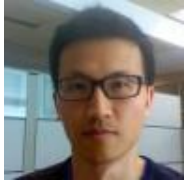


'Egregious' police cover-up alleged in pipe attack that left teen blind in one eye

Two men — an off-duty Toronto police officer and his brother — face criminal charges in a case that has prompted accusations of racial profiling and police deception



An off-duty Toronto police officer and his brother are charged with assaulting 19-year-old Dafonte Miller, seen here before the alleged assault and in hospital. *Supplied*



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The log on Dafonte Miller's shattered cell phone shows a call was made to 911 at 2:52 a.m. on Dec. 28, 2016.

But the 19-year-old was barely able to speak, his lawyer says, because his phone was snatched away by two pipe-wielding assailants who viciously attacked the teen in a quiet Whitby, Ont., residential neighbourhood, leaving him with serious injuries, including the loss of an eye.

Two men — an off-duty Toronto police constable and his brother — now face criminal charges in a case that has prompted accusations of racial profiling and police deception.

"I can't emphasize how egregious the cover-up is," Julian Falconer, Miller's lawyer, told reporters Friday.

Miller, who is black, and his buddies were walking to a friend's house when, according to Falconer, two men emerged from the open garage of a home. They asked if they were from the area and what they were up to.

Miller, who lives about a five-minute drive away, and his friends said they didn't need to answer and kept walking. One of the two men identified himself as a police officer and a chase ensued, Falconer said.

It is alleged that Miller, who had split up from his friends, was subsequently punched, kicked and beaten with a metal pipe. The teen attempted to bang on the doors of neighbours, leaving behind traces of blood, Falconer said.

No one deserves to be beaten down on the street and then get charged on top of it. No one deserves this

At one point, he dialled 911, but one of the men grabbed the phone and told the dispatcher he was an officer who was making an arrest.

Durham Region Police Service, who responded to the 911 call and requested an ambulance, later charged Miller with stealing under \$5,000 in cash, assault with a weapon (described as a “pole” in court records), possession of a weapon and possession of marijuana.

But Miller was the only one who suffered injuries that night and was “never an aggressor,” his lawyers say. The theft accusation was a fabrication and the \$13.50 in his possession was his own money. They did confirm that 0.4 grams of marijuana was found on him.

All charges were dropped in May. “After reviewing the whole of the case file, and in particular the significant injuries sustained by Mr. Miller, we decided it was not in the public interest to continue with the charges,” assistant Crown attorney Michael Malleson said Friday.

On Tuesday, Ontario’s Special Investigations Unit, which probes police-civilian encounters that result in serious injury or death, announced Toronto Police Const. Michael Theriault, 25, had been charged with aggravated assault, assault with a weapon and public mischief (for allegedly making misleading statements to police). He has been suspended with pay.

On Friday, the SIU announced his brother, Christian Theriault, was charged with the same offences.



Lawyer Julian Falconer: "I can't emphasize how egregious the cover-up is." *Michael Peake/Postmedia/File*

The Theriaults "acted together and were parties to the same assault," SIU director Tony Loparco said. "Upon consultations with and advice received from the Crown Law Office ... and in view of the exceptional circumstances of this case, **I am satisfied that the overall interests of justice are best served by trying both accused together in one trial.**"

Both men are due back in court Aug. 10. The charges against them have not been proven.

Falconer said the SIU was notified only after being contacted by his office, which suggests there was an attempt to cover up the incident.

Durham police maintain it was "the responsibility of the police service that employs the officer to contact the SIU."

A Toronto police spokeswoman said Friday an experienced SIU liaison officer “looked at all of the information available at the time and decided that this did not meet the mandate of the SIU.”

That’s “absolutely absurd,” Falconer said.

CityNews reported this week that the father of the two men charged is an investigator with the internal affairs branch of the Toronto police.

Miller, who is said to enjoy rap and R&B music, was planning to enrol in sound engineering courses at Seneca College, but those plans have now been derailed, his lawyers say.

In an interview with CBC Radio this week, Miller’s mother, Leisa Lewis, said her son’s left eye was ruptured and will require an operation to remove it.

“We just couldn’t understand how a police officer could come on the scene and **see him in the condition that he was in. His left eye was actually out of the socket** ... and no one thought to do any proper investigation,” she said.

Lewis said she has a hard time imagining the same outcome if her son had been Caucasian. “I really cannot picture it,” she said.

The whole incident has left her son feeling “broken” and “lost.”

“He feels like this is such an injustice. ... No one deserves to be beaten down on the street and then get charged on top of it. No one deserves this.”

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