



Trib
& Ch. 8

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STATE OF FLORIDA

CASE NUMBER: 2009-CF-010749

VS

BRIAN LESLIE BLAIR

NOTICE OF CASE STATUS - LETTER OF RELEASE

Case Filing Decision: NO-FILED

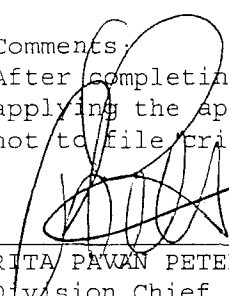
Agency Report Number: HCSO 2009-00342596

Lead LEO: DEPUTY RAYMOND THOMPSON D1 108

Case Decision Date: _____

Comments

After completing our investigation, carefully reviewing the facts, and applying the applicable case law, the State Attorney's Office has elected not to file criminal charges at this time.



RITA PAWAN PETERS
Division Chief
Assistant State Attorney

cc: LEO
[] Central Booking (if defendant incarcerated)
File

RPP/sm
OFFICE NUMBER: 2009-041415

FILED
CLERK OF CIRCUIT COURT
2009 JUL -2 AM 9:46
HILLSBOROUGH COUNTY, FL
CRIMINAL DIVISION

Memorandum to File

Date: July 1, 2009

RE: State v. Brian Blair 09-CF-10749

From: Rita Peters (intake conducted on 06/25/09; photos and 911 reviewed 07/01/09)

This case is recommended to be no filed for the following reasons:

1. The basic facts of the case are as follows (inconsistencies between witnesses will be pointed out in this memo): At 10:30-11:00 p.m., the victims, Brett Blair (17) and Bradley Blair (14), and two house guests, Alex Lanza and Sean Cameron, left the residence to hang out. They returned home at approximately 4 a.m. from a local park where they were playing basketball. By all accounts, Brian Blair was in the kitchen cooking salmon, and he began a verbal argument with Brett Blair. No witness can describe what Brian Blair was saying. Brett Blair indicated he did not pay attention to his father and walked away. Bradley Blair indicated that almost immediately upon returning from the game, he left the room and went to shower. The remaining individuals (Brett Blair, Alex Lanza and Sean Cameron) turned around and went to the bedrooms (Brett and Sean in Brett's bedroom and Alex in Bradley's bedroom).

A short time later, Brett Blair exited his bedroom and went to the kitchen to get something to drink at which point Brian Blair, continuing to yell at him, pushed him and ultimately punched him, one time, in the face. This was witnessed by the other victim and by the two witnesses.

At this point, Brett Blair attempted to charge at Brian Blair in an effort to hit him. Brian Blair then placed Brett Blair in an arm bar in an effort to restrain. Brett Blair began yelling that his father was going to break his arm at which point Bradley Blair jumped on top of Brian Blair and began to hit his back and his side (flank/chest area). He was pulled off of him by his mother and the other witnesses, and the defendant ended up on the floor.

Brett Blair indicated that when Brian Blair was on the floor, he got on top of him and began to hit Brian Blair several times about his head and face, while Brian Blair attempted to block the punches. Toni Blair indicated that she, Bradley Blair and the two witnesses pulled Brett Blair off of Brian Blair.

It was at this time, that all witnesses indicated that when Brian Blair got up off the floor, he approached Bradley Blair and hit him with a closed fist on his head for his continued punching of him. He only hit him one time, according to all witnesses. Bradley Blair, Toni Blair and the witnesses took Brett Blair outside to calm him down.

Brian Blair was left in the home alone, but exited the house and continued yelling at Brett Blair. Bradley Blair indicated that it is at this point that he contacted 911. No further violence was disclosed.

2. Inconsistencies:

Victim's curfew: a) Toni Blair indicated that Brett Blair's curfew is 12:30-1:00 a.m. b) Brett Blair indicated that his curfew is 12:30-1:00, if he is driving and no curfew otherwise.

Who was at home before the incident: a) Toni Blair indicated that she and her husband were at a charity event in the evening and returned home at 11:30 p.m. and she went to bed; b) Bradley Blair indicated that his parents were home and at 10:30 p.m., everyone was on the couches talking; c) Brett Blair indicated that his father had gone out alone and came home at 9:30, he indicated his mom was awake too.

Whether Brian Blair appeared intoxicated: a) Toni Blair indicated that prior to going home from an event in Brooksville, she, her husband and two others shared a pitcher of beer. Her husband did not drink alcohol when he got home; b) Bradley Blair indicated Brian Blair appeared intoxicated, but was not intoxicated when they returned home at 4 am; c) Brett Blair indicated Brian Blair was so intoxicated that he had urinated on himself.

Where the victims went at midnight: a) Toni Blair indicated she was asleep; b) Bradley Blair indicated they left their home and went to their grandmother's house, sat around for a little while and then back home to play basketball. They left for the park after 15 minutes (roughly 1 a.m.). They came home roughly 3 a.m.; c) Brett Blair indicated that they left and walked the neighborhood. The foursome ended up at the park and met with two other friends and played until around 4 a.m.

Who hit Brian Blair: a) Toni Blair saw both Brett Blair and Bradley Blair hit Brian Blair; b) Brett Blair saw his brother on top of Brian Blair and hit him; c) Bradley Blair indicated at intake he only jumped on top of his father, but hit him to get him off of his brother

Who broke the door: a) Toni Blair indicated the door had been broken by Brett Blair earlier (on a different date), but was "rebroken" by Brian Blair; b) Bradley Blair did not indicate who broke the door; c) Brett Blair indicated that Brian Blair broke the door.

Who was involved: in the 911 call, Bradley Blair is heard saying his mother, brother and father were fighting. He does not mention his own involvement or actions. No other person indicated that Toni Blair involved in any way other than to separate the parties.

When Brian Blair inflicted the arm bar: a) Brett Blair indicated that immediately upon being struck by Brian Blair, Brian Blair placed him in an arm bar, he never attempted to hit him; b) Bradley Blair indicated that upon being struck by Brian Blair, Brett Blair began to swing at Brian Blair, who was able to place Brett Blair in an arm bar.

3. Lack of Substantial Injuries that are as a result of Excessive Conduct and not of Corporal Punishment: neither victim sustained substantial injuries. Brett Blair had some redness to the hands. He indicated that came from the punches he threw at the defendant. Bradley Blair had redness to the neck area which he indicated came from his father attempting to stop him by

grabbing at his shirt. Law enforcement documented a bump of Bradley Blair's head, but the photographs do not show the injuries at all. Bradley Blair indicated that the bump was gone the next day and did not require medical attention.

Law enforcement documented the injuries to Brian Blair. He was bleeding from his earlobe (what appeared to be tearing at the earlobe), swelling to his face, abrasions to his face, large swelling and bruising to his chest (subsequently treated at TGH as chest wall contusion/cartilage bruising), redness and abrasions to his back, redness to his forearms. Some of these injuries (forearms) appear to be defensive wounds.

None of the injuries to the victims can be described as substantial or excessive.

4. Victim (Brett Blair) characteristics: Brett Blair appears, by his own admission and that of his mother and younger brother, to have anger issues with his father. He has demonstrated some poor decision making in the last few months by all accounts; behavior that greatly concerned his parents. His recent behavior, current relationships and aggression issues caused his grades to drop drastically at school and resulted in disciplinary action at school (including suspensions for aggressive behavior).

Brett Blair indicated at intake that he would not tolerate his father talking to him in certain ways, particularly in front of his friends. He did not want to be "disrespected." Brett Blair has engaged in conduct that has troubled his parents. Toni Blair indicated that her son had run away on four prior occasions. Both Toni Blair and Bradley Blair indicate that Brett Blair has become more defiant of late (more particularly in the last six months to one year). Brett Blair indicated at intake that while his father initiated this event, he (Brett Blair) "won" the physical battle.

Brett Blair has acknowledged that he has a good relationship with his father, but of late, his father's decisions regarding restrictions and curfews is inconsistent and has angered him. Brett Blair indicates that he believes that Brian Blair may drink excessively. Brett Blair indicated that he knows that Brian Blair was mad at him for returning home at 4 a.m. and for taking his 14 year old brother with him too.

In the 911 call, Bradley Blair is heard telling the 911 operator to send law enforcement because his "brother's gone crazy."

5. Cases
 - a. State v. McDonald, 785 So.2d 640 (Fla. 2d 2001): Recognizes a parent's right to discipline a child in a reasonable manner. A parent can be charged if the punishment is *excessive*.
 - b. Raford v. State, 828 So2d (Fla. 2002): Parent can assert an affirmative defense that they administered reasonable or non-excessive corporal punishment, but there is not a "parental privilege." When looking at whether the act is reasonable, harm to the child is reviewed. Several factors contribute to this analysis: the age of the child, any prior

injuries to the child, the location on the body of the injuries to the child, the multiplicity of the injuries, and the type of trauma inflicted.

- c. King v. State, 903 So.2d 954 (Fla. 2d 2005): Extended McDonald. Spankings that result in “significant bruises or welts” do not rise to the level of felony child abuse, which requires “more serious beatings that do not result in permanent disability or permanent disfigurement.” In reviewing injuries, it is important to determine whether the actions are excessive in light of the circumstances.
- d. Cox v. State, 1 So.3d 1220 (Fla. 2d 2009): An act that merely causes fear and anxiety, but no physical injury or mental injury is not criminal (in the analysis of aggravated child abuse)

In this case, we have a victim (Brett Blair), who in an act of defiance, did not respond to his obviously angry father, when the victim came home at 4 a.m. His prior conduct (running away, falling grades at school, relationships, curfew violations), his prior confrontations with his father involving acts of anger and aggression towards his father coupled with his conduct that evening show that there is a strong likelihood that the defendant would argue that he was disciplining his child.

The injuries to either victim were not substantial in any way. Applying the Raford factors, this case does not rise to that level (age: Brett Blair is 17, Bradley Blair is 14; no prior injuries to either victim, the only noticeable injury to Brett was as a result of his aggressive conduct towards Brian Blair and the only injury to Bradley Blair was on his head; there were not multiple bruises or other injuries to either victim; and the type of trauma was consistent with a physical scuffle).

The initial punch to Brett Blair inflicted by Brian Blair is not a battery as it can be argued that it is discipline. In light of the cases in the area of child abuse and their discussion of corporal punishment, the same analysis would need to be applied and that would negate battery.

Brian Blair sustained more of the injuries in this scuffle, some of the injuries being defensive. Brian Blair went to TGH as he sustained chest wall contusion. There is visible blood on the base of his ear lobe, swelling to his face, redness to his chest and back.

Both victims and Toni Blair very clearly say that in reviewing the totality of the incident, Brett Blair was more aggressive and hit Brian Blair many more times. The only physical acts towards Brett Blair are: pushing, one punch, arm bar.

Victim, Bradley Blair, was the first aggressor in the incident with his father. His actions immediately led to Brian Blair hitting him. Again, this action, in and of itself, does not rise to the level of child abuse given the case law.

Taking the evidence in light most favorable to the State, a reasonable hypothesis of innocence is that the victims left the house after the defendant and his wife fell asleep.

They returned home at 4am to a very angry parent. The defendant began to discipline the victim (first verbally and then physically), and the incident was escalated by the conduct of both victims (by repeatedly punching the defendant). There is no evidence to refute this.