assist Bill, but the police stopped her just before she arrived at his apartment.

These testimonies are consistent with respect to the conduct that constitutes the punishable act. But also the testimonies given at the trial hearing refer to the same facts. Thus, Bill G., victim of the crime, testified at trial and stated that on the night of March 26<sup>th</sup>, 2021, he was with his friends Bob L. and Ben K. at the Blue Moon bar, having a few drinks as they often did on Fridays. He states that at around 10:30 pm he had an argument with John D.

He notes that shortly thereafter John and the people he was with left the bar, and that he and his friends followed them in order to confront John to demand explanations for his aggressive behavior. He states that when they arrived at the parking lot, he noticed that John was about to drive his vehicle. He admits that at that moment he took a screwdriver out of the glove compartment of the vehicle and with it he quickly approached John's vehicle and made a long scratch on the hood. He notes that John got out of the vehicle, rebuked him and snatched the screwdriver from him. Then he attempted to assault him with the same screwdriver. At that moment the woman accompanying John D., Mary J., also rushed at him, pushed him and in that situation he fell to the ground and Mary J. threw herself on top of him. John D. took advantage of this circumstance to plunge the screwdriver into his neck, after which he noticed that he began to bleed profusely.

Bob L.'s testimony also refers to facts that substantially match on all relevant aspects. He states that at approximately 10:30 p.m. a dispute took place at the bar between Bill G. and John D.

He points out that minutes later, John and the people he was with left the bar, and he, Ben K. and Bill G. follow him to ask John for explanations for his aggressive behavior. In those circumstances, in the parking lot of the bar, he says that Bill G. took out of his car a screwdriver with which he scratched the hood of John's car. John got out of his car, insulted Bill and succeeded in snatching the screwdriver from him. Then he tried to stab him repeatedly with the screwdriver, but was unsuccessful. He says that at the same time Mary J.

insulted him and pushed him. Bill lost his balance and fell to the ground, and Mary J. jumped on top of him. At that point John drove the screwdriver into Bill's neck, after which Bill began to bleed out.

Ben K. also testifies in similar terms regarding John's conduct. He states that on March 26<sup>th</sup> he went with his friends, Bill G. and Bob L., to the Blue Moon bar to have a few drinks. That at approximately 10:30 p.m. Bill G. and John D. had a dispute at the bar.

He adds - ratifying in his testimony the core story of the other witnesses - that shortly afterwards, John and the people he was with left the bar, and he, Ben K. and Bill G. follow him to the parking lot. In those circumstances, in the bar parking lot, they noticed John, noticeably drunk, attempting to start his vehicle. He says that Bill G. took a screwdriver out of his car with which he scratched the hood of John's car. That John got out of his car, insulted Bill and succeeded in snatching the screwdriver from him. That he then repeatedly attempted to stab him with the screwdriver. At that point he saw Mary J. push Bill, and Bill lost his balance and fell to the ground, and Mary J. jumped on top of him and tried to pin him down. At that point John drove the screwdriver into Bill's neck, after which Bill began to bleed profusely, and Mary fled the scene.

Finally, in addition to the above, there is the expert testimony of Dr. Michael F., who explains the injury report, and refers that the victim presented a wound in the neck that caused the severing of the carotid artery that runs down the neck exactly at the point where the wound was produced with a sharp element, which is necessarily fatal if there is no prompt medical assistance and surgical intervention to avoid hypovolemic shock.

All this evidence converges in the corroboration of the punishable act perpetrated and its circumstances.

In fact, regarding to the punishable act, the testimonies of the co-defendants and of the eyewitnesses describe the same injury to the victim, produced with a screwdriver stuck in the neck, which according to the eyewitnesses' testimonies produced on the spot an intense hemorrhage. These testimonies are entirely consistent with the opinion of the forensic physician who stated that the injury inflicted on the victim's neck caused the severing of the carotid artery, and that if there had not been timely medical assistance and intervention, it would have caused the victim's death due to hypovolemic shock.

B) Regarding the guilty participation of John D. in the punishable act. All the testimonies of the co-defendants and witnesses match, since they all describe the same injurious conduct attributed, without any doubt, to John D. According to the referred testimonies, it is John



who confronts Bill G. and stabs him in the neck with the screwdriver, while he was on the ground.

Furthermore, from this factual context, and in particular from the type of injury inflicted and the area of the body assaulted, it must be concluded that John D. acted perceiving the probable murderous outcome, and the acceptance of the probable result of death by the conduct performed.

John's guilty participation in the unlawful act of which he is accused is therefore proven, inasmuch as he has directly and personally carried out the legally described conduct detailed above.

II) On the conduct of Mary J and the guilty participation attributed to her in event 1. Regarding the conduct of Mary J., the testimonies of Bill G., Bob L. and Ben K., included in the part relating to these matters in the previous section, are consistent in attributing to her a direct intervention in the fight that took place in the parking lot, and in which she allegedly took part, insofar as they refer that she rebuked Bill G. and pushed him, and when he fell to the ground she threw herself on top of him to attack him and immobilize him, and in those circumstances - the victim lying on the ground and with Mary J. on top of him - John wounded Bill in the neck with the screwdriver. On the basis of these testimonies, it seems that there was a conduct that complemented John D's conduct and contributed to the commission of the unlawful act.

However, the testimony of co-defendant Jack D., although he refers to the dynamics of the events and the intervention of Mary J. in such events, insofar as he refers to her insults to the victim and the push, the truth is that when asked specifically about Mary's conduct, and in particular whether Mary fell unintentionally on Bill or whether she threw herself on him to attack him, he indicated that she fell on Bill because she tripped over his body.

On the other hand, the testimony of police officer Arthur Z, who recorded Mary J.'s testimony, indicates that on that occasion the defendant indicated that her intervention in the events was limited to trying to prevent John from injuring Bill, and that is why she rebuked him and pushed him, in order to get him to leave the place.

On this point, there was also evidence provided by the defense, consisting of the testimony of Steve J., the defendant's brother, who testified about what his sister had told him in a telephone conversation he had with her from the police station, as soon as she had been arrested. He says that Mary gave him a brief description of what had happened and said that her intention, after the injury to the victim's neck, was to go to his home to ask him to give first aid to the victim, in his capacity as a paramedic specializing in emergency services. He

claims that in that telephone conversation she was very distressed and worried about the victim's health.

Consequently, regarding Mary's guilty participation in the frustrated homicide of which she is accused, these evidentiary elements introduce doubt as to the meaning of Mary J.'s conduct, a doubt that becomes relevant if we consider the dynamics of the facts, which are not entirely clear, precisely on this point. In particular, whether Bill G.'s fall to the floor was the consequence of Mary J.'s push or of another circumstance, and whether Mary J.'s subsequent action was to throw herself on top of the victim to attack and/or immobilize him or whether it was in fact an involuntary fall on him as a result of a stumble caused by Bill G.'s body lying on the ground.

It should also be considered at this point that Mary J. could have fled with Jack D. and John D., if in fact she had been motivated by the intention of avoiding a clear responsibility in the act, but instead of that she leaves the place on foot and in the direction of her brother's apartment, which, although it does not establish reliably that she had no guilty participation in the harmful act and that she was only motivated by the intention of seeking help, it does strengthen the doubt about the exact intervention that she had in the events. In summary, it is not clear that Mary J.'s push to Bill G. was the cause of his fall to the floor, nor is it clear whether Mary J. throws herself on him with the purpose of contributing to the commission of the crime or whether she falls unintentionally on him.

From the evidence it is not clear whether the facts constitute a complementary conduct that contributes to the perpetration of the punishable act. Consequently, her guilty participation in the unlawful act attributed to her cannot be considered proven beyond any reasonable doubt.

III) On the punishable acts and the guilty participation of Jack D.

A) Regarding event 2. First of all, it is worth considering Jack D.'s own testimony, who acknowledges having carried out the conduct attributed to him - event 2 - and which would constitute the punishable acts charged as concurrent offenses. In the relevant part of his testimony he states that, after the wound that John inflicted on Bill G., he himself picks up his brother John, puts him in the passenger seat of the car and proceeds to leave the place driving the car. He admits that he drives at high speed in order to get away from the scene quickly and to prevent his brother from being arrested and ending up back in jail.

He adds that when turning at the intersection of Los Héroes Avenue and Villaseca Street he encountered a woman who happened to be Olivia F., who at that moment was crossing the street at the place where there was a green light for pedestrians, whom he impacted and

caused her death at the same place. He also acknowledges that as a result of the previous impact he lost control over the car and hit a pole, and that as a consequence John D. suffered injuries to his neck and fractures to his ribs and skull.

In his testimony he also admits that he did not have a driver's license and lacked experience in driving, that he drove at excessive speed, that he did not respect traffic signals and, in particular, the various red lights along the route, and that in this context he perceived the risk of causing an accident and of causing damage to third parties and to his brother, but that the purpose of avoiding his brother a new conviction and a return to prison prevailed over this. He also admitted that he was aware that he was not in a position to avoid the possible results of his conduct.

These facts are corroborated by the testimony of the forensic physician of the Forensic Medical Institute, Dr. Charles R., who testified on the autopsy report of Olivia F., in which he established the cause of death and the type of injuries that caused it.

Regarding John D.'s injuries, these are also corroborated by the expert testimony of Dr. Gustav M., forensic physician of the Medical Institute of Forensic Medicine, who prepared the respective injury report, who explained the injuries caused and the convalescence time and impediment for work derived from them, concluding that the incapacity for work was for more than 60 days.

Finally, consistent with all the elements of proof there is the testimony of Bob L., who declares to have gone out in pursuit of Jack D. and John D., and was able to observe during the pursuit the same events that Jack recognized, in relation to the way of driving, speeding and violation of traffic signals, and the running over of Olivia F., as well as the subsequent collision with the light pole located on the sidewalk, from which the injuries of John D. resulted.

Consequently, the evidence indicated above is convergent and mutually reinforcing in order to corroborate the event and its circumstances, thus proving the event 2 attributed to Jack D., in the terms that will be indicated below.

B) On the guilty participation of Jack D. That regarding the guilty participation, there is no doubt that it is entirely proven, first, by Jack D.'s own testimony, who admits having gotten John D. into the car and then having started to flee, driving John D.'s vehicle at excessive speed, without respecting the traffic signals or the red lights on the way, perceiving the risk of his conduct and the probability of causing damages to third parties and to his brother, and being aware of the impossibility of avoiding them.

He specifically admitted that he ran over Olivia F., in the terms already described, and that he caused her death in the same place. He further admitted that, after hitting Olivia, he lost control of the vehicle and ended up hitting a pole located at the site and that as a consequence of the collision John D. suffered injuries to his neck and fractures to his skull and ribs.

That all the events included in the defendant's testimony are corroborated by the testimony of Bob L. The latter states that it is Jack D. who drives the vehicle in which he flees together with John D., and that he does so at excessive speed and without respecting the traffic signals. He also stated that he could see how Jack D. ran over a woman crossing the street, and he could also observe the subsequent collision against the pole that exists in the place from which John's injuries resulted.

Thus, it can be concluded that Jack D. performed the unlawful acts attributed to him insofar as he directly and personally carried out the conduct attributed to him.

That it is also proven that Jack acted perceiving the probability of the results which were accepted or assumed by him, a matter that flows from the general factual context and from his own testimony.

At this point, however, it is appropriate to refer to a nuance introduced by Jack D. in his testimony, following the examination of his defense attorney, in which he makes a nuance regarding the results of his conduct, when he indicates that he did not perceive the possibility of the specific and concrete results of killing a young mother or causing serious injuries to his brother, but only the risky nature of his conduct. The truth is that given the context of the escape of Jack D. and the very high risk involved, in addition to the recognition that he was not in a position to avoid its probable occurrence, it is concluded that the perception regarding the risk involved in the events could only be of truly serious results, with the respective acceptance or assumption of the such results, regardless of whether or not the agent could envision the specific death of a young mother or the serious injuries to his brother as results that ended up occurring. In other words, the failure to perceive the risk of specific results in specific persons is not an obstacle to understand that there was perception of the possibility and acceptance of really serious results compatible with the results that actually occurred in a particular and specific way in the person of a young mother -Olivia F.-, and in the case of his brother John.

**ELEVENTH:** Proven events. That based on the evidence presented during the trial, the Court considers that the following facts are proven beyond reasonable doubt:

(Event 1). On March 26<sup>th</sup>, 2021, around 10:40 p.m., Bill G., Bob L. and Ben K. leave the Blue Moon bar, located at Los Republicanos street No. 1538, Santiago, to catch up with John

D., who was in the parking lot of the bar in his car with Mary J. and Jack D., and was about to leave the place.

Bill G., who had argued a few minutes earlier with John D. inside the bar, took a screwdriver out of his car and made a long scratch on John D.'s car, whereupon John D. got out of his car, threw himself on Bill G. and snatched the screwdriver, with which he tried to hurt him several times without succeeding. Mary J. rebuked and pushed Bill G. Then he slipped and fell to the ground and Mary fell on top of him. John then drove the screwdriver into Bill's neck and severed his carotid artery, a necessarily fatal injury in the absence of timely medical assistance.

Bill G. immediately began to bleed profusely, and within minutes he received medical assistance and underwent emergency surgery at the Hospital Metropolitano de Santiago, which prevented the victim's death from hypovolemic shock.

It is further proven that John could not but imagine the likelihood of causing a necessarily fatal injury and accepted its occurrence by driving the screwdriver into a vital area of the body.

(Event 2). That after the neck wound that John inflicted on Bill G., without any further delay, Jack D. grabbed John D., got him into his car, placed him in the passenger seat, got behind the wheel, started the engine and sped away from the scene.

Jack D. rushed at excessive speed down Avenida Los Héroes, repeatedly ignoring traffic signals and red lights, without slowing down, aware of the risk involved in his conduct and the impossibility of avoiding a traffic accident under such circumstances. While turning at the intersection of Avenida los Héroes and Villaseca Street, Jack encountered Olivia F., who was crossing Villaseca Street. Jack D. impacted her at 120 km/h. The impact threw Olivia against the wall of the house located at that point. She suffered a fractured skull and massive brain trauma as a result of the collision, which caused her death on the spot.

Subsequently, Jack D. lost control of the car he was driving and crashed into a light pole at a speed of 90 km/h. As a result, John crashed into the windshield and was injured in the skull, neck and ribs, causing him to convalesce and be unable to work for more than 60 days.

**TWELFTH:** Legal characterization of the proven facts. I) Regarding event 1. That in connection with the legal characterization of event 1, this Court considers that it constitutes the criminal offense of frustrated simple homicide, established in Article 391 No. 2, in relation to Articles 7 and 51 of the Criminal Code, since in this case a conduct suitable to kill has been proven, with *dolus eventualis* with respect to the homicidal result, inasmuch as the perpetrator could not but perceive the possibility of the result and assume it as a probable

consequence of his conduct, which did not occur because of the timely medical assistance and intervention that prevented the result of death.

Since the result of death did not occur due to the timely medical intervention, it is considered a crime of simple homicide in frustrated degree, according to Article 7, which states "There is a frustrated crime or criminal offense when the perpetrator does everything necessary for the crime or criminal offense to occur and this does not occur due to causes independent of his/her will".

II) Regarding Event 2. That in connection with the legal characterization of event 2, this Court considers that it constitutes a crime of simple homicide and a criminal offense of serious injuries consummated as concurrent offenses, which are subject to the rule of Article 351 of the Code of Criminal Procedure for the purpose of determining the specific penalty applicable to the specific case.

As for the crime of simple homicide, it has been proven that Jack D. has deployed a homicidal conduct that has been consummated in the death of Oliva F., established and punished in Article 391 No. 2 of the Criminal Code. It has also been proven that the author deployed the conduct with *dolus eventualis*, since he could not but perceive the possibility of the result and assume it as a probable consequence of his conduct, and therefore, in this case, the intentional simple homicide of Olivia F. is established.

As for the crime of serious injuries, it has been proven that Jack D. has carried out the conduct that constitutes the criminal offense of serious injury provided for in Article 397 No. 2 of the Criminal Code, insofar as the injuries caused an incapacity for work of more than 30 days. That it has also been proven that the author has deployed his conduct with *dolus eventualis*, with respect to the result, since he could not but perceive the possibility of such result and assume it as a probable consequence of his conduct, and therefore, the intentional crime of serious injuries against John D. is also established.

**THIRTEENTH:** Legal characterization of the participation. I) That with respect to event 1, which has been qualified as the crime of frustrated simple homicide, John D. can be qualified as the perpetrator in accordance with Article 15 No. 1 of the Criminal Code, since he executed the act directly and personally.

II) That regarding Mary J.'s participation in event 1, this Court concludes that her participation in the events does not constitute any form of guilty participation in the crime of murder, since the proven events do not demonstrate that her participation constitutes a complementary conduct that contributes to the commission of the crime, which would justify any criminal punishment.

III) That regarding Jack D.'s participation in event 2, which constitutes the crimes of simple homicide and serious injury as concurrent offences, it is certain that Jack D.'s participation as a perpetrator has been proven in accordance with Article 15 No. 1 of the Criminal Code, since he has personally carried out the conduct of killing and injuring in a direct manner.

**FOURTEENTH:** Motions for Judgment of Acquittal. I) Motion for acquittal of John D. That in this regard, the foregoing reasoning firmly establishes the grounds for dismissing the motion for acquittal filed by the defense of John D. It is evident that, contrary to his allegations, the conduct constituting the crime of frustrated homicide and guilty participation has been fully proven in the terms set forth above. Consequently, his allegations regarding the impossibility of convicting him for this crime of frustrated simple homicide based on the argument that the *animus necandi* was not proven are totally unsubstantiated. The additional allegations regarding the impossibility of punishing for negligent homicide or serious injuries are even more groundless.

II) Motion for acquittal of Mary J. That with respect to the motion for acquittal filed by the defense of Mary J., it will be accepted precisely because it has not been proven beyond reasonable doubt, as required by Article 340 of the Code of Criminal Procedure, that she participated in the events in such a way that her conduct is complementary and contributes to the commission of the crime, but on the contrary, the events that have been considered proven are not sufficient to configure in her respect any form of guilty participation that deserves criminal punishment.

**FIFTEENTH:** Petitions of the parties regarding the modifying circumstances and other relevant circumstances for the determination of the penalty. I) That the Public Prosecutor's Office incorporates John D.'s criminal record extract, in which there are two previous convictions for two theft crimes, and requests that they be considered as an aggravating circumstance of recidivism of criminal responsibility.

II) The defense of John D. opposes the aggravating circumstance of recidivism because the previous convictions of his defendant are not for crimes of the same type or nature as the crime for which he is now being prosecuted, and therefore the specific recidivism of Article 12 No. 16 of the Criminal Code must be ruled out in this case. On the other hand, he alleges that the generic aggravating circumstance of Article 12 No. 15 of the same Code does not apply in this case either, due to the previous convictions that appear in the criminal record extract, since they are illegal acts that are not of equal or greater seriousness, but, on the contrary, are criminal offenses of lesser seriousness than the one for which the defendant is being prosecuted in this judicial proceeding.

III) The defense of Jack D. requests the recognition, in favor of his defendant, of the mitigating circumstance of not having a criminal record established in Article 11 No. 6 of the Criminal Code, for which the defense attorney presents the respective certificate, and also requests the recognition of the mitigating circumstance of substantial collaboration in the clarification of the events established in Article 11 No. 9 of the Criminal Code, since he testified in trial and recognized the events contained in the accusation, contributing substantially to the clarification of the facts and to the action of justice.

IV) The Public Prosecutor's Office opposed the recognition of the mitigating circumstance of substantial collaboration of Article 11 No. 9 of the Criminal Code alleged by the defense of Jack D., because his testimony in the oral trial was not an essential contribution, since in the process there have been other means of incriminating evidence sufficient to support the respective conviction.

**SIXTEENTH:** Mitigating and aggravating circumstances. I) With respect to John D., the aggravating circumstances of generic recidivism and specific recidivism, provided for in Article 12, Circumstances No. 15 and 16, respectively, must be dismissed. As alleged by the defense, the two previous convictions for two theft crimes against John D. do not have the same or greater seriousness, nor are they crimes of the same type as the crime established in this sentence, i.e., the crime of frustrated murder, so the circumstances that constitute the generic aggravating circumstance and the specific aggravating circumstance, respectively, are not present.

II) With respect to Jack D., the mitigating circumstance established in Article 11 No. 6 of the Criminal Code should be considered, since the convicted person has no prior criminal record. The mitigating circumstance of substantial collaboration in the clarification of the events of Article 11 No. 9 of the Criminal Code should also be recognized, since in his testimony given at trial he fully admitted the facts underlying the accusation, which contributed to the clarification of the events. It should be noted that for this mitigating circumstance to be recognized in his favor, it is not a requirement that said testimony be the sole and exclusive element of conviction necessary for the determination of the events, as the Supreme Court has clarified in its final judgment on case docket No. 3909-2009, dated September 15<sup>th</sup>, 2009, and therefore the opposition of the Public Prosecutor's Office on this point must be dismissed.

**SEVENTEENTH:** Determination of the penalty with respect to John D. That the crime of frustrated murder for which he will be punished has the penalty of imprisonment for a minimum of 10 years and 1 day and a maximum of 15 years, according to Article 391 No. 2 of the Criminal Code, but since it is a crime of frustrated homicide, by application of Article 7, in relation to Article 51, both of the Criminal Code, the applicable penalty should be



lowered by one grade, i.e., imprisonment for a minimum of 5 years 1 day and a maximum of 10 years. Since in this case there are no circumstances that modify the liability, the Court, in accordance with the provisions of Article 67 of the Criminal Code, may apply the full extent of the penalty, and must consider the extent of the harm caused in order to determine the *quantum*. This Court considers that since there is no background that allows determining a particular extension of the harm caused, it is appropriate to impose the minimum penalty, i.e., 5 years and 1 day of imprisonment.

**EIGHTEENTH:** Regarding the manner of serving the penalty imposed on John D. That the defense of John D. has requested the imposition of an alternative penalty under Law 18,216, which will be dismissed, since the penalty to be imposed prevents the application of alternative penalties established in the aforementioned Law.

**NINETEENTH:** Determination of the penalty applicable to Jack D. That as an adolescent at the time of the commission of the criminal offenses, it must first be considered that according to Articles 391 No. 2 and 397 No. 2 of the Criminal Code, and Articles 351 of the Code of Criminal Procedure and Article 21 of Law No. 20,084, the applicable penalty would be greater than 5 years of imprisonment, so that in these circumstances - by express provision of Article 23 of Law 20,084 - the penalty of imprisonment in a prison facility for minors with a social reintegration program is applicable.

The Court considers as relevant factors for the determination of the penalty the criteria established in article 24 of Law 20084, and in particular in this case, the seriousness of the offenses perpetrated, the role as direct perpetrator who personally committed the punished offenses and the extent of the harm caused, as well as the mitigating circumstances of liability that are present in the case, which are the lack of criminal record under Article 11 No. 6 of the Criminal Code and the substantial collaboration in the clarification of the facts under Article 11 No. 9 of the same Code. In consideration of these factors, the Court considers that an adequate and effective intervention for the fulfillment of the purposes of Law 20,084, whose main purpose is the preservation of the best interests of the adolescent, results in the imposition of the penalty of two years of imprisonment in a prison facility for minors with a social reinsertion program.

**TWENTIETH:** Costs of the Trial. That the convicted parties have been defended by the public defender's office, which, in addition to the other background of the case, allows inferring that they lack economic resources, for which reason they will be exempted from the payment of the costs of the trial, as authorized by Article 47 of the Code of Criminal Procedure.

For these considerations and in accordance with Articles 1, 11 No. 6, No. 9, 15 No. 1, 18, 21, 25, 28, 30, 50, 68, 69, 391 No. 2, 397 No. 2 of the Criminal Code; Articles 1, 45, 46, 295, 296, 297, 298, 309, 325, 326, 328, 338, 339, 340, 341, 343, 344, 346, 348 and 468 of the Code of Criminal Procedure, Law 20,084 and Law 18,216.

**THIS COURT RESOLVES AND DECLARES:**

I) That John D. is **SENTENCED** to five years and one day of imprisonment and the accessory penalties of perpetual and absolute disqualification for public offices and positions and political rights and absolute disqualification to practice licensed professions for the duration of the punishment, as perpetrator of the crime of frustrated murder of Bill G., committed on March 26<sup>th</sup>, 2021 in the municipal district of Santiago, who must serve the sentence imposed in prison given that the requirements that allow the application of an alternative penalty to the deprivation of liberty are not met. In any case, the time that the convicted person remained deprived of liberty during the course of the process, from March 26<sup>th</sup>, 2021 to December 15<sup>th</sup>, 2021, as evidenced in the background of the proceeding, must be considered as time served, as ordered by Article 348 of the Code of Criminal Procedure.

II) That Jack D. is **SENTENCED** to two years of imprisonment in a prison facility for minors with a social reintegration program, as the perpetrator of the crimes of murder of Olivia F. and serious injury caused to John D., perpetrated on March 26<sup>th</sup>, 2021 in the municipal district of Santiago. The penalty imposed shall be served in accordance with the plan to be drawn up by the respective delegate and after it has been approved by the Court. The judicial coordinator of the National Service for Minors shall be notified for this purpose. The time that the convicted person remained deprived of liberty during the process, from March 26<sup>th</sup>, 2021 to October 20<sup>th</sup>, 2021, must be considered as time served.

III) That the convicted parties are **EXEMPTED** from paying the costs of the trial.

IV) That Mary J., allegedly perpetrator, is **ACQUITTED** of the crime of frustrated homicide of Bill G., committed on March 26<sup>th</sup>, 2021, in the municipal district of Santiago.

V) That the respective agencies shall be notified in due time to enforce this resolution, in accordance with the provisions of Article 468 of the Code of Criminal Procedure.

VI) That the provisions of Law 20,285 and Minutes No. 44-2022 of the Supreme Court must be complied with, regarding the publicity of this sentence with respect to the convicted adolescent.

Send an authorized copy to the Seventh Criminal Court of Santiago, in accordance with the provisions of Articles 14 letter f) and 113 paragraph 2 of the Organic Code of Courts.

THIS COURT ORDERS THAT THIS JUDGMENT BE RECORDED AND FILED IN A TIMELY MANNER.

Case docket (RUC) No. 200654354-0.

Internal Court Case (RIT) No. 231-2022.

Written by Judge Rosa González Torres.

ISSUED BY THE SECOND CHAMBER OF THE FOURTH ORAL TRIAL COURT IN CRIMINAL MATTERS OF SANTIAGO, COMPOSED OF JUDGES ROSA GONZÁLEZ TORRES, MRS. CRISTINA MORALES GÓMEZ AND MR. CARLOS SOTO AGUILAR.