

TUESDAY 13 JUNE 2023 – 2nd Day – (Part 1 ?)

Day 2 of Mike's homicide trial was divided in three parts

- 1- A new witness and a reversal: Mike could have died in the street
- 2- Dumoulin's hearing: a two-speed procedure
- 3- Dumoulin's hearing: a systemic indictment of the Lausanne police force

1- A new witness and a counter-version: Mike died during the operation

The morning of this second day began with the hearing of a new witness, who had never before been heard during the investigation. From the window of a room that he rented, this witness saw part of the body tackle while Mike was conscious, but also the minutes after the cardiac arrest.

In his words, a different version emerges: a death in the street and not at the hospital, some 12 hours later. Mike would have been left for dead on the ground for several dozen minutes. The witness said he saw the ambulance crew and the cops talking for several minutes next to the body on the ground, covered by a security blanket. According to this witness, "the ambulance arrived without any sense of urgency". The scenario of a death in the street had already been put forward by Mr Ntah in the run-up to the trial. This version would further corroborate the risks of collusion between the officers, already widely pointed out yesterday. It also opens the way to possible complicity by the medical corps in establishing the time of death.

Legally, it is unlikely that this version will change the indictment. However, the short lapse of time between the intervention and death could be a further argument in favour of a causal link. The question of failure to assist a person in danger was never raised in this case.

"Still disputing the police version of events, the witness refers to "loud cries of urgency", which he heard from a flat 80 metres from the scene of the events with the window closed. This statement confirms that the image of an aggressive man is a fantasy and that the officers simply did not want to hear Mike's suffering."

In addition to the substance of his statement, the witness refers to the erratic conduct of the investigation. Although he actively and spontaneously wished to testify, the Public Prosecutor's Office did not facilitate his access to the proceedings. This testimony also confirms that there was no serious neighbourhood investigation: as the witness was 80 m from the scene, it is undeniable that a multitude of other people living in the vicinity of the place of arrest were able to observe the events.

Unsurprisingly, the defence lawyers tried to undermine his credibility by arguing that his memories were hazy. This is crass bad faith, since it was precisely another botched investigation that prevented him from giving evidence when his memories were still fresh.

Even though this version is obviously being ruled out of the trial by the president, it is still important that we hear it. The witness is categorical about what he saw: although he had witnessed the cardiac massage earlier, there was no longer any urgency around Mike when he last looked out of the window. Even though death had occurred at the CHUV hospital, the first responders and police had clearly left Mike "on the floor, unattended" for several minutes. How much precious time was lost at that point?

2- Dumoulin's hearing: a two-tier procedure

A second witness was then called: Stéphane Dumoulin, operational head of the Lausanne municipal police. He is practically a media personality, so much so that the Lausanne police have made him the standard-bearer of their 'war' on drug dealing. Mr Ntah referred to article 162, which states that only witnesses to the facts (who saw the scene), character witnesses (who know the accused) or experts may be heard. Dumoulin cannot respond to any of these positions. Defence lawyers summoned him to the trial, arguing that he could shed light on the hierarchical positions during the operation. Mr Ntah said he found it absurd that the presiding judge should accept this witness when two other eyewitnesses had been refused by the same judge, who ended up accepting Dumoulin's testimony, once again going along with the defence.

However, despite the bad faith of defence lawyers, Mr Ntah managed to turn the witness's examination around and ask him questions designed to shed light on the systemic malfunctions within the Lausanne police force. We then learned that Dumoulin was not the direct superior of the six officers, but that he was indirectly superior in the context of Operation Bermude, which included the intervention that led to Mike's death¹

Noting that the examination of their witness was turning against them, the defence lawyers asked Mr Ntah to stop asking questions. In their view, Ntah was speaking to Dumoulin as if he were a legal expert. However, it was clear that the defence was also asking Dumoulin questions about his expertise. At first, the judge tended to favour the defence. This incident made the prevailing double standard of the trial abundantly clear. It was finally resolved after a private meeting between the judge and all the lawyers. Mr Ntah was able to continue his questioning, raising a number of points that merit immediate political analysis.

3- Dumoulin's hearing: systemically calling into question of the Lausanne police force

a) Hierarchical (Dis)functioning

In the end, the Defence was unable to get much out of their witness: Dumoulin was essentially used to prove that there was no cop hierarchically responsible, but this position gradually trapped him in a paradox. So, either the cops put the onus on a single defendant (on a human scale, which they are presumably trying to avoid), or they assume that there is

¹ Operation Bermude was launched as part of the wider operation STRADA, to combat street dealing and begging by increasing the number and presence of police on the streets, as well as organising a wave of arrests at strategic locations in the city centre.

no hierarchy during an intervention, but then give a negative image of the police as acting like the Wild West. Yet this description seems structurally surprising in such a hierarchical body.

Dumoulin's attempt to sidestep the paradox fooled no-one, so hollow did his managerial semantics sound. According to him, in an intervention, "there are no rules about who is going to be in charge", but it's not a mess either, because it's clear that "someone will naturally take the lead". Would a natural leadership emerge depending on the situation? More likely, the police know who was responsible for Mike's murder, but their line of defence is based on a lie of omission.

Furthermore, in his testimony, Dumoulin points out that Operation Bermude consisted in an operation to raise awareness and act as a deterrent, by posting cops on patrols in the six squares concerned by street dealing in Lausanne. In addition to these formal mops, patrols can go out and improvise "when they have a moment", with weekly targets (targets that sets himself). He also insisted that the patrols would not necessarily be used to working together, that there would be no fixed pairings, or at least that they would change frequently. Is Dumoulin trying to relieve his officers? How can we understand this strategy? Can we really rule out the hypothesis that some of the cops who killed Mike were used to working together, especially when we know that many victims of police violence in the street recognise certain teams as being notoriously violent?

b) Lack of consequences for Mike's murder within the institution

As Dumoulin is the head of police operations, Mr Ntah asks whether any action has been taken following Mike's death, and several elements of his answer reveal the extent to which this murder has been treated as a harmless accident.

Dumoulin answers in the negative with surprising candour. According to him, taking action was not his responsibility, but that of the police commander who, to his knowledge, "took action". "Which actions?" asks Mr Ntah. "The action taken was not to take any action," Dumoulin replied unflinchingly. On the grounds of presumption of innocence, the police officers were able to resume their work in the street the very next morning. The argument is obviously fallacious. In an employing structure, it is not necessary to wait for a criminal decision before proceeding with an administrative sanction, especially in the case of police officers who have amply demonstrated their dangerousness. In addition, he acknowledges that no formal debriefing took place, nor even any follow-up of the officers (no ongoing training, no compulsory psychological follow-up). He did, however, say that he had occasionally asked them if they were doing well. We'll have to wait and see how relevant the psychological follow-up is.

"Of course, suspending the agents would have been an admission of guilt and a political defeat, but this trial confirmed our doubts: the agents all returned to work the very next day, and were not even reassigned to less exposed positions."

Has the murder changed Lausanne police practice on the issue of the prone restraint? "No" explains Dumoulin, "apart from the fact that the incident was reported to the ISP (Federal

authority responsible for Police training), the tactics have not changed. He refers to "raising awareness" and concludes, not without panache, "Well, we're talking about it". More structurally, it should be noted that Dumoulin, and more generally the police, tend to take refuge behind the federal authority of the ISP. That said, they fail to point out that this training institute has only an advisory role and that the police have cantonal autonomy over their practices. In other words, federal instructions are not authoritative. Abolishing the use of the prone restraint would depend solely on the will of the Lausanne staff (of which he is number 2 in rank).

Then, when one of the defence lawyers asked him whether the cops should "go to the end of the line" when they stop someone, he replied that "the police must go to the end of the procedure and, if the person resists, go to the end of the action". We know what "to the end" means in Mike's case... Unsurprisingly, Dumoulin follows the police's overall line of defence. He continues to implicitly defend the version that Mike was violent and that the tackle was a proportionate response. However, this implicit defence remains unfounded at the present time, if not invalidated, given that all the witness statements, even those of the cops, say that it was a case of passive resistance. The system, the excessive number of police officers and the dangerous techniques they used do not respect either the principle of proportionality or their ISP manual.

Finally, Dumoulin comments on the 'round-up' operations such as the one that led to Mike's death. The paradoxes of the police version continue to emerge. He states that he does not recommend this type of intervention, and even that he does not recommend acting in the way that the defendants pretend they have acted since the trial. But, realising the enormity of what he was saying, as operational head of the Lausanne police, he tried to make up for it by saying that the officers nevertheless had "the autonomy to take this kind of initiative". Once again, the police version is more than contradictory, both in its presentation of the facts and in its account of the operating methods in force. What exactly are they hiding?