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Judge: Denial deep-rooted in some defendants

Denial is defined as a defendant's opposition to charges against him and as a subconscious defense mechanism used to reduce anxiety by denying facts that are intolerable.

MY TURN

Many times in the criminal justice system, these definitions intersect.

While not everyone charged with a crime is guilty, most defendants end their case by pleading guilty. In justice courts, those who plead not guilty to misdemeanor offenses are entitled to a public trial.

The state must prove the defendant guilty beyond a reasonable doubt. The defendant needn't produce any evidence and can choose simply to argue reasonable doubt.

Hearing the defendant's concept of reasonable doubt is where things get interesting.

An elderly woman was charged with assault, a Class 3 misdemeanor,



FRANK J. CONTI

the least-serious type. A person is guilty of that charge if they touch another with the intent to injure, insult or provoke. At trial, the state produced a video of the defendant's spousal-maintenance hearing during her divorce from her ex-

husband, the victim.

At the conclusion of that hearing, which resulted in the defendant's support being denied, her son approached the victim and began yelling at him. The video showed the victim calmly standing next to his lawyer until suddenly an arm rose from the left edge of the screen, striking him in the face. The victim turned and asked, "Did you see her hit me?"

The state called three witnesses: the victim, the victim's lawyer and the bailiff. All three testified they saw the defendant hit the victim in the jaw without provocation.

On cross-examination, defense counsel couldn't dilute their testimony. The defendant took the stand, admitted "frustration" but said she involuntarily jerked her arm up in self-defense because the victim "had a look in his eye" similar to one he had during an alleged incident of domestic violence years earlier.

As it seemed clear she had used the opening created by her son's aggression to advance unseen and take a measure of revenge, I found her guilty.

The prosecutor and victim gave no input as to punishment. Defense counsel spoke briefly and advised her client to stay silent. I sentenced the defendant to one year unsupervised probation (the maximum), domestic-violence counseling as required by law and a fine of \$500 (the maximum) to be paid if she failed to complete counseling.

I told her crimes committed in the courthouse are serious, but I imposed

no jail time due to her age and lack of criminal history and because immediately after the incident she spent 12 hours in the most inhospitable county jail in downtown Phoenix.

After going off the record, the defendant wanted to ask me a question. Her lawyer grimaced.

With a straight face, the elderly woman asked, "How could you find me guilty when you can't see me in the video?"

Unblinking, I replied, "Because three people testified under oath they saw you punch your ex-husband in the jaw, ma'am."

For some criminal defendants, denial is a chronic condition. Perhaps probation and counseling can provide the cure.

Frank J. Conti is the elected justice of the peace for the Dreamy Draw Justice Court, which serves northeast Phoenix and parts of Paradise Valley and Scottsdale. He can be reached at frank@contiforjustice.com.