

D.A. says charges won't be filed in 2008 death of Donald Berkebile



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By Record Herald staff
The Record Herald

NEW! Thu Jan 28, 2010, 11:18 AM EST

Mercersburg, Pa. -

A Mercersburg area man will not be charged in the July 28 death of a man.

Franklin County District Attorney Matthew Fogal announced Monday that a man will not be charged with the death of Donald Berkebile.

"I have determined that the available evidence does not support a charge," Fogal wrote.

Kendall's attorney, Stephen Kulla, issued a statement Monday.

"Mr. Kendall is pleased to learn that the Franklin County grand jury's decision that Bryan is not warranted," Kulla said. "We believe this is a just outcome. He regrets the fact that the encounter with Mr. Berkebile occurred, he certainly takes no pleasure in the ultimate death of Mr. Berkebile."

What happened

The incident began at 7:15 a.m. July 28 as Kendall, 40, was driving on Blue Spring Road in Mercersburg between their two properties on Blue Spring Road in a brush pile.

Fogal's release said Kendall got out of his vehicle and had words with Berkebile concerning damage to a stone property marker.

Shortly after Kendall got out of his vehicle, Berkebile shot him in the right forearm and torso with a Taurus double-action revolver, according to the release.

Kendall fell to the ground and was approached by Berkebile, who holstered his pistol.

The district attorney said Kendall stood up and started to struggle with Berkebile.

"Kendall struck an undeterminable number of blows with his fist and feet about Berkebile's head, neck and chest," the release said. "Kendall next disarmed Berkebile and then alerted authorities through use of his cellular telephone immediately after the incident."

Berkebile was pronounced dead at the scene and Kendall was flown to Altoona Hospital for treatment of his injuries.

Legal decision

"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 crime, cannot be based on speculation, conjecture or rumor," he wrote. "It must be based upon evidence that is both credible and admissible in a court of law."

The evidence indicates Kendall caused Berkebile's death through blunt-force trauma, but Fogal said "justifiable" homicide and "self defense" were taken into consideration.

"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," Fogal wrote.

Fogal attributed the year-and-a-half lapse between Berkebile's death and his decision to the time needed to thoroughly analyze the forensic evidence in the case.

Unique collection

Berkebile, a widower with no children, had been a curator at the Smithsonian for many years and amassed an extensive collection of Americana.

He also was an expert on carriages, stagecoaches, Conestoga wagons and other 19th century modes of transportation.

He had restored his Blue Spring Road home to how it was in the 1700s and it was described as looking as if the homeowners closed the doors 200 years ago and never came back.

Collectors traveled from as far away as Maine and Florida and elsewhere along the East Coast for a three-day auction of his lifetime collection of artifacts in the fall of 2008.

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Under Pennsylvania Law a 'Grand Jury' is a way to determine Justice by the people of the community and prevents a District Attorney from acting in an arbitrary manner.

I don't remember...but...what was the Coroner's finding in this matter?

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