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DENIAL AND CODEPENDENCE IN DOMESTIC VIOLENCE BY ADULT CHILDREN ON THEIR ELDERLY PARENTS

Preston Mighdoll*

INTRODUCTION

Despite his four recent arrests for battery on his elderly parents, the defendant continued to deny that he intended to hurt his mother or father. His mother did not wish to involve the police, and both of his parents sought his release from custody.

Ending this cycle of violence, protecting the elderly parents from violence perpetrated upon them by their adult children, and providing treatment programs for the offending adult child is the most common scenario faced by the Crimes Against the

Elderly Unit of the Palm Beach County, Florida State Attorney's Office. The case that will be shared with you in this article is replete with the issues and frustrations faced by all parties to these unfortunate events.

FLORIDA STATUTES

Florida Statutes Chapter 825 specifically addresses abuse, neglect, and exploitation of elderly persons and disabled adults. Abuse is defined as the "intentional infliction of physical or psychological injury" ¹ Neglect is the failure or omission to

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1. FLA. STAT. ANN. § 825.102(1)(a) (West 2000).

provide necessary care, supervision, or services.² Prosecutions under this statute usually involve perpetrators who are caregivers, whether in nursing homes, adult living facilities, or the home. This statute is most often used to address financial crimes against the elderly perpetrated by those standing in a position of trust and confidence or a business relationship.³

However, the most common offense prosecuted by the Crimes Against the Elderly Unit is battery on persons over sixty-five years of age. The Florida statutes increase a misdemeanor battery to a felony when the victim is over sixty-five years of age, without any additional criteria.⁴

THE CYCLE BEGINS: THE FIRST INCIDENT

The defendant in this case scenario was released from a drug and alcohol treatment program three days prior to the commencement of this series of incidents. This program was part of a sentence resulting from a battery offense, the eventual violation of the defendant's probation, and the revocation of that probationary status. At this point, the defendant had a history of two prior battery offenses and an assault on his seventy-five-year-old father. There were also five prior arrests for battery on his father which were not prosecuted.

Upon his arrival home, the defendant began drinking heavily, verbally abusing his parents, and braking items in the residence. When the father asked his son to control his behavior, the son punched him in the face. Although the mother denied witnessing this event, she and her husband left the premises in fear of being assaulted further. In their call to the police emergency line, one of the parents stated, "We are being slapped around by our son."

Upon their arrival at the gated community in which the victims resided, the police found broken glass on the kitchen floor and two telephones on the floor, one having been ripped from the wall. The defendant was later apprehended at the entrance to the development on his bicycle and stated that there had been a slight incident with his parents, but that there was no physical altercation. The son was charged with battery on a

2. FLA. STAT. ANN. § 825.102 (3)(a)(1) (West 2000).

3. FLA. STAT. ANN. § 825.103(1)(a)(1),(2) (West 2000).

4. FLA. STAT. ANN. § 784.08(2)(c) (West Supp. 2005).

person over sixty-five years of age, with the victim being his father.

During his statement to the police, the defendant stated, "As God is my witness, I did not do anything wrong." When confronted with his father's statement relative to the battery inflicted, the defendant was asked if his father was a liar. He responded, while lowering his head in shame, "I did not do anything on purpose. I never intentionally hit my father." He went on to admit that he accidentally hit his father in the face and that contact was made by an open hand, not a closed fist.

ACCOUNTABILITY AND ENABLING: THE NEXT INCIDENT

As the prosecution proceeded, the parents would not hold their son accountable and blamed his problems on his alcoholism. They showed an awareness of having enabled their son, but the possibility of his being incarcerated for these offenses was too painful for them. The defendant resided with his parents in the interim and another altercation occurred wherein he threw a plate of food at his mother during a verbal dispute. In the 911 tape, the father states that his son pushed a hot pot pie in his wife's face while she was in her bedroom. He had heard his wife screaming. The mother refused to provide the police with a written statement and indicated that the police should not have been called, although she did verify that the incident had taken place.

While in custody, the defendant was evaluated by a clinical psychologist who cited a long history of alcoholism. The report went on to indicate as follows:

More importantly, his self-report provides ample evidence of the use of minimization, rationalization, and denial of his perception of the extent of his alcohol problem. As a result, he has failed to profit from his past experiences and from treatment programs he has attended, so he finds himself in the same difficulties time and time again.

After the review of the psychologist's report, the defendant was found to be competent to stand trial, and the parents testified in court at a bond hearing that they wanted their son released to their custody.

Over the objection of the State, the court released the

defendant from custody. The parents were told to call 911 immediately when their son hurt them again. It was not a question of "if" this would occur, but "when." The cycle of violence appeared to be escalating.

DENIAL AND EVALUATION: INCIDENT NUMBER THREE

Within days, the defendant was again arrested for battery on a person over sixty-five years of age for having pushed his father down on his bed. In his inebriated state, he cursed at his parents and stated, "I want to die, I don't want no more of this." When the police were called to the residence, the defendant was taken to a local mental hospital for his own protection.

Once again, while incarcerated, the defendant was evaluated for competency and sanity. The examiners found that he satisfied the criteria to allow the case to go forward. The parents continued to insist that they did not wish to prosecute. It was at this point that the State was faced with the dilemma of proceeding to trial with reluctant victims, wanting to protect the parents from the inevitable continuation of these offenses, and ensuring a felony conviction for the defendant.

A negotiated disposition was entered in which the defendant admitted guilt to one count of battery on a person over sixty-five years of age. This involved the pushing of a hot pot pie into his mother's face, dismissal of the pending charge pertaining to the father, adjudication of guilt, and a sentence including the several months he had been incarcerated. During the plea conference, the mother acknowledged the facts of the case, adding that her son had not actually struck her.

THE CRESCENDO: THE FINAL INCIDENT

Approximately two weeks later, the defendant was again arrested for battery on persons sixty-five years of age or older, with both of his parents being victimized. The call to the police came from the father who indicated that the son had hit him on the arm with a newspaper, causing visible burning. He witnessed the son screaming profanities and hitting his wife on her head while she was lying in bed.

The injuries to the mother were extensive and she was transported to a local hospital by helicopter. The son was arrested with a police recommendation that the son be

permanently ordered not to contact the parents.

A POLICE OFFICER'S OBSERVATIONS

Prior to notifying the Florida Elder Abuse Hotline,⁵ the arresting officer was at the victims' residence with the defendant and his father. The mother had already been taken to the hospital. The officer observed:

It appears that the defendant has a tendency to become abusive toward his father, from what I saw. This determination is based on the way that he was speaking with his father and the rough nature in which he was helping his father change his clothing while in my presence.

He went on to state, "It is my feeling that both parents may be a little reliant on the defendant and are extremely frightened of him and refused to speak to law enforcement officials, as they are in fear of their son."

A PARENT'S ANGUISH

The Florida Department of Children and Family Services/Adult Protective Services became involved.⁶ During an interview, the father stated, "My son got out of jail fifteen days ago. He was in jail for abusing myself and my wife. My son hit us both. He hit my wife in the head with a newspaper. He yells at us all the time." He went on to indicate that his wife did not want to involve the police as she was of the opinion that this made matters worse.

The report stated that the father was afraid of his son. He was afraid that his son would continue to hurt his wife. The father emphasized how difficult it was to stand up in court and testify against your child. He did not want his son to return home, and he expressed his hope that his son would stay in jail.

Again, mental examinations were ordered of the defendant while he was in custody. His mother was in a coma having suffered blunt head trauma. She had a bilateral extra-axial hemorrhage, and surgery was needed to relieve the pressure on

5. 1-800-96ABUSE.

6. FLA. STAT. ANN. § 415.101 (West 2005).

her brain.

Of course the initial concern was for the mother's medical condition. As the criminal charges were addressed, there was a lack of testimony to support the events as they occurred. The mother was in a coma and the father was suffering from Parkinson's disease. Eventually, the parents were moved to New Jersey by their daughter for further medical treatment and recovery, as well as to protect them from their son.

DEFIANCE OF THE "NO CONTACT" ORDER

The defendant, while in custody, was not at first aware of his mother's condition or that his parents had been moved out-of-state. He defied the "no contact" order and wrote profusely to his parents. He stated:

I know I had been drinking but I didn't do anything that I know of . . . I am also on a No Contact once again and am not even supposed to be writing this. Please help me to get out but don't let anyone know that I've written.

In other correspondence to his father he indicated remorse by stating, "I get a little excited sometimes. I'm not out to hurt you or Mom." But he also chastised his father by questioning, "Why in the world do you have to tell the cops this once again?" In a Valentine's Day card to his mother, after having learned of her condition, he wrote, "I can't believe all of this. I hope I'm not to blame for your condition that day."

The defendant also wrote to the judge that he had not committed any acts which would justify his punishment, that his father was heavily medicated due to his Parkinson's disease, and that his mother was an alcoholic. He claimed that his parents always visited him while he was in custody, and pointed out, "Does this show a battered mother and father for heaven's sake?" He informed the judge that his mother fell down and struck her head and noted, "Would you believe I was arrested again just eleven days later [after his release]?"

YET ANOTHER ROUND OF MENTAL EVALUATIONS

The mental evaluation of the defendant was completed and submitted to the court. It stated:

The most interesting part of his discussion was that he did not show remorse about the injury to his mother or father He also presented a flow chart of all the times he has been arrested for domestic violence, but he claims that he is the one that is battered by his mother.

The evaluator went on to state that the defendant was in denial of his chronic alcohol abuse. His personality disorder seemed to be egosyntonic; therefore, he was not able to benefit from any therapy to help him with his disorder.

A LACK OF EVIDENCE

Issues continued to persist in this case which made it difficult to satisfy the burden of proof. Should the testimony of the parents be perpetrated as they recovered, even though they were now out of state? Would they testify against the son? What would the value of the father's testimony be due to his deteriorating condition?

Additionally, attempts were made to secure the mother's medical records. Her cooperation could not be secured, and her daughter was attempting to obtain guardianship of both parents. However, once this was accomplished, they would not be competent to testify.

The victims were now living in a care facility near their daughter's residence in the northeast. There was not any independent corroboration of the incident. Without their testimony, the State could not proceed with its prosecution. Discussions were had with the victims' daughter, and based upon the medical conditions of the victims, it was determined that the prosecution could not proceed. The case was dismissed and the defendant was released from custody.

BACK TO THE RESIDENCE

The defendant then returned to his parents' local residence. The homeowner's association wherein they resided was notified of the defendant's possible return and it was requested that he not be allowed on the property. A letter was written by the parents to the security office of the homeowner's association stating that their son did not have permission to be on the property. They went on to say that if "he is found on or in said residence he should be considered trespassing or breaking and entering."

However, as he had resided there previously as a family member, and not as a tenant, the homeowner's association would not prevent him from returning there.

The association's counsel responded that the local sheriff's office had been contacted and "that because the son resides in the parents' home, the sheriff cannot remove the son; thus, even with the parents' letter, the association's hands are tied."

The local police department was contacted when it learned that the defendant had entered his parents' residence without their consent. They also would not intervene. An eviction did not appear to be the appropriate process. The defendant continued to reside there and caused substantial damage to the property.

LEGAL AID SOCIETY

As a result, the local Elder Law Unit of the Legal Aid Society assisted. They brought an action for ejectment from real estate,⁷ alleging that the son was residing in the residence without the owners' consent. This complaint was sworn to by both of the parents before a notary public in New Jersey.

Affidavits were also submitted on behalf of the parents when the local court would not issue an order of ejectment based upon the defendant's default. In their affidavits, the parents indicated that they owned the property, which the defendant had been residing there without their consent, that attempts to remove the son peacefully had been unsuccessful, and that he had caused extensive damage to the property. In their affidavits they admitted that the wife had been hospitalized due to injuries inflicted by the son and that the defendant had threatened both parents with physical harm.

After several months, an order of ejectment as to the defendant and a writ of possession for the parents were issued. The sheriff was directed to remove the defendant from the premises.

CONCLUSION

We commonly refer to elder abuse as the mistreatment of a senior by someone who is generally known to the victim. This

7. FLA. STAT. ANN. § 66.011 *et seq.* (West 2005).

abuse can be of a financial, physical, or emotional nature, as well as neglect.

South Florida has an ever-increasing elderly population, whether the defining age is sixty or sixty-five. Simultaneously, we are finding that, for a variety of reasons, more adult children are residing with their parents. The adult child is usually dependent on the parents financially and the elderly parents are dependent on the adult child for his or her care-giving ability.

The situations that come to the attention of social service agencies and law enforcement generally involve an adult child who has a substance abuse problem or mental health issues. The parents become an economic resource, with the potential for violent interaction when they do not comply with the child's demands. Add unresolved family conflicts or further addiction issues and the risk of abuse increases.

As a service delivery system, we must consider alternatives to our aging population caring for their adult children. Discharge planners in residential alcohol, drug, and mental health rehabilitation facilities must consult with Adult Protective Service Investigators to avoid returning these adult children to their vulnerable parents.

This solution would require the development of alternate living environments in the community. Halfway house settings are needed for these adult children. Safe house settings are needed as a haven for their parents.

THE CASE BEFORE US

The case presented in this article illustrates the reluctance of parents to report the physical violence perpetrated against them by their adult children. In the absence of independent, corroborating evidence or testimony, the only witnesses to these events are the parties themselves. An elderly hearsay exception must be adopted, as previously existed under Florida statutes.⁸ This was held to be unconstitutional in 1999.⁹

Such an exception would allow trustworthy, out-of-court statements to be admissible. A court hearing would be held to determine whether there were sufficient safeguards to ensure the reliability of the statement before it was presented to a jury

8. FLA. STAT. ANN. § 90.803(24) (West Supp. 2005).

9. *Conner v. Florida*, 748 So.2d 950 (Fla. 1999).

for consideration. This would provide a tool for prosecutors to protect such elderly parents from the commission of continued violence against them by their adult children.

Elderly adults are often reluctant to seek the assistance of social service or law enforcement agencies to intervene in their private lives. Civil injunctions against violence may be of assistance. However, the use of guardianships, whether voluntary or involuntary, may be the best alternative, though certainly not the least restrictive. Prosecutors find themselves unable to proceed with criminal charges when there is a lack of sufficient evidence. As noted in this case, there was difficulty in securing assistance from the civil side of the court system in removing the defendant/son from his parents' residence. Legislation must be enacted to address the particular concern of adult children living with their parents without the benefit of a lease or similar documentation. This situation is a particular challenge when the parents reside in a condominium or belong to a homeowner's association.

Despite all of the frustrations which were present in this case, law enforcement, adult protective service investigators, prosecutors, and legal aid staff worked together to protect the victimized parents from the ongoing violence perpetrated by their adult son. Fortunately, the use of task forces is increasing in many jurisdictions to better coordinate this effort.