



Lab tests are back in death of Berkebile

By VICKY TAYLOR Staff writer

Franklin County District Attorney Matt Fogel is reviewing the July 2008 Don Berkebile homicide case and expects to make a decision soon about potential charges against Berkebile's attacker, Bryan Kendall of Mercersburg.

Meanwhile, a civil lawsuit by Kendall against the Berkebile estate has been put on hold pending the outcome of the criminal investigation into the 81-year-old man's death, according to a spokeswoman at the Franklin County Prothonotary's office.

Fogel said long-awaited lab results on evidence collected at the scene of the fight that ended in Berkebile's death on July 28, 2008, is now in his office. He is reviewing those reports and other evidence gathered by Pennsylvania State Police investigators, including Kendall's statements to police following the death of 81-year-old Berkebile.

Although he said he expects to make a timely decision about what charges, if any, will be filed in the case, Fogel refused to be pinned down to a specific date for that decision.

"I can't put a timeline on it," he said. "I don't want to rush a decision."

Fogel, who was appointed to replace the late

Jack Nelson as Franklin County's district attorney in October, said he still has a lot of evidence and reports to study and will discuss his findings with state police investigators before making that decision.

"I haven't had (the case) for over a year, and I want to make sure this is done right," he said.

The big hang-up in the case has hinged on the fact that it has taken the Pennsylvania State Police forensics lab well over a year to process the evidence sent to it shortly after Berkebile's death, according to investigators.

That evidence and the lab reports on it were crucial in determining what charges should be filed, lead investigator Trooper Frank Hershey said last year.

A Pennsylvania State Police spokesman acknowledged last fall that the state's seven labs were behind in processing evidence, but said the delay was caused by a shortage of personnel.

The labs were in the process of hiring new experts, which he said should speed up the processing of evidence.

Berkebile's death more than 16 months ago was called a homicide by Franklin County Coroner Jeff Conner, who attributed the death to blunt force head trauma. Conner describe a homicide as death at the hands of another person.

Advertisement

TARGET WEB COUPON **EXPIRES 2/27/10**

25¢ each
with purchase of twenty-five
4x6" Kodak instant prints



This coupon is intended for use by the original recipient only and is void if copied, altered, transferred, purchased, sold or prohibited by law. Limit one offer per Visa/Discover, MC/Amex and the will not be included in cashback or rebate offers. For each value. Offer available at Target One Hour Photo Labs. See Target.com/photo for the complete reward you. One hour service limited to machine capacity.



3855-0113-1852-4674-0306-4005-84

Print Powered By FormatDynamics™



According to an initial police report, Berkebile and Kendall got into an argument as Kendall was leaving his home to go to work that morning. He had to use an access road across Berkebile's property to get to the highway from his home.

He allegedly got out of his truck to argue with Berkebile, who was burning brush at the side of the access road.

At some point, Berkebile shot Kendall in the chest with a gun loaded with birdshot, according to a police news release.

Kendall told a Public Opinion reporter who interviewed him over the telephone that day that the argument and fight took place at the side of the access road after he stopped and got out of his truck when Berkebile began yelling at him.

Months later, Kendall would claim in a civil lawsuit against Berkebile's estate that Berkebile was standing in the middle of the road with the pistol already out of the holster and hidden behind his back, blocking his way to the highway.

Investigators have not released information from their interviews with Kendall or anything gleaned from the scene.

Kendall lawsuit against Berkebile estate

Bryan Kendall and his wife Susan have filed a civil suit asking for about \$350,000 in damages for his medical expenses, lost wages and things such as embarrassment and humiliation as a

result of the fight in which Berkebile died.

The suit requests a jury trial.

The 18-page lawsuit claims Kendall was unable to avoid the fight and was in fear of his life when he struggled with Berkebile after being shot and "playing dead" until Berkebile got close enough to him so he could grab his adversary.

The lawsuit was filed Oct. 8, 2008. On March 5, 2009, an attorney for the Berkebile estate filed a response to the suit, asking that the Kendalls not be allowed to testify because their claims against the estate can't be answered by Berkebile.

Attorney John Keller cited Pennsylvania's "Rule of Evidence 60" law -- commonly known as the "Dead Man's Act" -- in his argument against allowing the Kendalls testimony in the case.

The statute that says any person with interests adverse to the deceased's interests shall not be a competent witness to any matter before the death.

He wants a judge to exclude Kendall's testimony about the events leading to Berkebile's death.

The civil case is on hold pending the outcome of the criminal case, a spokeswoman at the Franklin County Prothonotary's office said this week.

Advertisement

TARGET WEB COUPON **EXPIRES 2/27/10**

25¢ each
with purchase of twenty-five
4x6" Kodak instant prints



This coupon is intended for use by the original recipient only and is void if copied, altered, transferred, purchased, sold or prohibited by law. Limit one offer per transaction. Offers void where prohibited. Offer available at Target Drive Thru Photo Labs. ©2010 Target Brands, Inc. All rights reserved. One hour service limited to machine capacity.



3855-0113-1852-4674-0306-4005-04

Print Powered By FormatDynamics™