

MISSION IMPOSSIBLE: DEFENDING A FELONY ASSAULT
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By L. Alexander Toia, CCLA, LPI

THE CASE

Three days after an altercation between two high school boys, the “victim” and his father reported injuries including a broken nose, fractured eye-socket, and damaged retina. The pair described the assailant as a high school football player who used his size and reputation to bully other students.

When meeting with our 15-year-old client, I could see that he was too small, thin and reserved to act aggressively against someone almost twice his size, as the alleged victim was. Our client had played one year on the freshman football team and found it too physically demanding. He was soft-spoken, intelligent, and nowhere near the profile that the victim and his father had given to police and prosecutor investigators.

Our client said the larger teen had been intimidating a 7-year-old boy on the front lawn of a neighborhood home where children had gathered for a Friday night birthday party. The “victim” was calling the child a runt and a fag, and physically pushing him around to make him cry. Our client told the bully – who was trying to crash the party with other uninvited friends -- to knock it off. The “victim” focused his aggression on our client and challenged him to fight. Our client told him it was not worth fighting over, but the “victim” persisted. When there was no way out, our client had no other recourse than to defend himself. This was clearly a victim precipitated two punch exchange, where the bully received a slight bloody nose, caused more from tearing of skin than force to his face. Our client ran into the house and collected towels and ice for the victim, who said he was “cool,” agreed that the fight was over, and remained in the street with his buddies for about 40 minutes until he called his father to pick him up.

THE CHALLENGE

Medical reports showed that the “victim” had serious injuries and was treated at a hospital emergency room at 1 p.m. the next day, Saturday. That was about 16 hours after the fight. Our 15-year-old client was arrested for aggravated assault, causing “victim’s” broken nose, fractured eye-socket, and damaged retina.

While there were 15 potential witnesses to the altercation, none were interviewed by police. In fact, the police never conducted any investigation, although both local law enforcement and the prosecutor’s office interviewed victim and his father, who initiated the criminal complaint.

THE INVESTIGATION

As defense investigators, we started talking to the eye-witnesses. It turned out that 12 kids had direct information, although only nine were willing to meet with me. Eight of them provided signed written statements. Five were friends of our client and three were friends of the “victim.” All of them described a huge difference in size and temperament between the two, and several described the victim was known for his bad temper.

The statements verified our client's story that he stepped in to prevent the intimidation and bullying of the younger boy and that the altercation was brief and unremarkable.

After the victim's father came to pick him up, witnesses on both sides reported hearing the father yelling and cursing at his son, and slapping him on the head "for fighting again."

At that point, my theory was that the injured boy was hurt more by his father than by the altercation with our client. Before the case was resolved, this family filed a lawsuit against our client and his family. I suggested to the family lawyer that we should conduct a background investigation to see what sort of people these were to file a false police report and also try to collect damages for injuries that our client did not cause.

The background investigation showed that this father was a tyrant. At 6'5" tall and 255 pounds, he was an intimidator and controller. There were numerous violent episodes within the family circle, and finally his wife turned to the New Jersey Division of Youth and Family Services for help. The angry father was abusive to the investigators. After the couple separated, the mother kept her sons with her until they became too violent for her to control. They pushed this petite woman when they could not have their way, pulled her hair, knocked her down, and left the house whenever they wanted, in complete disregard for her authority. Finally she dropped her children off at the ex-husband's house because she could not keep them in her home. It was on this night that the incident with our client occurred.

THE OUTCOME

With the benefit of the defense investigation, our 15-year-old client received reduced charges which were dismissed after seven months of probation. Copies of our investigation were also provided to the child welfare agency, the prosecutor's office, and to our client's family insurance carrier which was defending the civil claims.

KEYS TO SUCCESS

Pinning down the facts of the altercation – which the police had failed to do – and gathering background information provided a clear picture of the dynamics of this case and established the credibility of our client.

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Alex Toia is the owner of **Alexander Toia & Company, LLC – Professional Investigations - Research Specialists**, 45 South Park Place, No. 373, Morristown, NJ 07960 (973-538-3338). Website: www.atoiacompany.com. He has been a professional investigator for 37 years, having worked in the Criminal Justice System, The Chubb Insurance Group, and 27 years of private practice. ATC specializes in complex civil and criminal defense investigations, and 99% of clients are law firms, or entities represented by legal counsel. Alex has been a member of NALI since 1986, a member of NCISS, and involved with NJLPIA, the New Jersey state association.