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- Investigations
- Crime

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SPORTS

BUSINESS

ENTERTAINMENT

LIFE

AUTOS

PHOTOS

DIVERSIONS

CLASSIFIEDS

OBITUARIES

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## A bad week for police should have the rank-and-file fuming: DiManno

Cops who do their jobs conscientiously should be furious about the behaviour of their peers.

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Toronto Police Chief Mark Saunders speaks during a press conference in response to Monday's guilty verdict in the trial of Const. James Forcillo.

By: **Rosie DiManno** Columnist, Published on Fri Jan 29 2016

Attempted murder, deceit, collusion, perjury, obstructing justice and something else that won't be revealed until a disciplinary tribunal in March.

These are your cops, Toronto.

"It certainly has been an anomaly week for our service," said Police Chief Mike Saunders, confirming the latest charges Thursday. And you've got to feel some sympathy for the guy, who's barely had a moment's peace since he got the top job.

Const. James Forcillo: Guilty of attempted murder in the six rounds he fired at the already dying teenager Sammy Yatim.

Const. Jeffrey Tout: two counts of obstruct justice, two counts of perjury, laid yesterday.

Det. Const. Benjamin Elliott: three counts of obstruct justice, three counts of perjury.

Const. Michael Taylor: two counts of obstruct justice, perjury.

Det. Const. Fraser Douglas: two counts of obstruct justice, two counts of perjury.

Tout, Elliott, Taylor and Douglas, all alleged to have planted heroin in a suspect's car, were charged criminally early Thursday after they took themselves to a police station. All suspended with pay. All still enjoying liberty because their first court appearance isn't until March 11.

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Const. Tash Baiati: Charged under the Police Service Act in relation to an incident where at least 14 bullets were fired at a vehicle boxed in — not moving — by two patrol cars. The specific charge(s) Baiati is facing won't be known until his first appearance before a disciplinary tribunal March 8.

Toronto cops should be fuming. Not because their fellow officers have been convicted or charged with serious crimes, morale on the force purportedly plummeting, to hear police association Mike McCormick tell it. They should rather be furious — every cop from among the thousands who serve Toronto and have never been convicted of a crime, never been charged criminally or under the Police Act, never planted evidence or lied on a witness stand, or concocted a story among themselves, or in any other way disgraced the uniform.

They should be enraged by colleagues who've brought their police service into disrepute. Just like those 90 officers who preemptively removed their badge numbers during the G20 protest five summers ago because they didn't want to risk being identified if something untoward happened, as it did.

Open up another can of union-paid cop lawyers.

Professional Standards has been investigating the four officers charged criminally Thursday since last September, when Justice Edward Morgan threw out drug charges against Nguyen Son Tran and issued a blistering condemnation of the cops — and of their misleading sworn testimony in court, described as “egregiously wrongful conduct” in which the police witnesses had “obviously colluded.”

It was far from the first time a judge has admonished a cop for lying.

Tran had spent a year in jail awaiting trial. He hadn't made bail because of a previous drug charge, laid by the same officers.

Now, because the cops themselves have been charged, every investigation in which they'd been involved, every case that went to trial with their fingerprints all over it, will need to be scrutinized. There is the very real possibility, if the officers are found guilty, of convictions being quashed. Let that be top of mind to all those who believe instinctively in the virtue of every single police officer — society's first line of defence against criminals.

Another kick in the goolies is what the Toronto service didn't need right now. We are obviously still talking about a handful of cops under a criminal dark cloud. But, in the latest scandal, these were all veteran officers, not relative greenhorns acting rashly in the moment.

“It's all kind of strange for him,” said Kim Schofield, speaking on behalf of Tran, whom she defended at trial. “It comes as a relief more than a surprise. Relieved and impressed.”

Tran was pulled over on Jan. 13, 2014, allegedly after running a red light — which the defendant has always denied. “They'd been watching him,” Schofield claims.

Had Tran indeed not run that light, purportedly almost hitting a pedestrian, there would have been no legal grounds for stopping him or subsequently searching his car.

Const. Tout, who pulled Tran over initially for the alleged driving infraction, put the suspect's details out over police radio and discovered Tran had drug trafficking charges against him. When he approached the car again, Tout testified he saw grains of white powder on the Toyota's centre console and arrested him for possession.

Tran said he was stopped at the red light when he saw D.C. Elliott sitting in an unmarked car alongside. Tran recognized him from his earlier arrest. When Tout approached his Toyota, said Tran, the officer was speaking on his cellphone. He overheard Tout say: “Exactly him.” Two minutes later, Elliott and Taylor arrived at the scene. In searching the car, they found 11 more grams of heroin, wrapped in plastic and concealed behind the steering column.

Yet, at trial, the officers could not produce any plausible explanation for how the loose heroin — which triggered the search — got onto the dashboard. No explanation for why there were no partially empty bags or drug paraphernalia found in the car, no trace of drugs on Tran's clothing and no theory for why the suspect, an experienced drug trafficker, wouldn't have simply wiped off the loose heroin on the dashboard before Tout appeared at his window.

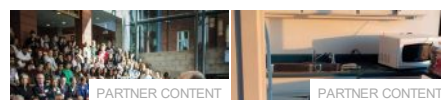


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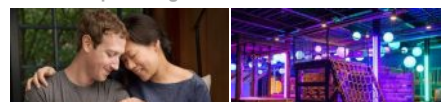


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As Morgan made clear, a traffic stop alone would not have justified police searching the vehicle. He wrote in his judgment: "Officer Elliott required some evidence of an ongoing offence to be openly visible in order to justify a search of the car. It is the defence position that the officer solved this problem by simply depositing the requisite evidence in the form of powdered heroin spread across the console of the car."

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This would have been done after Tran — who's disabled and was using crutches — had exited the vehicle.

Morgan, unimpressed with the officers' testimony, concluded the heroin was planted. "(T)he false creation of a pretext to search the defendant's vehicle, combined with the collusive fabrication of a story by the two lead officers as to why they came to assist in the traffic stop ... certainly amounts to egregiously wrong conduct. ... This police misconduct outweighs the roughly 12 grams of heroin found by the police. The quantity of the drugs is, of course, a serious matter; but the misconduct evidenced here is entirely beyond anything that the courts can accept."

That rendered the search illegal.

"I conclude that is indeed what happened here. All of the heroin that was found pursuant to this pretext for a search is, as they say, fruit of a poisoned tree."

Interestingly, Morgan refers to Taylor in his ruling as a sergeant. Now he's a constable. Saunders said Thursday that no officers had been demoted in rank. Police spokeswoman Meaghan Gray told the Star afterwards that Taylor had been a probationary officer. "He was not confirmed into that role, so he retains the status of constable."

The status of a constable charged with half a dozen counts of perjury and obstruct justice.

"I've had many cases before of similar findings," said Schofield. "But never with this kind of investigation. Maybe this judge issued a not-watered-down version of events. Maybe this will teach officers that they can't lie with impunity."

Four cops. Seventeen charges. One officer guilty of attempted murder.

One hell of a bad week.

*Rosie DiManno usually appears Monday, Wednesday, Friday and Saturday.*

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