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## Police failure to report altercation between teen, off-duty cop in Whitby amounts to 'cover up', lawyer charges

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Neither Toronto police nor the SIU would comment on the events that led to the charges, but Julian Falconer, a Toronto lawyer hired by the man's family, outlined his client's version of the events that led to Miller's injuries and Theriault's eventual arrest. - Bernard Weil/Toronto Star



Ontario's Special Investigations Unit announced Tuesday that Toronto police Const. Michael Theriault has been charged in connection with "serious injuries" suffered by a 19-year-old in Whitby in December 2016. The victim has been identified as Dafonte Miller. - Toronto Star photo



Leisa Lewis, mother of Dafonte Miller, speaks with lawyer Julian Falconer at his office. - Bernard Weil / Toronto Star

DURHAM — Police engaged in a “cover up” when they failed to report the beating of a Whitby teen by an off-duty cop to the province’s police oversight agency, a lawyer has charged.

Julian Falconer said the Special Investigations Unit, which examines incidents of injury or death involving police, should have been notified immediately after his client, 19-year-old Dafonte Miller, sustained serious injuries during an altercation Dec. 28, 2016 in Whitby. An investigation by the SIU began in April of this year after Falconer’s office reported the incident, says the agency.

On Tuesday, July 18, the SIU announced the arrest of Michael Theriault, a Toronto police constable, on charges of aggravated assault, assault with a weapon and public mischief. He is now suspended with pay.

Police should have reported the incident to the SIU last December, Falconer contended.

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“In my view, this is blatant flouting of the law,” he said. “The extent of the cover up is breathtaking.”

Falconer also charges that Durham police botched the investigation by failing to interview neighbours who witnessed the event. Miller, who has no criminal record, was the one charged by Durham cops, but those charges were withdrawn in May of this year, Falconer said.

“My client was innocent,” Falconer declared.

Durham police spokesperson Dave Selby said the onus was not on Durham police to report Miller’s injuries to the SIU.

“It is the responsibility of the police service that employs the officer to contact the SIU,” Selby said in a statement released Tuesday afternoon.

“We conducted an investigation and interviewed multiple people. Our investigation resulted in only one person being charged — the injured male party. It would be inappropriate to discuss our investigative findings or any details of the incident, given the current SIU charges before the court against the off-duty officer.”

Selby said that after the SIU invoked its mandate “we co-operated fully with their investigators.”

Falconer said that Miller was heading to a friend’s house with two others in the early morning hours of Dec. 28 on Erikson Drive in Whitby when they were confronted by two men who demanded to know what they were doing. Theriault identified himself as a police officer, Falconer said.

A pursuit began and Miller was separated from his friends before being beset by the two men, Falconer said.

Miller was beaten with a steel pipe, sustained broken bones and a grotesque injury that has left him blind in his left eye, Falconer said.

“It represents an unbelievably brutal attack,” the lawyer said.

Miller called out for help and tried to call 911, said Falconer, adding residents in the area who saw the incident unfold also called police.

When Durham police arrived, they arrested Miller, charging him with offences including assault with a weapon, theft and marijuana possession. Miller was taken to hospital with serious injuries.

Falconer said Durham police appear to have accepted the allegations of the off-duty officer.

“You had to work at ignoring the truth,” said Falconer. “Dafonte Miller has lost an eye. His eye was actually hanging out at the scene. The individuals who attacked him had no injuries whatsoever.”

Leisa Lewis, Dafonte Miller's mother, said she believes her son was targeted because he is black. Theriault is white.

"I can't picture this happening to a group of white kids walking through a neighbourhood," Lewis said. "So I do think race played some part in it."

The incident has had a profound effect on Miller, a lively, outgoing young man who enjoyed life, Lewis said.

"He goes minute by minute," she said. "He will have an OK moment, but then he will have a breakdown ... He's still scared. He's still in that moment. To him it's still fresh."

Falconer insisted police have a duty to report incidents in which civilians are hurt, regardless of whether the officer involved is in uniform or off-duty.

"There is no room for debate," he said. "Everybody understands that."

Theriault is scheduled to appear in court in Oshawa Aug. 10.

— *With files from Torstar News Service*

by **[Jeff Mitchell](#)**

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