

# PROSECUTING ATTORNEY

## CRIMINAL DIVISION

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On March 16, 2022 Lowell Police responded to a vehicle stopped in the road on Alden Nash Avenue. Mr. Zachary Myers had stopped in the road for two possums in the roadway; a mother possum that apparently had been struck by a car, and her child. According to Mr. Myers Facebook post on this incident, Officer Stephens the Lowell officer responding, approached Mr. Myers and stated, "Why the f\_\_\_ are you blocking the road?! You're really blocking the road for a f\_\_\_\_\_ing possum?!" Officer Stephens then kicked one possum so hard that it "flew 10 feet from the middle of the road to the grass." Officer Stephens then told him, "Problem f\_\_\_\_\_ing solved get the f\_\_\_ out of the street."

In addition to the Facebook post, Mr. Myers filed a complaint regarding this alleged behavior with the Lowell Police Department. In his written statement regarding the incident he repeats many of the same allegations regarding the conduct and comments of the officer as he did in his Facebook post. In his written statement, he writes that the possum was kicked a total of three times to get it off the road. Later, in his recorded interview, he states the possum was kicked like a football and demonstrates such a kick.

The bodycamera footage, and the patrol in-car video of Officer Stephens was submitted to this office for review, along with the written and recorded statements of Mr. Myers. Based on the review of all of the material, there is no basis to file any charges for animal cruelty for this incident.

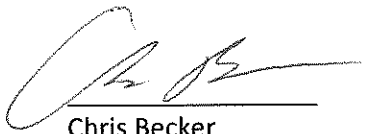
First, much of what Mr. Myers alleges is not substantiated by the audio/video recordings. The words Officer Stephens was alleged to have spoken to Mr. Meyers, specifically the multiple use of the F-word, simply did not occur in the way Mr. Myers alleges. While the audio portion of the officer's bodycamera does not immediately begin, much of his interaction with Mr. Meyers is caught on the footage, and at no time did Officer Stephens make any of the comments to Mr. Meyers as he alleged on Facebook or in his written or verbal statement to Lowell Police. In his written statement, Mr. Myers is quite clear that when Officer Stephens got to the front of Mr. Myers vehicle he, "followed by saying 'You really stopped in the middle of the road for a F\_\_\_\_\_ing possum?'" The bodycamera footage is on, and there is absolutely no comment like that made at that time. Nor is there any "Problem f\_\_\_\_\_ing solved get the f\_\_\_ out of the street." Those comments simply were not made.

Secondly, in addition to the inconsistency regarding the comments made, there is no evidence that Officer Stephens kicked the possum like a football, or kicked it so hard it "flew 10 feet from the middle of the road to the grass" as was also alleged. Officer Stephens did use his foot to move one possum; but while he did use his foot, it would be hard to describe this as a kick. He used the side of his foot, the video shows his foot did not move back more than six inches, and it was not a hard strike where the possum flew in the air. The contact did cause the possum to roll on the road. He did this three times to get the possum off the road. He did pick up the apparently dead possum by the tail and throw it off to the side of the road into the grass.

None of this conduct is criminal. Under MCL 750.50(2)(b) a person shall not “cruelly drive, work, or beat an animal..” There is no legal definition of “cruel” in this law, in the absence of a legal definition the common dictionary terms may be used. *Robinson v Detroit*, 462 Mich 439, 496 (2020). The definition of cruel in the American Heritage Dictionary of the English Language is, “Disposed to inflict pain or suffering; *Synonyms, ferocious, barbarious, inhuman, sadistic, pitiless, ruthless. These adjectives mean predisposed to inflict violence, pain, or hardship.*” Nothing Officer Stephens did here can accurately be described as attempting to inflict pain, or predisposed to inflict violence, pain, or hardship. He clearly was trying to get a possum off the road, and he did use force to do so, but to argue that with these actions he was attempting to hurt or harm this animal simply is not supported by the evidence contained in the video footage. The law also requires the animal be alive, so throwing a dead animal off the side of the road does not meet this definition either.

This case was also reviewed for the possibility of filing a false report of a misdemeanor offense. There is no basis for any charges there either. One of the key elements of filing a false report is the element of *knowingly* filing a false report. At issue here is the crime of cruelty to animals. There is no question Officer Stephens contacted the possum with his foot. Mr. Myers clearly believed this behavior was cruel to the possum. His belief is misplaced and not in accordance with the law. However, we cannot prove he was knowingly filing a false report based on what he witnessed. Officer Stephens clearly did not say what Mr. Myers said he did, but that is not the issue. Mr. Myers could be lying or he could have simply heard what he wanted to hear. We cannot prove either position. However, that is not the crime. The crime is what occurred with the animal, and given what occurred there is not a sufficient basis to say Mr. Myers knowingly made a false report of cruelty to animals.

No charges will be filed against anyone in this incident.



Chris Becker  
Kent County Prosecutor

3-22-22

Date