

Bullying: How a school suspension, police investigation ‘railroaded’ Toronto teen

Unsubstantiated bullying accusations, a suspension and police probe have affected the life of a Toronto student and his family.

A 15-year-old student, at top, puts his hand on a bible in this image from an October 2011 Toronto police video interview. The student accused a fellow student of assault and harassment. Faces of the teen and his father, bottom right, have been digitally obscured to protect their identities.

By [Sandro Contenta](#) and [Jim Rankin](#)

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Mark and Daniel, two students at an elite academic public school in Toronto, never got along.

Mark thought Daniel arrogant and rude. “He has this delusion of grandeur,” says Mark, 17. “He thinks he’s just superior to everybody else.”

Daniel thought Mark green with envy.

“He’s probably jealous because, when I look at myself, I see someone who is athletic, good-looking and the best guitar player at my school,” Daniel told police, after matters got out of hand. “I am much better looking than he is — I don’t need to go into the details about that.”

Friction between the two heated up for months. “Generally, we would each find an opportunity to make the other one look bad,” Mark says.

It came to a boil on a fall morning in 2011, when they were both 15. Before gym class, a brief locker-room fight resulted in bruises, scrapes, a bloody nose, a minor concussion and cut lips.

As fights go, it was typical high school fare. The consequences were anything but. Eighteen months later, there’s no end to the fallout.

School authorities called police. Mark was charged with harassment — the criminal code’s “bullying” charge — and assault, even though police didn’t interview a single student who witnessed the fight.

In these hyper-vigilant times, which have seen some [bullying victims commit suicide](#), to be fingered as a bully has consequences.

Except in Mark’s case, police appear to have got it wrong.

The charges were dropped a year later, after Mark’s father got affidavits from witnesses.

The evidence indicates Mark was considered the aggressor after police first spoke to the school’s principal. But Grant Bowers, lawyer for the Toronto District School Board, insists the school treated the boys equally by giving each a three-day suspension for fighting.

Bowers flatly blames police for conducting a shoddy investigation.

“A simple routine investigation of the allegations would have determined that there were two sides to that story,” Bowers said.

The charges were laid after interviewing Daniel.

Police spokesperson Mark Pugash acknowledged no eyewitnesses were interviewed before the laying of charges but said police believed they had enough evidence.

“The test is: do you have enough evidence to charge?” said Pugash. “That’s a different threshold from: is the person guilty or not guilty?”

Mark’s suspension was overturned on appeal. Last December, a panel of three TDSB trustees ruled it was “not reasonable.”

Mark’s parents are livid. In early April, Mark’s father had Daniel privately charged with “making a false statement” to police.

They have also filed a complaint with the Human Rights Tribunal of Ontario, accusing the board and school officials of discrimination. Mark’s father is

white, his mother is black and Mark, as his mother says, “presents as black.”

A TDSB analysis of student survey data from 2006/2007 showed that black students are three times more likely to be suspended than white students. The data were revealed earlier this year, only after a [request from the Star](#). Results from a more current survey are expected this summer.

“Mark was railroaded,” says his father, who sells Internet software. “There was no due process. The rush to judgment was instantaneous.”

He also blames what he calls a “panicked atmosphere around bullying.” He agrees bullying should be taken seriously. But in Mark’s case, he argues the hyper-sensitive atmosphere around the issue resulted in educators and police escalating the response beyond reasonable proportions.

And his son paid the price.

Mark was forced to change schools because his arrest release conditions forbade him from going anywhere near Daniel and required him to stay at least 300 metres from his old school. He lost a chance at a part-time city job, was hit by panic attacks that hurt his grades and suffered added scrutiny from police even after the charges were dropped.

“I think it was a really shady, bad thing to do,” Mark says. “They only got one side of the story when there was a whole class of kids that were saying things that were the complete opposite. The whole situation was really badly handled.

“There was this whole gross misrepresentation of me and my character that came out as a result.”

The Youth Criminal Justice Act prevents the Star from identifying the students involved. Mark and Daniel are pseudonyms.

This account of events is based on court documents, police notes, a video statement given to police by Daniel, school and school board correspondence, sworn affidavits from classmates, and documents filed in a human rights complaint.

Daniel’s father told the Star the family did not wish to be interviewed for this story.

A telling of Daniel’s version of events is available in the statement he gave police.

In 2011, Daniel and Mark were Grade 10 students at the west-end school, which describes itself as having core values that include critical thinking, democracy and equality.

The night before the locker-room showdown, Daniel told his father he had been bullied by Mark, according to a sworn videotaped statement he gave police, which the Star obtained. He accused Mark of repeatedly taunting and calling him names.

A regular taunt, Daniel said, was being accused of having “a homosexual relationship” with his gym teacher. Daniel also accused Mark of challenging him to a “staged fight.”

The next day, Oct. 20, 2011, Daniel went to school “prepared for an attack.” He arrived wearing a hockey jock. He also brought pills to reduce pain.

In the gym’s change room, Mark made the first move.

“I went up to him and I figured it was time for this to be over,” Mark says in an interview at his parents’ west-end home. “I was done with it and wanted to move on. And so I just went up to him and I told him to stop talking s--- to me because I just didn’t like it.

“And he right there punched me in the face.”

Daniel tells a different story. He told police Mark started by taunting him and then, “he shoved me — threw a punch” and “my head was smacked against the wall.” He said he was hit with “probably 15 punches” and managed to land a couple himself.

“I was brutally beaten,” Daniel told police. “My face was completely pummelled. I had blood pouring down from my nose, from my mouth, all down my face onto my chest.”

“I was not anticipating that at all to happen,” Daniel added. “I was expecting to be verbally abused again, for I don’t know how many times he’s done it in the

last few weeks, but I wasn't expecting to be attacked."

Daniel claimed none of the 20 boys in the change room tried to stop the fight. "I feel very alone," he said. "Like no one really cared enough to get help or get him off of me."

Moments later, the gym teacher saw Daniel walk into his office bleeding from his nose and mouth. They talked about the fight. The gym teacher then went to the change room, saw Mark "washing off blood from his hands and clothes" and took him to the principal's office, according to a written response to the human rights complaint on behalf of the gym teacher, the principal and the school board.

The teacher told the principal about the fight. In his statement to the human rights tribunal the teacher insists the allegations against Mark "were not originally reported" by him.

The gym teacher acknowledges never asking Mark for his version of events. Neither did the principal. In the statement to the human rights tribunal, there is no mention of the teacher sending Daniel to the principal's office. Daniel told police he went there on his own.

Mark insists it's well known that Daniel is the gym teacher's pet. He's convinced the gym teacher portrayed him as the aggressor.

There's also a history, according to Mark's father.

In correspondence filed with the human rights tribunal, his father says there was a "pre-existing bias" against his son. Mark's mother had previously complained to the principal about the gym teacher giving her son low grades.

As for the principal, Mark's parents point to a previous suspension issued the month before the fight. Mark and another student were involved in a verbal spat. A vice-principal determined no suspension was necessary, his father says in his submission to the human rights tribunal.

The principal nonetheless suspended Mark, without speaking to him, the family says.

That suspension was overturned.

After the fight between Mark and Daniel, the principal called the boys' parents. When they arrived that morning, he told them, in separate conversations, "he did not wish to ascribe guilt to either of the two students at that time," according to his statement to the human rights tribunal. He was concerned about possible head injuries and insisted that both boys get medical attention.

Shortly after leaving the principal's office, Mark's father had his son text students who witnessed the fight. They met a couple of them minutes later, and each insisted Daniel threw the first punch.

A [TDSB protocol](#) with police says police must be notified after a "physical assault causing bodily harm requiring medical attention." The principal consulted with his superintendent and an official at the board's safe schools program.

Then he called police.

In schools assigned with a Toronto police school resource officer, a principal's first call after a relatively minor fight would typically be to that in-house constable. While the high school did not have an assigned officer, a neighbouring school did.

The principal called that officer first, but the officer was not available. He was referred to an officer at the nearest station.

The task of investigating fell to Joao Duarte, a Toronto police detective constable assigned to the street crime unit, and to his partner, Dan Saleh.

There was an initial, brief telephone conversation between Duarte and the principal. According to the officer's notes of the conversation, the "victim" of a fight was Daniel, in what "appears to be bullying situation since start of school year."

The principal, in response to the human rights complaint, does not deny that the word bullying came up but said he believes it was Duarte who used the word victim in relation to Daniel.

The board's position? The principal treated both students equally: He suspended each for three days.

“Both students were suspended solely on the basis of fighting,” reads the board response to the human rights complaint. The board also says race was never mentioned — Daniel is white, Mark black — and was never a factor in the case. It points to the principal’s incident report form that puts the number of offenders and victims each at two.

With that, it was left to police to sort out the story.

After speaking with the principal and Daniel’s dad, as Duarte’s notes make clear, Daniel was the “victim” and Mark the “suspect.”

The blood cleaned up, Daniel’s father took him first to see his family doctor, who expressed concerns about a possible head and spine injury and referred him to Toronto Western Hospital, which then transferred him to Sick Kids.

Tests showed there were no fractures, and no injuries to the spine. But there was, according to the discharge diagnoses, neck sprain or strain, facial injury and concussion.

As for Mark’s injuries, his father took him to see his family doctor, who noted multiple abrasions, cuts, scratches, and some bruising to his face. He also had a headache and was checked for a possible concussion. He was told to take ibuprofen and call back if need be.

Four days later, on Oct. 24, Daniel and his father walked into a police interview room at a police station to give a videotaped sworn statement to officers Duarte and Saleh.

Wearing a neck brace, Daniel swore on a bible to tell the truth, and with the camera rolling, proceeded over the course of an hour to paint a picture of a campaign of harassment that culminated in the fight.

Because of Daniel’s age, his father was allowed to stay for the interview, Duarte explained. Another reason to allow him to stay was that he had been “assisting the police,” said Duarte.

Daniel went on to say he had never told anyone about the bullying, other than his father the night before the incident, and that he himself had never bullied anyone.

He referred police to a since deleted YouTube video showing Mark and another student fighting.

At one point, Saleh asks Daniel if he had been suspended because of the incident. Daniel looks to his father and seems confused, but eventually says, no, he was not suspended.

“It was probably the worst day of my life on Thursday,” Daniel told police. “I just really want to move on from that. It was very traumatic.”

His father told police he had discussed with his son “methods” he could use to defend himself if attacked. Unfortunately, Daniel didn’t get a chance to use them, he added.

“We’re proud of him for not taking the bait, for not agreeing to a staged fight,” Daniel’s father said. “(Daniel) was beaten physically, but he wasn’t beaten psychologically.”

Later that day, without interviewing a single eyewitness to the locker-room fight or alleged bullying incidents, police decided they had enough evidence to charge Mark with assault causing bodily harm and four counts of criminal harassment.

Meanwhile, Mark’s father had been trying to reach Duarte since the day of the fight. He says he left a message with the officer. The day after, he made several calls to the officer’s police division and was told that two police officers had tried to track down Duarte by phone, radio and email.

Duarte’s notes indicate he phoned Mark’s father the day after the fight, but left no message.

The first time Mark’s father managed to talk to Duarte was on Oct. 26 — the day police intended to arrest his son, at school, where both boys had returned following their suspensions.

Instead, there was an arranged surrender the next day. Mark was booked, fingerprinted and posed for a mug shot. A condition of his release was that he could not go near his high school.

“It felt like an out-of-body experience,” Mark says of the arrest. “It was surreal. I never envisaged myself

in that situation. I was in shock and mentally numb during the whole thing.”

“I felt violated, honestly. The thing in my mind was that I shouldn’t have been there.”

Mark’s mom, who works as a fashion company executive, feared her son would be marked from that day on.

“I was scared because the reality is, I’m black,” says Mark’s mother. “And my son, who presents to the world not as a half-white person but as a visibly black person, was going to have to be arrested.”

“I know what happens when that train leaves the station. That’s why I was scared.”

Under the advice of a lawyer, Mark refused to provide a statement for police.

After missing about two weeks of school, Mark was transferred to a new high school, where his grades suffered as the worry over his criminal charges mounted.

The principal launched an investigation of the fight after charges were laid. The school’s vice-principal interviewed 14 students, including some who witnessed the fight, and the school then sat on the results. Bowers, the TDSB lawyer, insists it would not have been appropriate for the board to pass on those findings to police.

“We assume that the police are doing the job in a professional way,” Bowers said, adding that the school had no say in the charges being laid and in Mark being forced to change schools. He described a three-day suspension as “very minor.”

“The consequences to (Mark) in this circumstance was not the result of anything the school board did or said at all, but is a consequence of the police actions. And that’s unfortunate.”

Mark’s father hired lawyers and got sworn affidavits from nine students. Of them, the two who witnessed the start of the fight insisted Daniel threw the first punch. The rest either disputed Daniel’s version of prior brushes with Mark, or described incidents where Daniel belittled others.

Two of the students mentioned an incident where Daniel was involved in a scuffle that generated a nickname taken from a violent movie hero.

One eyewitness to the fight said Daniel and Mark didn’t like each other. He said he was “absolutely certain that (Daniel) threw the first punch. (Mark) was stunned, and stood there for a second. (Mark) then struck (Daniel) back. A fight ensued.”

Another student, who did not see the fight but had known Mark since Grade 7, said the gym teacher favoured Daniel and that she had never seen — or heard of — Mark bullying anyone.

A Toronto police witness list disclosed to Mark did not include a single student.

Mark’s lawyer informed the Crown of the contents of the student affidavits. Police eventually did interview one of the students.

On Nov. 26, 2012, charges against Mark were withdrawn after he agreed to a peace bond — a promise to be on good behaviour — that came with no other conditions attached.

Neither Duarte nor Saleh responded to a Star request for comment.

Police spokesperson Mark Pugash said police had statements that the officers “did look at medical records. There was evidence from other sources.

“And the test is not, ‘have you spoken to (person) A or B or C or D,’ the test is do you have sufficient evidence to meet the threshold for laying charges.”

As for the lack of student eyewitnesses, Pugash said: “We had difficulties getting a hold of people or getting people to give statements.”

Once charges were dropped, Mark immediately started doing better in school.

Things seemed to be returning to normal. He likes his new school, enjoys his favourite sports, rugby and skiing, and any movie starring Will Ferrell.

But his troubles with police are not over.

On Dec. 14, 2012, Mark was rushing home to meet his 11:30 p.m. curfew. He was crossing a busy west-end street to get his locked bicycle when an officer accused him of jaywalking, and questioned him further.

Mark told the Star he gave the officer “my name and everything,” and allowed her to search his backpack. Nothing untoward was found and she let him go with a warning.

Two days later, the same officer showed up at Mark’s home and issued three tickets: for jaywalking, and for having no bell and no light on a bicycle.

According to Mark’s father, the officer said “your son is up on charges and he’s got to learn to take responsibility for himself.”

The officer apparently checked Mark’s identity in police databases and found it did not match. “She tried to claim that he gave her a false name. In fact, he gave her his full name,” said his father. His son also provided a correct home address, he insisted.

Asked about the tickets, police spokesperson Pugash told the Star he personally had seen the officer’s notes and said Mark “was unco-operative and he gave a different name and a different date of birth.”

The tickets are still before the courts.

What is clear is that Mark is now firmly embedded in Toronto police databases because of the school incident, even though the criminal charges are withdrawn.

He and his family fear he is now a marked young man.

“Since I was wrongfully charged, I should have my photograph, name and fingerprints removed from the Toronto police records,” says Mark.

“I don’t want them keeping tabs on me like that, because I did nothing wrong.”

Mark’s father estimates legal fees might cost him as much as \$20,000. The family, solidly middle-class, wonders how many others there are without the

means to challenge suspensions and criminal charges.

“We’re just the poster family for a whole lot of other people who are railroaded all the time in the education system and the criminal justice system,” says Mark’s mother. “And that’s a sad fact.”

Two months ago, Mark’s father convinced a justice of the peace to issue privately laid criminal charges against Daniel. It was his third try, having been turned down by justices of the peace on two earlier occasions.

Daniel, now 17, is charged with having committed “public mischief” by misleading a peace officer “to enter upon an investigation by making a false statement.”

He has a court date scheduled for Monday.

Correction - June 3, 2013: This article was edited from a previous version that misstated the name of Human Rights Tribunal of Ontario.