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Authority	Court of Limburg
Date of judgment	17-07-2015
Date of publication	17-07-2015
Case number	03 / 866220-15
Jurisdictions	Criminal law
Special characteristics	First instance - multiple
Content indication	Policeman shoots at the driver of a passenger car during action of the Arrest Unit, but touches the passenger. Suspicion of attempted manslaughter, severe abuse and (attempted) serious abuse. OM is seeking acquittal, subsidiary dismissal of all legal proceedings. The court held eight attempted manslaughter. Speaking of conditional intent. No successful appeal to severe weather (excess) or psychic force majeure. Prison sentence of 2 years.
Law References	Penal Code Penal Code 41 Penal Code 45 Penal Code 287 Police Act 2012 Police Act 2012 7
Locations	Rechtspraak.nl SR-Updates.nl 2015-0330 NBSTRAF 2015/202 with annotation of dr. JAAC Claessen NJFS 2015/198

Pronunciation

RECHTBANK LIMBURG

Sitting place Maastricht

Criminal law

Parquet number: 03 / 866220-15

Contradiction

Judgment of the multiple chamber dated 17 July 2015

in the criminal case against

[suspect],

born in [birthplace] on [date of birth],

to choose domicile in this address [address].

Counsel is CA Jonkers, lawyer, with offices in Utrecht.

1 Investigation of the case

The case was dealt with in substance at the meeting of 3 July 2015, in which the public prosecutor, counsel and the defendant made their views known.

2 The indictment

The indictment is attached to this judgment as an appendix.

The suspicion appears, briefly and factually, that the defendant has tried to deliberately kill [victim 1] or has intentionally severely abused [victim 1] or has attempted to intentionally severely [victim 1] mistreating.

3 The assessment of the evidence

3.1 The position of the public prosecutor

The public prosecutor primarily believes that the suspect must be acquitted of the charges against him. None of the documents provided sufficient evidence for the intention of the suspect to kill or severely abuse [victim 1]. Nor, according to the public prosecutor, can it be legally and convincingly proven that there was a conditional intention on the part of the suspect. The defendant stated that he had targeted [victim 2]. It is not clear why [victim 1] has been hit by the bullet. The public prosecutor points out that it can not be ruled out that the bullet track has changed because it was shot through glass. Also, it was not clear whether the car was in motion at the moment the defendant has shot. In view of these unknown factors, it can not legally and convincingly be proved that the accused knowingly accepted the considerable chance that he [victim 1] would hit the moment he aimed at [victim 2]. Nor does it appear conditional in the statement of the suspect. The public prosecutor is of the opinion that no conditional set-up can be derived from the outward appearance of the behavior of the suspect. After all, the suspect had targeted [victim 2], but [victim 1] has been hit. In the alternative, the public prosecutor has concluded that he will be dismissed from all legal proceedings due to severe weather conditions, in the further alternative because of emergency weather excesses.

3.2 The position of the defense

Counsel has primarily advocated the acquittal of the accused. He states that there is insufficient evidence for the intent or conditional intention of the suspect to kill or to inflict serious bodily harm to [victim 1]. Furthermore counsel argued that the defendant acted in accordance with Article 7, first paragraph, of the Police Act 2012. The situation on the spot met the requirements as stated in this article. The accused could reasonably assume that the use of the firearm was permitted in the present situation.

3.3 The verdict of the court ¹

With regard to the primary fact

preface

On 22 August 2013, the Limburg police unit carried out an investigation with the aim of arresting a person named [victim 2] (further: [victim 2]) on suspicion of involvement in a number of ram raids. For the purpose of his arrest, an observation team (further: OT) and a detention unit (further: AE) were deployed. The suspect was part of this AE that day, together with 5 colleagues. The OT had lost [victim 2] several times during his car, because of his high speed (above 200 kilometers per hour). While following [victim 2] the OT noticed at some point that a passenger was entering his car in Meerssen. This turned out to be the later victim [victim 1]. The OT observed at some point that [victim 2] drove the car park of the coffee shop "[name]" in Heerlen with his passenger car. At the moment that the AE subsequently initiated the procedure to detain [victim 2] in this parking place, [victim 2] tried to flee the car. During this maneuver, a shooting incident then took place, in which the co-driver [victim 1] was hit by a bullet.²

Declaration by [victim 1]

On September 19, 2013, [victim 1] filed a report against the suspect because of attempted manslaughter, heavy abuse or an attempt at heavy abuse. [Victim 1] referred in his declaration to his previous statement made to the police on 27 August 2013. ³On 27 August 2013, [victim 1] stated as a witness that on 22 August 2013 he was a passenger in the car of [victim 2]. At coffeeshop "[name]" [victim 2] parked the car and went inside, while [victim 1] kept waiting in the car. After [victim 2] had been inside for half a minute, it took place again at the driver's seat of the car. [victim 1] soon after heard a sound behind the car and when he looked back, he saw that a passenger car had stopped behind their car. According to [victim 1] two men with black clothes came from this car. When they were on either side of the car, [victim 1] heard a loud blow and heard that someone was calling " *Out of the car!* ". He also heard that " *Police!*" was called. [victim 2] locked the car doors according to [victim 1]. Then, [victim 2] drove away at a decent speed and made a bend of 180 degrees. While driving away, according to [victim 1], the windows of the car were struck. When taking the turn [victim 1] saw that the window in the right front door was broken. After [victim 2] had taken the turn, he drove straight ahead according to [victim 1], after which he drove in the parking lot between two cars. It was only when [victim 1] had been taken out of the car by the police and lying on the ground that he noticed that he had been hit. [victim 1] has stated that he does not know when the police have shot. ⁴In his declaration of 19 September 2013, [victim 1] added to his earlier statement that he can not remember when the word " *police* " was called. [Victim 1] stated that as a co-driver he was not in a position to do anything and that he did not give any reason to shoot him. ⁵

The injury of [victim 1]

Both the Emergency Department of the Atrium Medical Center and Dr. [name], surgeon, have drawn up a medical statement about the injuries of [victim 1]. From the statement of the Atrium Medical Center it follows that in [victim 1] a gunshot wound was found in his chest on the left, as well as a lung contusion left, a corcontus with a trace of pericardial fluid and a bullet wound in the left arm, where the bullet was still present. ⁶Dr. [Name] described these injuries and related that there was one wound immediately next to the sternum and one wound slightly further to the left at the same height (top edge heart), which impressed as a scrap wound. There was also a wound on the inside of the left upper arm. From radiological and laboratory research it followed that the bullet had been knocked on a rib next to the sternum and had gone to the side. The bullet had left the wound through the second wound on the chest without causing vital damage. The blow of the bullet caused a lung contusion and a bruising of the pericardium. The wounds of [victim 1] were taken care of in the operating room, where the bullet was removed from his arm. ⁷

The statement of the suspect

On 23 August 2013, the suspect made a statement to the police about what happened on the evening of 22 August 2013. The suspect, policeman and AE member, together with his AE colleagues [name], [name], [name], [name] and [name] were used for the arrest of suspect [victim 2]. [name] and [name] took place after a brief briefing in an unobtrusive service vehicle and were followed by the other AE members, who had taken their seats in an unobtrusive service vehicle (being a Volkswagen Golf). The suspect had taken place at the rear of the service vehicle, on the right. While driving the AE was kept informed of the observations of the IP. This is

how the OT learned at some point that a passenger was sitting next to [victim 2]. The OT then informed AE that [victim 2] had stopped at the coffeeshop "[name]" in Heerlen. The OT indicated via the radio that it wanted to take action. The suspect and his colleagues were all wearing coats with prominent police emblems at the front, side (sleeve) and back. The defendant stated that AE did not have the task of arresting the passenger, but this had to be kept under control to protect bystanders and AE members. Via the radio, AE suddenly noticed that the arrest would not take place in the coffee shop, but outside the coffee shop. [victim 2] was after all prepared to drive away. According to the suspect there was no time to make a plan of action and people had to switch to routine action.

The defendant stated that [name] parked the official car just behind the car of [victim 2] and that he saw that the reverse lighting of the car of [victim 2] was on. At the moment that [name] the car stopped, the suspect stepped out and walked to the right front of the car. The suspect tried to open the right front door, but this did not work. The suspect called "Police!" And hit the window with his free hand. The defendant stated that it was his job to get the passenger out of the car, but that it did not react [victim 2]. According to the suspect, the car of [victim 2] suddenly started moving. The suspect heard how the car engine went high and he hit the bottom of the butt and later with the barrel of the gun on the window of the door, while he continued calling the occupants. The car of [victim 2] shot away according to the suspect.

The defendant stated that he can not remember how the car was driven away. He walked with the car and did not know where his colleagues were at that moment. The defendant stated that the car tried to drive away from the parking lot. He was afraid that the car would overturn his colleagues and he feared for his own life. The suspect stated that he saw people jumping to the side and then instinctively reacted. At that moment the defendant directed and shot at [victim 2]. He wanted to stop the Golf and was focused on the driver. He was standing or walking at the right of the car and could look in the car. According to the suspect, the right door window shattered after the shot. The suspect, however, did not see any reaction to the occupants. The car drove away and came into the parking lot colliding with two cars, including the unobtrusive official car of [name] and [name]. After this, the car stopped and [victim 2] and [victim 1] were taken out of the car. At that moment the suspect only understood that [victim 1] had been hit. According to the defendant, the threat and danger were not over until the moment that [victim 2] was arrested.¶

At the hearing, the defendant added to his statement to the police that his job was to occupy himself with the co-driver. The suspect knew this because of his seat in the vehicle of the AE. The agents on the left side of the vehicle would deal with the driver, the agents on the right in the vehicle with the passenger. According to the suspect, the whole incident lasted only a few seconds and went very quickly. The suspect felt how his neck hairs stood up and the sweat broke out. His ears started to whiz and he felt his own heartbeat. The defendant stated that he was afraid to lose his life. He was standing at an arm's length from the car. According to the accused, he could not estimate where the car would go. The defendant has stated that he does not know exactly when the shot has fallen. He shot with outstretched arms. The suspect looked over his barrel, but did not focus with the grain and at that moment had a view of [victim 2]. He thought he would hit [victim 2] in his hull. At that time [victim 1] was not in the path of the firearm. He did not see where his colleagues were at that moment. The defendant stated that he can not explain how [victim 1] could be hit. He did not see where his colleagues were at that moment. The defendant stated that he can not explain how [victim 1] could be hit. He did not see where his colleagues were at that moment. The defendant stated that he can not explain how [victim 1] could be hit.¶

The reconstruction on the basis of the surveillance images of "[name]"

At the hearing, the court showed the reconstruction of the course of events in the "[Name]" parking lot, drawn up by the Netherlands Forensic Institute. The total reconstruction is 21.3 seconds. On the images, the car park of "[name]" is visible from three different viewpoints, recorded with four different surveillance cameras. The images cover the timeline of the arrival of the cars from the OT and the AE until the moment that the AE members proceed to the arrest of [victim 2] and [victim 1]. Every member of the AE, as well as witness L115, is shown in color on the surveillance images of each individual surveillance camera. These images simultaneously show what happened in the evening of 22 August 2013 during the deployment of the AE.

From these images it follows that the passenger car of [victim 2] is parked in the parking lot of the coffee shop "[name]", when three inconspicuous passenger cars enter the parking lot in succession (second 0.6). ¹⁰ Based on the testimony of witness L115, who is a member of the IP ¹¹, the court finds that the first passenger car is the car of the IP. This passenger car drives past the car of [victim 2] and puts the car at some distance from the car of [victim 2] silent without blocking this car. Shortly after this is visible how the cars of the AE in the parking lot behind the car of [victim 2] stop. The first car, in which - in view of the defendant's statement - the suspect and three other AE members are located, stops just behind the car of [victim 2]. ¹² The second car, in which [name] and [name] are located ¹³, is blocking the entrance and exit of the parking lot. A third car takes place behind it again. On the images it is visible that there are no other bystanders at that moment in the parking lot. ¹⁴ At second 4.3 AE member [name], seated left at the back of the first car ¹⁵, gets out. At second 5.1, the suspect (on the images marked with a light brown color) steps as a co-driver from the first car of the AE. ¹⁶ The other AE members also step out of the two passenger cars, with the Defendant and the AE members from the first car, being [name], [name] and [name] ¹⁷ moving towards the car of [victim 2].

From second 6,6 it is visible how the car of [victim 2] moves and moves forward, making a U-shaped maneuver from his parked position. At that moment AE member [name] is on the left side of the car and the AE members [name], [name] and the suspect are on the right. Visible is that the defendant is at the height of the passenger door of the car of [victim 2]. From second 9,3 it is visible that the suspect keeps his service firearm in his right hand. At the end of this U-shaped bend (second 11.7), the car of [victim 2] drives a few meters backwards (up to second 14.7). At second 15.0 the car of [victim 2] moves towards the entrance and exit of the parking lot. At that moment the suspect is still at the height of the co-driver's door. The car then drives at a speed that rises to a maximum of 26 km / hour, towards the entrance and exit of the car park (second 15.6) and at second 17.7 against two cars, including the car of [name] and [name]. The car drives visibly faster during this last maneuver than during its previous maneuver (the U-turn). At second 18.9 the car of [victim 2] came to a standstill.¹⁸

On the basis of the statements made by the various AE members on the spot, the court finds that the police officers wear clothing with the emblem 'Police', as well as 'Police!' to call, have identified as being police. ¹⁹ The victim [victim 1] has also initially stated that he has heard that there is 'Police!' was called.

Several AE members have also stated that the engine of the car of [victim 2] make roaring noises and that it had squeaky tires during the maneuver. ²⁰

Intermediate conclusion

Given the declaration of [victim 1], the statement of the defendant and the observed injury of [victim 1] the court finds that the defendant fired a bullet in the direction of [victim 2], whereby that bullet was the body of [victim 1] has invaded. The court finds that there are almost 12 seconds between the driving away of [victim 2] and the stopping of his car against the car of [name] and [name]. On the basis of the statement of the defendant and the declarant [victim 1], the court establishes that the suspect at any time during the approximately 12 seconds long maneuver of [victim 2] has shot.

The moment of shooting

The court can not detect the actual shot on the images. However, on the basis of the findings of the forensic investigation, the reconstruction and the statement of AE members and the defendant, the court is of the opinion that this moment can be determined.

From the investigation of the forensic technical support in the parking lot it follows that it is plausible that on the Volkswagen Golf of [victim 2] and [victim 1] is shot from the right side, in which the right door window was shot and the victim [victim 1] was hit in the left chest. ²¹ Forensic investigation was carried out on the clothing of [victim 1]. In a black T-shirt, the height of the chest and the left sleeve was almost horizontal and in line five holes found. For visualization, the outer garments of [victim 1] (a jacket and a T-shirt) were put on a display mannequin, whereby the probable path of the projectile was represented by means of a knitting needle. The verbalists concluded that the projectile probably caused a shot at the right breast, then a shot at the left shoulder and a shot at the inside of the left arm again. ²²

Witness [name], being AE-member, stated about the shot that he heard a bang and that he saw that the suspect was standing with the firearm in his hands with the front passenger doorman. 23

Witness [name], also AE member, stated that [victim 2] sent away and that there was a shot. [name] does not know exactly when the shot fell, but it struck him that the car was moving. According to [name] he was looking at the back of the car at that moment. [name] then stated that the shot had fallen when maneuvering the car. 24

Witness [name] stated that he saw that the vehicle of [victim 2] then goes forward again. [suspect] he sees at that moment on the passenger side of the vehicle. He also sees [name] with his weapon in his hands. Then the driver gives a full throttle and sees the car move. In that fraction of a second he hears a shot fall and a diamond falls. 25

On the basis of these statements and results, the nature of the injuries of [victim 1], and the statement of the defendant at the hearing that he had a view of the driver, the court concludes that the suspect at the time of shooting more or less at odds with compared to [victim 1] on the right side of the car of [victim 2] must have been. During the approximately 12 seconds maneuver of the car of [victim 2], according to the court, only one moment is visible when the suspect in this position and in the shooting position described by him (with outstretched arms) in relation to the car from [victim 2], namely between seconds 15.0 and 15.3. The suspect currently has a somewhat bent posture, so that from this position it was also possible - as the defendant has stated - to see [victim 2] and to focus on him. The court finds that this is the moment at which the car of [victim 2] has completed its reversing movement and that it starts to move and then drive with increasing speed towards the entrance and exit of the parking lot. On the reconstruction it is visible that at that moment nobody is in the direction of the car of [victim 2], with the exception of deputy AE commander [name], who is a bit further away. [name] is outside the defendant's field of view when the suspect shoots. The other members of the AE team are located next to or behind the car. The court finds that this is the moment at which the car of [victim 2] has completed its reversing movement and that it starts to move and then drive with increasing speed towards the entrance and exit of the parking lot. On the reconstruction it is visible that at that moment nobody is in the direction of the car of [victim 2], with the exception of deputy AE commander [name], who is a bit further away. [name] is outside the defendant's field of view when the suspect shoots. The other members of the AE team are located next to or behind the car. The court finds that this is the moment at which the car of [victim 2] has completed its reversing movement and that it starts to move and then drive with increasing speed towards the entrance and exit of the parking lot. On the reconstruction it is visible that at that moment nobody is in the direction of the car of [victim 2], with the exception of deputy AE commander [name], who is a bit further away. [name] is outside the defendant's field of view when the suspect shoots. The other members of the AE team are located next to or behind the car. On the reconstruction it is visible that at that moment nobody is in the direction of the car of [victim 2], with the exception of deputy AE commander [name], who is a bit further away. [name] is outside the defendant's field of view when the suspect shoots. The other members of the AE team are located next to or behind the car. On the reconstruction it is visible that at that moment nobody is in the direction of the car of [victim 2], with the exception of deputy AE commander [name], who is a bit further away. [name] is outside the defendant's field of view when the suspect shoots. The other members of the AE team are located next to or behind the car. 26

The acceleration track has been investigated by the Road Accident Analysis Service. This had a length of 8.95 meters. The car of [victim 2] and [victim 1] was found in the end of this tire track in its final position. From the analysis of this track it follows that the driver of the car has driven at the end of the track with an "indicative" speed between about 21 and 26 kilometers per hour. 27 In view of the location of the acceleration track found, in combination with the images, the court concludes that this track was created after the defendant shot in the direction of [victim 2]. From the reconstruction follows that the car of [victim 2] between seconds 15.0 and 15.3 had a speed of at least 12 and at most 13 kilometers per hour. 28

Talk about (conditional) intent?

The court will now answer the question whether there was intentional or conditional intent on the part of the suspect on the killing of [victim 1]. The court observes first of all that none of the procedural documents follows that the defendant had the intent on killing [victim 1]. That is why the court must answer the question whether, with his conduct at the time of the incident, the suspect knowingly accepted the considerable chance that he might kill [victim 1]. The defendant stated that he had his weapon aimed at the chest of [victim 2], whereby the aiming must be understood in such a way that he did not look over the grain and the barrel but the firearm with two outstretched arms [victim 2]. has pointed out. [victim 2] was in a moving and maneuvering car. The suspect was aware that there was a passenger next to [victim 2] in the car. By firing his weapon at his height at a short distance from [victim 2] and [victim 1] in this way and in this way, the suspect has, according to the court, knowingly and willingly accepted the considerable chance that he [victim 1] instead of [victim 2] in his trunk and would, given the location of vital organs in the breast area, thereby kill.

Conclusion

In view of the foregoing, the District Court considers the primary charge to be lawfully and convincingly proven, on the understanding that the suspect had the conditional intent on the death of [victim 1].

Finally, the District Court notes that the legal counsel of the defendant at the hearing also stated that the defendant acted in accordance with Article 7, first paragraph, of the Police Law 2012. According to counsel, the defendant could reasonably assume that the use of the firearm was permitted in the present situation. However, now that counsel has not made any explicit conclusions about this, for example within the meaning of article 359a of the Code of Criminal Procedure, the defense of the counselor does not require any (further) discussion. The District Court also notes that the Chief Public Prosecutor concluded in his letter of 12 February 2014 (dismissal decision) that the defendant acted in violation of the Official Instructions of Police, the Royal Netherlands Marechaussee and other investigating officers.

3.4 The proven statement

The court considers proven that the defendant

on August 22, 2013 in the municipality of Heerlen to carry out the crime planned by the suspect to deliberately kill [victim 1], with that intention with a firearm fired a bullet where the bullet is the body of that [victim 1] have been invaded, while the execution of that intended offense is not completed.

The court does not consider proven what is more or differently charged. The suspect will be acquitted of it.

4 The qualification

The proven facts provide the following offense:

With regard to primary:

attempted manslaughter

5 The punishability of the proven facts

5.1 The position of the public prosecutor

The public prosecutor is of the opinion that the accused should be dismissed from all legal proceedings, since he can make a successful appeal to stormy weather. There was evidently an instantaneous, unlawful sexual assault on the defendant's own body, as well as that of his colleagues. At the hearing the witness [name] stated that he feared being overtaken by the car, since the car was coming at him. The defendant stated that he was near the

wheel arch of the car and that he feared being pushed away and getting under the wheels. From the statements of the witnesses it follows that it was necessary for the defendant to defend himself against the instantaneous, unlawful assault by [victim 2].

5.2 The position of the defense

The counsel has argued that the defendant should appeal to emergency weather and that he should therefore be released from all legal proceedings. The requirements of proportionality and subsidiarity are met. The suspect has identified himself as a policeman and has tried in various ways to bring [victim 2] and [victim 1] to a standstill. The suspect was in the maneuvering of the car by [victim 2] right next to the wheel arch. Counsel points out that there were squeaking tires and slipping wheels. [victim 2] applied excessive violence in a small parking lot. According to counsel, it is important that the suspect did not know what [victim 2] would do. Counsel in this connection refers to the statement of the suspect,

5.3 The judgment of the court

In order to assume a necessary emergency situation, it is necessary to make it plausible that there was an immediate and unlawful assault on the suspect and / or his colleague AE members by the passenger car in which [victim 2] and [victim 1] were located.

The defendant stated that he feared for his life and that he was afraid that the car would overturn his colleagues. The accused has stated on his own position that he was right next to the car, near the wheel arch. For this purpose, the Court considered under 3.3 that the suspect had fired the shot between seconds 15.0 and 15.3 of the reconstruction. On the basis of this reconstruction, as well as from the statement of the defendant, the court finds that the suspect was neither in front of nor at that moment in the direct direction of the car of [victim 2]. The court is therefore of the opinion that at that moment there was no instantaneous unlawful sexual assault against the suspect. The images also show that the suspect did not have to worry at any time that he would come into contact with the car and that injury would be feared. As far as the colleague AE members of the suspect are concerned, the District Court also considers that it has not proved to be sufficient with regard to them for an instantaneous unlawful sexual assault. First, the defendant stated that he did not know where they were when he shot in the direction [victim 2]. In view of the statements of the AE members and suspect that they always work in a bowl with members who are next to the car, the suspect did not have to expect that there were members in the direction of the car. On the basis of the reconstruction, the court further found that none of the AE members were in the direction of the car before and at the moment the suspect shot. However, the court concludes that deputy commander [name] was in the direction of the car when [victim 2] sent in after he went forward again; that is after the shot. In this respect, the District Court is of the opinion that there was possibly a possible foreseeable instantaneous assault on [name] when the car of [victim 2] increased in speed and actually drove in his direction after sending (from second 15.3). However, this will only take place after the suspect has discharged the shot (between seconds 15.0 and 15.3). [name] stated that he was the driver of the second car of the AE unit (on the aforementioned images colored with red) and that he then the car of [victim 2] after the turning maneuver went ahead. At that moment he had a weapon in his hand, but he is not sure if he had his weapon aimed at the vehicle of [victim 2]. The court concludes from this statement and from the images that [name] could come away fairly easily for the advancing car of [victim 2] and that there was no need / reason for him to use his weapon. but he is not sure if he had his weapon aimed at the vehicle of [victim 2]. The court concludes from this statement and from the images that [name] could come away fairly easily for the advancing car of [victim 2] and that there was no need / reason for him to use his weapon.

In view of these circumstances, the court is of the opinion that there was no question of an immediate, unlawful assault against the accused or one of his colleagues prior to the moment the suspect shot. Even after the shot there was no question of such a situation. For this reason, the court rejects the appeal to emergency weather.

The court therefore comes to the conclusion that no facts or circumstances have become plausible that exclude the punishability of the offense.

6 The punishability of the suspect

6.1 The position of the public prosecutor

The public prosecutor also believes that the accused should be dismissed from all legal proceedings, since he can make a successful appeal to emergency weather excesses. The suspect described that he felt anxious, that he started to sweat and that he wanted to go home. According to the public prosecutor, there was therefore a violent state of mind as a result of the instantaneous, unlawful assault by [victim 2].

6.2 The position of the defense

Counsel also called on emergency weather exits. The suspect had a strong emotional movement, which was caused by the excessive violence of [victim 2]. Counsel in this respect refers to the statement of the defendant as made with the police.

6.3 The judgment of the court

Emergency weather excess

With reference to all that has been considered above, the appeal to emergency weather is also rejected. Now that in the opinion of the court there is no question of severe weather due to the absence of an instantaneous unlawful assault, there can be no mention of emergency weather excess.

Official judgment on psychological force majeure

Although no objection has been made in this respect, in view of the wording chosen by the defendant at the hearing during the investigation into the facts, the court will officially answer the question whether there was psychological superiority on the part of the suspect. There is a question of psychological superiority in the cases of an external urge from which the suspect could not reasonably resist and did not have to offer. Although the court simply assumes that the situation on the parking lot, as the accused also stated, was stressful, she does not consider the psychological need of the suspect objectified on the basis of the evidence referred to in 3.3 that this leads to the conclusion can substantiate that the suspect, at the moment of committing the offense, was in such a psychological situation that he could not or should not act differently than he did. The court points out that it follows from the statement of the defendant, but also from that of the witness [name], that the accused was trained as AE member in the performance of risky detentions. Although the car of [victim 2] was not blocked by the car of the OT against the expectation of the AE, the detention took place on a site which the AE had previously found suitable for such action. It concerned a well-lit room, closed off by an AE car, on which there were no unsuspecting third parties. The District Court also considers it important that the reconstruction shows that the car of [victim 2] had only a limited speed of approximately 12 to 13 kilometers per hour during forward and reverse maneuvering. That the controlled driving maneuver of [victim 2] (he always comes to a halt neatly in front of the obstacles / walls) so psychologically unbalanced that he was in a state of psychological superiority, does not fall out of the situation. file. In addition, although an acceleration track was found in the parking lot, this track only arose after the shooting incident, namely when the car of [victim 2] finally drove towards the exit of the parking lot.

The suspect is punishable because no facts or circumstances have become plausible that excludes his punishability.

7 The punishment

7.1 The prosecution of the public prosecutor

The public prosecutor has demanded the acquittal of the defendant and (more) alternatively the dismissal of all legal proceedings of the suspect.

7.2 The position of the defense

Counsel has primarily advocated the acquittal of the suspect and (more) subsidiary dismissal of all legal proceedings.

7.3 The judgment of the court

In determining the punishment to be imposed, having regard to the nature and seriousness of what has been proved, to the circumstances in which the proven facts were committed and to the person of the suspect, as evidenced by the investigation during the hearing, come.

In the performance of his duties as police officer and as an experienced member of the Arrest Unit Limburg-South, the defendant discharged a shot during an emergency deployment, during which attempt was made to keep the driver [victim 2] in his car. While the suspect was a short distance from the passenger car, he used - without necessity - his service firearm and shot through the window of the front passenger door. As a result of the shot, the co-driver [victim 1] was injured on his chest and upper arm. The bullet has pierced the chest of [victim 1]. By releasing the shot in the direction of [victim 2] while his car was in motion, the defendant accepted the chance that [victim 1] could be killed. *an inch further and there had been a funeral* . "

The court is of the opinion that the defendant acted disproportionately and thoughtlessly under the given circumstances. The court charges this to the suspect.

An attempted manslaughter is one of the most serious criminal offenses in the Criminal Code. To that end, in principle only an unconditional prison sentence is appropriate as a punishment. In this case, the court has taken into account the fact that a suspect is a police officer and has committed the offense in the performance of his duties, but sees in it insufficiently valid reason to deviate from an unconditional prison sentence.

The court seeks to join the criminal prosecution of the Court of Appeal in 's-Hertogenbosch in connection with an attempted manslaughter. In this jurisprudence, an unconditional prison sentence of 4 years is used as the starting point.

However, the court sees reason to deviate from this. In a sentence that reduces sentence, the court considers that the suspect has a blank criminal record. Moreover, the probation advice shows that there is no recidivism risk and that the suspect does not experience any problems in any area. That the shooting incident and (outcome of) the criminal case have had a major impact and will still have on suspicious life, the court realizes and has involved in its judgment. Finally, it weighs in as punitive that the fact took place almost two years ago.

The court considers, all in all, the imposition of a completely unconditional prison sentence for the duration of 2 years appropriate and appropriate.

8 The injured party and the compensation measure

8.1 The claim of the injured party

The injured party [victim 1] claims compensation of € 4,534.60, of which

€ 1,034.60 in respect of material damage and € 3,500.00 in respect of non-material damage, increased by statutory interest and with the imposition of the compensation measure. Furthermore, the injured party claims compensation

€ 1,657.98 in respect of costs for legal assistance.

8.2 The position of the public prosecutor

The public prosecutor has primarily requested the rejection of the claim of the injured party if the accused will be acquitted. In the alternative, the Public Prosecutor has demanded that the claim of the injured party be declared inadmissible if the defendant is dismissed from all legal proceedings. In the further alternative, the public prosecutor has finally demanded that the claim of the injured party be partially awarded. The Public Prosecutor deems a compensation of € 500.00 reasonable and fair in respect of material damage suffered by [victim 1].

8.3 The position of the defense

The defense has not formulated a position with regard to the claim of the injured party if the suspect will be acquitted or will be dismissed from all legal proceedings. Completely in the alternative, the defense joined the position of the public prosecutor in respect of the requested material damage. The defense also referred to the court's judgment regarding the requested non-material compensation and the requested reimbursement of legal expenses.

8.4 The judgment of the court

The District Court is of the opinion that it was established at the hearing that the injured party [victim 1] was directly harmed by the punishable offense proven above. A defense has been filed against the amount of the claimed compensation for material damage. Although the requested material compensation has not been substantiated with purchase receipts, it appears from the case file that the (brand) clothing of [victim 1] is damaged. Now that the age of these clothes has not been proven, the court will determine the material damage ex aequo et bono at € 750.00. The more advanced by [victim 1] must be rejected. No defense was filed against the amount of the claimed compensation for non-material damage. To this extent, the claim of [victim 1] must be assigned. In view of the accused's reference against the amount of the claim for non-material damage, the court will determine this damage at € 3,500.00. The court will assign the claim up to an amount of € 4,250.00, plus the statutory interest as of 22 August 2013. The court will also impose the compensation measure.

Now that the proxy of the injured [victim 1] has filed the claim and was also present at the hearing, the court will - in view of the amount of the claim - award the costs of legal assistance in accordance with Staffel extrajudicial collection costs (BIK) and salaries in the cantonal matters. and for an amount of € 500.00 (2 points). For the rest, the court will reject the requested costs of legal aid.

9 The legal requirements

The decision is based on Articles 24c, 36f, 45 and 287 of the Penal Code, as these articles read at the time of the proven facts.

10 The decision

The court:

Proof statement

- declares the charges to be proven as described above under **3.4** ;
- expresses the suspect free of what is more or differently charged;

Punishment

- declares that the proven facts constitute the offense as described above under **4** ;
- declares the suspect punishable;

Punishment

- condemns the suspect for the primary offense to a **prison sentence of 2 years** ;

Disadvantaged party and compensation measure

- allocates part of the claim of the injured party [victim 1] and condemns the accused to pay against proper proof of discharge to the injured party **€ 4,250.00** , to be increased with the statutory interest to be calculated over the period from 22 August 2013 to to the day of full satisfaction;
- rejects the claim of the injured party for the rest;
- condemns the accused in the costs incurred by the injured party in the context of this procedure and to make it still in execution, estimated at **€ 500.00 so far** ;
- imposes on the suspect the obligation to pay to the state for the benefit of the victim, [victim 1], of € 4,250.00, in case of non-payment and redress by 52 days of detention, on the understanding that the replacement custody the payment obligation does not cancel, to be increased with the statutory interest to be calculated over the period from 22 April 2013 until the date of full payment;
- stipulates that if the defendant has fulfilled the obligation to pay to the state, the obligation to pay to the injured party will be terminated in this respect and vice versa that, if the accused has fulfilled the obligation to pay the injured party, the obligation to pay to the state in so far as it expires.

This judgment was rendered by Mr. LP Bosma, chairman, mr. FAGM Vluggen and

mr. JHM Engels, judges, in the presence of Mr. IK Bakker, clerk, and was pronounced in public session on 17 July 2015.

ANNEX I: The indictment

The accused is charged with that

1.

he on or about August 22, 2013 in the municipality of Heerlen to implement the crime planned by the suspect intentionally [victim 1] of the to rob life, with that intent with a firearm fired a bullet in the direction of that [victim 1] where that bullet is the body of that [victim 1] have been invaded, while the execution of that intended offense is not completed;

In the alternative, at least if the above was not to be sentenced or could lead to:

he on or about August 22, 2013 in the municipality of Heerlen to a person named [victim 1], intentionally causing serious bodily harm, by deliberately firing a bullet in the direction of a firearm that [victim 1] and in which that bullet has invaded the body of that [victim 1];

more in the alternative, at least if the above is not a conviction might or could lead, that:

he on or about August 22, 2013 in the municipality of Heerlen to implement the offense planned by the suspect to a person named [victim 1], intentionally causing severe bodily harm, with that intention with a firearm has fired a bullet in the direction of that [victim 1] and where that bullet has invaded the body of that [victim 1], while the execution of that intended crime has not been completed;

¹ De vindplaatsvermeldingen, voorkomend in de hierna opgenomen bewijsmiddelen en de motivering van de bewezenverklaring, verwijzen naar de doorlopende paginanummering in de voor eensluidend afschrift gewaarmerkte kopie van het in de wettelijke vorm door daartoe bevoegde verbalisanten van de Rijksrecherche Regio Zuid opgemaakte proces-verbaal, genummerd 20130074 d.d. 22 augustus 2013 en de als bijlagen daarbij gevoegde schriftelijke bescheiden, welke alle wettige bewijsmiddelen zijn als bedoeld in artikel 344, eerste lid jo artikel 339, eerste lid onder 5^o van het Wetboek van Strafvordering.

² P-v 20130074 [naam] d.d. 10 oktober 2013, p. 4.

³ P-v van verhoor aangever [slachtoffer 1] d.d. 16 september 2013, p. 163 en 164.

⁴ P-v van verhoor getuige [slachtoffer 1] d.d. 27 augustus 2013, p. 158 tot en met 160.

⁵ P-v van verhoor aangever [slachtoffer 1] d.d. 16 september 2013, p. 164.

⁶ Geneeskundige verklaring Spoedeisende Hulp Atrium Medisch Centrum d.d. 22 augustus 2013, p. 166 en 167.

⁷ Brief van dr. [naam] d.d. 26 september 2013, zonder doornummering.

⁸ P-v verhoor verdachte [verdachte] d.d. 23 augustus 2013, p. 114 tot en met 119.

⁹ De verklaring van de verdachte, zoals afgelegd ter terechtzitting van 3 juli 2015.

¹⁰ CD-rom NFI, animatie / reconstructie, d.d. 2 oktober 2014.

¹¹ P-v verhoor getuige L115 d.d. 23 augustus 2015, p. 155.

¹² CD-rom NFI, animatie / reconstructie, d.d. 2 oktober 2014.

¹³ P-v verhoor getuige [naam] d.d. 23 augustus 2013, p. 150 en 151.

¹⁴ CD-rom NFI, animatie / reconstructie, d.d. 2 oktober 2014.

¹⁵ P-v verhoor getuige [naam] d.d. 23 augustus 2013, p. 144.

¹⁶ CD-rom NFI, animatie / reconstructie, d.d. 2 oktober 2014.

¹⁷ P-v verhoor verdachte [verdachte] d.d. 23 augustus 2013, p. 116.

¹⁸ CD-rom NFI, animatie / reconstructie, d.d. 2 oktober 2014.

¹⁹ P-v verhoor getuige [naam] d.d. 23 augustus 2013, p. 141 en p-v [naam] d.d. 23 augustus 2015, p. 145.

²⁰ P-v verhoor getuige [naam] d.d. 23 augustus 2013, p. 133 en p-v verhoor getuige L115 d.d. 23 augustus 2015, p. 155.

²¹ P-v forensisch technische ondersteuning betreffende politieel schietincident d.d. 16 september 2013, p. 16 tot en met 18.

²² P-v sporenonderzoek d.d. 13 september 2013, p. 89 en 90.

²³ P-v van verhoor getuige [naam] d.d. 30 augustus 2013, p. 125.

²⁴ P-v van verhoor getuige [naam] d.d. 23 augustus 2013, p. 145.

²⁵ P-v van verhoor getuige [naam] d.d. 23 augustus 2013, p. 151.

²⁶ CD-rom NFI, animatie / reconstructie, d.d. 2 oktober 2014.

²⁷ P-v Verkeersongevallenanalyse d.d. 2 september 2013, p. 53 tot en met 58.

²⁸ NFI CD-ROM, animation / reconstruction, dated 2 October 2014.
