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March 28, 2023

Yakima County Sheriff Robert Udell
YCSO Deputy Robert Hubbard
Yakima County Sheriff's Office
1822 S. 1st Street
Yakima, WA 98903

***Re.: Yakima County Coroner James Curtice
YCSO Case #23C03545***

Sheriff Udell and Deputy Hubbard:

I have now had an opportunity to go over the reports and video in the above case that was investigated and submitted by the Yakima County Sheriff's Office. I was able to view the extensive video of the underlying incident as filmed by the body cameras worn by your deputies.

The investigation revealed that on the evening of March 10, 2023, off-duty YSO Deputy Justin Swale was in the company of Jim Curtice, Yakima County Coroner, at a local establishment talking and having drinks. Deputy Swale offered to drive Mr. Curtice home because he believed that Mr. Curtice was too intoxicated to drive. Mr. Curtice accepted the deputy's offer, and the trip home was without incident until they arrived at Mr. Curtice's home. As they approached the front porch, Mr. Curtice became belligerent and out of control. Off-duty deputy Swale indicated that Mr. Curtice tried to fight with him and was asking to be killed. Mr. Curtice allegedly told Swale that he wanted to die and that he was going to stab himself once inside his house. Curtice's wife was at home and had contacted YSO because she was observing the conflict between Swale and Curtice on the front lawn of the residence.

YSO Sgt. Panattoni and YSO Dep. Hubbard arrived at about the same time and observed the two gentlemen on the ground with Swale on top of Curtice. Curtice was yelling. Both deputies attempted to pull Curtice up and they grabbed his arms. He pulled away and said "fuck you" and "kill me", repeatedly. Curtice was then handcuffed behind his back while still on the ground. The reports drafted by the responding deputies all stated it was clearly evident that Curtice was intoxicated and was experiencing a severe mental health crisis. In my opinion, the videographic evidence corroborates their assessment.

After being handcuffed, the deputies attempted to stand Mr. Curtice up and escort him to one of their vehicles. He struggled with the deputies. Dep. Hubbard indicated that Curtice "would not walk on his own accord". YCSO Dep. Bossert indicated the following as they walked Curtice to the car:

“... he refused to cooperate and kept falling to the ground and wouldn't walk under his own power.”

It was at this point that Curtice allegedly assaulted Dep. Hubbard by kicking Hubbard's leg and causing them both to lose their balance and fall to the ground. Eventually, he was placed in the patrol vehicle but continued to yell obscenities at the deputies as well as stating he wanted them to kill him. Medical personnel were called to the scene based upon the extreme intoxication and his suicidal statements. Mr. Curtice was taken accordingly to MultiCare Yakima Memorial Hospital. During the drive to the hospital and after arriving, Mr. Curtice continued to yell and begged to be killed. He was ultimately restrained on the bed and was given sedatives by the hospital staff to put him asleep.

In relation to the alleged leg assault, YSO Dep. Hubbard states the following:

I did not experience any pain or sustain any injuries when Curtice kicked me. None of Curtice's threats to kill were deemed as credible, based upon his apparent level of intoxication and that he did not specifically direct his statements to any particular person.

The first issue that I must explore is the potential perception of a conflict of interest I may have as the elected prosecutor of Yakima County involving the filing of charges against the elected county coroner. American Bar Association (ABA) Standard 3-1.2 indicates that the “prosecutor is an administrator of justice, a zealous advocate, and an officer of the court. The prosecutor's office should exercise sound discretion and independent judgement in the performance of the prosecution function.” The NDAA National Prosecution Standards (Fourth Ed. 2023) provides some guidance, in part, on conflicts of interest. Chapter 1, Section 3.3(d) states the following:

d. The prosecutor should excuse himself or herself from any investigation, prosecution, or other matter where personal interests of the prosecutor would cause a fair-minded, objective observer to conclude that the prosecutor's neutrality, judgment, or ability to administer the law in an objective manner may be compromised.

I begin my analysis of a potential conflict by acknowledging that I know and work with Jim Curtice in his capacity as an elected official of Yakima County and the responding YSO deputies in their capacities as local law enforcement officers. If merely knowing or having a working relationship with a participant in an incident were the basis for an intractable conflict of interest, any prosecutor would have a conflict of interest in making a charging decision where a local law enforcement officer was an alleged victim. Like other prosecutor's offices, the Yakima County Prosecutor's Office routinely evaluates cases where officers are allegedly assaulted during the discharge of their duties, despite our collegial working relationship with these officers. The current case involving Mr. Curtice's interactions with the deputies of the Yakima County Sheriff's Office is no different.

I have never represented the current coroner in any way other than to provide my legal opinion and insight when asked. Neither myself nor the prosecutor's office represent him personally and I do not have any other relationship with the coroner other than we are both elected county officials representing our respective county departments. It would be my position that I do not have an *actual* conflict in deciding any criminal charges in this particular case. Additionally, I would argue any potential perception of a conflict of interest is defeated once I undertook my initial review of the underlying incident. I assert I am neutral in my analysis of the facts, and I believe I can objectively administer the law and evaluate these facts in this particular situation.

It is my formal opinion I do not have a conflict of interest in this particular case and under these particular facts.

Having addressed the potential for a conflict of interest and disposed of that issue, I must now assess whether charges are appropriate. In making prosecutorial charging decisions here in the state of Washington, prosecutors are guided by RCW 9.94A.411 which helps define evidentiary sufficiency. A decision to not prosecute is governed by the standard in RCW 9.94A.411(1) which states that a “prosecuting attorney may decline to prosecute, even though technically sufficient evidence to prosecute exists, in situations where prosecution would serve no public purpose, would defeat the underlying purpose of the law in question or

would result in decreased respect for the law.” Additionally, and conversely, a decision to prosecute standard is also provided for in that same statute. Subsection (2)(a) states that crimes against persons will be filed if sufficient admissible evidence exists, which, when considered with the most plausible, reasonably foreseeable defense that could be raised under the evidence, would justify conviction by a reasonable and objective fact finder.

Regarding my decision whether to file criminal charges, I begin by reiterating that I have reviewed the evidence and the copious amount of video which really does tell the story of this incident. We know that on March 10, 2023, Mr. Curtice had been drinking. We also know that Dep. Swale, who was off duty at the time, was with Mr. Curtice at the local establishment. Swale kindly offered to take Curtice home. It was Swale’s belief and opinion that Curtice was intoxicated. Swale was not on duty and was merely acting as a conscientious acquaintance of Mr. Curtice. When they arrived and just before they entered the residence of Curtice, conflict ensued. Curtice, by all evidence, was very intoxicated and emotionally compromised. As I indicated above, the officers involved all agreed that he was intoxicated and having a mental health crisis that was severe. He wanted to die and was inconsolable. This continued for the next hour. Curtice remained in this state throughout the event around law enforcement and medical personnel – many of whom he knew. The physical detention in this event and Curtice being handcuffed was only done because he would not calm down, not because he had committed a crime. Off-duty Deputy Swale made it clear that he was not a victim concerning any attempted physical assault prior to the other officers showing up.

I am formally determining that Jim Curtice will not be charged with a crime under these set of facts and for the state of mind he possessed during this event. It is clear that he was suffering from some type of severe medical event and his ability to form the requisite mental state, also known as a mens rea, to commit an intentional assault is not present. Without being able to prove beyond a reasonable doubt that it was intentional, the State will fail to meet its burden of proof for an assault. Additionally, any leg kick, as seen in the video, could be seen as purely de minimis with no injury or associated pain as Dep. Hubbard concluded. It would be my position that any underlying prosecution with these facts would not serve a public purpose.

I am using my prosecutorial discretion to not file any charges in this particular case.

If you have any questions, please contact me at your earliest convenience.

Sincerely,



Joseph A. Brusic
Yakima County Prosecutor