



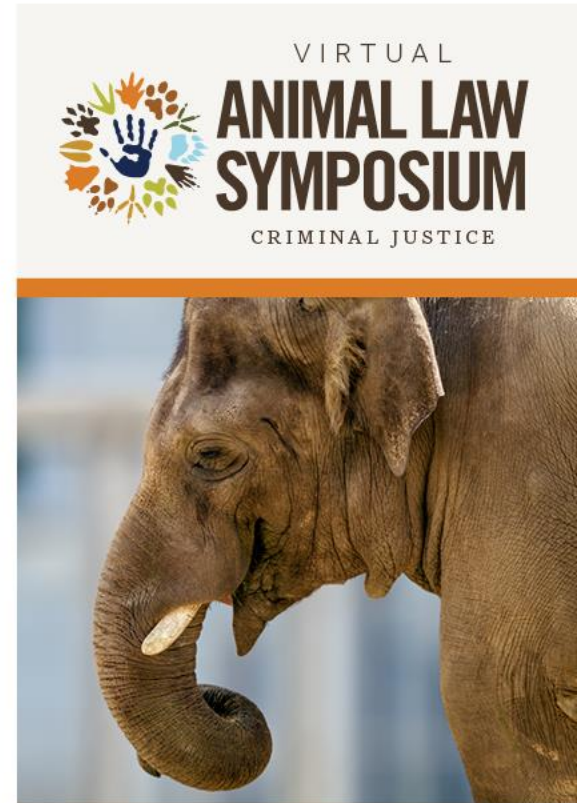
Private Complaints, Prosecution, and Persistence in Pennsylvania

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Animal Partisan



Common reasons for not prosecuting cruelty in agriculture

- Misunderstanding the law
 - *Scope of species protected*
 - *Interpretation of mens rea*
 - *Interpretation of exemptions*
- Lack of experience/knowledge to handle
- Lack of resources
- Political/local pressure
- Belief that farm's corrective actions are enough
- Distrust of animal rights organizations/evidence
- Does not believe these animals deserve protection



Private criminal complaints

- At least 20 states have procedural mechanisms where private parties can attempt to initiate criminal prosecution
- In most states, case law is very limited, but in others (i.e., Pennsylvania) these procedures have been widely used
- Specific procedures vary by state, but include:
 1. Petitioning court for review of prosecutor's denial
 2. Directly approaching a magistrate to request charges
 3. Directly approaching a judge to request charges
 4. Requesting to appear before a grand jury
 - By individual party
 - Upon petition of concerned citizens
 5. Appointing a private prosecutor
 6. Requesting a writ of mandamus to force prosecution



Martin Farms investigation

- **Animal Outlook** investigator employed as a milker at Martin Farms in Chambersburg, Pennsylvania from October to December 2018
- Martin Farms is an industrial dairy with approximately 1,000 mature cows
- Video and documentary evidence captured:
 - Hitting, kicking, and stomping cows
 - Brutal and unlicensed veterinary procedures
 - Botched attempts at euthanasia
 - Spraying cows with scalding water
 - Dragging downed cows with hip clamp device
 - Tail twisting
 - Improper and cruel disbudding of calves
 - Pushing downed cows with tractors
 - Failure to provide veterinary care



Attempt #1: Pennsylvania State Police

- **January 2019** – AO provides 4 hours of video and 89 pages of documents to the Pennsylvania State Police (PSP)
- **April 2019**
 - PSP issues press release claiming they were made aware of the allegations on March 27, 2019
 - Martin Farms issues statement indicating it was “appalled” and “shocked” that these incidents took place and had terminated involved employees and was working on “continuous improvement”
 - National Milk Producers Federation issues statement that “the video shows evidence of willful mistreatment”
- **November 2019** – AO meets with PSP leadership twice in Harrisburg to discuss progress on the case and is advised that the evidence “warrants some charges.”
- **March 2020** – PSP issues press release stating “troopers visited the farm and interviewed the owner, and a neutral third-party veterinarian assisted in reviewing video and other evidence” and that “prosecution was declined”

DENIED



Pennsylvania Private Complaint Statute

234 Pa. Code § 506

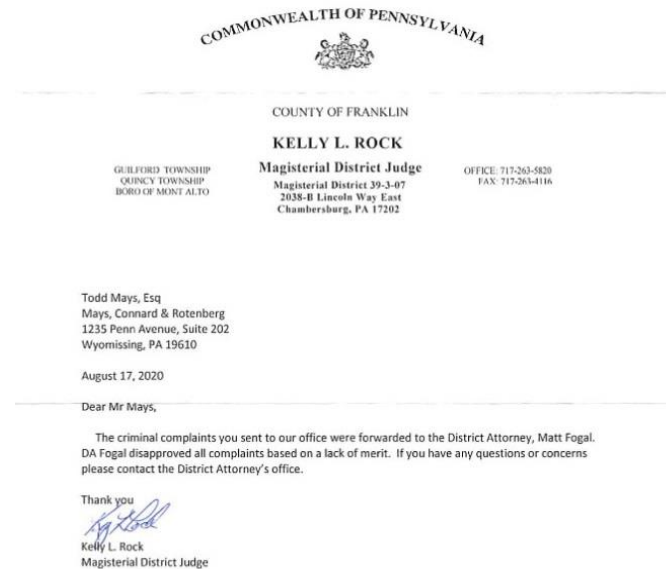
- (A) ***When the affiant is not a law enforcement officer***, the complaint shall be submitted to an attorney for the Commonwealth, who shall approve or disapprove it without unreasonable delay.
- (B) If the attorney for the Commonwealth:
 - (1) approves the complaint, the attorney shall indicate this decision on the complaint form and transmit it to the issuing authority;
 - (2) disapproves the complaint, the attorney shall state the reasons on the complaint form and return it to the affiant. ***Thereafter, the affiant may petition the court of common pleas for review of the decision.***



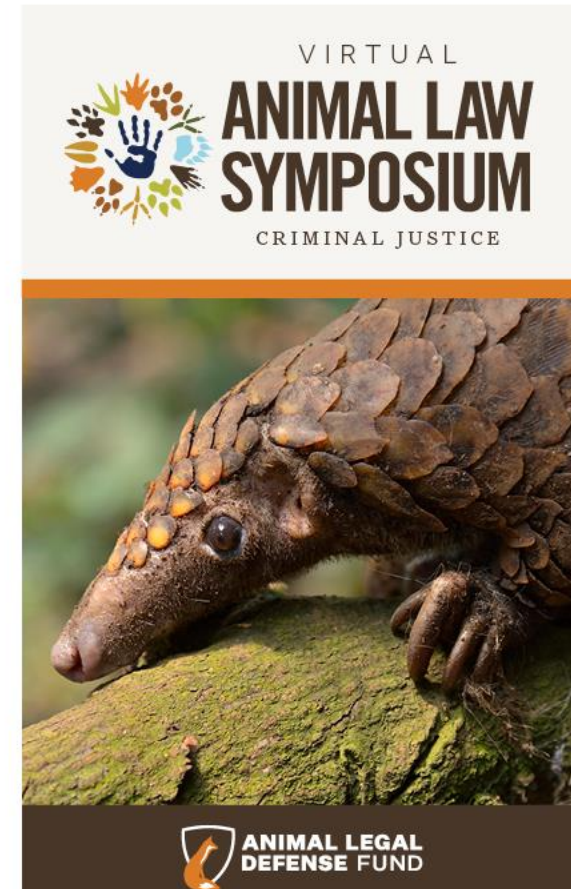
Attempt #2: District Attorney

- On July 27, 2020, Animal Outlook submitted private complaints for 15 defendants, including Martin Farms, its owner, and employees
- The complaints alleged 327 individual violations of Pennsylvania's animal cruelty and neglect laws
- On August 17, 2020, the Franklin County District Attorney disapproved every single one of the 327 complaints for "lack of merit"
- No further explanation was provided

DENIED



AO was capably assisted throughout this case by local counsel from Mays, Connard, and Rotenberg



Attempt #3: Court of Common Pleas

- Having expected the District Attorney's denial, AO then invoked its statutory right to appeal the decision
- On September 28, 2020, AO filed a petition with the Court of Common Pleas of Franklin County, requesting review of the District Attorney's denial
- The court directed the District Attorney to explain his reasons for denial of the complaint:
 - Legal reasons = *De novo*
 - Policy or hybrid reasons = Abuse of discretion
- After conducting *de novo* review, the court issued a 13-page opinion on February 22, 2021 dismissing AO's petition.
- The court found that "There was not enough evidence, based upon the law, to initiate prosecution against any of the Defendants"

DENIED

IN THE COURT OF COMMON PLEAS COUNTY OF FRANKLIN
39th JUDICIAL DISTRICT

IN RE: PRIVATE CRIMINAL COMPLAINT FILED BY ANIMAL OUTLOOK

PETITION FOR REVIEW OF DISAPPROVED PRIVATE CRIMINAL COMPLAINT

September 28, 2020

Petition for Review Pursuant to 204 Pa.Code, Rule 506(B)(1) of District Attorney of Franklin County's Denial of Affiant's Private Criminal Complaint.

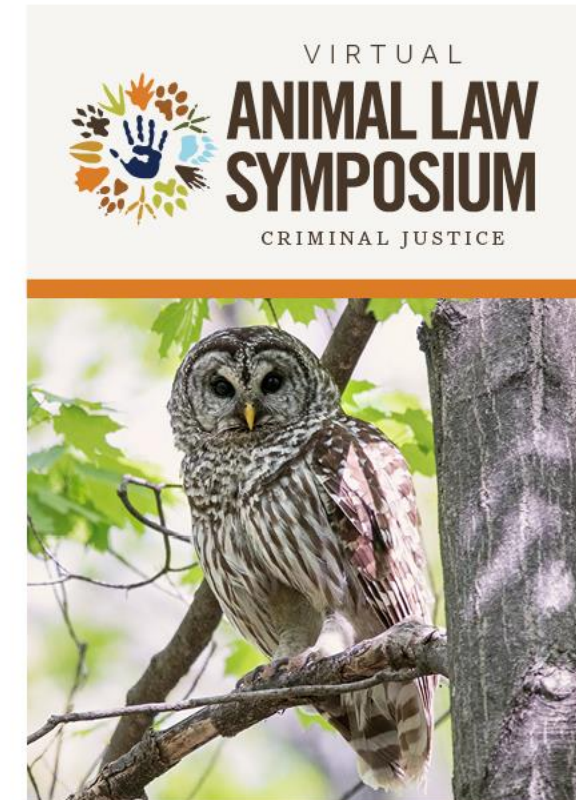
And NOW, comes the affiant, Animal Outlook, who hereby avers the following and requests that this petition for review of Affiant's private criminal complaint pursuant to Pa. R. Crim. P. 506 (B)(1) be granted for the reasons set forth below:

BACKGROUND

1. Between October 17, 2018 and December 7, 2018, an agent for Affiant worked at Martin Farms, a dairy factory farm in Chambersburg, Pennsylvania and recorded the condition and treatment of live animals at the facility. Footage from these recordings is available at <https://vimeo.com/312954484> (password: LE54321).

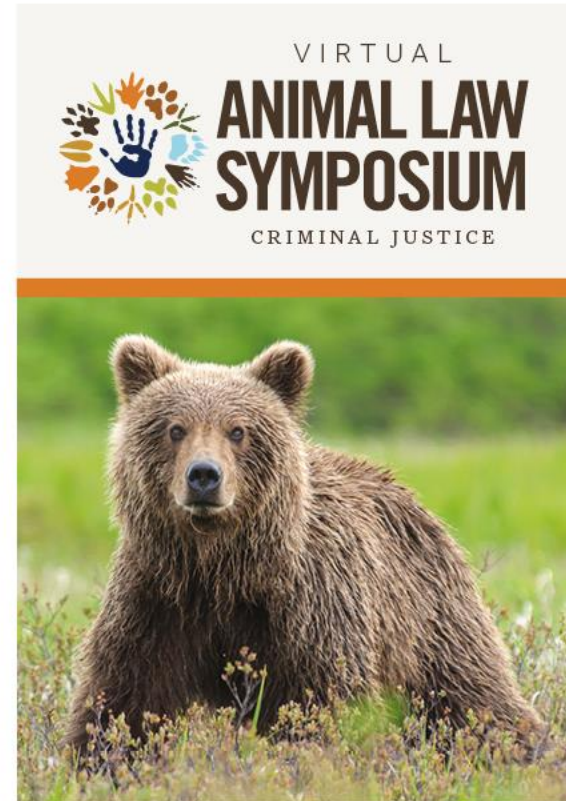
2. On January 30, 2019, Affiant submitted 89 pages of documentary evidence and over four hours of video evidence of Defendants engaged in acts of animal cruelty and neglect to the Pennsylvania State Police ("PSP") and Franklin County District Attorney Matthew Fogal.

OCT 06 2020
ATTEST: A TRUE COPY
Sherry M. White
Clerk of Courts



Attempt #4: Superior Court

- AO appealed the Court of Common Pleas' dismissal to the Superior Court
- AO argued that the lower court erred by:
 - Imputing a "willful" *mens rea* into the cruelty and neglect statutes
 - Misinterpreting the "normal agricultural operation" exemption
 - Misapplying the facts to the law in determining that no neglect had occurred
- AO emphasized several categories of incidents amongst the 327:
 - Improper disbudding
 - Improper handling of non-ambulatory cows
 - Failure to provide veterinary care



“Normal Agricultural Operations”

- Under 18 Pa.C.S.A. § 5560, “normal agricultural operations” are exempted from punishment under the cruelty and neglect statutes
- **“Normal agricultural operation”** – “Normal activities, practices and procedures that farmers adopt, use or engage in year after year in the production and preparation for market of poultry, livestock and their products in the production and harvesting of agricultural, agronomic, horticultural, silvicultural and aquicultural crops and commodities.”



VIRTUAL
**ANIMAL LAW
SYMPOSIUM**
CRIMINAL JUSTICE



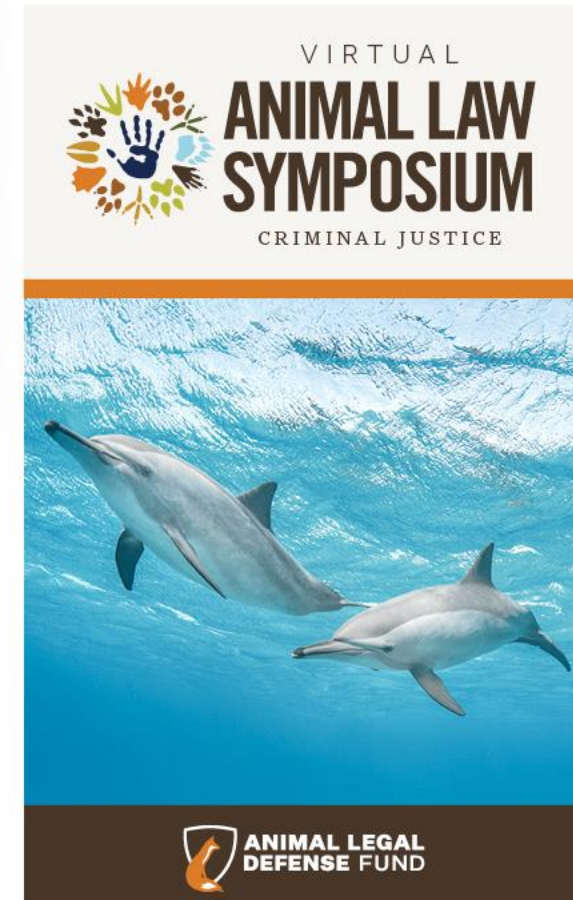
Superior Court Decision

- On February 8, 2022, the Superior Court issued a 28-page opinion reversing the trial court
- Remanded the case to the trial court directing it to order the District Attorney to prosecute AO's complaints that dealt with:
 - Improper movement of downer cows
 - Excessive shocking
 - Tail pulling/twisting
 - Calf dehorning
- Found that the trial court improperly:
 - Credited evidence from Martin Farms' long-time veterinarian while discounting evidence from the investigator and a former employee
 - Accepted remedial measures as negation of liability for prior criminal acts
 - Addressed only a "hand-picked few" of the allegations
- Classified the District Attorney's interpretation of the "normal agricultural operations" exemption as "absurd"



Attempt #5?: Supreme Court (PA)

- District Attorney petitioned the Supreme Court of Pennsylvania asking it to hear an appeal of the Superior Court decision
- The Supreme Court placed the petition on hold pending the outcome of *In re Private Criminal Complaint of Luay Ajaj*, an unrelated case involving the standard of review for private criminal complaints
- **HOLDING:** “*We hold that, when reviewing a prosecutor’s decision disapproving a private criminal complaint under Rule 506, a court of common pleas may only overturn that decision if the private complainant demonstrates that the disapproval decision amounted to bad faith, occurred due to fraud, or was unconstitutional.*”
- Currently pending the Supreme Court’s decision on the District Attorney’s petition for appeal based on the *Ajaj* decision.



Key takeaways

- Contrary to common perception, animals used in agriculture are not completely excluded from protection by cruelty laws
- Practices that are common in the agriculture industry may still be criminal
- Remedial measures (firings, retraining, etc.) do not negate prior criminal conduct
- Agriculture industry testimony does not carry more weight than contrary voices (including video evidence from undercover investigations)
- Private criminal complaints hold some promise for enforcing cruelty laws





Thank you!

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