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Montgomery Township man won't be charged in neighbor's death

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MERCERSBURG, Pa. — No criminal charges will be filed over a July 2008 fight between neighbors in Montgomery Township, Pa., that left one man dead, the Franklin County District Attorney's Office announced Thursday.

An autopsy determined that Donald Berkebile, 81, died of blunt force trauma to the head and neck in the struggle with his neighbor, Bryan Kendall, the district attorney's office said in December.

Police have alleged that Berkebile shot Kendall, who survived his injuries, in the chest with a revolver in a driveway shared by their Blue Spring Road homes.

"The available evidence does not support criminal action against Bryan Kendall," District Attorney Matthew Fogal said in a news release.

Fogal's office had been awaiting test results from the Pennsylvania State Police Crime Lab. Those forensics results didn't arrive until the end of 2009.

Fogal said "the evidence is clear" that Kendall caused Berkebile's death through blunt-force trauma.

"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."

Decisions regarding criminal charges must be based on credible evidence that is admissible in court, Fogal said.

"Mr. Kendall is pleased to learn that the Franklin County District Attorney has determined that prosecution ... is not warranted. We believe this is the correct and just decision," Kendall's attorney, Stephen Kulla, said in a statement.

Fogal presented a summary of events from July 28, 2008, as based on the evidence. In it, he said the men argued and Kendall was shot in the torso and right forearm with a Taurus double-action revolver, Night Court Judge model, fully loaded with .410 short shells.

Kendall, 40 at the time of the incident, struggled with Berkebile after being shot, using his fists and feet to deliver blows to Berkebile's head, neck and chest, according to the summary. Kendall disarmed Berkebile and used a cell phone to call authorities at 7:15 a.m., according to the summary.

The prosecution would have needed to prove that homicide was not justifiable, or, in other words, that Kendall didn't act in self-defense, Fogal said.

"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. ... It is clear there is insufficient evidence to indicate that Berkebile's act of shooting Kendall was justified due to any initial threat or aggression from Kendall," Fogal said.

Kendall "regrets the fact that the encounter with Mr. Berkebile happened. Although Bryan did not initiate nor desire the occurrence, he certainly takes no pleasure in the ultimate results — the significant injuries he endured and the death of Mr. Berkebile," Kulla said.

The 18 months spent on the investigation should not be viewed as "a breakdown" in the justice system, Fogal said. Instead, a "deliberate and contemplative decision" is needed when determining whether to file homicide charges, which do not carry a statute of limitations in Pennsylvania, he said.

Fogal said his office never "blamed" the Pennsylvania State Police Crime Lab for the delay in the case, saying the laboratory's resources are limited and are used for cases pending across the state. Cases getting ready for immediate trial must be priorities, he said.

In February 2009, Kendall sued Berkebile's estate for medical expenses, lost wages, and humiliation and embarrassment. Lawyers representing the estate responded that testimony should not be accepted because it cannot be refuted by a dead man.

The civil case was put on hold pending the completion of the criminal investigation, according to the Franklin County Prothonotary's Office.

Berkebile was the last of his immediate family. A Web site, www.justicefordon.info, was established in 2009. An e-mail to the address listed at the site requesting comment was not immediately returned Thursday.

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