



October 23, 2012

Unarmed and Gunned Down by Homeowner in His 'Castle'

By JACK HEALY

KALISPELL, Mont. — The last mistake Dan Fredenberg made was getting killed in another man's garage.

It was Sept. 22, and Mr. Fredenberg, 40, was upset. He strode up the driveway of a quiet subdivision here to confront Brice Harper, a 24-year-old romantically involved with Mr. Fredenberg's young wife. But as he walked through Mr. Harper's open garage door, Mr. Fredenberg was doing more than stepping uninvited onto someone else's property. He was unwittingly walking onto a legal landscape reshaped by laws that have given homeowners new leeway to use force inside their own homes.

Proponents say the laws strengthen people's right to defend their homes. To others, they are a license to kill.

That night, in a doorway at the back of his garage, Mr. Harper aimed a gun at the unarmed Mr. Fredenberg, fired and struck him three times. Mr. Fredenberg crumpled to the garage floor, a few feet from Mr. Harper. He was dead before morning.

Had Mr. Fredenberg been shot on the street or sidewalk, the legal outcome might have been different. But on Oct. 9, the Flathead County attorney decided not to prosecute, saying that Montana's "castle doctrine" law, which maintains that a man's home is his castle, protected Mr. Harper's rights to vigorously defend himself there. The county attorney determined that Mr. Harper had the right to fetch his gun from his bedroom, confront Mr. Fredenberg in the garage and, fearing for his safety, shoot him.

"Given his reasonable belief that he was about to be assaulted, Brice's use of deadly force against Dan was justified" under current Montana law, Ed Corrigan, the county attorney, wrote in a [four-page letter](#) explaining his decision to the Kalispell police.

The shooting raises similar questions about armed citizens and their right to self-defense to those raised after the February shooting of [Trayvon Martin](#), 17, in Florida, with the critical difference that Mr. Martin was shot outside.

In Montana, it has focused new scrutiny on whether the castle doctrine measure, implemented in 2009, has given homeowners the authority to defend themselves against real threats or has provided a way to kill without consequences.

“The community has not been well-served by either the law or the legal process in this case,” the local newspaper, [The Daily Inter-Lake](#), wrote in a recent editorial.

In 2009, Montana joined more than 20 other states in passing broad self-defense measures backed by the National Rifle Association and other gun-rights groups. Under the law, a person can brandish a gun to ward off a threat. An individual does not have to flee or call the police before engaging in self-defense.

For criminal trials in which a defendant claims self-defense, the legislation flips the burden of proof, putting the onus on prosecutors to discredit those claims.

“It changed things here in Montana,” said Leo Gallagher, president of the [Montana County Attorneys Association](#), which joined associations of sheriffs and police chiefs to oppose the law. “For any sort of personal affront, you’re permitted to threaten the person with a gun.”

To Mr. Fredenberg’s family, the county attorney’s decision not to press charges hit like a fourth bullet. They acknowledged that Mr. Fredenberg, a hot-rod lover who painted, fixed and restored cars, had made his share of bad decisions in life. He often drank too much — his blood alcohol level was 0.08 percent on the night he died. He had a turbulent love life. He struggled financially.

But they said Mr. Fredenberg was also big-hearted, a doting father to his four children and a practical jokester — “40 years old going on 25,” his father put it. They said he was not violent and had done nothing that night to deserve being killed.

“It’s tearing me up,” said his father, Ron Fredenberg, a retired police officer and detective in Kalispell. “Dan was totally unarmed.”

Mr. Fredenberg’s long path to that slate-blue duplex at Empire Loop began about two years earlier, when he started dating a young barista named Heather King. After finding out she was pregnant with twins, the two eloped to Las Vegas, where they started what was by all accounts a rocky

marriage.

Heather Fredenberg, 22, said she and Dan were passionate about each other, but also bickered about child care, bills, fixing the car and other stresses amplified by having two infants and not enough time or money. The county attorney's report said they were "mutually abusive with each other, both verbally and physically." More than once they considered divorcing.

About three months before the shooting, Ms. Fredenberg started seeing Mr. Harper. She has called it a flirtation and an "emotional affair" that was intimate but never sexual. She told her husband about the relationship, and the two men once clashed at Fatt Boys Bar & Grille in Kalispell.

Although Ms. Fredenberg said she and her husband were committed to each other despite everything, Mr. Fredenberg's father said his son believed the marriage was breaking apart. The day before he died, he told his father, "I'm giving up on it. I just can't put up with it anymore," his father said.

On Sept. 22, Mr. Harper called Ms. Fredenberg and asked a favor: He was moving out of town the next day, and could she come over and help him clean the house? She took her 18-month-old twin boys and spent the afternoon at his home, a five-minute drive from hers. She swapped tense text messages with Mr. Fredenberg and talked on the phone around 8:30 p.m. He asked whether she was with Mr. Harper. She said she did not answer. He cursed and hung up.

As she was strapping her sons into their car seats and getting ready to leave, she said, she asked Mr. Harper to circle the block with her to diagnose a clunking sound in her car. As they drove, she saw headlights in her rearview mirror. Her husband had come looking for her, and he was behind them.

Ms. Fredenberg said she dropped Mr. Harper off at his house and told him to go inside and lock the doors. She said he told her that he had a gun and was not afraid of her husband. Mr. Fredenberg, close behind, parked his car and followed Mr. Harper into his garage, its light spilling onto the driveway.

Under Montana's old law, homeowners could protect themselves with deadly force only if someone breached their house in a "violent, riotous or tumultuous manner." The changes erased those provisions, giving people license to use lethal force if they "reasonably believe" they are about to be assaulted.

"You don't have to claim that you were afraid for your life," Mr. Corrigan, the county attorney, said.

“You just have to claim that he was in the house illegally. If you think someone’s going to punch you in the nose or engage you in a fistfight, that’s sufficient grounds to engage in lethal force.”

It was immaterial that Mr. Fredenberg was unarmed. What mattered was what Mr. Harper — who declined to comment through his lawyer — later told investigators: that Mr. Fredenberg was charging toward him, angry, “like he was on a mission,” and that Mr. Harper was scared for his life.

In an interview, Ms. Fredenberg said that she sat in her car and watched the shooting, and that her husband was standing still when he was shot. She ran to him, screaming. His last words, she said, were a simple plea: “Call 911.”

Neither the police nor the county attorney conducted a rigorous investigation, she said, leaving her husband without an official advocate.

“There is no justice,” she said.

▼
OPEN

MORE IN U.S.
**Urgent
Hurricane
Northe**
Read More