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October 9, 2018

Gary Jones  
Interim Chief of Police  
Yakima Police Department  
200 South 3<sup>rd</sup> Street  
Yakima, WA 98901

***Re.: Officer Involved Alleged Assault  
YPD Officer Ian Cole #7660  
September 23, 2018  
YPD Case No. 18Y039978***

The following decision regarding the officer involved alleged assault indicated above is based upon the reports and documents that I have received from the Yakima Police Department after the completion of their full investigation surrounding the alleged assault of [REDACTED], by YPD Officer Ian Cole on September 23, 2018 at the Yakima County Fairgrounds. The Yakima County Prosecuting Attorney's Office has now completed its review of the reports, videos, recordings and various statements created during that investigation.

The relevant statute pertaining to lawful use of force under these circumstances is RCW 9A.16.020(1) which states the following:

*The use, attempt, or offer to use force upon or toward the person of another is not unlawful in the following cases: (1) Whenever necessarily used by a public officer in the performance of a legal duty, or a person assisting the officer and acting under the officer's direction;*

### **INVESTIGATION**

The above statutory provision governs the alleged assault in this particular incident at the Central Washington State Fair which took place at approximately 9:20 p.m. on the night of September 23, 2018. YPD Officers Ian Cole and Kevin Cays were working uniform patrol on foot at the Fair. Both were in full Yakima Police Department patrol uniform complete with badge, name tag, and department patches. Coles and Cays received notice that a group of Norteno gang members were causing problems with other patrons at the fair. During their patrol, they encountered a large group actively engaged in a fight. They ran towards the group, identified themselves as police officers and ordered the crowd to disperse. The crowd numbered approximately 10 to 15 subjects. YPD Officer Cays ordered the group to stop and get down on the ground. Several individuals ran

away but a few of them continued to actively fight. Both Cays and Cole ordered the remaining individuals to stop and get on the ground. While they were giving the commands, they both took out their department issued pepper spray. Two subjects refused to obey and continued fighting. Consequently, both Cays and Cole utilized their pepper spray to subdue the participants. One of those individuals was [REDACTED].

YPD Officer Cole ordered [REDACTED] to stop and get on the ground after spraying him in the face and head. During this time, Officer Cays had his attention drawn to several other persons involved that continued to yell and approach the officers. The officers could be heard telling these individuals to "stay back." Some complied with the order to get down. [REDACTED] failed to comply with Cole's direct order and continued to walk away from him, ignoring his commands. At that time YPD Officer Cole delivered one single push kick from behind to [REDACTED]'s waistline/upper buttock area. This caused [REDACTED] to fall over and lay on the ground. Cole held [REDACTED] down and additional members from the YPD Gang Unit assisted and took the suspects to the YPD MOPS van for the cleansing of their eyes, face and head.

A number of eyewitnesses were contacted and interviewed during the resultant investigation. Those individuals all corroborated the officer's account of a fight amongst numerous suspects in which only some of them complied with the direct orders from the officers. These orders were heard by the witnesses and included "Get down", "Stop" and "Police." These witnesses also agreed that [REDACTED] was kicked only one time in the lower back area. It was their observation that the officer was trying to "like pull him down so he wouldn't run away." One witness indicated that it was more of a shove than a kick. All indicated that this kick/shove was intended to get [REDACTED] on the ground. No other use of force was observed by any witness contacted by law enforcement.

### *ANALYSIS*

The facts of this incident clearly indicate that YPD Officers Cole and Cays were performing their legal duty as police officers in full uniform at the time of this fight at the Fair. They ordered the participants to stop and get down on the ground numerous times. Based upon video taken at the time of the fight, the commands were clear. The officers yelled "Stop, police, stop" and "Get on the ground now." The alleged assault involves the kick/shove that officer Cole applied to the lower back/upper buttocks of [REDACTED].

The Yakima Police Department Use of Force Policy, Section 300.3, states the following:

*Officers shall use only that amount of force that reasonably appears necessary, given the facts and circumstances perceived by the officer at the time of the event to accomplish a legitimate law enforcement purpose. The "reasonableness" of force will be judged from the perspective of a reasonable officer on the scene at the time of the incident. Any evaluation of reasonableness must allow for the fact that officers are often forced to make split-second decisions about the amount of force that reasonably appears necessary in a particular situation, with limited information and in circumstances that are tense, uncertain and rapidly evolving.*

There are several factors to consider in determining whether YPD Officer Cole should be charged with assault upon [REDACTED]. At the time these officers came upon this fight, there was an immediate threat and potential severe situation with 10 to 15 fighting individuals in which a number of them did not comply with the officer orders to stop and get on the ground. This included [REDACTED]. He failed to comply both before and after being pepper sprayed. Officer Cole perceived him to be a threat who failed to follow reasonable commands in a tense situation. The officers were outnumbered. Officer Cays had to threaten spraying some that were yelling and approaching the officers. The officers had probable cause to arrest these suspects for Fighting in Public under the Yakima Municipal Code. This was a very fluid situation that was a potential threat

to the officer's safety as well as others standing around the melee. Clearly, [REDACTED] had ample opportunity to comply with the directives. He started to walk away before he was kicked.

I hereby find that YPD Officer Cole reasonably believed he had to utilize this push kick to control [REDACTED] and bring a prompt resolution of the situation to preserve his and others safety. His use of force, namely the usage of pepper spray and one kick to the back, was reasonably and necessarily used to enforce compliance with his commands and to prevent further injury from all involved and/or watching the fight. No other force was applied once the individual was subdued. Taking into consideration all the facts and circumstances known and perceived by YPD Officer Cole on September 23 and comparing it to what a reasonable officer would have done under the same or similar circumstances, I hereby find that Officer Cole lawfully used force upon [REDACTED]. He used necessary force in performing his legal duty as a law enforcement officer for the City of Yakima.

***YPD Officer Ian Cole will not be charged with the crime of assault for this incident.***

If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience.

Sincerely,



Joseph A. Brusic  
Yakima County Prosecutor  
Yakima, WA