

[NewsGTA](#) Toronto police officer, brother accused of misleading investigators in Dafonte Miller case

Const. Michael Theriault and his brother, Christian Theriault, are charged with public mischief in addition to aggravated assault and assault with a weapon in connection with the Dec. 28 incident in Whitby.



Toronto Police Michael Theriault. Photo taken from a YouTube video posted by Joseph Briggs on November 25, 2015. (PHOTO COURTESY OF JOSEPH BRIGGS)



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A Toronto police officer and his brother charged in the [beating of Black teen Dafonte Miller](#) are accused of misleading investigators, according to newly obtained court documents.

The charges against Michael Theriault, a 25-year-old constable with the Toronto police force, and his 21-year-old brother, [Christian Theriault](#), include aggravated assault and assault with a weapon in relation to the incident, which took place Dec. 28 in Whitby.

Both men were also charged with public mischief. According to information filed in court, the Special Investigations Unit alleges the

Theriaults “did with intent to mislead, cause a peace officer to enter upon or continue an investigation and thereby commit public mischief.”

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The date of the alleged offence — Dec. 28 — suggests that the SIU, a police oversight body, is alleging Theriault and his brother misled Durham police officers, who responded to the scene in the early morning hours. The SIU was not informed of the incident until April. Neither the SIU nor Durham police would comment Tuesday.

According to the section of the Criminal Code under which the Theriaults have been charged, someone has committed public mischief if they report an offence that hasn't occurred, make a false statement accusing someone of an offence, or do anything meant to cause someone to be suspected of a crime or “divert suspicion from himself.”

The brothers are currently out on bail and scheduled to appear in court on Aug. 10. Michael Theriault has been suspended with pay from the Toronto police.

Miller's lawyer, Julian Falconer, has provided an account of what allegedly happened in the early morning hours of Dec. 28, none of which has yet been tested in court.

Miller and his friends, Falconer said, were walking down Erickson Dr., a quiet suburban street north of Dundas St. E., before 3 a.m., when they were confronted by the brothers, who were in the garage of their family home. According to property records, the home is owned by the Theriaults' father, John Theriault — a longtime Toronto police detective currently assigned to the professional standards unit.

Michael Theriault, Falconer alleged, identified himself as a police officer and asked what the group of friends were doing. The Theriaults

chased Miller and his friends, eventually catching up to Miller and beating him with a metal pipe, the lawyer said.

Miller called 911 as the attack continued, Falconer has said. The call history from his phone, captured in a photo provided to the Star and other outlets, shows a call to 911 at 2:52 a.m., which lasted just over a minute.

According to Falconer, Michael Theriault grabbed the phone and told the operator he was a police officer and had made an arrest. Falconer told the Star he has personally listened to the 911 recording, which has not been released publicly.

When Durham police arrived at the scene, Falconer said, Michael Theriault told them he and his brother had heard noises coming from a car in their driveway, and saw Miller and one of his friends running away from a Theriault family car.

Michael Theriault told Durham police that change used for grocery money was missing from the car, Falconer said.

Michael Theriault's lawyer, Michael Lacy, declined to comment on his client's charges.

Durham police charged Miller on Dec. 28 with theft under \$5,000, assault with a weapon described as a "pole," and possession of a small amount of marijuana. Those charges were withdrawn by the Crown in May, before going to trial.

Durham officers interviewed multiple people, collected evidence and took photographs during their investigation of the Dec. 28 incident, Durham Chief Paul Martin said in a news release Friday.

Neither Toronto police nor Durham police notified the SIU, the body called in to investigate cases of death, serious injury or alleged sexual assault involving police. It was not until Falconer contacted the police watchdog in April that it began an investigation.

Toronto police Chief Mark Saunders has repeatedly defended his service's decision not to contact the SIU. Members of the Toronto police professional standards unit decided, based on the information they had at the time, that the Theriault case did not meet the threshold to report to the police watchdog, Saunders told reporters.

Saunders announced Thursday that Waterloo police had been called in to conduct a [third-party investigation](#) into the circumstances of Miller's beating.

Martin has announced [an internal review](#), led by his deputy chief Uday Jaswal, to examine whether Durham officers acted correctly in arresting Miller and in not contacting the SIU.