



PRESS ADVISORY

SUPREME COURT OF CANADA DENIES THERIAULT'S REQUEST FOR LEAVE TO APPEAL

December 16, 2021

Today, the Supreme Court of Canada released its decision dismissing Michael Theriault's application for leave to appeal from the judgement of the Ontario Court of Appeal, which upheld his conviction and sentence.

In the unanimous Court of Appeal decision of July 19, 2021, the Honourable Justice M. Tulloch found the trial judge, Justice Di Luca, made no errors in his conviction and sentencing of Cst. Theriault. The Court of Appeal recognized that police officers are held to higher standards than the ordinary person because of the significant powers they are granted. The Court of Appeal found that:

The fact that a police officer is off duty at the time they commit the offence does not alter the power and corresponding responsibilities that come with the job... Police officers are trained to respond properly to volatile encounters; when the training is weaponized in a manner that undermines public safety, public trust will be particularly compromised.

The Miller Family commented:

“This criminal process has been a long and difficult road for our family, and we are glad that it is behind us, and we can try to move forward and heal. This criminal process was a first step of accountability. Our civil claim is proceeding, and we plan to fully participate in the *Police Services Act* hearing proceeding against the Durham police officers who ‘investigated’ the assault.”

Lawyer Julian Falconer of Falconers LLP, who acts for Dafonte Miller and his family in investigating the police misconduct and commencing Mr. Miller's civil lawsuit, stated:

“I'm happy for the family that the criminal process has finally been completed. The criminal process has been ongoing since 2018. My clients have had to relive the trauma of that night because of the lengthy process.



The dismissal of Michael Theriault’s application for leave to appeal by the Supreme Court makes law of the important systemic findings of the Honourable Justice Tulloch. In his decision, Justice Tulloch wrote:

[143] The existence of anti-Black racism in Canadian society is beyond reasonable dispute and is properly the subject matter of judicial notice. It is well recognized that criminal justice institutions do not treat racialized groups equally: Robin T. Fitzgerald and Peter J. Carrington, “Disproportionate Minority Contact in Canada: Police and Visible Minority Youth” (2011) 53 Can. J. Crimin. & Crim. Just. 449, at p. 450; *R. v. Le*, 2019 SCC 34, 375 C.C.C. (3d) 431. This reality may inform the conduct of any racialized person when interacting with the police, regardless of whether they are the accused or the complainant.

[144] The social context of anti-Black racism was relevant in the case at hand. I agree with the trial judge that it would have been understandable for Mr. Miller to distrust law enforcement. When police arrived on the scene, Mr. Miller was severely injured; he was bleeding profusely from his face and unable to stand on his own. The Theriault brothers had no visible injuries, except for a scratch on Christian’s hand. Yet, police permitted Michael to handcuff and search the severely injured Mr. Miller. The trial judge was right to point out that the matter may have unfolded differently had “the first responders arrived at a call late one winter evening and observed a black man dressed in socks with no shoes, claiming to be a police officer, asking for handcuffs while kneeling on top of a significantly injured white man.” Mr. Miller’s charges were not stayed until months later.

[145] ... The trial judge was correct to consider the social context of anti-Black racism, and its effect on Mr. Miller’s actions and how he was treated on the night in question. It is common sense that being a Black man in our society could have affected Mr. Miller’s trust in law enforcement and the criminal justice system more broadly.

[146] In my view, it is incumbent on trial judges to consider relevant social context, such as systemic racism, when making credibility assessments. The trial judge did not err in doing so, and his findings are entitled to considerable deference on appeal.

This is a monumental step in recognizing the way anti-black racism not only affects how Black Canadians are policed, but also the way Black Canadians interact with police and their distrust of the police and how that can influence their actions.”

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