

Unanswered questions surround beating of Toronto man allegedly at the hands of off-duty cop

Why didn't 2 police forces notify Ontario's police watchdog about assault?

By Lauren Pelley, CBC News



In the early morning hours of Dec. 28, 2016, 20-year-old Dafonte Miller suffered an injured eye and broken nose, jaw and wrist, during a beating allegedly at the hands of off-duty Toronto police officer Const. Michael Theriault and his brother Christian Theriault. (Leisa Lewis)

Toronto cop, father of 2 men accused of assaulting Dafonte Miller, connected to case: police report

In the early morning hours of Dec. 28, 2016, a young man in Whitby, Ont. — a suburban town an hour east of Toronto — suffered an injured eye and broken nose, jaw and wrist.

It happened at the hands of a Toronto police officer and his brother, according to the victim's lawyer, Julian Falconer.

While 20-year-old Dafonte Miller awaits surgery to remove the eye injured in the incident, Toronto police Const. Michael Theriault and his brother Christian Theriault, a civilian, are facing multiple charges for allegedly chasing down and repeatedly beating Miller with a steel pipe, Falconer says. On Friday, the Theriaults' lawyers attended the pair's first court appearance on their behalf to argue the conditions of their bail.

Waterloo Police to investigate handling of Dafonte Miller case

The case has taken twists and turns to reach this point. When the incident happened last year, Miller initially faced charges amid an investigation from Durham Regional Police, the force attending the scene that night.

But in May, those charges were withdrawn, just days after Falconer reported the incident to the Special Investigations Unit, the provincial civilian oversight agency that investigates

circumstances involving police that have resulted in a death, serious injury, or allegations of sexual assault.

Why the delay?

What happened that night in December prompted the SIU to lay aggravated assault, assault with a weapon and public mischief charges against both Theriaults, saying they "acted together."

But those charges came seven months after the incident, and were the result of a lawyer flagging the case for the SIU, not either of the police forces involved.

Confidential report leaves 'unanswered questions' about Dafonte Miller case, Mayor Tory says

As public calls for more information grew louder, Toronto police chief Mark Saunders announced on Thursday that the Waterloo Regional Police will be responsible for an internal investigation into the circumstances surrounding the alleged assault. "As soon as legally possible, that report will then be made public," he said in a statement.

Now, as the case now works its way through the legal system amid ongoing public outcry — and under the spotlight of the internal investigation — there are, as Mayor John Tory recently put it, many "unanswered questions."



Toronto police Const. Michael Theriault (shown here) and his brother Christian Theriault, a civilian, are facing multiple charges for allegedly chasing down and repeatedly beating Miller with a steel pipe, Miller's lawyer says. (Submitted by Joseph Briggs)

Why did the Theriault brothers allegedly approach Miller in the first place?

Court documents obtained by CBC Toronto show Durham police initially charged Miller with theft under \$5,000, two counts of assault with a weapon, possession of a weapon and possession related to marijuana. The assault charges involved Const. Michael Theriault and Christian Theriault, with police alleging Miller used a weapon, "namely a pole," to assault the brothers.

The theft charge alleges Miller stole money from John Theriault — the brothers' father and a long-time detective with the Toronto police who currently works in the professional standards unit.

All the charges against Miller were withdrawn following a pretrial hearing on May 5, while the brothers are now the ones facing aggravated assault, assault with a weapon, and public mischief charges.

Falconer, and some of Toronto's prominent black activists, believe the alleged attack was racially motivated. "From my client's point of view, he was jumped," Falconer said in a previous interview with CBC Toronto.

"I don't know why these two brothers who've been charged in this beating had possession of a steel pipe that they were so readily able to take out and use to assault a member of the public," said activist and freelance journalist Desmond Cole, who attended the Toronto Police Services Board meeting on Thursday to protest the alleged attack on Miller. "I'm not sure what that's about — but it terrifies me."

What happened during the 911 call allegedly made on Dec. 28, 2016?

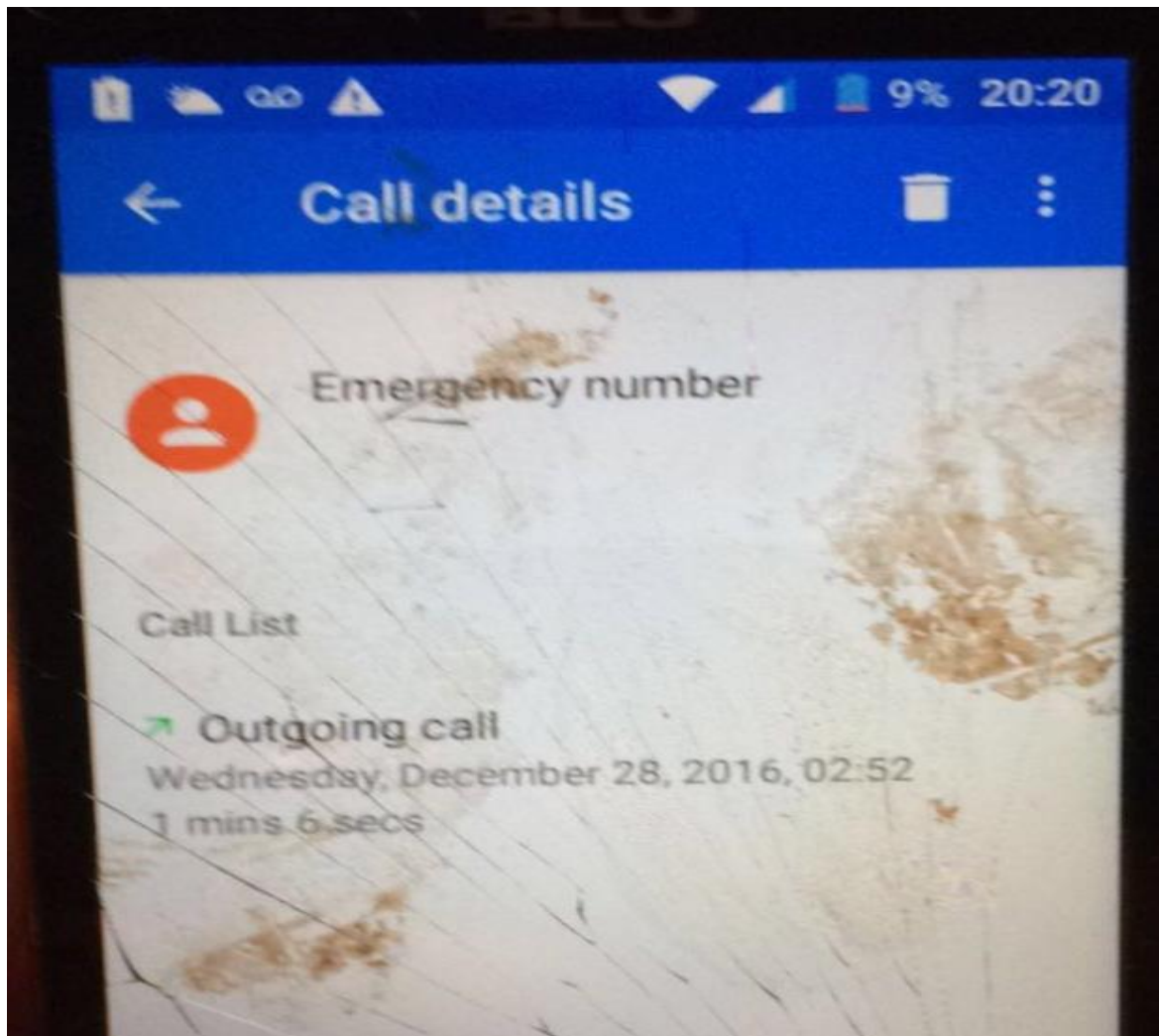
Falconer said Miller made a 911 call on his own phone in hopes of getting help during the alleged beating. The lawyer claims it proves Const. Theriault took Miller's phone, said "you're under arrest," identified himself as a police officer "repeatedly," and said he was from Toronto police's 42 Division.

CBC has not obtained or listened to the recording and cannot verify its content.

'It was not a cover-up': Police chief faces mounting questions over Dafonte Miller case

Durham police have not commented on the contents of any 911 call, but chief Paul Martin said in a statement on Friday that "several" officers attended a call and "medical assistance was promptly provided to the injured male."

"Our officers interviewed multiple people, evidence was collected and photographs were taken as part of our investigation," Martin said. "As a result of our investigation, we charged the male party, Dafonte Miller, with several offences."



A photo of Dafonte Miller's phone provided to CBC Toronto after the alleged assault shows a call made at 2:52 on Dec. 28, 2016 to an "emergency number."

When did Durham police become aware that a police officer was involved? And when did they notify Toronto police?

"When we became aware during our investigation that there was an off duty [Toronto police] officer there, we contacted that service as is the protocol," Durham police spokesperson David Selby said, but he would not comment further.

Toronto police spokesperson Meaghan Gray told CBC Toronto that Durham police contacted the force on Dec. 28, 2016, the day of the incident. It's still not clear at what exact point that day the Durham police force learned Const. Theriault was an off-duty Toronto police officer.

Why didn't the Durham or Toronto police forces report the incident to the Special Investigations Unit?

Gray said an SIU Liaison Officer with Toronto police was the one notified about the incident involving Const. Theriault. At that time, the officer determined the incident did not meet the mandate of the SIU. It's not known why the incident did not meet the mandate in that officer's eyes, or what follow-up took place internally after that point.

Durham police said Toronto should have been the force to make the call. On Friday, Durham police chief Paul Martin said in a statement that under the legislation, "it is the responsibility of the police service who employs the officer to make the determination about contacting the SIU."

Former SIU directors question 'deplorable' police handling of Dafonte Miller case

Two former directors of the SIU offered a different take to CBC Toronto. "Any police officer who's aware of another police officer causing serious injury or death, has to notify, immediately, the SIU... It's not an issue of which badge you're wearing," said André Marin, who headed the police watchdog from 1996 to 1998, in a recent interview.

Former director Ian Scott, who served from 2008 to 2013, echoed that sentiment. In his view, "the minute" Durham police officers realized that an officer who had put himself on duty was connected to the incident, "they should have notified the SIU."

Did the Theriaults' police officer father make any decisions on the case?

Miller's lawyer is raising questions about whether John Theriault could have used his position with the force to influence decisions made by Toronto police.

"My number one concern that has been conspicuous by its total silence is: What role did the father of the two brothers play?" Falconer said. "I would like to know what communications, if any, that John Theriault had with Durham Regional Police — did he contact them that night, or the day after, or the day after that in relation to the investigation?"

Cole echoed Falconer's concern. "That division, that Christian and Michael Theriault's father belongs to and works for, is the division responsible for calling the SIU," Cole said.

CBC Toronto reached out to John Theriault by e-mail for comment but did not receive a response by publishing time.



Dafonte Miller's lawyer, Julian Falconer, believes the alleged attack was racially motivated. "From my client's point of view, he was jumped," he says. (Martin Trainor/CBC)

Why was the Waterloo Regional Police selected as the force responsible for an internal investigation into the circumstances surrounding the alleged assault?

On Thursday, the Toronto police announced they would be conducting a "Section 11" investigation, a mandatory internal probe. Waterloo Regional Police were called in to run the investigation — an unusual step.

"I have taken the extra step of reaching out to an independent agency to complete the Section 11 investigation," Toronto police chief Mark Saunders read from a prepared statement at the Toronto Police Services Board meeting.

"This case is complicated and there have been serious allegations made, which everyone is taking seriously, especially the members of the Toronto Police Services Board," board chair Andy Pringle said at Thursday's meeting.

Women claim workplace sexual assault, harassment in \$167M lawsuit against Waterloo Regional Police

Former officer's report aims to 'expose' police internal practice

The move is raising questions among activists and Miller's lawyer. "I do not feel confident in another police service investigating this situation," said Sandy Hudson, co-founder of Black Lives Matter Toronto.

"Why would you rely on police to investigate police — and why would you rely on a police service under a huge cloud itself for human rights violations?" echoed Falconer.

The Waterloo, Ont., force is currently embroiled in a \$167-million lawsuit, filed against the Waterloo Regional Police Services board and police association by two women claiming they experienced systemic and institutional gender-based discrimination and harassment on the job.

Durham police chief Paul Martin has also ordered a separate internal review of his force's actions on the night of the alleged assault, including whether they should have arrested Miller or reported the incident to the SIU.