

# J U D G M E N T

Sofia, 22 November 2021

## I N T H E N A M E O F T H E P E O P L E

The **SOFIA CITY COURT, Criminal Division, TRIAL CHAMBER 17**, in a public hearing held on the twenty-second of November of the year two thousand and twenty-one, composed of:

**PRESIDING JUDGE: EMA B.**

**JUDGE: APOSTOL K.**

**JUROR: PAVLENA G.**

**JUROR: RICK B.**

**JUROR: STEFINA G.**

with the participation of Prosecutor **Stefan T.** and court reporter **Diana B.** concerning **Criminal Case by Public Prosecution (CCPP) 12345xx/2021**, assigned to the **Presiding Judge Ema B.** as Judge-Rapporteur and registered at the Sofia City Court's case register **for the year 2021**, on the basis of the law and the evidence in the case

### A D J U D I C A T E S:

**FINDS** the accused **JOHN W. D.**, born on 3 March 1995 in Plovdiv, Bulgaria, Bulgarian national, having prior criminal record, living in Lozenetz, Sofia 1407, Bulgaria, **GUILTY** of the following: on 26 March 2021, at around 10.30 p.m., in the centre of Sofia, at 2 Vitosha boulevard, in the proximity of the Palace of Justice at the square of St. Nedelia church—after having been convicted for theft and having fully served the sentence of imprisonment of one year and six months imposed by the Sofia District Court in CCPP 547/5689 on 13 September 2018—inflicted an injury on Bill G.'s neck, by way of an incision with a screwdriver to his left external carotid artery, which caused Bill G. a profuse bleeding constituting a life-threatening health condition from a transient character—constituting the crime of **inflicting a medium bodily injury in cases of dangerous recidivism** and **SENTENCES** the accused **JOHN D.** pursuant to article 54, paragraph 1 of the Criminal Code for the crime **under article 131a, second proposition read together with article 129**,

**paragraph 2, article 29, paragraph 1, letter (a) of the Criminal Code to a term of IMPRISONMENT of 5 (FIVE) YEARS.**

**FINDS** the accused **JOHN W. D.** (identified above) **LIABLE** for the non-pecuniary damages suffered by the civil claimant Bill G. and **ORDERS** the accused **JOHN W. D.** to pay to Bill G. the amount of **BGN 3 000** together with the legal interest from the date of the tort until the final payment of the amount and **REJECTS as unfounded** the civil claim for non-pecuniary damages for the difference between the awarded sum and the full amount of compensation claimed.

**FINDS** the accused **JOHN W. D.** (identified above) **LIABLE** for the pecuniary damages suffered by Bill G. consisting of costs incurred for medical treatment **for the period 27 March 2021-30 June 2021** and **ORDERS** the accused **JOHN W. D.** to pay to Bill G. the amount of **BGN 10 000** together with the legal interest from 27 March 2021 until the final payment of the awarded sum.

**FINDS** the accused **JOHN W. D.** (identified above) **NOT GUILTY** and **ACQUITS** him pursuant to **article 304 of the Criminal Procedure Code** of the charge of **attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 2 of the Criminal Code.**

**FINDS** the accused **MARY A. J.**, born on 13 April 1997 in Karlovo, Bulgaria, Bulgarian national, living in Lozenetz, Sofia 1407, Bulgaria, **NOT GUILTY** and **ACQUITS** her pursuant to **article 304 of the Criminal Procedure Code** of the charge of **aiding and abetting the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4 of the Criminal Code.**

**FINDS** the accused **JACKSON W. D.**, born on 1 September 2003 in Sofia, Bulgaria, Bulgarian national, living in Liulin, Sofia 1513, Bulgaria, **NOT GUILTY** and **ACQUITS** him pursuant to **article 304 of the Criminal Procedure Code** of the charge of **aiding and abetting, as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4 and article 31, paragraph 2 of the Criminal Code.**

**FINDS** the accused **JACKSON W. D.** (identified above) **GUILTY** of the following: on 26 March 2021, between 10.30 p.m. and 11 p.m., in Sofia, at 13 Kniaz Dondukov boulevard, as a minor (above 16 years and below 18 years), while driving a vehicle without possessing a driving licence at an average speed of 130 km/h without lights on at badly lit inner city streets in the vicinity of the main boulevard Kniaz Dondukov and the Palace of Justice, heading from the Palace of Justice towards Kniaz Dondukov boulevard and crossing major intersections at red traffic lights, hit at the speed of 120 km/h the pedestrian Olivia F.—who was crossing Kniaz Dondukov boulevard at a green light for pedestrians—being fully aware that this way of driving in violation of the traffic rules would not allow him to react in time to avoid collision with another car or a pedestrian and reconciling himself with the possibility of his conduct causing another person’s death—as a consequence of which Olivia F. was thrown in the air, landing against a house wall, hitting it with her head with full force as a result of which she suffered multiple skull fractures and massive brain trauma, inconsistent with life, and died instantly—constituting the crime of **intentionally causing as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, the death of another by violating the traffic rules** and **SENTENCES** the accused **JACKSON W. D.** pursuant to article 54, paragraph 1 and article 63, paragraph 2, point 2 of the Criminal Code for the crime **under article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code** to a term of **IMPRISONMENT of 4 (FOUR) YEARS and 6 (SIX) MONTHS.**

**FINDS** the accused **JACKSON W. D.** (identified above) **GUILTY** of the following: on 26 March 2021, between 10.30 p.m. and 11 p.m., in Sofia, at 13 Kniaz Dondukov boulevard, as a minor (above 16 years and below 18 years), while driving without possessing a driving licence in the direction from the Palace of Justice towards Kniaz Dondukov boulevard at an average speed of 130 km/h lost control over the vehicle at 13 Kniaz Dondukov boulevard and collided with a wrought-iron lamp post at the speed of 90 km/h, stopping the car instantaneously, as a consequence of which John D., who was sitting in the front passenger seat without a seat belt, crashed through the windshield and suffered severe fractures to his skull, neck, arms and ribs—consequences which Jackson D. did not foresee, but was obliged to and was able to foresee—thus **causing as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, medium bodily injury through negligence while driving a motor vehicle in violation of the traffic rules and without possessing a driving licence** and **SENTENCES** the accused **JACKSON W. D.** for the crime **under article 343, paragraph 3, letter (a) read together with article**

**343, paragraph 1, letter (b) read together with article 129, paragraph 2 read together with article 31, paragraph 2 of the Criminal Code to a term of IMPRISONMENT of 2 (TWO) YEARS.**

**IMPOSES** on the accused **JACKSON W. D.** (identified above) on the basis of **article 23 of the Criminal Code** for the crimes under **article 342, paragraph 3, letter (c) and article 343, paragraph 3, letter (a) read together with article 343, paragraph 1, letter (b) read together with article 129, paragraph 2 read together with article 31, paragraph 2 of the Criminal Code** a **JOINT SENTENCE of IMPRISONMENT of 4 (FOUR) YEARS and 6 (SIX) MONTHS.**

**FINDS** the accused **JACKSON W. D.** (identified above) **LIABLE** for the non-pecuniary damages suffered by the civil claimants Roy F., Alexandra F. and Greta F. as a consequence of the crime under **article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code** and **ORDERS** the accused **JACKSON W. D.** to pay to the civil claimants Roy F., Alexandra F. and Greta F. the amount of **BGN 30 000** together with the legal interest from the date of the tort until the final payment of the amount.

**ORDERS** the accused **JOHN W. D.** and the accused **JACKSON W. D.** pursuant to **article 189, paragraph 3 and article 190, paragraph 2 of the Criminal Procedure Code** to pay to the State via the bank account of the Sofia City Court the costs incurred throughout the proceedings amounting to **BGN 1 300.**

**The judgment may be appealed within 15 (fifteen) days from today before the Sofia Court of Appeal pursuant to Chapter        of the Criminal Procedure Code.**

**PRESIDING JUDGE: (signature)**

**JUDGE: (signature)**

**JUROR: (signature)**

**JUROR: (signature)**

**JUROR: (signature)**

Jurors Rick B. and Stefina G. append a partly dissenting opinion on the sentence of the accused JACKSON W. D.

## REASONS to the JUDGMENT

in CCPP 1234xx/2021 adjudicated by the Sofia City Court, Criminal Division,

### TRIAL CHAMBER 17

The Sofia City Prosecutor's Office has filed an indictment in pre-trial proceedings 5643xx/2021, Prosecutor's file 4879xx/2021, conducted against **John D., Jackson D. and Mary J.**, and an indictment in pre-trial proceedings 5668xx/2021, Prosecutor's file 4943xx/2021, conducted against **Jackson. D.**

**I. The indictment in pre-trial proceedings 5643xx/2021, Prosecutor's file 4879xx/2021** alleges that:

1. On 26 March 2021, at around 10.30 p.m., in the centre of Sofia, at 2 Vitosha boulevard, in the proximity of the Palace of Justice at the square of St. Nedelia church, **John D., as perpetrator**—having two prior convictions of theft, one of which an 18-months' imprisonment imposed three years ago and fully served—together with Jackson D. and Mary J., as aiders and abettors, physically assaulted Bill G. whereby: John D. threw himself at Bill G. shouting "I'm gonna kill you, you bastard!" aiming with a screwdriver he had just wrenched out of Bill G.'s hands at his chest and stomach and, upon Bill G. slipping and falling on the ground, stabbed him in the neck injuring an artery. The commission of the crime commenced by means of a substantial step towards causing the death of Bill G. by way of inflicting an injury to a vital organ of his body. The consequences of the conduct—the death of Bill G.—eventually did not occur independent of the perpetrator's intentions who meant to engage in the conduct and to cause the consequences, thus committing the **crime of attempted murder in the circumstances of dangerous recidivism<sup>i</sup> under article 116, paragraph 1, point 12 read together with article 115,<sup>ii</sup> article 18, paragraph 1<sup>iii</sup> and article 20, paragraph 2<sup>iv</sup> of the Criminal Code.**

2. On 26 March 2021, at around 10.30 p.m., in Sofia, at 2 Vitosha boulevard, in the proximity of the Palace of Justice at the square of St. Nedelia church together with John D., as perpetrator, and Mary J., as aider and abettor, the 17-year-old **Jackson D., as aider and abettor**, was standing between John D.—while he physically assaulted Bill G.—and Bill G.'s friends, Bob L. and Ben K., which prevented them from intervening and thus knowingly facilitated the infliction of an injury to a vital organ of Bill G.'s body and by doing so **aided and abetted as a minor,<sup>v</sup> who was able to understand the nature and meaning of the conduct and was able to control his behaviour, the crime of attempted murder in the**

**circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4<sup>vi</sup> and article 31, paragraph 2<sup>vii</sup> of the Criminal Code.**

3. On 26 March 2021, at around 10.30 p.m., in Sofia, at 2 Vitosha boulevard, in the proximity of the Palace of Justice at the square of St. Nedelia church together with John D., as perpetrator, and Jackson D., as aider and abettor, **Mary J., as aider and abettor**, pushed Bill G. screaming “You idiot! Why did you have to provoke him?!” and, upon Bill G. slipping and falling on the ground, threw herself over him with her hands on his neck and while John D. was stabbing him with the screwdriver injuring an artery she prevented Bill G. from breathing and getting off the ground and thus knowingly facilitated the infliction of an injury to a vital organ of Bill G.’s body. By doing so **Mary J. aided and abetted the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4 of the Criminal Code.**

**II. The indictment in pre-trial proceedings 5668xx/2021, Prosecutor’s file 4943xx/2021 alleges that:**

1. On 26 March 2021, between 10.30 p.m. and 11 p.m., in Sofia, at 13 Kniaz Dondukov boulevard, the 17-year-old **Jackson D.** while driving without possessing a driving licence at an average speed of 130 km/h without lights on at badly lit inner city streets in the vicinity of the main boulevard Kniaz Dondukov and the Palace of Justice, heading from the Palace of Justice towards Kniaz Dondukov boulevard and crossing major intersections at red traffic lights hit with the vehicle at the speed of 120 km/h the pedestrian Olivia F. who was crossing Kniaz Dondukov boulevard at a green light for pedestrians, as a consequence of which she was thrown in the air, landing against a house wall, hitting it with her head with full force as a result of which she suffered multiple skull fractures and massive brain trauma, inconsistent with life, and died instantly. Consequently, **Jackson D.**—being fully aware that his way of driving in violation of the traffic rules would not allow him to react in time to avoid collision with another car or a pedestrian and reconciling himself with the possibility of his conduct causing another person’s death—committed **as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, the crime of intentionally causing death of another by violating the traffic rules under article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code.**

2. On 26 March 2021, between 10.30 p.m. and 11 p.m., in Sofia, at 13 Kniaz Dondukov boulevard, the 17-year-old **Jackson D.** while driving without possessing a driving licence in the direction from the Palace of Justice towards Kniaz Dondukov boulevard at an average speed of 130 km/h lost control over the vehicle at 13 Kniaz Dondukov boulevard and collided with a wrought-iron lamp post at the speed of 90 km/h, stopping the car instantaneously, as a consequence of which John D., who was sitting in the front passenger seat without a seat belt, crashed through the windshield and suffered severe fractures to his skull, neck, arms and ribs—consequences which Jackson D. did not foresee, but was obliged to and was able to foresee—thus **causing as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, medium bodily injury through negligence while driving a motor vehicle in violation of the traffic rules and without possessing a driving licence—constituting a crime under article 343, paragraph 3, letter (a) read together with article 343, paragraph 1, letter (b) read together with article 129, paragraph 2<sup>viii</sup> read together with article 31, paragraph 2 of the Criminal Code.**

### **III. Trial proceedings**

#### **1. Joinder of the cases**

By virtue of article 35, paragraph 2 of the Criminal Procedure Code, the proceedings in the case against **John D., Jackson D. and Mary J.** and the proceedings in the case against **Jackson D.** were joined in the present **Criminal Case by Public Prosecution (CCPP) 1234xx/2021.**

The joinder of the cases took place by virtue of article 41, paragraph 1 of the Criminal Procedure Code, which allows for joinder of two or more cases for various crimes against various persons when there is a nexus between them.

As regards the nexus between the two cases, besides the fact that the alleged circumstances in both cases took place around the same time and around the same location, they are further connected through the alleged participation of the same person in both cases, namely the accused Jackson D.

Next, by virtue of article 35, paragraph 2 of the Criminal Procedure Code, both cases fall under the jurisdiction of the Sofia City Court in light of the gravity of the alleged offences.

#### **2. Preliminary hearing under article 370 of the Criminal Procedure Code**

Following the joinder of the cases, the Trial Chamber decided to convene *proprio motu* a preliminary hearing under article 370 of the Criminal Procedure Code with the parties and the persons, identified in the indictment as victims of the offences charged, to determine the procedure to be followed, including whether to conduct the trial in accordance with the abbreviated procedure under Chapter XXVII of the Criminal Procedure Code.

At the outset of the preliminary hearing under article 370 held on 30 September 2021, the Trial Chamber noted that the accused Mary J. appeared without a counsel. On the basis of article 372, paragraph 2 of the Criminal Procedure Code which requires the appointment of counsel to unrepresented accused in proceedings under article 370 *et seq.* of the Criminal Procedure Code, the Trial Chamber appointed attorney Nikolov from the Sofia Bar Association as counsel for the accused Mary J.

### **3. Decision on admission of additional parties**

The Trial Chamber summoned to the preliminary hearing also the individuals, identified as victims in the indictment, and the next of kin of the deceased, notifying them of their rights under article 75 of the Criminal Procedure Code, including the right to apply to participate as private prosecutors under article 76 *et seq.* of the Criminal Procedure Code and/or civil parties under article 84 *et seq.* of the Criminal Procedure Code. The Trial Chamber must rule on the victims' applications for participation, given that neither the private prosecutor nor the civil party are indispensable parties in the criminal proceedings and thus the criminal justice process may take place without them (see to this effect the binding jurisprudence of the Supreme Cassation Court in Interpretative Decision 2, 05 February 2004, Criminal Case 2/2003 pronounced at the Joint Session of the Criminal Division of the Supreme Cassation Court).

With respect to Bill G., identified in the indictment as a victim of the crime under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 2 of the Criminal Code, the Trial Chamber granted his victim application and admitted him as a party—a private prosecutor—in the proceedings.

Likewise, the Trial Chamber admitted for consideration Bill G.'s civil claim for compensation amounting to BGN (Bulgarian leva) 45 000 against the three accused consisting of pecuniary damages of BGN 10 000 for the costs incurred for the medical treatment of his injuries caused by the incriminated act for the period 27 March 2021-30 June 2021 and for non-pecuniary damages of BGN 35 000 thousand for the long-term psychological harm suffered as a result



of the incriminated act. The Trial Chamber was satisfied that the civil claim met the requirements for admission for consideration under article 85 of the Criminal Procedure Code and, accordingly, granted Bill G. the status of civil party—civil claimant—in the proceedings.

At the same hearing, the Trial Chamber appointed under article 101, paragraph 1 of the Criminal Procedure Code attorney Doncheva from the Sofia Bar Association as special representative of the rights and legal interests of the minors Roy F., three years old, Alexandra F., five years old, and Greta F., ten years old, named in the indictment as victims of the incriminated act of Jackson D. under article 342, paragraph 3, letter (c) of the Criminal Code as a consequence of the death of their mother and sole carer, Olivia F. Upon special representative Doncheva's application on behalf of the three minor victims, the Trial Chamber admitted them as private prosecutors in the proceedings.

By virtue of an oral order at the same public hearing, the Trial Chamber dismissed the application for consideration of a joint civil claim against the accused Jackson D., brought by special representative Doncheva on behalf of the three minor victims, Roy F., Alexandra F. and Greta F. requesting compensation for pecuniary damages as a result of the loss of the victims' only carer, their mother, Olivia F., in the amount of BGN 10 000. The Trial Chamber noted that the civil claim for pecuniary damages neither specified the nature nor the particular source of the material harm, *i.e.* the pecuniary damages suffered by each victim (such as expenses for food, clothing etc.) nor the period for which the pecuniary damages were claimed. Accordingly, the civil claim for compensation of pecuniary damages necessitated further information, which special representative Doncheva was unable to provide at the same hearing. The Trial Chamber found that an adjournment of the proceedings on account of the civil claim application for pecuniary damages would run afoul of the purpose of the present abbreviated trial procedure aimed at a timely and expeditious adjudication of the criminal case. To the same effect is the binding jurisprudence of the Supreme Cassation Court in Interpretative Decision 2, 05 February 2004, Criminal Case 2/2003 pronounced at the Joint Session of the Criminal Division of the Supreme Cassation Court, according to which the right of victims to participate as a civil party in the criminal case may not be exercised to the detriment of the public interest or the timely and efficient dispensation of justice. The Trial Chamber further noted that its dismissal of the application for consideration of the civil claim for compensation of pecuniary damages did not affect the victims' right to claim compensation in civil proceedings for the harm suffered as a result of the alleged offence under article 342, paragraph 3, letter (c) of the Criminal Code.

At the same time, the Trial Chamber accepted for consideration the joint civil claim against the accused Jackson D., brought by special representative Doncheva on behalf of the three minor victims, Roy F., Alexandra F. and Greta F. requesting compensation for non-pecuniary damages as a result of the loss of the victims' only carer, their mother, Olivia F., in the amount of BGN 30 000. As regards the admissibility of the civil claim against the accused Jackson D., the Trial Chamber noted that he had already reached the full legal age as of 1 September 2021 and thus there were no legal impediments of accepting for consideration the civil claim for non-pecuniary damages against him. Accordingly, being satisfied that the civil claim for non-pecuniary damages met the requirements under article 85 of the Criminal Procedure Code, the Trial Chamber granted Roy F., Alexandra F. and Greta F. the status of civil parties—civil claimants—in the proceedings.

Mr. Oswald F., the brother of the deceased Olivia F, was also summoned to the preliminary hearing being notified of his entitlement under article 74, paragraph 2, article 76 *et seq.* and article 84 *et seq.* of the Criminal Procedure Code to apply for participation in the proceedings as private prosecutor, as civil party, or both, given the loss of his next-of-kin. Mr. Oswald F. stated that he did not wish to apply for participation in the case.

#### **4. Decision to conduct the trial pursuant to the abbreviated trial procedure under articles 370-374 of the Criminal Procedure Code**

Upon appointing counsel and special representatives and upon deciding on the victims' applications for participation as private prosecutors and/or civil parties in the proceedings, the Trial Chamber notified the accused of their **entitlement under article 371 of the Criminal Procedure Code to consent to the abbreviated procedure under articles 370-374 of the Criminal Procedure Code**. In accordance with article 372 of the Criminal Procedure Code, the Trial Chamber explained to the parties and participants that this is a bifurcated procedure, allowing the accused either:

1. to waive their right to examine and/or to call evidence at trial and thus to rely on the evidence gathered at the pre-trial stage of the proceedings—thus allowing for adjudication on the merits of the case on the basis of the evidentiary material gathered at the pre-trial stage of the proceedings, such as the statements of witnesses and/or experts, expert reports, as well as other documentary, oral and tangible evidence, without the need to examine it at trial and/or to gather new evidence (article 371, point 1 of the Criminal Procedure Code); or

2. to admit fully the facts and circumstances as described in the indictment and thus to waive their right to collect evidence concerning these facts and circumstances (article 371, point 2 of the Criminal Procedure Code).

The Trial Chamber then heard the submissions of the parties on the conduct of the proceedings pursuant to article 370 of the Criminal Procedure Code, in particular, whether to follow the abbreviated trial procedure, as clarified, and, if yes, under which variation and under what conditions, if any.

The co-accused Jackson D. and John D. and their common legal representatives, lead counsel Ms. Summer and co-counsel Mr. King, expressed their consent for the conduct of the trial pursuant to the abbreviated trial procedure laid down in article 371, point 1 of the Criminal Procedure Code thus waiving their right to examine at trial the evidence gathered at the pre-trial stage of the proceedings.

The accused John D. expressed willingness to make an unsworn statement before his final submissions on the merits of the case.

The accused Jackson D. submitted that he maintained his statements and confession given at the pre-trial stage of the proceedings and requested the Trial Chamber to admit into evidence his student character report by the principal of his school, Shawn D.

The accused Mary J. and appointed counsel Nikolov expressed their consent that the trial be conducted pursuant to the abbreviated trial procedure under article 371, point 1 of the Criminal Procedure Code without the need for examination of the evidence gathered at the pre-trial stage. The accused Mary J. submitted that she maintained every single word in her statements given at the pre-trial stage of the proceedings and requested the Trial Chamber to admit into evidence a performance appraisal report and a first aid certificate.

Private prosecutor and civil claimant Bill G. and his counsel, Mr. Green, as well as special representative Doncheva, acting on behalf of the private prosecutors and civil claimants Roy F., Alexandra F. and Greta F., also consented to the abbreviated procedure under article 371, point 1 of the Criminal Procedure Code.

Upon hearing the parties, the Trial Chamber determined that the trial will be conducted pursuant to the abbreviated procedure set out in articles 370-374 of the Criminal Procedure Code in the variant under article 371, point 1, and scheduled a hearing on 22 November 2021

to hear the accused John D.'s unsworn statement together with the parties' closing submissions and to pronounce the judgment and the sentence.<sup>ix</sup>

## **5. Hearing on 22 November 2021. Admission of evidence and closing submissions**

At the hearing on 22 November 2021, the Trial Chamber incorporated into the trial record by virtue of article 373, paragraph 1 read together with article 283 of the Criminal Procedure Code the evidence gathered at the pre-trial stage of the proceedings upon determining that it was collected in accordance with the law. The Trial Chamber then proceeded with receiving the unsworn statement of the accused John D. (whereby he provided his account of the events on 26 March 2021), the additional written evidence presented by the accused Mary J. and Jackson D., followed by the parties' closing submissions.

### **5.1. Prosecutor's submissions**

During the parties' closing submissions, the Prosecutor from the Sofia City Prosecutor's Office **maintained the charge against the accused John D.** requesting his conviction for the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 2 of the Criminal Code and, accordingly, the imposition of a sentence of 15 years' imprisonment. The Prosecutor submitted that the sentence should be determined towards the minimum provided in the law. The Prosecutor substantiated his submission by noting that, despite the fact that John D. committed the alleged offence after having repeatedly infringed the law—which in the Prosecutor's view should be considered as an aggravating circumstance—the accused expressed remorse for the infliction of the injury. The Prosecutor also averred that the accused John D.'s intention to kill Bill G. was provoked by the victim's aggressive behaviour.

With respect to the civil claimant Bill G.'s claim for compensation, the Prosecutor submitted that it should be awarded in full.

The Prosecutor **maintained the charges against the accused Jackson D.** for the crime under article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code and for the crime under article 343, paragraph 3, letter (a) read together with article 343, paragraph 1, letter (b) read together with article 129, paragraph 2 read together with article 31, paragraph 2 of the Criminal Code and requested a conviction on both charges and the imposition of a joint sentence for both crimes by virtue of article 23, paragraph 1 of the Criminal Code in the range of three to five years' imprisonment.

As circumstances relevant to the individualisation of the sentence the Prosecutor pointed to the minor age of the accused (as a mitigating circumstance), to the fact that he sat behind the wheel on the night of 26 March 2021 without a driving licence (as an aggravating circumstances) as well as to the fact that as a consequence of his conduct three children were orphaned and, moreover, left without their sole carer (as an aggravating circumstance) and another person—the accused’s brother and co-accused John D.—was injured (as an aggravating circumstance).

The Prosecutor did not maintain the charge against the accused Jackson D. for aiding and abetting as a minor the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1, article 20, paragraph 4 and article 31, paragraph 2 of the Criminal Code. The Prosecutor pointed to the lack of sufficient evidence to substantiate this charge and submitted that Jackson D. should be acquitted.

The Prosecutor did not maintain the charge against the accused Mary J., submitting that she should be acquitted. The Prosecutor contended that on the basis of Mary J.’s statements during her questioning at the pre-trial stage of the proceedings together with the witness statement of her brother, Steve J., and, in particular, in light of the written evidence, admitted by the Trial Chamber, it becomes evident that the accused Mary J. did not intend to assist John D. in the commission of the crime of attempted murder of Bill G. The Prosecutor submits that Mary J. in fact tried to push away Bill G. to stop the altercation and to provide first aid to the victim by stopping the injury from bleeding.

## **5.2. Private prosecutors’ and civil claimants’ submissions**

Private prosecutor and civil claimant Bill G. and his counsel, Mr. Green, asked the Trial Chamber to convict the accused John D. on the charge of attempted murder and to impose a sentence towards the maximum term of imprisonment envisioned by the law. As to the charges of aiding and abetting the crime of attempted murder against the co-accused Jackson D. and Mary J. the private prosecutor Bill G. and his counsel did not express an opinion and left the determination entirely to the assessment of the Trial Chamber. Bill G. in his capacity as civil claimant requested that the Trial Chamber awards in full his claim for compensation for pecuniary and non-pecuniary damages.

Special representative Doncheva, acting on behalf of private prosecutors and civil claimants Roy F., Alexandra F. and Greta F., requested the conviction of Jackson D. for the crime of

intentionally causing death of another by violating, as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, the traffic rules under article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code, which has left her clients orphaned and without their sole carer. As to the sentence, attorney Doncheva leaved this determination to the Trial Chamber's discretion. Special representative Doncheva requested that the Trial Chamber awards the civil claimants' claim for compensation for non-pecuniary damages in full.

### **5.3. Defence's submissions**

Lead counsel for John D., counsel Summer, maintained her client's innocence and pleaded for his acquittal. Counsel Summer submitted that the evidence establishes that Bill G.'s injury was inflicted by accident, inadvertently, during an altercation initiated entirely by Bill G., who followed the accused to his car and started harassing him. Counsel Summer submitted that John D. did not intend to harm Bill G., but tried to defend himself and his car from damage. Further, counsel Summer contended that the injury was inflicted as a consequence of Bill G. falling on the ground and dragging John D. down with him. Accordingly, counsel Summer requested the Trial Chamber to acquit the accused John D. by finding that the injury was an accident within the meaning of article 15 of the Criminal Code<sup>x</sup> or, alternatively, to consider that the accused acted in self-defence and thus to acquit him on the basis of article 12, paragraph 1 of the Criminal Code.

The accused John D. in his final words pleaded for an acquittal reiterating the account he provided during his unsworn statement and inviting the Trial Chamber to consider that he is not liable for the infliction of the injury on Bill G. on the basis of article 15 or, in the alternative, article 12, paragraph 1 of the Criminal Code. The accused John D. also pleaded for the Trial Chamber's lenience towards his brother and co-accused Jackson D.

Lead counsel for the accused Jackson D., Ms. Summer, pleaded that he is innocent with respect to the charge of aiding and abetting the crime of Bill G.'s attempted murder. She asked the Trial Chamber for lenience towards her client as regards his responsibility for the two traffic offences. Counsel Summer emphasised on Jackson D.'s excellent personal characteristics, his minor age and contended that the only reason for him to sit behind the wheel on the night of 26 March 2021 without a driving licence and to drive in violation of the traffic rules was his desire to save his brother from Bill G.'s aggressive friends, who, especially after the inadvertent injury, were thirsty for vengeance.

The accused Jackson D. in his final word expressed remorse for the death of Olivia F. and for the injuries sustained by his brother John D. Saying that he was ready to bear the consequences of his conduct, he asked the Trial Chamber for leniency in the determination of his sentence. The accused pleaded not guilty to the charge of aiding and abetting the crime of attempted murder.

Attorney Nikolov, appointed counsel for the accused Mary J., maintained his client's innocence concurring entirely with the Prosecutor's position. The accused Mary J. in her final word maintained her innocence and requested to be acquitted. She also pleaded for lenience towards her co-accused John D. and Jackson D., insisting that the altercation was provoked entirely by Bill G.

**The SOFIA CITY COURT, upon evaluating the evidence on its own and in its totality, found the following:**

#### **ON THE FACTS**

The accused John D. and the accused Jackson D. are brothers. John D. was born on 3 March 1995 in Plovdiv, Bulgaria. Jackson D. was born on 1 September 2003 in Sofia, Bulgaria.

The accused Mary J. was born on 13 April 1997 in Karlovo, Bulgaria. She and the accused John D. are in an intimate relationship.

#### **I. The accused John D.**

John D. has two prior convictions for theft.<sup>xi</sup> The sentence in the first case is a fine imposed by virtue of a Trial Judgment in CCPP 235/3780 on 25 May 2016 by the Sofia District Court, Trial Chamber 21, and the sentence in the second case is an imprisonment of 18 months imposed by virtue of a Trial Judgment in CCPP 547/5689 on 13 September 2018 by the Sofia District Court, Trial Chamber 14. The accused John D. has served the full prison term and has paid the fine, but the penalties have not yet been expunged from his criminal record.

The accused John D. dropped out of the local high school 'Vassil Levski' when he was 17 years old and has been working in the same car repair shop 'Give Yourself a Brake' on and off ever since. His employer Peter V. considers him as a good and reliable car mechanic and allowed him to come back to work after John D. served his prison term. John D. has his own vintage, second-hand sports car, which he is forever tuning in his spare time. The vehicle did

not have airbags when the accused bought it and in his spare time he managed to install an airbag on the driver's side only.

## **II. The accused Jackson D.**

The accused Jackson D. has no prior criminal record. He lives with his parents and studies at the local high school 'Vassil Levski' at the 10<sup>th</sup> grade. The accused is respected both by his peers and by his teachers as a diligent student and a good-hearted human being. He neither has a car nor a driving licence.

## **III. The accused Mary J.**

The accused Mary J. is a dog trainer at the organisation 'Four Paws' and a volunteer in an elderly care home 'St. Nicholas' in Sofia. She is respected by her employer at 'Four Paws' as a kind and considerate young woman. In May 2019, she enrolled in a first aid training programme. Mary J. lives with the accused John D. in a rented flat in Lozenetz residential district in Sofia.

## **IV. Sequence of events on the evening of 26 March 2021**

On Friday, 26 March 2021, around 8 p.m. the three accused drove in John D.'s car to his favourite bar, the 'Blue Moon', to have a meal and a few drinks. As usual, Jackson D. did not have alcohol, but a few soft drinks, while John D. had one beer after the other.

At around 10.30 p.m., John D. had already consumed a substantial amount of alcohol which reached the concentration of 1.2 ‰ in his blood. Out of jealousy, he got into a heated argument with another guest, Bill G., and his two friends, Bob L. and Ben K., none of whom he had ever met before. After five minutes, Jackson D. and Mary J. managed to persuade him to leave.

After settling the bill, the three accused went to the parking lot approaching John D.'s vehicle. Despite the insistence of Jackson D. and Mary J. that he should not drive, given his distinctly wobbly walk, he was about to enter the car from the driver's door, when Bill G. showed up.

In the meantime, Bill G., Bob L. and Ben K. had come to the parking lot and Bill G. had just taken a screwdriver from his own car. Then he approached John D.'s car and drew a long and deep scratch across the hood of the car with the screwdriver. John D. got out of his car, livid with rage, and threw himself at Bill G., wrenching the screwdriver out of his hands and screaming at him "I'm gonna kill you, you bastard!".



Mary J. also stormed at Bill G., shouting “You fool! What did you do?! He’s on a short fuse, you idiot!” trying to push him away from John D.

Jackson D. also stood between his brother and Bill G., on the one side, and Bill G.’s friends, on the other. Almost immediately, however, he was pushed away by Ben K. and stood away.

Meanwhile, John D. aimed several times with the screwdriver at Bill G.’s chest and stomach but kept missing. Bill G. then slipped and fell to the ground. Seeing this, Mary J. threw herself over him and John D. ran the screwdriver through Bill’s neck, injuring an artery. Bill G.’s friends pushed away Mary J. who was leaning over Bill with her hands on his neck which was bleeding profusely. Bob L. and Ben K. tried to staunch the flow of blood, while calling an ambulance.

After Mary J. was pushed away from Bill G., she started running with her hands covered in blood towards the apartment of her brother Steve J., who is a paramedic and lives not far away from the pub ‘Blue moon’. Meanwhile, the accused Mary J. tried to get in touch with Steve J. on the phone, but he did not answer. Before she reached her brother’s place, one block away from his street and about 15 minutes after she left the parking lot, Mary J. was detained by police officers Greg D. and Cathy P.

Meanwhile, right after John D. injured Bill G., his brother Jackson D. pulled him off the ground and dragged him to his car. The accused Jackson D. put John D. in the passenger seat and he himself sat behind the wheel, neither fastening his brother’s nor his own seat belt for lack of time. He started the engine with the key that had still been in the ignition and drove away at high speed without turning the lights on.

When Bob L. heard the engine revving, he dashed to his own car to pursue Jackson D. and John D., while Ben K. stayed behind with Bill G. waiting for the ambulance, which arrived seven minutes after Jackson D. drove off. Bill G. was taken to the nearby hospital ‘Pirogov’ and was saved in an emergency surgery.

The accused Jackson D. as an inexperienced and unlicensed driver was rushing through the badly lit inner city streets at an average speed of 130 km/h., repeatedly disregarding red traffic lights at major intersections without slowing down. He was completely focused on getting away so that his brother John would not be identified and detained.

While Jackson D. was turning a bend in the road along Kniaz Dondukov boulevard, the pedestrian Olivia F., who was out on a late evening walk, stepped across the road at a green

traffic light for pedestrians. She was hit by the vehicle driven by the accused Jackson D. at the speed of 120 km/h. The impact threw Olivia F. up in the air after which she landed against a house wall, hitting it with her head with full force. Olivia F. suffered multiple skull fractures and massive brain trauma and died instantly. Olivia F. had lost her husband a year ago and was a single mother and the sole carer of her three young children at the ages of three, five and ten, namely Roy F., Alexandra F. and Greta F.

Immediately after the collision with Olivia F., the accused Jackson D. lost control of the car and collided with a wrought-iron lamp post at a speed of 90 km/h, which stopped the car instantaneously. John D. who was not wearing a set belt, crashed through the windshield, suffering severe fractures to his skull, neck, arms and ribs. Jackson D. was cushioned by the driver airbag and only suffered fractures to five ribs and a severe whiplash trauma. Five minutes later police officers Tony B. and Gerry W. attended the traffic incident site, calling an ambulance and detaining Jackson D.

## **ON THE EVIDENCE**

The above facts have been established on the basis of the written evidence and oral evidence gathered at the pre-trial stage of the proceedings together with the unsworn statement of the accused John D. and written documents admitted into evidence during the abbreviated trial procedure.

### **I. Types of evidence**

In determining the relevant facts, the Trial Chamber took into account the following items of oral evidence: statement (confession) of the accused Jackson D. given before a judge in the course of the pre-trial proceedings by virtue of article 222 of the Criminal Procedure Code (pp 17-20 of the pre-trial record); transcript of questioning of the accused Mary J. (pp 13-14 of the pre-trial record); transcript of questioning of the accused John D. (p. 12 of the pre-trial record); witness statement of Bill G. given before a judge in the course of the pre-trial proceedings by virtue of article 223 of the Criminal Procedure Code (pp 38-40 of the pre-trial record); statements of witnesses Bob L. (p. 77-78 of the pre-trial record), Ben K. (p. 72 of the pre-trial record), Steve J. (p. 41 of the pre-trial record), Oswald F. (p. 74 of the pre-trial record), Peter V. (pp 42-43 from the pre-trial record), Greg D. (p. 75 of the pre-trial record), Cathy P. (p. 76 of the pre-trial record), Craig H. (p. 77 of the pre-trial record), Milena P. (p. 78 of the pre-trial record), Tony B. (p. 79 of the pre-trial record) and Gerry W. (p. 80 of the pre-trial record).

The Trial Chamber also considered the following items of written evidence: protocol of search and seizure of Jackson D. (p. 27 of the pre-trial record), protocol of search and seizure of John D. (p. 28 of the pre-trial record), protocol of search and seizure of Mary J. (p. 29 of the pre-trial record), forensic medical examination report of a person concerning Bill G. by medical expert Dr. Hugh G. (p. 36 of the pre-trial record), protocol of inspection of a traffic accident site (p. 42 of the pre-trial record), medical report of blood alcohol level concerning John D. by medical expert Dr. Ellen A. (p. 31 of the pre-trial record), medical report of blood alcohol level concerning Jackson D. by medical expert Dr. Ellen A. (p. 32 of the pre-trial record), auto-technical expert report by expert Ernest B. (pp 33-35 of the pre-trial record), protocol of consultation with a minor child concerning Greta F. (pp 49-50 of the pre-trial record), forensic medical examination report of a body concerning the deceased Olivia F. by medical expert Dr. Ellen A. (p. 20 of the pre-trial record), forensic medical examination report of a person concerning John D. by medical expert Dr. Ellen A. (p. 21 of the pre-trial record), psychological assessment of the child Greta F. by Dr. Kim R. (pp 51-55 of the pre-trial record), psychological assessment of the child Roy F. by Dr. Kim R. (pp 56-62 of the pre-trial record), psychological assessment of the child Alexandra F. by Dr. Kim R. (pp 63-70 of the pre-trial record), social report CPA-354/13.06.2021 (pp 72-83 of the pre-trial record), forensic psychiatric and psychological assessment report of an alleged minor offender concerning Jackson D. by Dr. James M. (pp 84-101 of the pre-trial record), forensic psychiatric and psychological assessment report of an alleged offender concerning John D. by Dr. James M. (pp 102-105 of the pre-trial record).

In the course of the trial proceedings the Trial Chamber admitted as written evidence a social report of the Agency for Social Assistance, Directorate of Social Assistance-Lozenets, ref. SG-3231/19.11.2021 regarding the situation of orphaned children Roy F., Alexandra F. and Greta F., medical expenses documentation concerning medical services provided to Bill G., including rehabilitation, prescriptions and medication for the period 27 March 2021-30 June 2021, performance appraisal report of Mary J. from her employer Victor D., first aid certificate 2435/13.03.2019 in the name of Mary J., student character report by principal Shawn D. concerning Jackson D., call sequence table of phone number 00359 xxx xxx, registered under the name of Steve J., for 26 March 2021 and a call sequence table of phone number 00359 zzz zzz, registered under the name of Mary J., for 26 March 2021, updated criminal record certificates for John. D, Jackson D. and Mary J.

## **II. Discussion**

## **1. Evidence relevant to the accused John D.**

As regards the accused John D., the Trial Chamber notes that, while at the pre-trial phase he availed himself of the right to remain silent pursuant to article 55, paragraph 1 of the Criminal Procedure Code, subsequently, during the abbreviated trial procedure under article 370 *et seq.* of the Criminal Procedure Code he provided an unsworn statement. With respect to the unsworn statement of the accused, the Trial Chamber notes its twofold nature.

On the one hand, an accused's unsworn statement serves his or her defence, which explains why the law does not envisage an undertaking as to its truthfulness. At the same time, unsworn statements form part of the evidentiary material provided that they contain, as a whole or in part, information relevant to the case.

The Trial Chamber further observes that statements made by the accused do not have a pre-determined evidentiary weight. Instead, the Trial Chamber must assess their probative value on the basis of a scrutinized analysis of whether and to what extent the accused's version of the facts is corroborated by other evidence. The credibility of the accused's unsworn statement, as is the case with any other type and piece of evidence, depends on the extent to which it is substantiated by other evidence of a different nature or from another source.

Upon having evaluated the accused John D.'s statement on its own and in light of the rest of the evidence on the record, the Trial Chamber finds that the version of the facts, conveyed by the accused John D., is corroborated in part by the rest of the evidence in the case. In particular, the Trial Chamber observes that John D.'s unsworn statement is not the only piece of evidence establishing that he and the victim Bill G. did not know each other before they met in the evening of 26 March 2021, as well as that the accused was provoked by Bill G., following an exchange of heated arguments between them earlier the same evening at 'Blue moon' pub. The same facts are equally reflected in the statements provided by the other co-accused Jackson D. and Mary J., as well as by Bill G.'s friends, witnesses Bob L. and Ben K. All these pieces of evidence, considered together, demonstrate that John D. and Bill G. first met at the pub where they exchanged some heated arguments triggered by John D.'s jealousy, that afterwards John D. left the pub staggering together with the other co-accused before Bill G. and his friends followed them to the parking lot where Bill G. confronted John D.

Similarly, these pieces of evidence, each considered on its own and taken together, establish other relevant facts, namely that the screwdriver, with which the accused John D. inflicted Bill G.'s injury, belonged to Bill G., as well as that upon taking the screwdriver off Bill G.'s

hands, John D. started hitting in Bill G.'s direction with clumsy and poorly coordinated movements due to the amount of alcohol he had just consumed. Another equally relevant circumstance, established on the basis of the statements of the three accused and the statements of witnesses Bob L. and Ben K., is that just before the altercation Bill G. ran the screwdriver through the hood of John D.'s car, which John D. was constantly tuning in his spare time. All these facts, considered together, show that John D.'s conduct was in response to Bill G.'s provocative behaviour, as asserted in the accused's unsworn statement.

Although the accounts provided by Jackson D. and Mary J. may be considered both as partial and as serving their defence given their status as co-accused for aiding and abetting the offence, for which John D. stands trial, as well as their close relationship with him (as brother and girlfriend), the Trial Chamber finds that they contribute to establishing the facts and circumstances surrounding John D.'s conduct.

Despite the twofold nature of Jackson D.'s and Mary J.'s statements, given their status as co-accused, the Trial Chamber assesses them as credible and reliable evidence on the points discussed above. The accounts of Jackson D. and Mary J. in the part concerning Jackson D.'s conduct are detailed, internally and mutually consistent and are further corroborated by the statements of witnesses Bob L. and Ben K. These two witnesses, in contrast to the co-accused Jackson D. and Mary J., have close friendly relations with the victim of the offence, Bill G., and not with any of the accused. Nevertheless, both Bob L. and Ben K. acknowledged that it was their friend Bill G. who followed John D. to the parking lot, not *vice versa*, and that he was the one carrying the screwdriver.

As regards the rest of John D.'s statement, the Trial Chamber is of the view that it serves his defence and, therefore, it does not consider the rest of John D.'s statement as evidence establishing facts relevant to the subject-matter of the case. In particular, the Trial Chamber does not assess as credible John D.'s contention that he did not inflict the injury willingly, but inadvertently after being dragged by Bill G. who slipped and fell on the ground. This part of the accused's statement remains isolated in light of the rest of the evidence on this point, in particular, the statements of Bill G., Bob L. and Ben K., which complement each other. These pieces of evidence, taken together, establish that before Bill G. fell on the ground, John D. stormed at him, wrenching the screwdriver out of his hands shouting "I'm gonna kill you, you bastard!" and that still—despite the lack of much coordination of his movements—he was aiming the screwdriver at Bill G. Consequently, the accused meant to cause harm to Bill G. and acknowledged this aloud.

Similarly, these pieces of evidence demonstrate that John D. did not inadvertently slip and fall over Bill G. On the contrary, he leaned over Bill G. when the latter fell on the ground and ran the screwdriver through his neck.

The conclusion that John D. meant to harm Bill G. is further supported by Mary J.'s reaction to the damage to the hood of John D.'s car who shouted at Bill G. "You fool! What did you do?! He's on a short fuse, you idiot!" referring to John D.

This reaction on the part of Mary J. is similarly reflected in the statements of Bill G., Bob L. and Ben K.

Other facts substantiating the inference that John D. meant to hurt Bill G. are the accused's short temper (reflected in the statements of the co-accused Mary J. and Jackson D., as well as in the statement of John D.'s employer, witness Peter V.), the quantity of alcohol John D. had drunk that evening (acknowledged in the statements of the co-accused and corroborated by Dr. Ellen A.'s medical report on the alcohol level in John D.'s blood demonstrating a blood-alcohol concentration of 1.2 ‰), as well as the fact that John D. had been provoked by Bill G.'s aggressive behaviour, including through damaging his favourite car. The fact that John D. was constantly tuning his car in his spare time is established on the basis of the statement of the accused Mary J. and further corroborated by the witness statement of Peter V. All these circumstances lead to the conclusion that John D. acted in a state of rage and hardly managed to contain himself. Consequently, the Trial Chamber concludes that the accused John D. deliberately caused the bodily injury to Bill G.

In determining the gravity and the type of injury sustained by Bill G., the Trial Chamber relies on the forensic medical examination report elaborated by medical expert Dr. Hugh G. According to the expert report, Bill G. sustained an incision to the left external carotid artery, which caused a life-threatening health condition from a transient character.

## **2. Evidence relevant to the accused Mary J.**

Next, as regards the accused Mary J., despite the twofold nature of an accused's unsworn statement, as discussed above, the Trial Chamber considers that her account provided at the pre-trial stage of the proceedings is credible in its entirety and thus contributes to the establishment of the truth. Mary J.'s unsworn statement is clear, logical and internally consistent. Furthermore, when assessed not on its own, in isolation, but in light of the totality of the evidence in the case, Mary J.'s statement resonates to a considerable extent and is complemented by the majority of the rest of the evidence, both oral and written. More

precisely, Mary J.'s statement that she pushed Bill G. away from John D. trying to prevent an altercation is complemented by the witness statements of Bill G., Ben K. and Bob L., who as already noted, heard her shouting at Bill G. "You fool! What did you do?! He's on a short fuse, you idiot!", referring to John D. Similarly, Mary J.'s contention that she threw herself on the ground trying to separate Bill G. from John D. and that she put her hands on Bill G.'s neck to help stop the blood flow is corroborated by the first aid certificate in her name, admitted into evidence by the Trial Chamber.

The fact that Mary J. tried to help the victim is also demonstrated by her conduct immediately after the incident when she ran towards her brother's—Steve J.—place, who lives not far away from 'Blue moon' pub, to fetch him to help Bill G. The truthfulness of Mary J.'s contention is corroborated by the witness statement of Steve J. who stated that he is a paramedic, living one block away from the street where his sister was detained by the police. Witness Steve J. further explained that at around 10.40 p.m. on the evening of 26 March 2021 he saw a missed call from his sister, but when he tried to call her back, she did not respond.

According to the witness statements of police officers Greg D. and Cathy P., it becomes clear that at around 10.50 p.m. on the same evening they detained Mary J. who was running down Khan Asparuh street towards the city centre looking distressed and lost, with her hands covered in blood.

The witness statement of Steve J. is further corroborated by the call sequence table of phone number 00359 xxx xxx for 26 March 2021 and the call sequence table of phone number 00359 zzz zzz, which show an outgoing call of 00:00 minutes duration from Mary J.'s phone to Steve J.'s phone at 10.46 p.m. on 26 March 2021 and an incoming call to Mary J.'s phone from Steve J.'s phone at 10.52 p.m. on 26 March 2021 of 00:00 minutes duration. These records support the conclusion about a missed call from Mary J. to her brother at 10.46 p.m., followed by a missed call from Steve J. to Mary J. several minutes later.

The Trial Chamber finds that the above pieces of evidence considered on their own and taken together establish that Mary J. tried to prevent an altercation between John D. and Bill G. and afterwards tried to assist the victim. This conclusion is neither undermined by the witness statements of Bill G, Bob L. and Ben K. nor by the witness statements of Greg D. and Cathy P. The accounts of the latter two witnesses who detained Mary J. merely establish that the accused was running down the street in distress and that her hands were covered in blood. None of these circumstances, however, disproves the credibility of Mary J.'s account. On the

contrary, they further substantiate the fact that Mary J. had tried to stop the blood on Bill G.'s neck and that she was desperately trying to reach her brother to fetch him help Bill G. The fact that, according to Bill G.'s witness statement, he thought that Mary J. was pushing him to lie down on the ground does not negate the conclusion that the reason for her to do so was to help him.

The same holds true with respect to witnesses Bob L. and Ben K. who, upon seeing their friend lying on the ground covered in blood with Mary J. leaning over him, immediately pushed her away *presuming* that she was about to harm Bill G., without in fact having seen what exactly she was doing. Therefore, the Trial Chamber does not consider that the witness statements of Bob L. and Ben K. disprove Mary J.'s account. In particular, while the Trial Chamber does not find a reason to question the credibility of Bob L.'s and Ben K.'s witness statements on this point, despite their friendship with the victim Bill G., it does not consider their account of the circumstances surrounding Bill G. lying on the ground to be reliable. This conclusion stems from the fact that due to Mary J.'s posture at that particular moment the two witnesses were unable to clearly perceive her actions. Both Mary J., on the one hand, and Bob L. and Ben K., on the other hand, state that she was facing Bill G. and thus the ground. Consequently, the two witnesses could only see Mary J.'s back. Furthermore, both Bob L. and Ben K. said that they pushed Mary J. away from Bill G. *because they thought* that she was about to harm him, but *did not say that they actually saw* her harming their friend. Therefore, albeit credible (since Bob L. and Ben K. were sincere in their assumption that Mary J. was about to harm Bill G.), the statements of the two witnesses are unreliable on this particular point due to the fact that *in reality they did not witness* any wrongdoing on Mary J.'s part.<sup>xii</sup>

### **3. Evidence relevant to the accused Jackson D.**

With respect to the accused Jackson D., the Trial Chamber takes into account his statement given before a judge at the pre-trial stage of the proceedings, admitting that he had no clear memory of the altercation between Bill G. and John D. and where exactly he himself was positioned at that point in time, explaining that his only thought was how to get his brother John D. away from the parking lot as quickly as possible. The accused explained that he was afraid that John D. would get into a fight and would thus get in trouble with the criminal justice authorities for another time and wanted to prevent this at any cost.

During his questioning before a judge at the pre-trial stage, the accused admitted that it was possible that he stood between his brother and Bill G.'s friends, although, being under stress,



he did not remember the exact circumstances surrounding the altercation. At the same time, the accused averred that if that were indeed the case, this was a logical and simply human defensive reaction, given that Bill G.'s friends were much more robust and outnumbered his brother. Thus, Jackson D. suggested that his instinctive reaction would have been to stand between them and shield his brother, at least from one side, assuming that from the other side Bill G. was attacking his brother with the screwdriver.

The Trial Chamber finds no reason to question the credibility of Jackson D.'s statement on this point. It should be recalled that, depending on the circumstances, an accused's account, besides serving his or her defence, may likewise contribute to establishing the subject-matter of the case. The accused's statement on this point is consistent and not unreasonable, especially in light of the respective circumstances.

Moreover, none of the eyewitnesses' accounts seems to undermine Jackson D.'s version of the facts. In fact, Bob L. and Ben K. said that Jackson D. stood a few seconds between them and John D., while the latter and Bill G. were both still standing. Then, according to Bob L., the witness pushed away Jackson D. to reach John D. Also, Bob L. added that he never again saw Jackson D. afterwards. The Trial Chamber further considers witness Ben K.'s statement that Jackson D. stood with his face towards him and Bob L. and was, accordingly, with his back towards John D. and Bill G. Consequently, the Trial Chamber concludes that Jackson D. was unable to perceive what John D. and Bill G. were doing, in particular, whether and who was attacking whom. Given all the above, the Trial Chamber finds that the evidence at hand does not establish that Jackson D. prevented Bob L. and Ben K. from intervening between John D. and Bill G. On the contrary, the witness statements discussed hitherto demonstrate that Jackson D. was pushed away by Bob L. almost immediately—even before Bill G. fell on the ground and was injured—and did not return to the this spot again.

Further, the Trial Chamber notes the accused Jackson D.'s full confession as regards the commission of the two traffic offences. Relevantly, the Trial Chamber recalls the overarching criminal justice precept, proclaimed in article 116 of the Criminal Procedure Code, prohibiting the pronouncement of a conviction only on the basis of the accused's admission of guilt. Equally relevant is article 116, paragraph 2 of the Criminal Procedure Code, according to which the confession of the accused shall not discharge the respective bodies from the obligation to collect also other relevant evidence.

Consequently, the Trial Chamber must examine whether Jackson D.'s full confession is corroborated by other evidence in the case from other sources and/or of a different nature. Other evidence directly relevant to the elucidation of the circumstances surrounding the commission of the traffic offences and their immediate aftermath are: the protocol of inspection of the traffic accident site, the auto-technical expert report, the report on the alcohol concentration in Jackson D.'s blood, the forensic medical examination reports concerning the injuries sustained by John D. and by the deceased Olivia F., the forensic psychiatric and psychological assessment report of an alleged minor offender concerning Jackson D., as well as the witness statements of police officers Tony B. and Gerry W. who attended the traffic accident site, contacted the emergency and detained Jackson D. Another relevant piece of evidence is the witness statement of the paramedic Milena P., according to whom the ambulance arrived at the traffic accident site within seven minutes. These pieces of evidence corroborate and complement each other.

The evidence above, considered on its own and in its totality, establishes both the identity of the perpetrator of the two traffic offences, namely the accused Jackson D., the circumstances immediately preceding their commission together with the manner and sequence of their commission. To start with, the witness statements of police officers Tony B. and Gerry W., which are logical and mutually consistent, taken together with Jackson D.'s full confession and the report on Jackson D.'s blood alcohol level contribute to establishing the fact that the accused drove the car without a driving licence and not under the influence of alcohol.

The protocol of inspection of the traffic accident site further establishes that the vehicle crossed at a red light the major intersection just before it hit Olivia F. The same piece of evidence demonstrates that at the time the victim was crossing the road, immediately before she was hit by the vehicle driven by Jackson D., the light for pedestrians was green. The protocol of inspection of the traffic accident site together with the auto-technical expert report further demonstrate that at the moment of the collision with Olivia F., Jackson D. drove the vehicle at a speed of 120 km/h on a public street with a 50 km/h speed limit. According to the auto-technical expert report, no braking marks were found on the road surface at the collision spot. Hence, the Trial Chamber concludes that Olivia F. was hit by the vehicle driven by Jackson D. at full speed, which led to her body being thrown in the air, landing with full force against the first obstacle in its way, which according to the protocol of inspection of the traffic accident site was a house wall.

The above inferences are also supported by the fact—established on the basis of both the protocol of inspection of the traffic accident site and the auto-technical expert report—that immediately after hitting Olivia F., Jackson D. lost control over the vehicle, as a result of which it collided with a wrought-iron lamp post and stopped instantaneously at a speed of approximately 90 km/h. This speed is reflected in the auto-technical expert report. Furthermore, the technical expert Ernest B. noted in the report that he did not detect braking marks on the road surface at the collision spot.

According to the forensic medical examination report concerning the deceased Olivia F., she suffered multiple skull fractures and massive brain trauma, inconsistent with life, which caused her instant death. The expert Dr. Ellen A. concluded that the type of Olivia F.'s trauma and fractures correspond to trauma and fractures inflicted as a result of a collision at full speed with a large object, such as a vehicle or a wall, or both.

With respect to the injuries sustained by John D., the forensic medical examination report establishes that he suffered the following injuries: three fractures to the right side of his neck, two fractures to his right arm around the elbow, a trauma to his rib cage fracturing the fourth and fifth ribs on the right. The report also points to one fracture to John D.'s head in the upper right side of the head around three centimetres above the right temporal bone which penetrated the skull about two centimetres. The expert Dr. Ellen A. concluded that the type of John D.'s trauma and fractures correspond to trauma and fractures inflicted as a result of a collision at full speed both with a cutting and a hard object, such as a windshield and a road surface.

According to the forensic psychiatric and psychological assessment report of an alleged minor offender, Jackson D.'s psychological development corresponds to the psychological development of adolescents of the same age. The expert Dr. James M. states that Jackson D. is mentally healthy and that at the time of the incriminated acts he was able to understand the nature and significance of his conduct, as well as to control his behaviour.

## **ON THE LAW**

### **I. On the charge against the accused John D.**

With respect to the charge against the accused John D. for the **crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 2 of the Criminal Code**, the Trial Chamber finds the following.

The facts and circumstances, as established on the basis of the holistic evaluation of the evidence, lend support to the conclusion that on 26 March 2021 at about 10.30 p.m. the accused John D.—having prior criminal record for theft and having fully served the sentence of imprisonment of one year and six months—inflicted an injury on Bill G., whom he had never previously met, by way of an incision to his left external carotid artery with a screwdriver, taken from the victim, which caused the victim a profuse bleeding constituting a life-threatening health condition from a transient character. The type of the injury inflicted on Bill G. falls within the ambit of **a medium bodily injury pursuant to article 129, paragraph 2 of the Criminal Code.**

Furthermore, the injury was inflicted **in the circumstances of dangerous recidivism within the meaning of article 29, paragraph 1, letter (a) of the Criminal Code** due to the fact that the accused John D. had been convicted for grave intentional crime—for theft under article 194 of the Criminal Code, punishable with imprisonment by up to eight years—to 18 months’ imprisonment and the serving of the punishment was not suspended pursuant to article 66 of the Criminal Code.

Hence, the accused’s conduct comprises the objective elements of the crime under **article 131a, second proposition of the Criminal Code, namely inflicting a medium bodily injury in cases of dangerous recidivism.**

The Trial Chamber notes that the objective elements of the offence of inflicting a medium bodily injury in cases of dangerous recidivism are akin to the objective elements of the offence of an attempted murder in the circumstances of a dangerous recidivism—the offence with which the accused John D. is charged—resulting in the infliction of a medium bodily injury.

Consequently, the core distinguishing element between the two offences lies in the accused’s *mens rea*, namely whether he meant to engage in a conduct that would result in the death of the victim or rather meant to engage in a conduct that would result in the infliction of a medium bodily injury. Hence, the proper legal characterisation of the acts and conduct of the accused is contingent on the facts which reflect his state of mind, *i.e. his mens rea*, at the moment of the fulfilment of the objective elements, spelled out above.

### **1. No direct intent to cause Bill G.’s death**

Article 11, paragraph 2, first proposition of the Criminal Code provides that an intentional act committed by way of direct intent (*dolus directus*) is where the perpetrator was aware of the

unlawful nature of his or her conduct, foresaw its consequences as dangerous to society and desired their occurrence.

The holistic evaluation of the evidence leads the Trial Chamber to conclude that the accused John D. did not possess a direct intent to cause the death of Bill G. within the meaning of article 11, paragraph 2, first proposition of the Criminal Code. Relevant in this respect is the sequence of events that preceded the infliction of the injury, in particular, the behaviour of both the accused John D. and of the victim Bill G. considered in light of the short temper of the accused and the fact that he had consumed a substantial amount of alcohol which affected his agility and coordination. The Trial Chamber also takes into account the fact that the accused and the victim had never met before.

Likewise, the Trial Chamber notes that it was not the accused to set off the altercation at the parking lot. On the contrary, despite the short exchange of heated arguments in the pub with Bill G., due to John D.'s jealousy, the accused afterwards walked away which shows that he neither wished nor intended to have any further contact with, let alone to confront Bill G. Also to be noted is that the accused inflicted the injury by way of poorly coordinated movements due to the amount of alcohol he had consumed earlier that night. Furthermore, the injury was inflicted with a tool which the accused got by chance from the victim's hands immediately before that and a few moments after the victim—using the same tool—had intentionally damaged the accused's car.

Likewise, the Trial Chamber considers the lack of other injuries inflicted on the victim, apart from the incision on his neck. Despite the fact that John D. had the opportunity to inflict another injury, he did not. In particular, the Trial Chamber observes that the accused was leaning—undisturbed with a screwdriver in his hand—over Bill G. who was lying injured on the ground below him unable to move and, accordingly, to defend himself, but John D. did not hit him again.

This line of reasoning is not affected by the fact that when John D. wrenched the screwdriver out of Bill G.'s hand, he screamed that he would kill him. In the Trial Chamber's view, this demonstrates the level of indignation with the victim's provocative behaviour and was due to John D.'s short temper and the fact that he was under the influence of alcohol.

It thus follows that the circumstances surrounding the altercation between John D. and Bill G. in the evening of 26 March 2021 *do not reflect a direct intent to kill on the part of the accused*. The Trial Chamber thus finds that, although John D. meant to hurt Bill G. by

inflicting a bodily injury in response to his provocative behaviour, he did not mean, *i.e.* he did not desire or wish to cause the victim's death.

At the same time, the Trial Chamber notes that the incision on Bill G.'s neck affected an artery and hence occasioned a life-threatening condition. Likewise, the Trial Chamber considers the fact that before making the incision to Bill G.'s neck, John D. was aiming the screwdriver at the direction of his chest and stomach. Depending on the circumstances, an injury to these bodily parts may also occasion a life-threatening condition. Hence, although John D.'s direct intent was to inflict a bodily injury on Bill G., the accused foresaw the likelihood that death may occur as a consequence of his conduct, but nevertheless proceeded and thus accepted, *i.e.* reconciled himself with the victim's possible death as a result of his actions.

Consequently, if John D.'s conduct would have occasioned Bill G.'s death, the accused would have been responsible for murder under article 116, paragraph 1, point 12 read together with article 115 and article 20, paragraph 2 of the Criminal Code *by way of dolus eventualis* within the meaning of article 11, paragraph 2, second proposition of the Criminal Code. According to the latter provision, an intentional act committed by way of *dolus eventualis* is where the perpetrator was aware of the unlawful nature of his or her conduct, foresaw its consequences as dangerous to society and allowed their occurrence.

In the present circumstances where death did not occur, the issue that arises is whether the accused may be held responsible for an attempted murder by way of *dolus eventualis*. Relevant in this respect is article 18, paragraph 1 of the Criminal Code, which stipulates that '[a]n attempt shall be the commenced perpetration of intentional crime, whereas the act has not been completed or, although completed, the consequences dangerous to society provided by the law and *desired by the perpetrator* have not occurred.'<sup>xiii</sup> Indubitably, the wording 'consequences [...] desired by the perpetrator' signify the possession of direct intent as regards the consequences of the incriminated conduct as spelled out in article 11, paragraph 2, first proposition of the Criminal Code. Consequently, the Criminal Code does not envision an attempt by way of *dolus eventualis*.

It thus follows that the accused John D. lacked the requisite *mens rea* for the crime of attempted murder and, accordingly, did not commit the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 2 of the Criminal Code.

## **2. Direct intent to inflict medium bodily injury on Bill G.**

At the same time, the Trial Chamber finds that John D. meant to engage in a conduct that would result in the infliction of a medium bodily injury. In particular, on the basis of the psychiatric and psychological assessment report, the Trial Chamber concludes that, despite the amount of alcohol consumed on the night of the incident, the accused was aware of the unlawful nature of his conduct—inflicting bodily injury on a person—and was able to foresee that the incision to Bill G.’s neck would result in an injury to a vital part of his body—which could cause a life-threatening health condition. In addition, the accused also meant to cause, *i.e.* desired the consequences of his unlawful conduct.

Accordingly, the Trial Chamber finds that the accused committed the elements of the offence of inflicting a medium bodily injury with direct intent in the circumstances of dangerous recidivism under article 131a, second proposition read together with article 129, paragraph 2, article 29, paragraph 1, letter (a) and article 11, paragraph 2, first proposition of the Criminal Code.

At this point the Trial Chamber will briefly address the accused John D.’s contention that the harm to Bill G. was inflicted by way of an accidental act within the meaning of article 15 of the Criminal Code or, alternatively, by way of self-defence within the meaning of article 12, paragraph 1 of the Criminal Code.

First, the evidence at hand demonstrates that the injury to Bill G. is not the result of an accidental act within the meaning of article 15 of the Criminal Code (whereby the accused would not have been obliged or able to foresee the infliction of the bodily injury). On the contrary, as discussed in detail above, the evidence unequivocally illustrates that the accused John D. reacted to Bill G.’s provocative behaviour by throwing himself at the victim, shouting that he would kill him and aiming with the screwdriver at his chest and stomach. These acts attest to a conscious and intentional conduct on the part of John D. towards the victim. This intentional conduct continued also after Bill G. slipped and fell on the ground, when John D. leaned over him—again a conscious and intentional act—and stabbed the victim in the neck—another conscious and intentional act on the accused’s part. Consequently, John D.’s conduct does not constitute an accidental act under article 15 of the Criminal Code.

Likewise untenable is John D.’s alternative contention that he acted in self-defence under article 12, paragraph 1 of the Criminal Code. Bill G.’s actions—albeit unlawful—do not constitute an ‘attack’ within the meaning of said provision, especially after John D. wrenched

the screwdriver off his hands. As of this moment onwards, there was no attack against which John D. would have been entitled to defend himself. Consequently, John D.'s conduct does not fall within the scenario envisaged in article 12, paragraph 1 of the Criminal Code.

On the basis of all the above, the Trial Chamber found that while **John D. is not guilty** of the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 2 of the Criminal Code, **his conduct fulfils the objective and subjective elements of the crime of inflicting with direct intent a medium bodily injury in the circumstances of dangerous recidivism under article 131a, second proposition read together with article 129, paragraph 2, article 29, paragraph 1, letter (a) and article 11, paragraph 2, first proposition of the Criminal Code.**

The offence, for the commission of which the Trial Chamber **found John D. guilty**, is less grave and—as already pointed out above—comprises the same objective elements as the offence charged. Accordingly, the Trial Chamber **CONVICTED the accused John D. for the crime of inflicting a medium bodily injury in cases of dangerous recidivism under article 131a, second proposition read together with article 129, paragraph 2, article 29, paragraph 1, letter (a) with direct intent under article 11, paragraph 2, first proposition of the Criminal Code** and **ACQUITTED the accused John D. pursuant to article 304 of the Criminal Procedure Code** of the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 2 of the Criminal Code.

## **II. On the charge against the accused Mary J.**

As regards the charge against the accused Mary J. for the **crime of aiding and abetting an attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4 of the Criminal Code**, the Trial Chamber finds the following.

The holistic evaluation of the evidence lends support to the only reasonable conclusion that the accused Mary J. acted in a way that neither fulfilled the objective, nor the subjective elements of the offence charged.

This inference rests on the Trial Chamber's factual findings, spelled out in detail above, relating to Mary J.'s conduct on the night of the incident. Most importantly, the evaluation of the evidence in its totality unequivocally shows that Mary J. not only tried to prevent the



incident but, subsequently, provided herself first aid to the victim followed by an attempt to fetch her brother to the crime scene, who is a paramedic and lives just a couple of blocks away.

Consequently, rather than aiding John D. in inflicting the injury to Bill G., Mary J.'s conduct was aimed at preventing John D. from harming Bill G. and at immediately providing first aid to the victim as well as further professional medical help. All these considerations support the conclusion that the accused's conduct was not unlawful. Quite on the contrary, Mary J.'s acts were aimed at preventing the altercation and at assisting the victim.

In light of the above, the Trial Chamber concludes that **the accused Mary J. is not guilty** of the offence charged and should therefore be **ACQUITTED pursuant to article 304 of the Criminal Procedure Code** for the crime of aiding and abetting the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4 of the Criminal Code.

### **III. On the charges against the accused Jackson D.**

1. With respect to the charge of **aiding and abetting as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, the crime of attempted murder in the circumstances of dangerous recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4 and article 31, paragraph 2 of the Criminal Code**, the Trial Chamber finds the following.

As discussed at length above, the evaluation of the evidence in its totality does not establish any acts or conduct on the part of the accused Jackson D. aimed at assisting his brother, the accused John D., in inflicting the injury on Bill G. The Trial Chamber herewith reiterates that the mere fact that Jackson D. stood for a few moments between his brother and the victim's two friends before being pushed away by them is not in and of itself unlawful. Given the lack of any evidence of Jackson D.'s complicity in the infliction of Bill G.'s injury, the conduct of the accused does not fulfill the objective elements of the crime charged. Consequently, **the accused Jackson D. is not guilty of the offence charged** and is accordingly **ACQUITTED pursuant to article 304 of the Criminal Procedure Code** of the crime of aiding and abetting as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, the crime of attempted murder in the circumstances of dangerous

recidivism under article 116, paragraph 1, point 12 read together with article 115, article 18, paragraph 1 and article 20, paragraph 4 and article 31, paragraph 2 of the Criminal Code.

2. With respect to the charge against the accused Jackson D. for the **crime of causing intentionally the death of another by violating the traffic rules committed as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, under article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code**, the Trial Chamber finds the following.

The evaluation of the evidence in its totality entails the only reasonable conclusion that the conduct of the accused Jackson D. fulfilled the objective and subjective elements of the crime charged.

As regards the requisite *actus reus*, the Trial Chamber finds that Jackson D.'s manner of driving was **in violation of a number of traffic rules under the Road Traffic Law**. In particular, the accused **acted in violation of article 20, paragraphs 1 and 2 of the Road Traffic Law**—obliging the drivers to control permanently the road vehicles they drive and, at selecting the speed of movement, to comply with the atmospheric conditions, with the relief of the locality, with the condition of the road and of the vehicle, with the character and the intensity of the traffic, with the concrete visibility conditions in order to be able to stop in front of each obstacle which can be foreseen, as well as to reduce the speed, and if necessary, to stop in all cases, where danger for traffic occurs. Likewise, the accused **acted in violation of article 116 of the Road Traffic Act**—obliging the driver of a vehicle to be careful and cautious towards the pedestrians—as well as **in violation of article 120, paragraph 1 of the Road Traffic Act**—obliging the driver of the vehicle to stop at the pedestrian crossing when the traffic lights give a signal, prohibiting the passing of vehicles and accordingly allowing pedestrians to cross. Furthermore, by driving a motor vehicle without having the respective driving licence the accused **acted in violation of article 177, paragraph 1, point 2 of the Road Traffic Law**.

On the basis of the protocol of inspection of the traffic accident site, the auto-technical expert report and the forensic medical examination report concerning the deceased Olivia F. the Trial Chamber concludes a direct nexus between the above conduct of the accused and the death of Olivia F. First, the auto-technical expert report and the protocol of inspection of the traffic accident site, taken together, lend support to the conclusion that had the accused Jackson D. observed the traffic rules, spelled out above, he would have been able to activate the braking

system of the vehicle on time and, accordingly, would have been able to avoid colliding with the pedestrian. The forensic medical examination report concerning the deceased Olivia F. unequivocally establishes a direct nexus between the accident, caused by the accused, and the lethal trauma and fractures sustained by the victim.

As regards the requisite *mens rea*, the Trial Chamber finds that the accused acted intentionally with *dolus eventualis* within the meaning of article 11, paragraph 2, second proposition of the Criminal Code. In particular, Jackson D. was aware that he was driving in violation of the Road Traffic Law. Likewise, Jackson D. was aware of the unlawful circumstances of his conduct and foresaw its consequences, such as the likelihood of causing a collision with another vehicle, a bystander or a pedestrian—and thus the likelihood of causing a person’s death—but nevertheless proceeded, whatever the impact. Hence, although the accused did not mean to bring about the unlawful circumstances or to cause the unlawful consequences which followed from his conduct—another person’s death by way of his dangerous driving—he foresaw and reconciled himself with the possibility of such consequences ensuing from his actions.

Instructive in this respect is the accused Jackson D.’s statement that he was determined to proceed at any cost in order to prevent his brother from being identified. Despite his minor age, given the forensic psychiatric and psychological assessment, the Trial Chamber concludes that at the time of the incriminated act the accused Jackson D. was able to understand the nature and significance of the conduct, as well as to control his behaviour.

All the above considerations entail that the accused’s conduct fulfils the objective and subjective elements of the **crime of intentionally—by way of *dolus eventualis*—causing the death of another by violating the traffic rules committed as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, under article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code.** The accused was thus **found guilty of the offence charged** and was accordingly **CONVICTED**.

3. With respect to the charge against the accused Jackson D. for the **crime of causing as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, medium bodily injury through negligence while driving a motor vehicle in violation of the traffic rules and without possessing a driving licence constituting a crime under article 343, paragraph 3, letter (a) read together with article**

**343, paragraph 1, letter (b) read together with article 129, paragraph 2 read together with article 31, paragraph 2 of the Criminal Code,** the Trial Chamber finds the following.

The evaluation of the evidence in its totality entails the only reasonable conclusion that the conduct of the accused Jackson D. fulfilled the objective and subjective elements of the crime charged.

As regards the requisite *actus reus*, the Trial Chamber's findings resonate to a considerable extent with its findings in the preceding paragraph concerning the charge under article 342, paragraph 3, letter (c) of the Criminal Code. In particular, given the close proximity in place and time between the two traffic offences and the surrounding circumstances, the Trial Chamber reiterates its conclusion that Jackson D.'s manner of driving was **in violation of a number of traffic rules under the Road Traffic Law**. Most relevant with respect to the determination of the accused's liability and the proper legal characterisation of his conduct are two violations of the Road Traffic Law.

First, the accused drove the vehicle in violation of **article 20, paragraphs 1 and 2, of the Road Traffic Law**, which envisions the obligation to control permanently the road vehicle and, at selecting the speed of movement, to comply with the atmospheric conditions, with the relief of the locality, with the condition of the road and of the vehicle, with the character and the intensity of the traffic, with the concrete visibility conditions in order to be able to stop in front of each obstacle which can be foreseen, as well as to reduce the speed, and if necessary, to stop in all cases, where danger for traffic occurs.

Secondly, by driving a motor vehicle without possessing the respective driving licence the accused **acted in violation of article 177, paragraph 1, point 2 of the Road Traffic Law**, which entails the legal characterisation of his conduct under article 343, paragraph 3, letter (a), which is a graver offence (punished by a more severe punishment) than the offence under article 343, paragraph 1, letter (a) of the Criminal Code.

On the basis of the protocol of inspection of the traffic accident site, the auto-technical expert report and the forensic medical examination report concerning the injuries sustained by John D. the Trial Chamber concludes a direct nexus between the above conduct of the accused and the harm inflicted on John D. First, the auto-technical expert report and the protocol of inspection of the traffic accident site, taken together, lend support to the conclusion that had the accused Jackson D. observed the traffic rules, spelled out above, he would have been able to activate the braking system of the vehicle on time and, accordingly, would have been able

to control the vehicle and avoid collision with the wrought-iron lamp post. Secondly, the forensic medical examination report of John D. unequivocally establishes a direct nexus between the accident, caused by the accused, and the trauma and injuries sustained by John D.

As regards the requisite *mens rea*, the Trial Chamber finds that the accused was aware that he was driving in violation of the Road Traffic Law. At the same time, there is no evidence on the record to establish that the accused Jackson D. was aware that only the driver's seat had an airbag, accordingly, that the passenger's seat—where John D. was sitting—was not equipped with an airbag. Instructive in this respect is the fact that the car did not belong to Jackson D. and there is no other evidence that could support the conclusion that he knew that the car was not properly equipped with an airbag. This logically entails the conclusion that the accused Jackson D. was not aware of the danger that in case of a collision, his brother, who was sitting at the front passenger's seat would not be sufficiently protected.

Nevertheless, although the accused Jackson D. did not foresee the consequences of his unlawful conduct, given all the surrounding circumstances, including the badly lit streets and intersections, and the high speed at which he was driving, he could have foreseen and was obliged to foresee that his manner of driving could endanger the physical integrity of his brother, travelling next to him, in case of a collision. The above entails the conclusion that the accused committed the offence through negligence within the meaning of article 11, paragraph 3, first proposition of the Criminal Code. According to this provision, the perpetrator did not foresee the occurrence of the consequences of his unlawful conduct, but was obliged to and could have foreseen them.

Further, as already noted above, despite his minor age, given the forensic psychiatric and psychological assessment, at the time of the incriminated act the accused Jackson D. was able to understand the nature and significance of the conduct, as well as to control his behaviour.

All the above considerations entail that the accused's conduct fulfils the objective and subjective elements of the **crime of causing as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, medium bodily injury through negligence while driving a motor vehicle in violation of the traffic rules and without possessing a driving licence constituting a crime under article 343, paragraph 3, letter (a) read together with article 343, paragraph 1, letter (b) read together with article 129, paragraph 2 read together with article 31, paragraph 2 of the**

**Criminal Code.** The accused was **found guilty** of the offence charged and was accordingly **CONVICTED**.

## **ON THE SENTENCE**

### **I. Punishment imposed on John D. for the offence under article 131a, second proposition read together with article 129, paragraph 2, article 29, paragraph 1, letter (a) of the Criminal Code**

Pursuant to article 131a, second proposition of the Criminal Code, the punishment for medium bodily injury in cases of dangerous recidivism is a term of imprisonment from five to twelve years. As a matter of principle, in the determination of the sentence, *i.e.* the type and the duration of the punishment, the Trial Chamber takes into consideration all relevant factors, such as all mitigating and/or aggravating factors together with the circumstances of the crime and the personal circumstances of the convicted person.

With respect to John D. the Trial Chamber is of the view that the punishment should be imposed towards the minimum provided for by the law, namely a term of imprisonment of five years. This conclusion rests on the fact that the mitigating circumstances outweigh the aggravating circumstances. In particular, the Trial Chamber took into account as mitigating circumstances the fact that John D., despite challenging the unlawfulness of his conduct, nevertheless expressed remorse for the infliction of the injury. Another relevant mitigating circumstance is the fact that the accused acted in response to the victim's provocative behaviour and inflicted the injury with a tool, which he had taken off the victim's hands in an attempt to prevent the latter from further damaging the hood of his car. Consequently, John D. acted in a state of rage—an emotional disturbance, triggered by the victim's provocation.

On the other hand, the Trial Chamber considers as an aggravating circumstance the specific manner and place of infliction of the bodily injury, in particular, the fact that the injury was inflicted on a vital bodily part—the neck of the victim.

At the same time, the Trial Chamber disagrees with the Prosecutor's proposition that the accused's previous convictions should also be considered as aggravating circumstances. The fact that John D. committed the offence charged after having infringed the law on two previous occasions and after having fully served the respective sentences imposed (one for a grave crime under the Criminal Code) is reflected in the legal characterisation of the offence as an offence committed in the circumstances of dangerous recidivism within the meaning of article 29, paragraph 1, letter (a) of the Criminal Code. The fact that the offence was

committed in the circumstances of dangerous recidivism entails also by virtue of the law a more severe punishment pursuant to article 131a, second proposition of the Criminal Code.

Given that the accused's prior criminal record constitutes an element of the legal characterisation of the offence and leads, by definition, to a more severe punishment, it cannot be considered separately and concurrently as an aggravating circumstance. The one and the same fact may be considered only once in the determination of the sentence (either as a constitutive element of the offence charged OR as an aggravating or a mitigating circumstance). This principle is explicitly acknowledged in article 56 of the Criminal Code, according to which the circumstances reflected in the definition of the respective crime shall not be considered as well as mitigating or aggravating circumstances.

Despite the several mitigating circumstances, identified above, the Trial Chamber does not consider that the sentence should be determined below the limit provided by law pursuant to article 55, paragraph 1, point 1 of the Criminal Code. The Trial Chamber finds that the punishment of five years' imprisonment would meet the objectives of the general and personal deterrence under article 36, paragraph 1 of the Criminal Code.

**II. Punishment imposed on Jackson D. for the crime of intentionally causing the death of another by violating the traffic rules committed as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, under article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code**

The punishment for the offence under article 342, paragraph 3, letter (c) of the Criminal Code is a term of imprisonment from ten to twenty years. However, given that the crime was committed by the accused as a minor, who at the time of the commission of the crime had turned sixteen years of age, by virtue of article 63, paragraph 2, point 2 of the Criminal Code this term of imprisonment is replaced by virtue of the law with a term of imprisonment for a period from two to eight years.

In the determination of the most appropriate sentence within the term, provided for by law, the Trial Chamber has found a balance of mitigating and aggravating circumstances. On the one hand, the Trial Chamber takes into account as mitigating circumstances Jackson D.'s good character, the fact that he fully confessed and expressed remorse for the commission of the crime. On the other hand, the Trial Chamber evaluates as aggravating circumstances the fact that the accused drove the vehicle without a driving licence (a fact which does not

constitute an objective element of the offence under article 342, paragraph 3, letter (c) of the Criminal Code), as well as the consequences of his conduct—the death of Olivia F. and the ensuing orphanage of her three minor children. Consequently, the Trial Chamber found that a term of imprisonment of four years and six months would most appositely meet the objectives of the general and personal deterrence with respect to Jackson D., as set out in article 36, paragraph 1 of the Criminal Code.

**III. Punishment imposed on Jackson D. for the crime of causing as a minor, who was able to understand the nature and meaning of the conduct and was able to control his behaviour, medium bodily injury through negligence while driving a motor vehicle in violation of the traffic rules and without possessing a driving licence constituting a crime under article 343, paragraph 3, letter (a) read together with article 343, paragraph 1, letter (b) read together with article 129, paragraph 2 read together with article 31, paragraph 2 of the Criminal Code**

Whereas as regards the offence under article 342, paragraph 3, letter (c) of the Criminal Code, the fact that the accused drove without a driving licence did not affect the legal characterisation of his conduct and thus constituted an aggravating circumstance, it impacts the legal characterisation of the accused's conduct under article 343 of the Criminal Code. In particular, it impacts the gravity of the crime and accordingly the punishment. Due to the additional objective element of driving a vehicle without possessing a driving licence, the conduct of the accused constitutes a graver offence under article 343, paragraph 3, letter (a) of the Criminal Code as compared to the offence under article 343, paragraph 1, letter (b) of the Criminal Code. Accordingly, this likewise entails a more severe punishment—namely a term of imprisonment from one to six years—than the punishment envisaged for the offence under article 343, paragraph 1, letter (b) of the Criminal Code (up to three years or probation).

In the determination of the most appropriate punishment, the Trial Chamber took into account as mitigating circumstances the fragile age of the accused, his good character, the fact that he fully confessed and expressed remorse for the commission of the crime. At the same time, the Trial Chamber considered as the only aggravating circumstance the trauma inflicted on the accused's brother, John D., as a consequence of the accident, consisting of fractures to several parts of his body, in particular, skull, neck, arms and ribs. Consequently, the Trial Chamber was of the view that the punishment to be imposed on the accused should be determined slightly above the minimum, namely a term of imprisonment of two years.



#### **IV. Determining a joint sentence for both offences committed by Jackson D.**

Given that the accused committed the two crimes before a sentence had entered into force for any of them, upon determining the punishment for each of the crimes, for which the accused was convicted, the Trial Chamber proceeded by virtue of article 23 of the Criminal Code with the imposition of a joint sentence between the term of imprisonment of four years and six months for the crime under article 342, paragraph 3, letter (c) of the Criminal Code and the term of imprisonment of two years for the crime under article 343, paragraph 3, letter (a) of the Criminal Code. According to article 23 of the Criminal Code, the joint sentence should be the longer of the two terms of imprisonment, namely a term of imprisonment of four years and six months. Consequently, the Trial Chamber imposed on Jackson D. a joint sentence of a term of imprisonment of four years and six months.

#### **ON THE CIVIL CLAIMS AND THE COSTS**

##### **I. On the civil claim of Bill G.**

Given the conviction of the accused John D. for the crime under article 131a, second proposition read together with article 129, paragraph 2, article 29, paragraph 1, letter (a) of the Criminal Code, the Trial Chamber also examined the merits of the civil claim for compensation by Bill G. The Trial Chamber found accordingly that the prerequisites of article 45 of the Civil Procedure Code were met for engaging the civil liability of the accused John D. in light of the fact that his conduct was unlawful and guilty.

The civil claimant Bill G. suffered non-pecuniary damages in the form of significant pain and severe suffering as a consequence of John D.'s actions. The court under Article 52 of the Civil Procedure Code, using the criterion of fairness, found that John D. was liable to compensate the non-pecuniary damages suffered by the civil party in the amount of BGN 3 000 together with the legal interest from the date of the tort until the final payment of the amount awarded.

At the same time, due to the fact that the conduct of the accused was provoked by Bill G.'s aggressive behaviour, the Trial Chamber found that the claim for non-pecuniary damages above the amount granted of BGN 3 000 should be rejected as unfounded.

With respect to the pecuniary damages suffered by Bill G. consisting of costs incurred for the medical treatment of his injuries caused by the incriminated act for the period 27 March 2021 - 30 June 2021 in the amount of BGN 10 000, the Trial Chamber on the basis of the evidence presented by the civil claimant—invoices and other financial documents—has determined that

the claim should be awarded in full. Consequently, the Trial Chamber found the accused John D. liable to compensate the pecuniary damages suffered by Bill G. in the amount of BGN 10 000 together with the legal interest from 27 March 2021 until the final payment of the amount awarded.

## **II. On the civil claim of Roy F., Alexandra F. and Greta F.**

Similarly, given the conviction of the accused Jackson D. for the crime under article 342, paragraph 3, letter (c) of the Criminal Code, the Trial Chamber also examined the merits of the civil claim for non-pecuniary damages of the three minor victims, the civil claimants Roy F., Alexandra F. and Greta F. The Trial Chamber found accordingly that the prerequisites of article 45 of the Civil Procedure Code were met for engaging the civil liability of the accused Jackson D. in light of the fact that his conduct was unlawful and guilty.

In the assessment of the extent of the non-pecuniary damages suffered by the three orphaned civil claimants, the Trial Chamber took into account the psychological assessment of the three orphaned children Roy F., Alexandra F. and Greta F. by Dr. Kim R. together with the social report of the Agency for Social Assistance, Directorate of Social Assistance-Lozenets, ref. SG-3231/19.11.2021 regarding their situation. On the basis of these pieces of evidence, each assessed on its own and taken together, the Trial Chamber concluded that each of the three minor children suffered non-pecuniary damages in the form of severe and long-term suffering, which continues until the present moment, as a consequence of the loss of their mother and only parent.

The Trial Chamber under article 52 of the Civil Procedure Code, using the criterion of fairness, found that Jackson D. was liable to compensate the non-pecuniary damages suffered by the civil claimants in the total amount of BGN 30 000 claimed together with the legal interest from the date of the tort until the final payment of the amount awarded.

## **III. On the costs**

The Trial Chamber determined that by virtue of **article 189, paragraph 3 and article 190, paragraph 2 of the Criminal Procedure Code**, the accused John D. and the accused Jackson D. should transfer to the bank account of the Sofia City Court the costs incurred throughout the proceedings amounting to BGN 1 300.

The Trial Chamber pronounced its judgment on the basis of the above reasoning.

**JOINT PARTLY DISSENTING OPINION OF JURORS RICK B. AND STEFINA G.**

While we agree with the majority on the liability of the three accused, we respectfully disagree with the lenience of the sentence imposed on the accused **JACKSON D.** for the crime under **article 342, paragraph 3, letter (c) read together with article 31, paragraph 2 of the Criminal Code** and, accordingly, of the joint sentence imposed on the accused by virtue of article 23 of the Criminal Code.

More precisely, we are of the opinion that the term of imprisonment imposed on the accused JACKSON D., namely four years and six months, falls short of fulfilling the purpose of the punishment laid down in article 36, paragraph 1, last proposition of the Criminal Code, in particular, as regards the general deterrent effect of the punishment.

Despite the several mitigating circumstances, such as the accused's young age, his good characteristics, full confession and remorse expressed throughout the proceedings, his conduct is highly reprehensible and sets a bad example to other members of society, especially to young persons and adolescents.

Furthermore, the fact that as a consequence of the accused's unlawful conduct a mother of three died and her minor children were left without their only parent and carer should equally be reflected in the punishment meted out pursuant to article 36 of the Criminal Code.

Given the above considerations, it is our firm understanding that, in order to fulfil the aim of the punishment under article 36, paragraph 1 of the Criminal Code, in particular, of producing an educative and deterrent effect on the other members of society, the punishment and, accordingly, the joint sentence to be served by the accused JACKSON D. should be determined towards the maximum provided by the law, namely a term of imprisonment of 7 (seven) years.

**JUROR:** (RICK B. signed)

**JUROR:** (STEFINA G. signed)

Note: The endnotes below do not form part of the Judgment. They are meant to provide some additional information to the reader concerning the applicable law.

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<sup>i</sup> According to article 29, paragraph 1, letter (a) of the Criminal Code, when a person commits the crime after he or she has been convicted for grave intentional crime to imprisonment for not less than one year and the serving of the punishment has not been suspended pursuant to Article 66, this is a case of dangerous recidivism.

<sup>ii</sup> According to article 115, a person who deliberately kills another person shall be punished for murder by imprisonment for ten to twenty years.

<sup>iii</sup> Article 18, paragraph 1 of the Criminal Code provides that an attempt ‘shall be the commenced commission of intentional crime, whereas the act has not been completed or, although completed, the consequences dangerous to society provided by the law and desired by the perpetrator have not occurred.’

<sup>iv</sup> According to article 20, paragraph 2 of the Criminal Code, a ‘perpetrator shall be a person who took part in the commission itself of the crime.’

<sup>v</sup> Note that the Criminal Code distinguishes between persons who are under the age of 14, who cannot be held criminally responsible under any circumstances (article 32, paragraph 1 of the Criminal Code), and persons aged 14 and below 18, who are considered criminally liable, subject to their ability to understand the nature and meaning of the conduct and to control their behaviour (article 31, paragraph 2 of the Criminal Code).

<sup>vi</sup> According to article 20, paragraph 4 of the Criminal Code, an accessory shall be a person who intentionally facilitated the commission of a crime through advice, explanations, promises to render assistance after the act, removal of obstacles, supply of means or in any other way.

<sup>vii</sup> Article 31, paragraph 2 of the Criminal Code reads as follows: ‘A minor—a person who has completed 14 years of age, but has not completed 18 years of age yet—shall be criminally responsible if he was able to understand the nature and meaning of the act and to manage his actions.’

<sup>viii</sup> According to article 129, paragraph 2 of the Criminal Code, ‘The bodily injury shall be considered medium if it has caused: permanent weakening of the eyesight or hearing; permanent disturbance of speech, difficulties of the movement of the extremities, the body or the neck, disturbance of the functions of the sexual organs without causing reproductive incapacity; breaking of a jaw or knocking out of teeth, without which chewing or speech are impaired; disfigurement of the face or of other parts of the body; permanent impairment of health not dangerous to life or impairment of health temporarily dangerous to life; injuries which penetrate into the cranial, thoracic and abdominal cavities.’

<sup>ix</sup> The Criminal Procedure Code does not provide for a separate sentencing procedure, unlike other jurisdictions at the national level and at the international level, such as, among others, the International Criminal Court and the Special Tribunal for Lebanon.

<sup>x</sup> Article 15 of the Criminal Code provides that an act shall be considered not culpably committed where the perpetrator was not obliged to or was unable to foresee the occurrence of the consequences dangerous to society (accidental act).

<sup>xi</sup> Article 194 of the Criminal Code envisions a punishment for up to eight years for the crime of theft. Article 93, paragraph 7 of the Criminal Code provides that ‘grave crime’ is ‘any crime for which the law provides punishment by imprisonment for more than five years, life imprisonment or life imprisonment without substitution’.

<sup>xii</sup> *See to the same effect*, International Criminal Court, *The Prosecutor v. Thomas Lubanga Dyilo*, Appeals Chamber Judgment of 1 December 2014, para. 239, where the Appeals Chamber observed that ‘although a witness may be *honest*, and therefore *credible*, the evidence he or she gives may nonetheless be *unreliable* because, *inter alia*, it relates to facts that occurred a long time ago or due to the “vagaries of human perception.”’ [emphasis added]

<sup>xiii</sup> Emphasis added.