

Bail conditions relaxed for cop and brother accused in Whitby assault

Const. Michael Theriault and Christian Theriault, charged in the beating of Black man Dafonte Miller, will now be able to consume alcohol, leave their homes at night and leave the province of Ontario while awaiting trial, a judge ruled Wednesday.



Toronto Police Const. Michael Theriault (right) and his brother, Christian Theriault, are charged in connection with the Dec. 28 beating of Dafonte Miller in Whitby. (CARLOS OSORIO / TORONTO STAR) | ORDER THIS PHOTO

By [PETER GOFFIN](#) Staff Reporter
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Bail conditions have been reduced for a Toronto police officer and his brother, accused of [beating Black teenager Dafonte Miller](#) with a metal pipe in Whitby on Dec. 28.

Const. Michael Theriault, 25, and [Christian Theriault](#), 21, will now be able to consume alcohol, leave their homes at night and leave the province of Ontario while awaiting trial, a judge ruled Wednesday.

The brothers were arrested two weeks ago and charged by Ontario's Special Investigations Unit with aggravated assault, assault with a weapon, and public mischief in connection with an incident that left Miller with several broken bones and an eye so badly damaged it will have to be removed.

The Theriaults — whose father John Theriault is a longtime Toronto police detective currently assigned to the professional standards unit — were originally released on bail with the conditions that they refrain from contacting Miller, his family, Durham police officers who investigated the incident and other individuals relevant to the case.

The Theriault brothers were also banned from having firearms, and ordered not to leave the province, not to consume alcohol and not to leave their homes between the hours of 10 p.m. and 6 a.m. unless they have special permission from their employers.

Defence lawyers appeared in court Friday to have the Theriaults' bail conditions changed. On Wednesday a judge decided that the brothers would be allowed to leave the house at night, to leave the province, and to drink alcohol.

All information shared with the court during the bail process, except for the judge's decision, is subject to a publication ban.

It is not uncommon for courts to change bail conditions, particularly if the original restrictions are considered to be overly harsh, said Toronto defence lawyer Daniel Brown, who is not involved in the Theriault case and spoke to the Star about criminal cases in general.



Dafonte Miller in a photo (left) from before his altercation with off duty Toronto police officer Michael Theriault and in hospital (right).

“You want to make sure the bail conditions reflect the dangers posed (by the accused),” said Brown.

“It would be inappropriate to bar someone from consuming alcohol (if alcohol played no role in the offence, but if there were allegations that alcohol was consumed and may have been a contributing factor in the assault you would certainly expect to see some sort of limitations or prohibitions on the consumption of alcohol.”

Miller’s lawyer, Julian Falconer, has alleged in interviews that the Theriaults had been drinking at the time of the Dec. 28 incident.

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 were walking down a residential Whitby street shortly before 3 a.m., when they were confronted by the brothers, who had been sitting in the garage of their family home nearby, Falconer said.

Michael Theriault, who was off-duty at the time, identified himself as a police officer and asked what the young men were doing, Falconer alleged. The Theriaults chased Miller and his friends and caught up with Miller, punching him, kicking him and beating him with a metal pipe, the lawyer said.

Miller called 911 as the attack continued, Falconer has said. The call history from Miller's 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 heard the 911 recording, which has not been released publicly.

Durham police arrived at the scene and charged Miller with theft under \$5,000, assault with a weapon and possession of a small amount of marijuana. Those charges were withdrawn by the Crown in May, before going to trial.

The Theriaults' mischief charges refer to allegations that [they misled investigators](#), according to court documents.

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.

The case is scheduled to return to court on Aug. 10.