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PRESS RELEASE

The Franklin County District Attorney is issuing the following in relation to the events that led to the death of Donald Berkebile on July 28, 2008:

Based upon a thorough review of the evidence available from the investigation, I have determined that the available evidence does not support criminal action against Bryan Kendall.

The evidence available indicates that a confrontation occurred between Donald Berkebile and Bryan Kendall at approximately 7:15 A.M. on Monday, July 28, 2008. Kendall was driving down a common driveway through Berkebile's property when he had contact with Berkebile, who was near an active brush burn-pile next to the driveway. Kendall exited his vehicle and entered into a brief exchange of words with Berkebile regarding damage to a stone-pile property marker. Shortly after Kendall exited his vehicle and spoke to Berkebile, Berkebile produced a Taurus double action revolver, model Night Court Judge, capable of discharging either .45 caliber ammunition or .410 shot shells. The pistol was fully loaded with .410 shot shells, containing Winchester Super Speed Xtra Number 6 shot. Berkebile fired one round into the right side of Kendall's torso and right forearm. Kendall fell to the ground and was approached by Berkebile, who holstered the pistol as he approached. Kendall then stood and engaged in a struggle with Berkebile, during the course of which Kendall struck an undeterminable number of blows with his fists and feet about Berkebile's head, neck and chest. Kendall next disarmed Berkebile and then alerted authorities through the use of his cellular telephone immediately after the incident. Berkebile died as a result of the injuries sustained during the struggle that followed his shooting of Kendall.

The evidence is clear that Bryan Kendall caused the death of Donald Berkebile through blunt-force trauma. There is no evidence that Kendall was armed with a weapon. While there has been rampant speculation in the community regarding possible motives on each side of this tragedy, charging an individual with the crime of homicide, or any other crime, cannot be based on speculation, conjecture or rumor. It must be based upon evidence that is both credible and admissible in a court of law.

Under the circumstances of this case, the law enforcement inquiry does not end with causation. In the Commonwealth of Pennsylvania, the prosecution bears the burden of proving beyond a reasonable

doubt that a homicide was not “justifiable” under the circumstances. Justification is a legal term that is commonly referred to as “self-defense.” Under Pennsylvania law, a person is justified in using deadly force if they believe that such force is necessary to protect themselves against death or serious bodily injury.

After reviewing all of the available evidence in light of the Commonwealth’s burden to disprove that Donald Berkebile’s death was justified, it is clear there is insufficient evidence to convince a jury that the force utilized by Kendall was not justified. Likewise, there is insufficient evidence to indicate that Berkebile’s act of shooting Kendall was justified due to any initial threat or aggression from Kendall. This determination is made after a thorough review of the evidence gathered in this investigation, including investigators’ observations at the scene, statements taken from witnesses, and forensic evidence processed by the Pennsylvania State Police.

I recognize that this determination is made over a year and a half after the incident. I also recognize that the delay was necessary in part to allow for forensic examination of evidence by the Pennsylvania State Police laboratory. However, taking the necessary time to properly analyze and review evidence in a matter as serious as this should not be viewed, as some in the community have suggested, as a “break-down” in the justice system. In a matter such as homicide, without question the most serious criminal offense in any jurisdiction, the laws of this Commonwealth contemplate a deliberate and contemplative decision whether to file charges. Indeed, this is reflected in the fact that the crime of homicide has no statute of limitations, thereby granting the Commonwealth all the time necessary to make a proper charging determination.

All members of the Pennsylvania State Police who contributed to this criminal investigation performed their jobs earnestly, completely, and professionally.

Despite unfortunate reports to the contrary, the District Attorney’s Office at no time in this matter “blamed” the Pennsylvania State Police laboratory for the delay in this matter. We stated publically that the laboratory’s resources are limited, as with all law enforcement sectors, and considering the lab’s resources are utilized for cases pending all across the Commonwealth, prioritization must be made to cases pending immediate trial.

With this determination, the law enforcement inquiry into this matter is now closed.