

MONDAY JUNE 12 2023 – 1st Day

Day one of Mike's homicide trial was divided into four sequences:

- Requisition on the evidence
- Requisition on the aggravation of the indictment
- Examination of the six police officers charged by Public Prosecutor's Office
- Questioning of the police officers by the plaintiff's lawyer

- **Requisition on the evidence**

Mike's lawyer requested that the court take note of several gray areas in the Prosecutor's investigation. In particular, he denounced the lack of seriousness in the way the investigation was conducted.

Mr Ntah, Mike's lawyer, challenged the investigation on a number of grounds:

- The expert hearings were botched by the Public Ministry (Prosecutor's Office): during some expert hearings, the prosecutor did not ask any questions
- The witness hearings were also botched
- The one and only neighborhood investigation carried out by the police was not done properly. No report was drafted and as a consequence there is no record of the neighbourhood investigation
- There are a number of biases such as the first police statement which referred to Mike as a drug dealer feeling unwell and suggesting that he had died of an overdose
- Following the respiratory arrest, the police officers spent more than four hours together. There is thus a high risk of collusion and agreement on a common and convenient version
- A study on prone restraint was published after the expert reports were submitted. Mr Ntah asked that the expert be heard again on this new study which shows that the problem with prone restraint is not conducive to asphyxia, of which there are no real traces on Mike, but acidosis, an excess of carbon dioxide in the blood, which was not tested on Mike.
- The cop's professional files, with their interventions' history, were never put in the trial's file, making it impossible to know if other people ever complained about their behavior in the past. In a homicide investigation, however, it is customary to look into the background of defendants, whoever they may be.
- In addition, Mr Ntah points to violations of the European Convention on Human Rights and asks the court to recognize that one of the police officers caused bodily harm to Mike.
- Generally, for all the above mentioned reasons, Mr Ntah argued that the investigation in itself is a violation of human rights on several levels.

In view of these major shortcomings, Mike's lawyer requested the re-admission of several pieces of evidence (hearing again witnesses and experts and the production of the cop's professional files).

All these requests were refused by the judges, the President stating that they do not want to "complicate their lives" with additional hearings. For the purpose of legal proceedings and potential appeal by the family's lawyer, it is essential that these requests were made at the beginning of the trial.

- **Requisition on the aggravation of the indictment**

Mike's lawyer requested an aggravation of the indictment from negligent homicide

(involuntary manslaughter/ *homicide par négligence*) to homicide by malice aforethought (voluntary manslaughter/ *homicide par dol eventual*). The legal difference between these two qualifications lies in the awareness of the risks: homicide by malice aforethought supposes that the cops were aware that their actions presented a risk of death and took the risk anyway. This aggravation was also refused by the court at the start of the afternoon session.

- **Examination of the six defendants by the Prosecutor**

The Prosecutor confronts the police officers with the results of the investigation. However, even if in charge of the investigation and prosecution, the Prosecutor did not ask any questions about the facts or the contradictions in defendants' accounts. He merely asked them about the training they received and how knowledgeable they are of Police manuals.

Repeating the same questions over and over to each defendant on how often they had used prone restraint he quite obviously aimed at trivializing this notoriously dangerous practice. His strategy appears to be presenting the prone restraint as a series of harmless, non-incriminating actions (immobilization, prone position arms and legs locks, etc...).

During Mr Ntah's interventions, the Prosecutor bit his nails and laughed every time Mr Ntah was interrupted by the president. His posture was otherwise relaxed, close to slouching, during the opening arguments questioning his investigation.

On several occasions, Mike's lawyer stressed the extent to which he felt he was alone, facing both the defence and a silent prosecutor. To the best of the memory of several legal experts in Vaud, no trial has ever been conducted by the plaintiffs in such solitude. Mr Ntah was compelled to play the prosecutor's role.

In addition to these considerations about the Prosecutor, the President's behaviour was atypical to say the least. Even though he has long been known for his peculiar handling of hearings, he was not as virulent with the cops as he often is with defendants. Moreover, he tended to complete defendant's answers and downplay Mr Ntah's interventions. Several times he repeated that he "was there to find out if there was indeed a negligent homicide", indicating that he had no desire or interest in requalifying the indictment or in attributing intention to the officer's behaviour.

- **Questioning of the police officers by the plaintiff's lawyer**

Mike's lawyer confronts the police about the results of the investigation.

The questioning, which was long and confrontational, revealed a number of key points about the investigation.

- The versions of events given by the six cops contained numerous empirical contradictions, concerning the violence prior to the belly tackle, the implementation of the belly tackle, the duration of the intervention and particularly the immobilisation, the interpretation of Mike's reactions and finally the observation of the cardiac arrest. Unsurprisingly, according to the questions, some of the defendants remembered precisely that they were not applying any pressure to the vital organs. They repeated with the same precision the places where each of them applied pressure, such as the right triceps. On the other hand, they say they "can't remember" essential information. No cop is able to say what another cop was doing during the arrest or how long anything lasted.

b) There is a paradox in the defendants' line of defence. At times they claimed that they had read the manuals, to assert, for example, that they had acted exactly in accordance with the principles of proportionality as defined in the Police Code. At the same time, when confronted with certain articles of the Police Code, they replied that they had never read it during their training.

c) The accused police officers had a prepared speech and repeated in a loop elements of

language prepared in advance:

- Everything was going so fast
- He was oppositional
- I don't remember

- I remember exactly what limb or muscle I was holding without knowing how long or what my colleagues were doing 8 centimetres away from me.

d) The hearing revealed the degree of violence and disorganisation of the operations. The officers admitted that they regularly "round up" drug dealers (the lexicon is that of the hunt) in chaotic conditions whose degree of improvisation betrays their brutality and dehumanisation. What's more, no hierarchical responsibility seems to have been established. None of the cops agreed to answer the simple question of responsibility: who was the officer in charge? It's impossible to know. In a vast chaos of contradictory versions, they all protect themselves, multiplying absurd exits.

e) After Mike's death, no "debriefing" was organised within the police force, and the hierarchy took no measures whatsoever, leaving each cop free to go back to work the next day.

f) When the notion of positional asphyxia was raised, the police officers mentioned possible risks of breathing difficulties but never mentioned the risk of death. However, Mr Ntah asked one of the police officers what the D of DPA (death by positional asphyxia) meant, and he was unable to answer. It was repeated several times that there is a box in the police training manual specifying that the person, once handcuffed, must be "immediately" seated or placed in a lateral position.

g) The defence lawyers relegate any consideration of structural racism in the police to the level of an accusation of intent against the police officer. The issue is systematically sidestepped. For example, when the lawyer revealed the presence of photos and racist comments in what's app groups of Lausanne police officers, the defence cried foul on the grounds that there was no proof that the six defendants were actually members of these groups. In another example, when one of the cops stated in his interview that he remembered "that the African was gesticulating", no one but Mike's lawyer picked up on it. Another example (and there are many) is that the first cop to intervene, the one who triggered the arrest, insisted on Mike's strength and his "impressive" side. This imagery of the black man as frightening and violent is structural and is found in many cases of racist police violence.